

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3  
4  
5 TRANSCRIPT OF PROCEEDINGS  
6 Hearing  
7 April 26, 2006  
8 Jefferson City, Missouri  
9 Volume 3

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

17  
18 RONALD D. PRIDGIN, Presiding,  
19 REGULATORY LAW JUDGE.

19 JEFF DAVIS, Chairman,  
20 CONNIE MURRAY,  
21 LINWARD "LIN" APPLING,  
22 COMMISSIONERS.

22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
24 MIDWEST LITIGATION SERVICES  
25

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FOR: Staff of the Missouri Public  
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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 31 WERE MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE PRIDGIN: Good morning. We're on the  
5 record. This is the hearing in Case No. EA-2006-0309, in  
6 the matter of the application of Aquila, Incorporated for  
7 permission and approval and a certificate of convenience  
8 and necessity authorizing it to acquire, construct,  
9 install, own, operate, maintain and otherwise control and  
10 manage electrical production and related facilities in  
11 unincorporated areas of Cass County, Missouri, near the  
12 town of Peculiar.

13 I am Ron Pridgin. I am the Regulatory Law  
14 Judge assigned to preside over this case. This hearing is  
15 beginning at approximately 8:53 a.m. on April 26, 2006.  
16 We're in the Governor's Office Building in Jefferson City,  
17 Missouri. At this time I would like to get oral entries  
18 of appearance from counsel, beginning with Staff, please.

19 MS. SHEMWELL: Good morning, and thank you.

20 JUDGE PRIDGIN: And if you could please be  
21 sure to speak into the microphone.

22 MS. SHEMWELL: Thank you. Nathan Williams  
23 and Lera Shemwell representing the Staff of the Missouri  
24 Public Service Commission, Post Office Box 360, Jefferson  
25 City, Missouri 65102. Thank you, your Honor.

1 JUDGE PRIDGIN: Ms. Shemwell, thank you.

2 On behalf of Aquila, please?

3 MR. SWEARENGEN: Thank you, Judge. Let the  
4 record show the appearance of James C. Swearengen and  
5 Janet Wheeler, Brydon, Swearengen & England, and Dale  
6 Youngs, Blackwell Sanders, for Aquila, Inc.

7 JUDGE PRIDGIN: Mr. Swearengen, thank you.  
8 On behalf of the Office of the Public Counsel, please?

9 MR. WHEATLEY: Yes. Good morning. My name  
10 is Mark Wheatley.

11 JUDGE PRIDGIN: Speak into the microphone,  
12 please.

13 MR. WHEATLEY: And I'm appearing for the  
14 Office of the Public Counsel. Our address is Post Office  
15 Box 2230, Jefferson City, Missouri 65102.

16 JUDGE PRIDGIN: Mr. Wheatley, thank you.  
17 On behalf of Cass County, Missouri, please?

18 MR. COMLEY: Good morning, Judge Pridgin.  
19 For Cass County, Missouri, let the record reflect the  
20 appearance of myself, Mark W. Comley, 601 Monroe Street,  
21 Jefferson City, Missouri, and also Debra L. Moore, Cass  
22 County Counselor, Cass County Courthouse, 102 East Wall  
23 Street, Harrisonville, Missouri 64701, and Cindy Reams  
24 Martin, 408 Southeast Douglas Street, Lee's Summit,  
25 Missouri 64063.

1 JUDGE PRIDGIN: Thank you, Mr. Comley. On  
2 behalf of StopAquila.org, please?

3 MR. EFTINK: Jerry Eftink for  
4 StopAquila.org. My address is 704 West Foxwood Drive,  
5 Post Office Box 1280, Raymore, Missouri 64083.

6 JUDGE PRIDGIN: Mr. Eftink, thank you. On  
7 behalf of intervenors, Miller, Dillon and Doll, please?

8 MR. COFFMAN: John B. Coffman, 871 Tuxedo  
9 Boulevard, St. Louis, Missouri 63019, and also appearing  
10 on behalf of these clients, Matthew Uhrig. I believe his  
11 address is already on file with the Commission.

12 JUDGE PRIDGIN: Mr. Coffman, thank you. On  
13 behalf of Southwest Power Pool, please?

14 MR. LINTON: On behalf of Southwest Power  
15 Pool, David C. Linton, 424 Summertop Lane, Fenton,  
16 Missouri 63026.

17 JUDGE PRIDGIN: Mr. Linton, thank you. I  
18 understand we also have entries of appearance from City of  
19 Peculiar. I may not have counsel from them this morning.  
20 I just want to give them a chance to enter an appearance  
21 if anyone is here.

22 And the same also for Sedalia Industrial  
23 Energy Users Association. I believe that they have  
24 intervened but have not been terribly active. I just  
25 wanted to give them a chance to enter an appearance if

1 anyone is here.

2 Are there any procedural matters that I  
3 need to take up before we begin testimony?

4 Mr. Eftink?

5 MR. EFTINK: Yes. This problem may have  
6 already solved itself, but I filed a motion about ten days  
7 ago because I filed a prefiled statement of Harold  
8 Stanley. He's working in New Mexico on a project where  
9 he's on call 24 hours a day until about Memorial Day. And  
10 in my motion I asked that his testimony be taken by the  
11 Commission by telephone, but I mentioned that a deposition  
12 was being set up by Aquila.

13 That deposition was taken. I think they  
14 gave notice to every attorney, so every attorney had the  
15 opportunity to ask questions of Mr. Stanley. So I guess I  
16 need to ask for a ruling on my motion. My preference  
17 would be to use the deposition, but if I have to present  
18 the testimony of Mr. Stanley by telephone, we can make  
19 arrangements for that.

20 JUDGE PRIDGIN: If you gave notice to  
21 everybody to appear by telephone, I mean, and you've  
22 already premarked the deposition, if I understand  
23 correctly.

24 MR. EFTINK: I'm going to premark it. The  
25 deposition is supposed to be delivered today to my office.

1 Of course, I won't get it until Saturday. I don't think  
2 we'll be putting on our case until Monday anyway.

3 JUDGE PRIDGIN: I understand. It may be  
4 wiser for me to hold off ruling on that motion because I  
5 don't know what counsel may have cross-examination, and  
6 even if counsel don't have any questions, the Bench may  
7 have some questions for him. And assuming that he is  
8 available by telephone, we may take his testimony by phone  
9 later in the hearing.

10 MR. EFTINK: Well, he's certainly available  
11 by telephone. It just may take a few hours to set  
12 something up.

13 JUDGE PRIDGIN: I understand, and I don't  
14 know how much warning you need, and obviously that's  
15 something -- I don't know what kind of questions, if any,  
16 counsel may have for him, and I don't know if counsel --  
17 if any counsel is ready to speak to that. I mean, Aquila  
18 apparently deposed him Monday; is that correct?

19 MR. EFTINK: Yes.

20 JUDGE PRIDGIN: So I don't know what other  
21 questions counsel might have for him, and you may not know  
22 that until you read the deposition. I understand that,  
23 and if it's not available until Saturday, is that correct,  
24 Mr. Eftink?

25 MR. EFTINK: We got an electronic version



1 last night. There's an attachment. There's at least one  
2 exhibit. The exhibit is just his prefiled statement. So  
3 at least for Aquila, their attorneys and for me, we've got  
4 an electronic version. If anyone else wants a copy, I've  
5 got a paper copy in my car today.

6 MR. YOUNGS: I can tell you we would have  
7 additional cross-examination based on the questions that  
8 were asked at the deposition, so we'd like to hold off on  
9 any ruling, if it's possible.

10 JUDGE PRIDGIN: Sure. That's fine.  
11 Mr. Eftink, I understand that this witness may need some  
12 time, some warning to prepare and, that's fine. That's  
13 certainly not a question that we have to answer today, and  
14 I would like to give counsel more time to look at the  
15 depositions to see if they have any more questions or  
16 cross-examination.

17 MR. EFTINK: That's fine.

18 JUDGE PRIDGIN: Anything else before --  
19 before we go into evidence? Okay. If there's nothing  
20 else, there's something I want to say before we get into  
21 evidence, and Mr. Empson will be -- if you'll get ready to  
22 come up to the witness stand here in just a moment.

23 The purpose of this hearing, as I see it  
24 anyway, is cross-examination. We've heard a lot of  
25 narrative. I've heard a lot of narrative in this case and

1 in the 0248 case for well over a year, and I've heard a  
2 lot of people be able to say what they want to say.  
3 And the purpose of this hearing -- we've got a lot of  
4 prefiled testimony. The purpose of this hearing is to  
5 cross-examine, to ask questions.

6 When you're cross-examining, chances are  
7 you need to be asking leading questions, and you need to  
8 be suggesting the answers and narrowing what that witness  
9 said. If you're not asking leading questions, you may  
10 want to ask yourself why you're asking the question.

11 We've heard plenty of narrative. We've  
12 heard plenty of explanation, at least I have. What I  
13 expect counsel to try to do, at least for the most part,  
14 is to ask leading questions. And I will admonish the  
15 witnesses that the answers to leading questions are such  
16 answers as yes and no and I don't know. And if you begin  
17 trying to give a narrative, chances are that's  
18 nonresponsive to the question and chances are I would  
19 sustain an objection to that attempted answer.

20 Your counsel can redirect, can ask you to  
21 explain, what did you mean by that, why did you say this,  
22 and that's perfectly proper. But the idea behind  
23 cross-examination is to try to narrow what it is was said  
24 on direct. Okay. I want to give people the chance to say  
25 what they want to say, but like I said, we've already had

1 a lot of narrative, and the purpose of this is  
2 cross-examination.

3 Mr. Eftink?

4 MR. EFTINK: Your Honor, I think we're all  
5 in favor of trying to move along expeditiously, but if  
6 something has been prefiled, does that mean that it's  
7 already in evidence?

8 JUDGE PRIDGIN: No, sir, not at all.

9 MR. EFTINK: I just wanted to clarify on  
10 that.

11 JUDGE PRIDGIN: People have the chance if  
12 they want to offer whatever's been premarked or not offer.  
13 People have the chance to object. It's not necessarily  
14 offered. It's just that I have a lot of testimony, a lot  
15 of narrative that's been prefiled. I'm not asking you to  
16 waive any type of objection that you may have to what's  
17 been filed. Okay. Any questions on that?

18 (No response.)

19 JUDGE PRIDGIN: All right. If there's  
20 nothing further, Mr. Empson, if you would come forward to  
21 be sworn, please, sir.

22 (Witness sworn.)

23 JUDGE PRIDGIN: Thank you very much, sir.  
24 If you would please have a seat in the witness chair, and  
25 who will be tendering him?

1                   Mr. Swearengen, whenever you're ready.

2   Unless I say otherwise, you can feel free to do it from  
3   the podium or from your table, wherever you prefer.

4                   MR. SWEARENGEN: Thank you. I'll just work  
5   back here.

6   JON R. EMPSON testified as follows:

7   DIRECT EXAMINATION BY MR. SWEARENGEN:

8               Q.     Would you state your name for the record,  
9   please.

10            A.     My name is Jon R. Empson.

11            Q.     And by who are you employed and in what  
12   capacity?

13            A.     I'm employed by Aquila, Inc. as senior vice  
14   president of regulated operations.

15            Q.     Are you the same Jon R. Empson who caused  
16   to be prepared and filed in this proceeding certain direct  
17   and surrebuttal testimony in question and answer form?

18            A.     Yes, I am.

19            Q.     And is your direct testimony marked as  
20   Exhibit 1 in this proceeding?

21            A.     Yes, it is.

22            Q.     And is it your understanding that your  
23   surrebuttal testimony is marked as Exhibit 2?

24            A.     Yes, it is.

25            Q.     Do you have copies of that testimony in

1 front of you?

2 A. Yes, I do.

3 Q. Do you need to make any changes with  
4 respect to Exhibit 1, your direct testimony?

5 A. Just a minor change. On page 7 of my  
6 direct testimony, at the top on lines 1 through 3, I  
7 reference the attempt to file with the appropriate Cass  
8 County officials, and I use the word a special use permit.  
9 Really, there was two, so it should read official permit  
10 applications, instead of a special use permit application.

11 Q. Are there any other changes that you wish  
12 to make with respect to your direct testimony?

13 A. There are not.

14 Q. With respect to your surrebuttal testimony,  
15 are there any corrections you need to make?

16 A. Again, just a couple of changes. First of  
17 all, on page 13, when I wrote my surrebuttal testimony we  
18 had deposed Mr. Mallory the day before it was due, so I  
19 did not have the actual transcript. I had taken notes  
20 during the deposition, and on line 2 I quoted -- or lines  
21 2 and 3 from my notes what he had said. And since we  
22 received the deposition, I've had a chance to read it. It  
23 isn't quite accurate. The quote now reads, as much chance  
24 as a snowball's chance in hell. The actual quote from the  
25 deposition on page 73 reads, as much chance as a snowball

1 in hell. So I need to take out the S in chance.

2 Also on page 14, on line 19, just a typo,  
3 the last word in that line is Peculiar. That should be  
4 capitalized. Then on line 21, there's a sentence that  
5 starts, this apparently. I left out two words, this  
6 position was apparently. So just the position was needs  
7 to be added in.

8 Those are the only corrections.

9 Q. Thank you. With those changes to your  
10 direct and surrebuttal testimony, Mr. Empson, if I asked  
11 you those questions, would your answers today be  
12 substantially the same?

13 A. Yes, they would.

14 Q. And are they true and correct to the best  
15 of your knowledge, information and belief?

16 A. Yes, they are.

17 MR. SWEARENGEN: With that, your Honor, I  
18 would offer into evidence Exhibits 1 and 2, and tender the  
19 witness for cross-examination.

20 JUDGE PRIDGIN: Mr. Swearengen, thank you.  
21 Any objections?

22 MR. COMLEY: Yes, your Honor. There are  
23 objections to the surrebuttal testimony of Mr. Empson.  
24 Cass County objects to page 2, lines 3 through line 28,  
25 and also page 3, lines 1 through 17 of Mr. Empson's

1 surrebuttal testimony, Exhibit 2.

2                   In those lines and pages, Mr. Empson is  
3 characterizing the evidence in the record and attempting  
4 to draw inconsistencies in the testimony of the witnesses  
5 with what has been filed in pleading form. The material  
6 that he has written is argumentative, conclusionary and  
7 invades the province of the finder of fact. We would ask  
8 that it be stricken.

9                   JUDGE PRIDGIN: Any response from Aquila?

10                  MR. SWEARENGEN: Just, your Honor, that I  
11 believe it is proper surrebuttal testimony to the rebuttal  
12 testimony that was filed on behalf of the County.

13                  JUDGE PRIDGIN: The objections are  
14 overruled. Exhibit Nos. 1 and 2 are admitted into  
15 evidence.

16                  MR. COMLEY: Your Honor, I have other  
17 objections.

18                  JUDGE PRIDGIN: Mr. Comley, when you're  
19 ready.

20                  MR. COMLEY: Page 5, starting in the middle  
21 of line 4, with for example.

22                  MS. SHEMWELL: Is that direct?

23                  MR. COMLEY: This is surrebuttal. Through  
24 line 34, and then all of pages 6, 7, 8 up to the lines of  
25 lines 1 and 2 on page 9.

1 JUDGE PRIDGIN: Yes, sir.

2 MR. COMLEY: You can see that this is an  
3 extensive dialog that includes references to transcripts  
4 of hearings, and quite honestly, Judge Pridgin, if this  
5 were being done on a live basis, I think the judge would  
6 step in and stop it. This is extensive quotation from  
7 transcripts that are available to the Commission and the  
8 parties. This is strictly argument. This kind of  
9 testimony is improper in direct testimony that's filed in  
10 written form.

11 MR. COFFMAN: Your Honor, I would like to  
12 join in that objection, and also add that in a related  
13 way, it is an attempt to state a legal conclusion.  
14 Mr. Empson is not an attorney, and to the extent that it  
15 uses excerpts, I think implies legal arguments that are  
16 misleading. So argumentative and assertions of legal  
17 opinion that are not appropriate in testimony.

18 MR. EFTINK: StopAquila joins in that.

19 JUDGE PRIDGIN: Responses from Aquila?

20 MR. SWEARENGEN: Judge, of course, this  
21 information comes from a transcript which can be certified  
22 to the Commission, and there wouldn't be any problem in  
23 doing that. They're not legal conclusions. If anything,  
24 they're hearsay. They're out-of-court statements, but  
25 they're not offered for the truth of what was said.



1 They're just offered for the fact that the court made  
2 these statements, that these statements were, in fact,  
3 made, and they had an impact on the decision-making  
4 process of Aquila. So I think they should be received.

5 JUDGE PRIDGIN: Any further objections,  
6 Mr. Comley?

7 MR. COMLEY: Page 23 of his surrebuttal  
8 testimony, in the conclusion section, lines 14 through 25  
9 on page 23 and all of page 24, and then lines 1 through 4  
10 of page 25. Again, the conclusion section is basically a  
11 continuation of the legal arguments that Aquila has  
12 presented in pleading form by its own attorneys. It is a  
13 rehash of those arguments, it is not testimony, and it's  
14 an improper summary of what is legitimate in his  
15 testimony.

16 JUDGE PRIDGIN: Any response?

17 MR. SWEARENGEN: Just that it is proper  
18 surrebuttal.

19 JUDGE PRIDGIN: Further objections?

20 MR. COMLEY: Going to the direct testimony,  
21 I thought I'd take care of Mr. Empson's legal brief first,  
22 then go to his direct testimony. On page 6, lines 3  
23 through 23 of Exhibit 1, again, Mr. Empson talks about the  
24 legalities of the Court of Appeals opinion and apparently  
25 his conclusion about its effects. This is improper direct

1 testimony. It's not matters of fact. It's conclusions of  
2 law, and among other things, it lacks foundation.

3 MR. COFFMAN: The nearby residents would  
4 join in that objection.

5 MR. EFTINK: StopAquila joins in it.

6 JUDGE PRIDGIN: Mr. Swearengen or  
7 Mr. Youngs?

8 MR. SWEARENGEN: Well, as far as foundation  
9 is concerned, I think this is, once again, obviously  
10 information that's in the public domain and information  
11 available to this witness and information upon which they  
12 have made the business decisions that they have made,  
13 including the filing of this application. So I think it's  
14 perfectly proper direct testimony from this company  
15 explaining why they are here before the Commission in this  
16 proceeding.

17 JUDGE PRIDGIN: Mr. Swearengen, thank you.  
18 Mr. Comley, any further objections?

19 MR. COMLEY: No other objections.

20 JUDGE PRIDGIN: Any other objections to  
21 what has been offered as Exhibits No. 1 and 2?

22 (No response.)

23 JUDGE PRIDGIN: Hearing none, the  
24 objections are overruled. Exhibits No. 1 and 2 are  
25 admitted into evidence.

1 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO  
2 EVIDENCE.)

3 JUDGE PRIDGIN: Mr. Swearengen, did I  
4 understand you had tendered Mr. Empson?

5 MR. SWEARENGEN: That's correct.

6 JUDGE PRIDGIN: From the order that I see  
7 that Aquila has filed, I see that the first party to  
8 cross-examine would be Staff. Any questions from Staff?

9 MS. SHEMWELL: No questions, thank you.

10 JUDGE PRIDGIN: All right. Thank you. And  
11 I don't want to shut off anyone's opportunity to  
12 cross-examine, but I don't want to put you on the spot.  
13 Mr. Linton from Southwest Power Pool, do you plan to have  
14 any questions either for Mr. Empson or do you anticipate  
15 cross-examining any Aquila witnesses?

16 MR. LINTON: I have no anticipation.

17 JUDGE PRIDGIN: All right. I don't believe  
18 anybody from City of Peculiar or SIEUA has entered an  
19 appearance, so I'll skip over them.

20 Mr. Wheatley, any cross?

21 MR. WHEATLEY: No, your Honor.

22 JUDGE PRIDGIN: All right. Thank you.

23 Mr. Comley, will you be cross-examining?

24 MR. COMLEY: Yes, sir.

25 JUDGE PRIDGIN: Whenever you're ready, sir.

1 MR. COMLEY: Can I do it from --

2 JUDGE PRIDGIN: Wherever you're  
3 comfortable.

4 MR. COMLEY: I'll try it from the podium.

5 CROSS-EXAMINATION BY MR. COMLEY:

6 Q. Mr. Empson, forgive me. It's going to take  
7 a moment or two to get straightened out here. First, good  
8 morning.

9 A. Good morning, Mr. Comley.

10 Q. And you know that I represent Cass County?

11 A. Yes, I do.

12 Q. Let's turn to your direct testimony first,  
13 and that would be Exhibit 1. On page 1 you talk about  
14 your current responsibilities, and you also say that you  
15 assumed those in January of 2004. Is that a correct  
16 reading of your testimony?

17 A. Yes, it is.

18 Q. Now, before that time, what post did you  
19 hold with Aquila?

20 A. I was a senior vice president responsible  
21 for the regulatory, legislative activities.

22 Q. And how long had you held that post?

23 A. Probably about six years.

24 Q. And in that post, were you still a part of  
25 the team that was involved in what became the South Harper

1 project?

2 A. Prior to 2004, I would have been a part of  
3 it only from the regulatory perspective, not from the  
4 operations perspective.

5 Q. And the regulatory perspective at that time  
6 included what duties?

7 A. Just reviewing the deed and the types of  
8 filings we had in the IRP and that type of thing, but not  
9 into the detail of the construction activities until  
10 January of 2004.

11 Q. In January of 2004, then your duties  
12 changed; is that correct?

13 A. That is correct.

14 Q. Would you say that the substantial part of  
15 the South Harper project for you started in January 2004?

16 A. That's correct.

17 Q. On page 3, you discuss the tracts of  
18 property where the South Harper facilities are located.  
19 One is the 74-acre tract and the other is a 10-acre tract;  
20 is that correct?

21 A. That is not correct. The one is a 74-acre  
22 site. That's where the plant is. The other is a 55-acre  
23 substation site north of the plant.

24 Q. The 55 acre. I'm sorry. And 10 acres of  
25 that is reserved for the station, is that how it works?

1           A.       Substation is occupying about 10 acres of  
2     the 55 acres, and of the 74 acres, we're occupying a  
3     little less than 10 acres, correct.

4           Q.       Now, are those tracts described on the back  
5     of your application, the application in this case?

6           A.       I couldn't tell you if they're described on  
7     the back of the application. I believe they are. The  
8     information that was submitted as part of the application?

9           Q.       Right.

10          A.       I assume that they are. I was not  
11     responsible for drafting that part.

12          Q.       Do you have a copy of that application with  
13     you to look at?

14          A.       I do not have a copy of the total  
15     application.

16          Q.       I might be needing to talk with you about  
17     that, because I think your testimony kind of blends in  
18     with what certain paragraphs of the application talk  
19     about; is that correct? That's really your role as a  
20     witness here?

21          A.       I think it's twofold. One is to set the  
22     policy of what we were doing, and the second is to do  
23     surrebuttal testimony on specific witnesses.

24          Q.       Now, with respect to the tracts that we're  
25     talking about, it's true that these are zoned agricultural

1 under the Cass County zoning ordinance?

2 A. That has been the statement. We've not  
3 been able to find a map to validate what they are zoned,  
4 but that has been the statement.

5 Q. In your testimony, isn't that what you  
6 claim they are?

7 A. Yes.

8 Q. And as far as I know, Aquila has never  
9 disputed that that is in an agricultural area?

10 A. We have not.

11 Q. On page 3 of your direct, line 19, you said  
12 construction of the South Harper facility and the  
13 substation was completed during the summer of 2005 and  
14 both were placed into commercial operation and began  
15 serving Aquila's customers during late June and early July  
16 of that year. But can you tell me, when did site  
17 improvements actually begin on the South Harper plant?

18 A. The plant itself we started grading about  
19 the second week of October of 2004.

20 Q. And grading, what -- let me say, can you  
21 tell me when site improvements aside from grading would  
22 have started?

23 A. We received the environmental permit on  
24 12/29/04. So we would have started site improvements, the  
25 concrete and that, right after that, toward the end of

1 '04, early '05.

2 Q. Wasn't it true that you actually started  
3 the site improvements before the end of year of 2004?

4 A. My understanding would have been that the  
5 concrete and that was really poured or started to be  
6 poured during the first week of 2005. If there was any  
7 site improvement it might have been moving some trailers  
8 on in preparation for the construction activity, but I  
9 could not agree that the actual site improvement started  
10 right then, with the permit not being issued until  
11 12/29/04.

12 Q. Turn with me to page 5 of your direct  
13 testimony. It's at the bottom of the page, lines 21  
14 through 23, and those lines, you're talking about the  
15 action for the writ of review that Cass County sought in  
16 connection with the, I'll call it the 2005-0248  
17 application. Does that make sense to you if I use those  
18 words?

19 Get that out of the way first. If I say  
20 2005-0248, we're talking about an earlier application  
21 filed by Aquila for the South Harper facility; is that  
22 correct?

23 A. I can't recall the letters.

24 Q. We'll just call it the 0248 case. Now, at  
25 the bottom of the page, are you talking about the writ of



1 review Cass County sought after the decision was made in  
2 April of 2005 by the Commission in connection with the  
3 0248 case?

4 A. It is that appeal. I just cannot validate  
5 that that is the number.

6 Q. And --

7 JUDGE PRIDGIN: Please turn your cell  
8 phones and Blackberries off.

9 MR. COMLEY: I apologize.

10 MR. SWEARENGEN: I called him.

11 MR. COMLEY: He's done that before.

12 BY MR. COMLEY:

13 Q. At the time you filed your testimony, there  
14 had not been a disposition of that case, correct?

15 A. That's correct.

16 Q. But do you know if this case has been  
17 disposed of?

18 A. It is my understanding it has now been  
19 disposed of.

20 Q. Do you know what date it was?

21 A. I do not.

22 Q. Isn't it true there was an Order issued by  
23 the Court by consent and the Court did direct the  
24 Commission to vacate that Order?

25 A. It's my understanding that there was a

1 joint effort where a draft was sent to the Commission to  
2 say, here's what needs to be signed in order for it to go  
3 away, but I could not talk about all the legal terms that  
4 were put into that.

5 Q. Let me put it this way: Would you agree  
6 that the record of the Commission would probably reflect a  
7 more accurate disposition of that than what you just told  
8 me?

9 A. I'm sure it does.

10 Q. On page 6, going into page 7, you talk  
11 about the efforts by Aquila to secure land use approval,  
12 and you've also done that on page 3 of your surrebuttal.  
13 I think what we'll do, we'll just go to your surrebuttal  
14 at this point, page 3 of your surrebuttal, the bottom of  
15 the page in that area. Now, there are a series of letters  
16 that were exchanged between Aquila and Cass County by and  
17 through their attorneys before the filing of the  
18 January 20th special use permit applications by Aquila?

19 A. That's correct.

20 Q. Do you know whether any of those were  
21 attached to the application in this case?

22 A. I believe they were. If I recall  
23 correctly, there might have been one or two of those  
24 letters attached.

25 Q. Weren't they also attached to a motion

1 filed by Aquila in connection with approval of a  
2 procedural schedule proposed? Do you recall that?

3 A. I don't recall that.

4 MR. COMLEY: Your Honor, I'd like to show  
5 these pieces of --

6 JUDGE PRIDGIN: You may.

7 BY MR. COMLEY:

8 Q. My apologies to the Commission.

9 Mr. Empson, I'm going to hand you what has been marked at  
10 the bottom as Appendix 1, and represent to you it's an  
11 appendix to a motion that Aquila filed in connection -- in  
12 support of its procedural schedule in this case. Can you  
13 identify that letter for the Commission?

14 A. This is a letter that was sent to J. Dale  
15 Youngs and Christopher M. Reitz from Cindy Reams Martin  
16 dated January 23rd, 2006.

17 Q. Let me show you what has been marked as  
18 Appendix 3A and represent that was appendices to the  
19 motion Aquila filed in support of its procedural schedule.  
20 Can you identify that for the Commission, please?

21 A. Yes, I can. This is a letter to Norma  
22 Dunn, senior vice president, corporate communications,  
23 from Gary Mallory, Presiding Commissioner, dated January  
24 5th, 2006.

25 Q. It may seem out of order, but I'm going to

1 hand you what has been marked as Appendix 3B and ask you  
2 to identify this letter from the Commission.

3 A. This is a letter sent to Christopher Reitz,  
4 general counsel of Aquila, by Cindy Reams Martin dated  
5 August 16th, 2005.

6 Q. Finally I'm going to show you what's been  
7 marked as Exhibit 4, and represent it's appendices to the  
8 same motion I've been discussing. Can you identify that  
9 for the Commission?

10 A. This is a letter sent to Cindy Reams Martin  
11 from J. Dale Youngs, dated February 14th, 2006.

12 Q. Now, Mr. Empson, is your testimony based  
13 upon the exchange of correspondence between Cass County  
14 and its attorneys concerning the circumstances behind the  
15 filing and rejection of the January 20 special use permit?

16 A. No, it is not.

17 Q. Have you seen these letters before?

18 A. Yes, I have.

19 Q. And the rejection of the application is not  
20 based upon those letters?

21 A. I thought you talked about our filing of  
22 the application and what we determined based upon these  
23 letters, not the rejection. I apologize.

24 Q. Can you tell the Commission the basis for  
25 the rejection of the application?

1           A.       My understanding of reading the letters,  
2     the basis was there was pending legal issues that had to  
3     be resolved before Cass County believed they could accept  
4     and process an application.

5           Q.       And my understanding is that Aquila knew  
6     that that was the County's position before January 20,  
7     2006?

8           A.       We knew it was the legal position, but as  
9     testify -- as we provide in our surrebuttal testimony by  
10    Norma Dunn, we have some other indications that while we  
11    discussed it at great lengths before filing, we felt that  
12    there was a position taken by Mr. Mallory to really  
13    encourage us to try to get this process resolved.

14          Q.       Despite the nature of the letters that he  
15    has sent to Ms. Dunn?

16          A.       That is correct. And she has in her  
17    surrebuttal testimony extensive conversations and  
18    discussions with him where he really encouraged us to try  
19    to file an application and get it processed, and as we  
20    talked about it internally we felt there might have been  
21    some disagreement between what the lawyers were doing with  
22    Mr. Mallory and what Mr. Mallory felt was the right thing  
23    to do.

24                   And so we debated it extensively and  
25    decided that, given Norma's relationship and comments,

1 plus other input we had from people that had interacted  
2 with Mr. Mallory, including two of our zoning counsel, we  
3 decided we should make the best effort to go ahead and  
4 file.

5 Q. So it was your testimony then, Mr. Empson,  
6 that on January 20th you wanted to make a good faith  
7 effort to submit yourself to the jurisdiction of the Cass  
8 County planning and zoning board?

9 A. Not that we would submit to jurisdiction,  
10 but we would try to work with them on resolving any issues  
11 that might exist for us to maintain the plant at that site  
12 and to try to work through this in a cooperative way.

13 Q. So your testimony is that you didn't want  
14 to submit to the jurisdiction of the Commission, but you  
15 wanted to file an application anyway?

16 A. We were trying to work with the County to  
17 resolve the issues. We felt legally still that we were in  
18 the position where the County did not have zoning  
19 jurisdiction over the site, but as we had tried to do with  
20 the Camp Branch application early on in this -- early on  
21 with the South Harper we were trying to address the issues  
22 and get them resolved.

23 Q. When did the application in this case --  
24 when was the application in this case filed?

25 A. The application of this case was filed

1     about a week later.

2             Q.       Do you know what date?

3             A.       I thought it was about January 25th or  
4     27th, if I'm correct.  It was after we had filed the  
5     application or tried to file an application for SUPs with  
6     Cass County.

7             Q.       I think the record will show that it was  
8     filed on January 25, 2006, so that would have been five  
9     days after the SUP application at Cass County --

10            A.       That is correct.

11            Q.       -- had been filed and rejected; is that  
12     correct?

13            A.       That is correct.

14            Q.       Part of your testimony talks about that  
15     rejection, and I note that there is a paragraph in the  
16     application, in fact, it was paragraph 26, that talks  
17     about your previous attempt by Aquila to secure local land  
18     use approval.  Two of the letters -- I think I referred to  
19     this with you momentarily ago -- are attached, in fact, I  
20     think to the application, the record will show, and I hope  
21     the Commission will take official notice of this, that  
22     Appendix 4 to the application are letters to Norma Dunn  
23     dated January 5, 2006 from Gary Mallory, and an August 16,  
24     2005 letter from attorney for Cass County, Cindy Reams  
25     Martin.

1                   So it looks to me that as of five days  
2   after the filing of the application, Mr. Empson, Aquila  
3   had decided that it was no longer going to try to submit  
4   itself to Cass County jurisdiction; is that correct?

5           A.       No, it's not.

6           Q.       So as of the date of the filing of the  
7   application, Aquila still believed it would submit another  
8   application?

9           A.       No. The reason we had filed -- we were  
10   filing two applications almost in sync. We believed that  
11   no matter what, we had to come to the Public Service  
12   Commission to get specific authorization to build the  
13   plant. So we in a parallel path were preparing  
14   applications for both entities.

15                   Once we got the one rejected at Cass  
16   County, we then decided just to stick with the Public  
17   Service Commission, because we were then given a date by  
18   the judge of May 31st where we had to have specific  
19   authorization to move forward. So we picked the one path  
20   that we felt was the best path to go.

21           Q.       But on January 20th, you filed an  
22   application, thinking that at that time the right thing to  
23   do was go through both; is that correct?

24           A.       It is correct that we wanted to work with  
25   Cass County, and we have now chosen the path through the



1 Public Service Commission to work with Cass County to get  
2 the issues addressed.

3 Q. You mentioned filing of Cass County's  
4 motion to dismiss on March 20 in your testimony. Isn't it  
5 true that the filing of that motion had nothing to do with  
6 Aquila's decision not to refile an application for a  
7 special use permit?

8 A. Obviously that came after, but it did  
9 validate our concerns about not refiling, about what the  
10 attitude of the County was.

11 Q. It had nothing to do with your decision as  
12 of February 14th --

13 A. That's correct.

14 Q. -- not to file another application?

15 On page 9 of your surrebuttal, I'm looking  
16 at lines 15 through 18, you're talking about arguments  
17 that were -- I did say arguments, but you talk about the  
18 press release issued December 1st, 2004 about Cass  
19 County's intention to file suit, and then you say that  
20 there was no mention or even an inference by either Cass  
21 County Council or Cass County Commissioners that the  
22 Public Service Commission, I think that's what you mean  
23 there, should defer to the County related to South Harper  
24 facilities. Have I misread your testimony?

25 A. You have not.

1           Q.       Was deference to the county zoning  
2 authorities even an issue in that case, do you remember?

3           A.       I'm sorry?

4           Q.       Was deference to the county zoning  
5 authorities even an issue in that case?

6           A.       What the County was saying, yes, we were  
7 subject to County zoning.

8           Q.       Zoning, yes. But as far as deference to  
9 the Commission, was there any kind of issue in that case  
10 about that?

11          A.       I don't understand your question.

12          Q.       On page 13 -- excuse me. Page 11,  
13 somewhere in here I think, yes, it's in lines 18 through  
14 19, you refer to the transcript of the Cass County  
15 planning board hearing held July 13, 2004; is that right?

16          A.       Yes, I do.

17          Q.       Let me show you an exhibit.

18                   JUDGE PRIDGIN: You may approach.

19 BY MR. COMLEY:

20          Q.       Mr. Empson, I took the liberty of handing  
21 you a document. Do you recognize that document and can  
22 you identify it for the Commission?

23          A.       The heading is, proceedings before the Cass  
24 County planning board at a public hearing held on Tuesday,  
25 January 13th, 2004, special use permit application

1 No. 2589.

2 Q. The exhibit I handed you has an affidavit  
3 from the court reporter, but can you take a look at your  
4 transcript that you -- do you have it available from your  
5 notes right there?

6 A. Yes.

7 Q. Do you have the same transcript? Can you  
8 see whether it's identical?

9 A. It's going to be very hard to tell.

10 Q. Check the first page and last page, I  
11 guess, and see. Well, let me see if I can shorten it. Do  
12 you have any reason to believe that what I've handed you  
13 is not an exact duplicate of the transcript that you have  
14 in your hand?

15 A. It would be impossible for me to determine  
16 whether it was or not.

17 MR. COMLEY: Your Honor, what I've done,  
18 been seven days ago under affidavit of Mr. Stulz, the  
19 court reporter for that hearing, I submitted the  
20 transcript under his affidavit pursuant to  
21 Section 536.070.12. I have not heard an objection, but  
22 the transcript of that record has been referred to so many  
23 times in this proceeding, I think it would be wise to move  
24 it into evidence, and I would offer it at this time.

25 JUDGE PRIDGIN: I believe my exhibit list

1 would be up to No. 32, if counsel would correct me. And  
2 Mr. Comley, again, would you identify this proposed  
3 exhibit?

4 MR. COMLEY: This represents the transcript  
5 of Cass County planning board hearing for a special use  
6 permit application, No. 2589, dated July 13th, 2004.

7 JUDGE PRIDGIN: Any objections?

8 MR. SWEARENGEN: We have no objection.

9 JUDGE PRIDGIN: Hearing none, Exhibit 32 is  
10 admitted into evidence.

11 MR. COMLEY: Because I e-mailed everyone a  
12 copy of that, I'm not going to hand out copies of that and  
13 increase the bulk. If there's any objection to that, let  
14 me know and we'll get copies made.

15 (EXHIBIT NO. 32 WAS MARKED FOR  
16 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)  
17 BY MR. COMLEY:

18 Q. On page 13 of your surrebuttal, on line 14,  
19 13 through 15, while we have been approached by  
20 communities before the county planning board decision, we  
21 did not start any detailed meetings until early August,  
22 following the meeting with Mr. Mallory, and that was  
23 concerning alternative -- well, tell me what those  
24 meetings were about.

25 A. Are you talking about the meeting with

1 Mr. Mallory or the meeting with the other communities?

2 Q. It would be the detailed meetings you're  
3 talking about in line 14.

4 A. The detailed meetings would have been we  
5 were approached by the City of Peculiar, City of Raymore,  
6 I think there was some others that said they would like to  
7 have us consider locating the facility in proximity to  
8 those areas. So we did not start detailed meetings until  
9 we had worked through the issues on the first application  
10 that we had for Camp Branch.

11 Q. Are you certain that they started in  
12 August?

13 A. On detailed meetings. We had had some  
14 contact probably in the first part of July, maybe even the  
15 end of June.

16 Q. Would that have been including with your  
17 economic development person, Mark Dawson?

18 A. That would be correct.

19 Q. So that would have happened in July?

20 A. It could have happened as early as the  
21 latter part of June, early part of July, that's correct.

22 Q. On page 14 of your surrebuttal, line 19,  
23 line 18 through 19 you say, Mr. Mallory confirmed  
24 knowledge, I think, about the Peculiar project and did not  
25 raise any land use concerns to Peculiar because it would

1 be the city's issue, not the county's.

2 Now, you're also claiming it's inconsistent  
3 that he did not express a concern for local residents when  
4 the County expressed no concerns for its residents when  
5 Peculiar was going to annex South Harper. Is that a  
6 fairly accurate reading of your testimony?

7 A. That's a good summary, yes.

8 Q. Really, isn't it true, Mr. Empson, that  
9 this is not the only case where Cass County has expressed  
10 its concern for its citizens? Isn't that correct, this  
11 application? Don't you see Cass County expressing  
12 concerns for its citizens in this case?

13 A. Yes, I do.

14 Q. And the case for the injunction against  
15 Aquila, that was also a case in which Cass County was  
16 looking after the interests of not only itself but also  
17 its citizens; is that correct?

18 A. That's correct.

19 Q. Let me ask you this: Do you know any  
20 authority that Cass County might have to object to or  
21 interfere with in an annexation procedure of incorporated  
22 cities within its boundaries?

23 MR. SWEARENGEN: Objection. That calls for  
24 a legal conclusion.

25 JUDGE PRIDGIN: I'll overrule. He can

1 answer if he knows the answer. If he doesn't know, he can  
2 say, I don't know.

3 THE WITNESS: I don't know of a legal  
4 authority, no.

5 BY MR. COMLEY:

6 Q. So did you have an expectation that Cass  
7 County would try to get involved in Peculiar and work  
8 through Peculiar to try to object to your proceeding? Did  
9 you have that expectation?

10 A. Yes.

11 Q. Did you find it fortunate that it didn't  
12 happen?

13 A. No. I found it unfortunate that it did not  
14 happen. If they'd started raising issues and concerns  
15 like they're raising now at that point in time, there  
16 might have been a different path that had been taken. I  
17 find it unusual that if someone is going to annex property  
18 and you have unincorporated citizens that are residing  
19 around that property, that the County wouldn't have raised  
20 questions. Whether they have the legal, at least they  
21 have the moral responsibility to say we don't believe that  
22 is appropriate, and they would defend the rights of those  
23 people that live in that vicinity.

24 Q. Eventually those objections were raised,  
25 weren't they?

1 A. Only after --

2 Q. These objections were raised?

3 A. Only after the City of Peculiar annexation  
4 fell through. During that process, nothing was raised.

5 Q. And they were raised at the time the trial  
6 started in January of 2005?

7 A. Only after the annexation didn't go  
8 through. It's confusing to me why the same concerns  
9 wouldn't exist whether the property is annexed by the city  
10 or not annexed by the city, if you have the land use  
11 concerns and the investments of the people that were  
12 living in close proximity to that land.

13 Q. And the arguments about this, I suspect,  
14 were raised to the trial court; is that correct?

15 A. I'm not aware. I'm looking here at how we  
16 made our decisions to move forward and input factors that  
17 we had to make those decisions.

18 Q. You mentioned that you had implicit support  
19 for the program on page 16.

20 A. Yes.

21 Q. I'm presuming that Aquila presented that  
22 argument to Judge Dandurand the at the trial?

23 A. Again, I'm talking about how we made the  
24 decisions within our own company to move forward with that  
25 building of the plant, not the legal arguments that might



1 have been presented by our lawyers.

2 Q. So I'm understanding that that kind of  
3 argument did not reach Judge Dandurand?

4 A. I cannot say specifically what kind of  
5 arguments are made. All I'm looking at is how we made our  
6 own personal decisions within our management.

7 Q. On page 17, line 8, you say, we held a  
8 meeting on November 5th, 2004, a discussion with  
9 Mr. Mallory about the intentions to proceed with South  
10 Harper. And I would gather before that meeting, the board  
11 of directors for Aquila had made a decision about whether  
12 to proceed with the construction of South Harper; is that  
13 correct?

14 A. Our senior management team had made the  
15 decision. I don't recall the dates when we were informing  
16 the board what their schedule times were, so I couldn't  
17 say for sure when those meetings took place.

18 Q. So in advance of that meeting, your  
19 understanding would be that the senior management team had  
20 the authority to approach Mr. Mallory about this,  
21 irrespective of whether the board would approve it?

22 A. The board had already approved the  
23 construction of the facility. We had kept them updated  
24 about the issues that we were facing. The purpose of this  
25 meeting was to discuss with Mr. Mallory how we move

1 forward, given the issues that we were facing with the  
2 loss of the annexation and wanting to go ahead and proceed  
3 to build the facility.

4                   So we had the people involved, including  
5 the City of Peculiar, our chief operating officer and  
6 legal counsel to review what our intentions were that we  
7 were going to build this plant according to code and that  
8 we wanted to work with the local landowners to resolve  
9 issues if we could, but we believe we had the legal  
10 authority to move forward.

11               Q.       Were you at that meeting?

12               A.       I was not at that meeting. I was involved  
13 in developing the talking points that went to the meeting,  
14 and the meeting itself was validated through the  
15 deposition of Mr. Mallory and also the transcript where  
16 Mr. Stamm did talk about this meeting and the earlier case  
17 before the judge.

18               Q.       So you were not at the meeting, but you  
19 knew of the outcome of the meeting?

20               A.       Yes. The people that were involved in  
21 that, I report to Mr. Stamm. We came back after the  
22 meeting, and I think Mr. Stamm's testimony in the  
23 transcript, that occurred when Judge Dandurand talked  
24 about what happened.

25               Q.       So what you're doing in your surrebuttal

1 testimony is summarizing your review of the transcript and  
2 testimony and also what you heard from Keith Stamm in his  
3 part of the meeting; is that correct?

4 A. And the deposition that was from  
5 Mr. Mallory, where he acknowledged that he had the  
6 meeting, could not remember the exact content, but also  
7 the information I have on what the content was, yes.

8 Q. So is it fair to say that lines 13 through  
9 20 of your testimony are really based on things that  
10 people told you and things that you read, not things that  
11 you actually saw or heard?

12 A. I was not personally in the meeting, but I  
13 talked with the people that were there, and I have  
14 validated those conversations through the deposition and  
15 the transcript.

16 Q. On page 18, you go into the rebuttal  
17 testimony of Mr. Peshoff, Cass County's expert?

18 A. That is correct.

19 Q. On that page, you talk about -- you take  
20 issue with the fact that the plant and substation were  
21 erected without any participation by the public. Let me  
22 ask you this: Would you agree with me, Mr. Empson, that  
23 the planning board of Cass County has held no public  
24 hearings about Aquila's application for a special use  
25 permit for South Harper and the Peculiar substation?

1           A.       Yes.

2           Q.       Now, on page 19, you now make the claim  
3       that the County endorsed Peculiar's annexation plan for  
4       the South Harper site. Tell me, on what evidence do you  
5       base the county endorsed the annexation?

6           A.       Two actions. First of all, they did  
7       approve a resolution for the City of Peculiar to annex the  
8       South Harper Road from the city limits down to the  
9       southern border of our plant site, and with full  
10      knowledge, as admitted by or discussed by Mr. Mallory  
11      during his deposition and the testimony of Mr. Fisher,  
12      that we were going to build the South Harper plant on the  
13      site that this road was going to be annexed to access.

14          Q.       And you would not agree that was just  
15      showing no objection to the annexation proposed by the  
16      City? You would not agree with that, would you?

17          A.       That's a play on words. To me, when people  
18      have an opportunity to raise an issue that in their mind  
19      is serious, then they would raise the issue.

20          Q.       That wasn't my question. In this part of  
21      your testimony, I think you're saying that it was City of  
22      Peculiar that was the governmental body reviewing the  
23      South Harper project and the substation. Would that be a  
24      correct picture of your testimony?

25          A.       Of the South Harper plant site, yes.

1           Q.       Now, I take it, then, that as part of that  
2 review process, Aquila was working with the City of  
3 Peculiar on the appropriate zoning for the plant and the  
4 substation?

5           A.       That is not correct.

6           Q.       Is it true that Aquila was prepared to  
7 submit to the zoning of the City of Peculiar in connection  
8 with the South Harper plant?

9           A.       No. As my testimony indicates, what we  
10 asked the cities that were trying to vie for this plant to  
11 provide was the site ready for us to start construction  
12 and all the land use concerns should be addressed by them  
13 before they delivered the site.

14          Q.       City of Peculiar does have zoning, doesn't  
15 it?

16          A.       I assume they do, yes. I think Mr. Fisher  
17 addresses what his intentions were in his filed testimony.

18          Q.       On page 20, you also discuss the multi-use  
19 tier and the County's comprehensive plan. Mr. Empson, I  
20 know you have considerable qualifications, but do you  
21 consider land use planning as one of the top of your  
22 qualifications?

23          A.       I'm not a specific land use planner. I did  
24 with my work experience, I have an MBA. I took some urban  
25 economics and land use economics. I worked for seven

1 years in economic development for the chamber of commerce  
2 and worked with the City of Omaha on land use issues  
3 between their cities and their three-mile  
4 extra-territorial area. So I have experience, but not as  
5 an expert in land use.

6 Q. Not in land use planning. All right. And  
7 you did hire yourself an expert in the case, didn't you?

8 A. We did, just as Cass County did, yes.

9 Q. Sure. Page 23, the question at line 4 says  
10 that Mr. Peshoff offered alternative locations to Aquila  
11 where you might build a plant, I guess. Now, tell me,  
12 where is that stated in his testimony?

13 A. Well, I probably don't have his -- well,  
14 maybe I do have his testimony here. On page 30 of 36, the  
15 question is, are there locations in unincorporated Cass  
16 County where industrial use, such as a power plant, would  
17 be permitted? Please identify those locations. Then he  
18 goes through an explanation of where those sites could  
19 have -- would have been.

20 Q. I don't see the word Aquila in that  
21 question or answer anywhere, but you're saying that  
22 testimony gave you the idea that Aquila was being given  
23 alternatives to the South Harper plant?

24 A. In the context of the rest of his rebuttal  
25 testimony, because he's responding to where our site was,

1 I would see no other reason he'd be offering sites if it  
2 weren't for a demonstration of where some alternatives  
3 would have been.

4 Q. You also say the first time the County has  
5 given you any alternatives. Do you think the County has  
6 the obligation to give you alternatives to your site for  
7 South Harper?

8 A. I think as the County's testimony has  
9 shown, they try to work with individuals or companies that  
10 are coming in. I would think that would be one of their  
11 obligations.

12 Q. Well, it's not a requirement?

13 A. It is not a requirement, but again, we're  
14 looking at how do you create a cooperative environment.  
15 We would have thought if there were alternatives that they  
16 thought would have worked, that they would have sure  
17 brought them forward.

18 Q. I understand that you sent Mr. Rogers,  
19 Chris Rogers, another witness in this case, to go examine  
20 those sites; is that correct?

21 A. I called Mr. Rogers and asked him if he  
22 could assemble a team to go out and look at these sites,  
23 since they were being referred to as potential  
24 alternatives, in my mind.

25 Q. I guess this is the first time Aquila's

1 ever examined those alternate sites; is that correct?

2 A. I think Mr. Rogers will testify to that.

3 MR. COMLEY: I have no other questions.

4 JUDGE PRIDGIN: Mr. Comley, thank you. I  
5 assume no other cross-examination from Cass County; is  
6 that correct?

7 MR. COMLEY: That's right.

8 JUDGE PRIDGIN: All right. Mr. Eftink, any  
9 cross?

10 MR. EFTINK: Yes.

11 CROSS-EXAMINATION BY MR. EFTINK:

12 Q. When Mr. Comley was asking you about this  
13 timeline of what happened between Cass County and the City  
14 of Peculiar, if I remember correctly, you said that you  
15 wished the County had raised some of these objections  
16 earlier. Did I correctly state your testimony?

17 A. I think you've summarized it close enough.

18 Q. Now, isn't it true that the annexation fell  
19 through, the City decided not to annex Harper Road in  
20 October 2004?

21 A. It was the latter part or mid to late part  
22 of October of 2004. We received a letter on October 16th  
23 from the City of Peculiar.

24 Q. And in November 2004, representatives of  
25 Aquila met with Gary Mallory, the head commissioner of



1 Cass County?

2 A. That is correct.

3 Q. You said that was November 5?

4 A. That's correct.

5 Q. Okay.

6 A. And if I remember, it was not only Aquila  
7 but also the City of Peculiar.

8 Q. By November 15, 2004, my group had filed  
9 suit against Aquila seeking an injunction, correct?

10 A. That's correct.

11 Q. And then the County filed suit right after  
12 Thanksgiving 2004 against Aquila?

13 A. I believe it was December 1st.

14 Q. Was the purpose of this November 5 meeting  
15 with Gary Mallory to try to get him to give assurances  
16 that Aquila would not be stopped in putting in a power  
17 plant at that South Harper location?

18 A. No. It was to educate him on what our  
19 intentions were to move forward, and that we were going to  
20 comply with all the building codes and would hope that we  
21 would have the support of the County to move forward.

22 Q. In Exhibit 1 on page 4, line 8, you say  
23 that the Public Service Commission had a long-standing  
24 policy that was summarized in a letter to Nanette Trout  
25 dated November 5, 2004. If you have Exhibit 1 in front of

1     you, can you turn to that exhibit?

2             A.       Are you talking about page 4 now,  
3     Mr. Eftink, or the attached schedule?

4             Q.       Well, in your prefiled statement on your  
5     page 4, line 8, you say the Public Service Commission had  
6     a long-standing policy that was summarized in a letter to  
7     Nanette Trout.

8             A.       Correct.

9             Q.       And you say that letter was dated  
10    November 5, 2004, correct?

11            A.       Yes. It's a -- it is correct. It's  
12    attached to my testimony as Schedule 1.

13            Q.       If you turn to the attachment in your  
14    schedule, it's identified as JRE-1. Is that a letter from  
15    the Public Service Commission to Nanette Trout dated  
16    November 5, 2004?

17            A.       It is a letter from the Executive Director  
18    of the Missouri Public Service Commission, Robert Quinn,  
19    to Nanette Trout dated November 5th, 2004.

20            Q.       And on the first page of that letter from  
21    the PSC, last paragraph, doesn't the PSC tell Ms. Trout  
22    that it doesn't tell utilities where to not build?

23                   MR. SWEARENGEN: I want to object. The  
24    letter speaks for itself.

25                   JUDGE PRIDGIN: He can answer the question.

1 I'll overrule.

2 THE WITNESS: Do you want me to read the

3 paragraph?

4 BY MR. EFTINK:

5 Q. Yes. I'm interested in that language.

6 JUDGE PRIDGIN: I don't see any need for

7 him to read the paragraph. You can sure ask him

8 questions.

9 MR. EFTINK: May I approach?

10 JUDGE PRIDGIN: Sure.

11 MR. EFTINK: Thank you. I will try to

12 point out the sentence I'm talking about.

13 THE WITNESS: That a utility not construct

14 a generation facility in a particular location.

15 BY MR. EFTINK:

16 Q. Well, you didn't read the whole sentence.

17 Doesn't the letter from the Missouri Public Service

18 Commission say, its authority does not extend to an

19 ability to order that a utility not construct a generation

20 facility in a particular location?

21 MR. SWEARENGEN: Objection, the letter

22 speaks for itself.

23 JUDGE PRIDGIN: Overruled. You can answer

24 the question.

25 THE WITNESS: That is what the letter says,

1     yes.

2     BY MR. EFTINK:

3             Q.       And that was about the same day that your  
4     people had the meeting with Gary Mallory in Cass County?

5             A.       That's correct.

6             Q.       And it was your understanding that the  
7     ability to stop you from building in a particular location  
8     resided with the County. Since the Public Service  
9     Commission said it's not going to tell you where to not  
10    build, you understood that if anybody had the ability to  
11    tell you where to not build, it would be Cass County?

12            A.       It was our understanding at that point in  
13    time that if we had a specific authorization from the  
14    Commission to build the plant, we were exempt from 64.235  
15    and that we did not -- the County did not have the  
16    authority to sanction the plant.

17            Q.       But nonetheless, you met with the County to  
18    try to get their approval for the location?

19            A.       We felt an obligation to go back to  
20    Mr. Mallory and explain to him where we were in that  
21    process, since he had been in communication with the City  
22    of Peculiar, to make him aware that annexation had fallen  
23    through. We wanted to continue to work with the City of  
24    Peculiar, since this site was within probably about one  
25    and a half to two miles and within their annexation area,

1 and it seemed reasonable that the City should have some  
2 input into the designing of the plant.

3 Q. And then about four weeks later, Cass  
4 County filed a lawsuit to try to stop you from building a  
5 power plant at that location?

6 A. That's what I indicate in my testimony,  
7 that the answer was, we don't agree with you and we're  
8 going to file an action to try to stop you.

9 Q. Now, prior to that, as you said, Aquila had  
10 sought zoning approval from Cass County when it wanted to  
11 build this same facility closer to Harrisonville. That's  
12 referred to as the Camp Branch facility, correct?

13 A. We filed a special use permit application  
14 with the County, with the understanding that we were doing  
15 this in a cooperative effort to try to site the plant  
16 consistent with the SUP requirements. And we did notice  
17 that at the hearing about what our legal requirements  
18 were, and this was much more of a work to try to make sure  
19 that we could get this plant built.

20 Q. And after that hearing, the planning board  
21 voted to recommend to the County Commission that the  
22 special use permit not be granted to Aquila, correct?

23 A. The planning board voted six to zero to  
24 recommend to the BZA, the Board of Zoning Adjustment, that  
25 the plant site not be approved for a special use permit.

1           Q.       All right. And after that, Aquila did file  
2   an application or a request to the County Commission  
3   sitting as the Board of Zoning Adjustment, to grant the  
4   special use permit, despite the recommendation of the  
5   planning board, correct?

6           A.       That's not correct. The application was  
7   automatically forwarded from the planning board to the  
8   BZA. What we did was go to meet with Mr. Mallory to say  
9   that since you had recommended that we file a special use  
10  permit application and they're now denying the special use  
11  permit application because we should have filed for  
12  rezoning, which was our original intent, our people who  
13  had worked with him felt that we had an opportunity to  
14  have the BZA still accept that plant site.

15                    So we went to him to find out what his  
16  attitude was, and that's when, as noted in the deposition,  
17  he indicated to us that our application had about as much  
18  chance as a snowball's in hell of getting approved.

19           Q.       He was referring to the recommendation by  
20  the planning board six to nothing against Aquila that  
21  occurred in July?

22           A.       No. He was talking about what was going to  
23  happen with the BZA, that we had no support with the  
24  BZA because of public outcry that did exist at the  
25  hearing. Even though he had not personally read our

1 application, had not personally read the recommendations  
2 of the consultant, but based upon the public opposition,  
3 they were going to deny our application.

4 Q. You're again referring to the Camp Branch  
5 application?

6 A. That is correct. That's what your question  
7 was dealing with.

8 Q. Okay. I just wanted to clarify. And after  
9 that, since the planning board had voted not to recommend  
10 approval, Aquila did not go ahead and build a power plant  
11 close to Harrisonville?

12 A. No. As indicated in my surrebuttal  
13 testimony, we asked them to delay the final decision  
14 because we'd been approached by a couple of communities,  
15 and what we wanted to do is to see if we could work  
16 through, then, without having the conflict with the County  
17 on the Camp Branch to see if we could get the facility  
18 built, because we knew if it was denied and we continued  
19 to pursue that channel, that it was going to be again a  
20 long and litigated process, so we were looking for an  
21 avenue that would not have that conflict.

22 Q. So when Aquila decided to put in a power  
23 plant closer to Peculiar, which is referred to as the  
24 South Harper plant, Aquila applied for a special use  
25 permit for the substation, correct?

1           A.       We initially did, that is correct.

2           Q.       And that application was filed by Aquila  
3 with Cass County?

4           A.       That is correct.

5           Q.       And that was in about September of 2004?

6           A.       I don't remember the exact date, but it  
7 would have probably been in that period of time, yes.

8           Q.       Okay. And then once Aquila decided to not  
9 submit to the County, Aquila withdrew its application for  
10 a special use permit for that substation in November 2004?

11          A.       That is correct. We wanted to keep both  
12 the substation and plant on the same path. Felt that if  
13 we were denied the substation route, then we'd be in a  
14 legal case to fight about whether that was properly zoned.  
15 So we decided to withdraw it and keep them both together.

16          Q.       So up until a few days before Cass County  
17 filed in Circuit Court for an injunction to stop Aquila,  
18 Aquila still had an application pending for a special use  
19 permit for the substation?

20          A.       I don't recall the exact date we withdrew  
21 that application for the special use permit. You're  
22 indicating you filed the action about mid November. I'm  
23 not sure when we withdraw that application.

24          Q.       Okay. But you withdrew it in November  
25 2004?



1           A.       I can't tell you. I don't remember exactly  
2 when we withdrew.

3           Q.       And prior to that, Aquila was involved in  
4 the Aries plant and submitted to zoning for that?

5           A.       Aquila was a partner in a nonregulated  
6 venture. It was not a utility property. So they went  
7 through, just as any commercial enterprise would, to  
8 submit to zoning. But it was not a utility that had the  
9 exemption under 64.235.

10          Q.       Well, it's the Aries plant that generates  
11 electricity that we're talking about?

12          A.       It's not a regulated plant by a public  
13 utility or a public service commission. It was built as a  
14 merchant plant to sell power into the nonregulated  
15 wholesale market.

16          Q.       So your answer is yes, Aquila and its  
17 partner submitted to zoning for the Aries plant?

18          A.       Because it was required by law, given the  
19 commercial enterprise nature of that plant.

20          Q.       And then Aquila had these three combustion  
21 turbines, and in 2002 Aquila asked Cass County to agree  
22 that it could put the three combustion turbines next to  
23 the Aries plant; isn't that correct?

24          A.       Yeah. That would have been the  
25 nonregulated partnership. You used the word Aquila. If

1     you're talking about Aquila utility, no, we did not.  If  
2     you're talking about what our merchant partner, our  
3     merchant subsidiary might have done with Calpine to  
4     generate another facility for nonregulated use, then I  
5     can't validate for sure that they did, but they might  
6     have.

7             Q.       So you're not sure if Aquila in 2002 asked  
8     Cass County to okay it putting in the three combustion  
9     turbines that we're talking about in this case right next  
10    to the Aries plant?

11            A.       Aquila utility did not make that request.  
12    There could have been an effort on behalf of Aquila, in  
13    partnership with Calpine, to expand that location in a  
14    nonregulated environment.  But it's two different entities  
15    you're talking about.  We as the utility, which I  
16    represent, did not make a request with Cass County to put  
17    those three turbines at the Aries plant.

18            Q.       Now, talking about these three combustion  
19    turbines, you agree that they were originally to be put in  
20    on the Aries site, correct?

21            A.       It's my understanding.  But again, my life  
22    in the company of Aquila has been on the utility side of  
23    the business, so I'm not as knowledgeable about what the  
24    intentions were on the nonregulated side of our business.

25            Q.       You know what the cost was of those three

1     CTs, correct?

2             A.       The original cost?

3             Q.       Yes.

4             A.       I recall, I couldn't give you the exact  
5     number, but yes, there was a number that we looked at when  
6     we looked at it as a utility, of whether or not we want to  
7     buy those CTs and use them for utility business.

8             Q.       Right. The original cost to the merchant  
9     side was about 77 million for the three combustion  
10    turbines?

11            A.       I think it was approximately 80 million, so  
12    I accept 77 million.

13            Q.       And then, in this transaction where you set  
14    up the South Harper power plant, Aquila purchased those  
15    three combustion turbines from its merchant side?

16            A.       That is correct. What we did was look at  
17    what's the lowest cost option for our customers. So we  
18    hired a third party to come evaluate what those turbines  
19    would be worth in the market, and by the rules that are  
20    with this Commission, when you have to transfer lower cost  
21    to market, we did that, because that was the best option  
22    for our utility customers. And we ended up taking about a  
23    \$14 million write-off on the value of those turbines by  
24    transferring to the utility.

25            Q.       Now on page 7, line 12 of Exhibit 1, you

1 state that Jerry Boehm will discuss the adoption by Aquila  
2 of the preferred plan over the least cost plan, correct?

3 A. Yes.

4 Q. And by that you mean that you're aware that  
5 Aquila did not choose the least cost plan for this  
6 utility?

7 A. It's the best cost, and you can ask those  
8 questions directly to Mr. Boehm when he is on the stand.

9 Q. My question is, don't you know that Aquila  
10 did not choose the least cost option?

11 A. On a pure cost basis. He'll discuss on an  
12 operational basis we took the best option.

13 Q. Now, are you familiar with the pollution  
14 reports or the emission reports that are filed by Aquila  
15 with the Missouri Department of Natural Resources?

16 A. I am not.

17 MR. EFTINK: Okay. I pass the witness.

18 JUDGE PRIDGIN: Mr. Eftink, thank you.

19 Mr. Coffman?

20 MR. COFFMAN: Thank you.

21 CROSS-EXAMINATION BY MR. COFFMAN:

22 Q. Good morning, Mr. Empson.

23 A. Good morning, Mr. Coffman.

24 Q. I'm John Coffman, and I assume you  
25 understand I represent three residents who live very close

1 to the South Harper power plant.

2 A. That is my understanding, yes.

3 Q. I know we -- you've been permitted to  
4 testify here as to Aquila's understanding of the law to  
5 some degree. Did Aquila have any specific authorization  
6 from the Public Service Commission to construct the South  
7 Harper facility in 2004 or at any time since then?

8 A. It was our understanding that we did have  
9 the specific authorization. We came back then in January  
10 of 2005 and filed an application with the Commission,  
11 which then an Order was issued in April of 2005, again  
12 giving us specific authorization. The courts have since  
13 determined that that was not the specific authorization  
14 that they expected to occur within the -- with the law.

15 Q. And did Aquila have the proper zoning  
16 approval from Cass County to build the South Harper plant?

17 A. We did not.

18 Q. You did not have any approval from Cass  
19 County to build that plant; is that correct?

20 A. That is correct.

21 Q. And you do discuss in your surrebuttal  
22 testimony the difficult decision that your company had  
23 regarding whether to go ahead with building the plant  
24 after an injunction had been placed against you; is that  
25 correct?

1           A.       That's correct.

2           Q.       But -- and you would acknowledge, wouldn't  
3 you, that Aquila did take a gamble and thought that it was  
4 a good gamble to go ahead and build the plant?

5           A.       Based upon the facts we had at the time,  
6 yes, we did.

7           Q.       But you understood it was not a sure thing  
8 legally?

9           A.       We understood there would be some legal  
10 challenges going forward, but felt good about our  
11 position.

12          Q.       And to clear up some of the questions  
13 earlier regarding what Cass County had said, what you  
14 claim were Cass County's positions, you would agree that  
15 Cass County would have no land use zoning regulation over  
16 the placement of a power plant that was in an annexed or  
17 city limit territory of the City of Peculiar, they would  
18 have no zoning authority in that situation, correct?

19          A.       Can you rephrase that one more time?

20          Q.       Do you believe that Cass County would have  
21 any zoning regulatory authority within the city limits of  
22 Peculiar?

23          A.       Once the property was within the city  
24 limits, no, they would not, to the best of my knowledge.

25          Q.       Would you acknowledge that Cass County

1 would have zoning approval in something built in an  
2 unincorporated area of Cass County?

3 A. I assume so by their zoning order, yes.

4 Q. And Cass County did immediately advise you  
5 that it expected Aquila to comply with this land use  
6 regulation once it was stated that Aquila was considering  
7 moving forward in an unincorporated area of the county?

8 A. They filed a legal action on December 1st,  
9 but throughout the time during the annexation process, the  
10 grading process, we had no advice coming from Cass County.

11 Q. But during that annexation process as you  
12 described, that was under the understanding that that  
13 would be something within the city limits of Peculiar?

14 A. That's where I get confused, Mr. Coffman,  
15 because to me you're annexing a piece of property, but  
16 it's still surrounded by unincorporated residents. So if  
17 you have a concern about consistency with the  
18 comprehensive plan and the zoning, why doesn't that issue  
19 still exist? And that's the confusion that I have. On  
20 the piece of property itself, I agree.

21 Q. What do you agree with?

22 A. That within that piece of property, once  
23 it's annexed, zoning isn't an issue.

24 Q. Do you believe that my clients should have  
25 an opportunity at a zoning hearing to have their property

1 rights and their due process rights considered?

2 A. I believe that your clients have that  
3 opportunity for the public with the public hearing that's  
4 already been held, with this evidentiary hearing that's  
5 being held now, to express their concerns.

6 Q. Do you believe this Public Service  
7 Commission has zoning authority?

8 A. I don't believe it's require for them to  
9 have zoning authority.

10 Q. So they should have a zoning hearing before  
11 a body that has no zoning authority?

12 A. It's not a zoning hearing. It's about the  
13 placement of this site, whether one of the factors dealing  
14 with the public interest is the location.

15 Q. Are you saying that my clients' zoning  
16 concerns, their property rights should be collapsed within  
17 a broader public interest determination made by this  
18 Public Service Commission?

19 A. You use the word zoning, but I would say  
20 yes, the concern about the placement of the site is  
21 collapsed within and by our testimony within the broader  
22 public interest standard.

23 Q. Well, when did my clients get a zoning  
24 hearing?

25 A. According to the law, I guess, Mr. Coffman,



1    when they say that if we have specific authorization from  
2    the Commission, the State has determined that there's a  
3    broad overall perspective that has to be provided beyond  
4    the County, and there is exemption from zoning that the  
5    courts have now determined exists for all classes of  
6    counties.

7           Q.       So Aquila reads the law in this situation  
8    to say in this specific situation my clients don't get a  
9    zoning hearing?

10          A.       That's correct.

11          Q.       Are you -- I assume that you have read the  
12   most recent order injunction from Judge Dandurand in Cass  
13   County issued I believe February 15th?

14          A.       I will look at it just to make sure that I  
15   have.

16          Q.       Yes.

17          A.       I have not read this -- the order. I just  
18   read the transcript of the hearing itself. So I had not  
19   read this order.

20          Q.       You did quote various excerpts here and  
21   there from that transcript where that order -- from which  
22   that order issued?

23          A.       That is correct.

24          Q.       But you hadn't actually read the injunction  
25   itself?

1           A.       I read his order at the end of the  
2 transcript, and I had not -- I'm sure I probably received  
3 it, but I did not go back in and read his order.

4           Q.       Well, it's a fairly short order.  Would you  
5 take a look at it now, please?

6           A.       You also handed me a letter.

7           Q.       Oh, I'm sorry.  I didn't mean to let you  
8 have that.

9           A.       I've quickly read through it.

10          Q.       Thank you.  And I know you're not a lawyer,  
11 but would you agree with me that the actual order itself  
12 from the court is what would control as to what Aquila's  
13 rights are under -- currently under that injunction, as  
14 opposed to the statements made in the transcript?

15          A.       I would concede that, subject to  
16 Mr. Swaengren's agreement.

17          Q.       And could you tell me if there is any  
18 mention in that order of the fact that Aquila would have  
19 the right to get some sort of preemption from the Public  
20 Service Commission?

21          A.       In the order itself, there is not.  You'd  
22 have to go back to the Court of Appeals decision.

23          Q.       Does that order not say that there is an  
24 injunction against operating that plant because it fails  
25 to -- that the power plant is inconsistent with the

1 agricultural zoning currently in place at Cass County?

2 A. I'd have to go back in and see if those  
3 particular words are used. Do you have a paragraph cite  
4 there that would save me some time?

5 Q. Yes.

6 A. It says of any -- talking about the removal  
7 of anything that is inconsistent with an agricultural  
8 zoning classification placed, affixed or constructed.

9 Q. And would you agree with me that that  
10 injunction is based upon inadequate zoning and not the  
11 lack of any particular certificate or specific certificate  
12 from this Commission?

13 A. I can't reach that legal conclusion.

14 Q. Did you see anything in that order that  
15 cited to the lack of a Public Service Commission  
16 certificate?

17 MR. SWEARENGEN: Judge, I think he answered  
18 the question, and the order speaks for itself.

19 JUDGE PRIDGIN: I'll sustain. It's been  
20 asked and answered.

21 MR. COFFMAN: If this order is not in the  
22 record, I would like to offer it. I only have one copy at  
23 the moment.

24 JUDGE PRIDGIN: I think it's been filed,  
25 but I will mark it as an exhibit, and I have that as

1 Exhibit No. 33. And, Mr. Coffman, if you could again  
2 briefly describe what that is?

3 MR. COFFMAN: This is an order from Judge  
4 Dandurand issued, I believe, February 15, 2006.

5 JUDGE PRIDGIN: Could you recite the case  
6 number, please?

7 MR. COFFMAN: CV104-1443CC, Cass County  
8 versus Aquila.

9 JUDGE PRIDGIN: And you're offering that,  
10 Mr. Coffman?

11 MR. COFFMAN: Yes, I am.

12 JUDGE PRIDGIN: Any objections?

13 MR. SWEARENGEN: We have none.

14 JUDGE PRIDGIN: Hearing none, Exhibit 33 is  
15 admitted.

16 (EXHIBIT NO. 33 WAS MARKED FOR  
17 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

18 BY MR. COFFMAN:

19 Q. There's been some statement or some  
20 suggestion, I think, in your testimony -- tell me if I'm  
21 wrong -- and I believe also in some testimony from the  
22 Staff of the Commission that a zoning hearing held with  
23 regard to the Camp Branch site was a sufficient public  
24 hearing with regard to residents that live near the South  
25 Harper area; is that your testimony?

1           A.       It was not my testimony, no.

2           Q.       Does it make any sense to you that my  
3 clients should have their due process rights regarding  
4 zoning be held regarding an application that's perhaps ten  
5 miles away from the site that Aquila ultimately decided to  
6 build its plant?

7                   MR. SWEARENGEN: I'm going to object to  
8 that. I think that, once again, that probably calls for a  
9 legal conclusion.

10                  MR. COFFMAN: We have gone so far down this  
11 road of letting Mr. Empson testify as to legal matters,  
12 and as I understand it, his testimony has been as to what  
13 Aquila understood the law to be as far as making its  
14 business decisions.

15                  JUDGE PRIDGIN: I'll overrule and let him  
16 answer.

17                  THE WITNESS: I never made that statement,  
18 Mr. Coffman, so I cannot judge whoever did -- did make  
19 that statement, why they reached that conclusion. So I  
20 never -- I never represented that if we had a public  
21 hearing at Camp Branch, that that would suffice for South  
22 Harper.

23 BY MR. COFFMAN:

24           Q.       Would that seem fair to you?

25           A.       It would not seem fair to me.

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

3                   JUDGE PRIDGIN: I don't believe we have any  
4 more cross-examination. Let me see if we have any  
5 questions from the Bench. Chairman Davis, any questions?

6                   CHAIRMAN DAVIS: No questions.

7                   JUDGE PRIDGIN: Thank you. Commissioner  
8 Murray?

9                   COMMISSIONER MURRAY: Just a couple. Thank  
10 you.

11 QUESTIONS BY COMMISSIONER MURRAY:

12               Q.       Good morning, Mr. Empson.

13               A.       Good morning, Commissioner.

14               Q.       Would you look at your Schedule JRE-1,  
15 please.

16               A.       Is that -- is that in my first JRE-1? I  
17 might have had a second JRE-1 in my surrebuttal, so is  
18 this my direct testimony?

19               Q.       This is with your direct.

20               A.       Okay. Yes.

21               Q.       What is that?

22               A.       This is a letter that was -- someone made  
23 an inquiry of Nanette Trout, it looks like to the Missouri  
24 State Auditor's Office. It was referred over to the  
25 Missouri Public Service Commission. So this was a

1 response from Robert Quinn to Nanette Trout to answer the  
2 question that was raised.

3 Q. Dated November 5th, 2004?

4 A. That is correct.

5 Q. And who is Nanette Trout?

6 A. My understanding, a local resident around  
7 the South Harper facility.

8 Q. And this is on a Public Service Commission  
9 letterhead; is that correct?

10 A. That is correct.

11 Q. And the Commissioners that are listed there  
12 are the same five Commissioners that are on the Commission  
13 today; is that correct?

14 A. That is correct.

15 Q. And the letter was signed by Robert Quinn.  
16 What position did he have at the time?

17 A. The executive director of the Missouri  
18 Public Service Commission.

19 Q. And the second paragraph of that letter  
20 stated the Missouri Public Service Commission is aware of  
21 Aquila's plans to construct additional gas-fired  
22 generation in their service territory and in this  
23 particular case near Peculiar, Missouri; is that correct?

24 A. That is correct.

25 Q. And then the next sentence -- I'm not going

1 to read the whole sentence, but the end of that sentence  
2 says, current state statutes do not require Aquila to  
3 receive Missouri PSC approval for the construction of  
4 these facilities; is that correct?

5 A. That's correct.

6 Q. And then at the end of that paragraph, the  
7 last sentence states, such certification was provided to  
8 Aquila when the service territory surrounding the region  
9 in question in this case was granted to Aquila; is that  
10 correct?

11 A. That's correct.

12 Q. So how did -- how do you interpret the  
13 meaning of that letter?

14 A. Well, my interpretation was this is telling  
15 us that we had -- or telling Nanette Trout that the  
16 company already had the authority they needed to build the  
17 plant in the vicinity of Peculiar, Missouri. We had all  
18 the authorization that we needed from the Public Service  
19 Commission.

20 Q. And was it your understanding that that  
21 authorization, if indeed it were a specific authorization  
22 to build the plant in that location, as the letter  
23 indicated, that Aquila would then be -- or the zoning  
24 requirement would be overridden by that Public Service  
25 Commission's grant of authority?



1           A.       That is correct.

2                   COMMISSIONER MURRAY:  Thank you.  I think  
3   that's all I have.

4                   JUDGE PRIDGIN:  Commissioner Murray, thank  
5   you.  Commissioner Appling?

6                   COMMISSIONER APPLING:  No questions, Judge.

7                   JUDGE PRIDGIN:  All right.  Thank you.  I  
8   don't believe I have any questions.  Do we have any  
9   recross based on Commissioner Murray's questions?

10                  (No response.)

11                  JUDGE PRIDGIN:  Seeing no volunteers -- oh,  
12   I'm sorry.  Mr. Eftink?

13                  MR. EFTINK:  Yes, I think I have one.  
14   Could I approach the witness --

15                  JUDGE PRIDGIN:  You may.

16                  MR. EFTINK:  -- to look at the exhibit?

17                  Thank you.

18   RE CROSS-EXAMINATION BY MR. EFTINK:

19                  Q.       I think Commissioner Murray's question to  
20   you was, did that letter say that Aquila had the specific  
21   authorization from the Public Service Commission?  Does  
22   the word specific or the word specific authorization  
23   appear in that letter?

24                  A.       I don't see the word specific in that  
25   letter.

1                   MR. EFTINK: Okay. I didn't either. Thank  
2     you.

3                   JUDGE PRIDGIN: Mr. Eftink, thank you. Any  
4     further cross?

5                   COMMISSIONER MURRAY: Judge, may I just  
6     clarify what I was asking the witness?

7                   JUDGE PRIDGIN: Yes, ma'am.

8                   COMMISSIONER MURRAY: I did not ask him if  
9     the letter said specific. I said as the letter would be  
10    interpreted to provide specific authorization, since it  
11    definitely talked about the site and it said the statutes  
12    do not require Aquila to receive Missouri PSC approval for  
13    the construction of these facilities. And my question was  
14    related to the interpretation of that letter as granting  
15    specific authority. Thank you.

16                  JUDGE PRIDGIN: Thank you, Commissioner.

17                  Any further recross?

18                  (No response.)

19                  JUDGE PRIDGIN: Redirect from Aquila?

20                  MR. SWEARENGEN: Yes, your Honor, just one  
21     question.

22                  JUDGE PRIDGIN: Yes, sir.

23     REDIRECT EXAMINATION BY MR. SWEARENGEN:

24                  Q.     Mr. Empson, in response to a question, and  
25     I'm not sure who asked you this, but you indicated that

1 the South Harper peaking facility is located in, I think  
2 you used the word agricultural area; is that correct?

3 A. I believe the question was, have we ever  
4 refuted that it was located. We have not been able to  
5 validate that there is zoning, but yes, it's zoned  
6 agricultural in a multi-use tier.

7 Q. And that would be my next question. You  
8 mentioned multi-use tier. Do you discuss that in your  
9 surrebuttal testimony at page 20?

10 A. Yes, I do.

11 MR. SWEARENGEN: Thank you. That's all I  
12 have.

13 JUDGE PRIDGIN: All right. Thank you. If  
14 there's nothing further, what I'd like to do is excuse  
15 Mr. Empson.

16 (Witness excused.)

17 JUDGE PRIDGIN: This looks to be a  
18 convenient time to take a break, since we're roughly at  
19 10:30. So let's go off the record. We'll try to resume  
20 in -- the clock on the back of the wall says 10:25.  
21 Because we have so many people, let's try to get going  
22 again at 10:40.

23 So we are off the record.

24 (A BREAK WAS TAKEN.)

25 JUDGE PRIDGIN: We're back on the record.

1 The hearing was not discussed while off the record and,  
2 Mr. Swearengen, I think that you did mention, though,  
3 before we came back on that you might want to take  
4 witnesses out of order?

5 MR. SWEARENGEN: Yes. Yes, Judge. As a  
6 preliminary order, if the Commission would agree and  
7 counsel for the other parties would agree, we would like  
8 to consider taking witness Chris Rogers, who right now is  
9 listed as the ninth witness on our list, we would like to  
10 move him up to the No. 4 slot.

11 I don't know if that means we'll get to him  
12 today or tomorrow, but counsel for Cass County is looking  
13 at that, and we don't have consent from all the parties to  
14 do that, and the Commission may have some objection, but  
15 it's something we would like to propose.

16 JUDGE PRIDGIN: I think the wisest thing to  
17 do right now is kind of hold that request and see if we  
18 can get to Mr. Rogers today, because it may become moot if  
19 the question becomes, well, the parties haven't had a  
20 chance to read that testimony yet and if they had a chance  
21 to read that this evening. And I'll certainly let counsel  
22 speak to that if they have any --

23 MR. SWEARENGEN: And that would be fine  
24 with us. Thank you.

25 MR. COMLEY: Your Honor, I'm grateful for

1 the consideration of the Commission on this. This is a  
2 rather fast-paced procedural schedule, and it's been  
3 difficult sometimes to make sure assignments are  
4 appropriate and, yes, I anticipated that Mr. Rogers would  
5 be not on the first day and would appreciate the  
6 Commission's sympathies in that respect. So thank you.

7 JUDGE PRIDGIN: I understand, Mr. Comley.  
8 And also let the parties know that we may be going -- just  
9 because we are in such a compressed time frame, that we  
10 may very well be going past five o'clock this evening and  
11 perhaps other evenings as well, and that may very well  
12 happen. It's -- I would rather be safe than sorry. I  
13 would rather go late and then have some time left over at  
14 the end than wake up on Friday, May 5th, and still have  
15 five witnesses left and we're all in a pinch.

16 And so I know a lot of counsel's from out  
17 of town. I did want to give you as much warning as I  
18 could for folks who need to make arrangements otherwise.

19 Mr. Williams?

20 MR. WILLIAMS: Do you have any idea -- do  
21 you have any idea as to how late we may run or is it going  
22 to be based on witnesses or --

23 JUDGE PRIDGIN: It may be based on  
24 witnesses. The short answer to your question is, no, I  
25 don't know. Obviously I would take into account any

1 problems that counsel may have as far as not being  
2 prepared for -- I don't want to plow ahead and get through  
3 12 witnesses today necessarily and counsel aren't  
4 prepared. No, that's not my plan.

5 But I do want to at least alert folks that  
6 we may be going past five. I get hungry for dinner, too,  
7 and I know you will, too. And we all get tired and we all  
8 have our limits. I do not have a specific time frame in  
9 mind, and that's something, obviously, I would be visiting  
10 with the Commission during breaks and lunches and see what  
11 other folks' feelings are. But just to alert you, don't  
12 be shocked if the clock rings five bells and we're still  
13 going.

14 Anything further from counsel before we go  
15 on to the next witness?

16 MR. EFTINK: Your Honor, on Chris Rogers,  
17 I'm not sure --

18 JUDGE PRIDGIN: Could you hit your  
19 microphone, please?

20 MR. EFTINK: This is Jerry Eftink.  
21 Regarding Chris Rogers, I'm not sure if I have his  
22 surrebuttal because it may be back in Kansas City. So if  
23 counsel could give me a copy of his statement, I'll read  
24 it sometime.

25 MR. SWEARENGEN: We'd be glad to do that.

1 JUDGE PRIDGIN: Mr. Eftink, thank you.

2 Mr. Swearengen, thank you.

3 Anything else before we go to the next

4 witness? Is this Mr. Boehm?

5 MR. SWEARENGEN: It's Mr. Boehm.

6 JUDGE PRIDGIN: Mr. Boehm, I'll ask you to  
7 raise your right hand to be sworn, please.

8 (Witness sworn.)

9 JUDGE PRIDGIN: Thank you very much. If  
10 you would please have a seat.

11 And, Mr. Swearengen, are you going to  
12 direct?

13 MR. SWEARENGEN: I will.

14 JERRY G. BOEHM testified as follows:

15 DIRECT EXAMINATION BY MR. SWEARENGEN:

16 Q. Would you state your name for the record,  
17 please.

18 A. Jerry G. Boehm.

19 Q. Mr. Boehm, did you file direct and  
20 surrebuttal in this proceeding?

21 A. Yes, I did.

22 Q. Is it your understanding your direct  
23 testimony has been marked as Exhibit 3?

24 A. Yes.

25 Q. And your surrebuttal is Exhibit 4; is that

1 correct?

2 A. Yes.

3 Q. Are there any corrections that you need to  
4 make with respect to your direct testimony?

5 A. My direct testimony, page 10, line 12, it  
6 says in January of 2005. That needs to be corrected. The  
7 correction is in January of 2004.

8 Q. Thank you. Are there any other changes you  
9 need to make with respect to your direct testimony?

10 A. No.

11 Q. With respect to your surrebuttal testimony,  
12 are there any changes that you need to make at this time?

13 A. No.

14 Q. If I asked you the questions contained in  
15 your direct and surrebuttal testimony, as you have  
16 corrected them, would your answers today be the same?

17 A. Yes.

18 Q. And would they be true and correct to the  
19 best of your knowledge, information and belief?

20 A. Yes.

21 MR. SWEARENGEN: I would offer into  
22 evidence Exhibits 3 and 4 and tender the witness for  
23 cross-examination.

24 JUDGE PRIDGIN: All right. Mr. Swearengen,  
25 thank you. Any objections to Exhibits 3 and 4?



1 MS. SHEMWELL: No objections.

2 MR. EFTINK: No objection, subject to  
3 cross.

4 JUDGE PRIDGIN: I understand. Hearing no  
5 objections, Exhibits No. 3 and 4 are admitted into  
6 evidence.

7 (EXHIBIT NOS. 3 AND 4 WERE RECEIVED INTO  
8 EVIDENCE.)

9 JUDGE PRIDGIN: Does Staff have any  
10 cross-examination?

11 MS. SHEMWELL: We do not, thank you.

12 JUDGE PRIDGIN: All right. Thank you. I  
13 don't believe SIEUA or City of Peculiar are here.  
14 Mr. Wheatley, anything from OPC?

15 MR. WHEATLEY: No questions.

16 JUDGE PRIDGIN: All right. Thank you. Be  
17 sure I'm on the correct list of cross-examination.

18 Cass County, Mr. Comley?

19 MR. COMLEY: Mrs. Martin will be conducting  
20 the cross-examination of Mr. Boehm.

21 JUDGE PRIDGIN: All right. Thank you.  
22 Ms. Martin, when you're ready, ma'am.

23 MS. MARTIN: Thank you very much.

24 CROSS-EXAMINATION BY MS. MARTIN:

25 Q. Good morning, Mr. Boehm. How are you?

1           A.       Fine. Good morning.

2           Q.       Appreciate your giving me the opportunity  
3 to ask you a few questions just to clarify some matters  
4 that have been raised by your direct testimony and the  
5 surrebuttal testimony that you've given. And I'll just  
6 tell you out of the box that the first question I had was  
7 the clarification you made with respect to January of  
8 2005. So I appreciate that information.

9                    If I understand the scope of your  
10 testimony, Mr. Boehm, as the manager of resource planning,  
11 your job is to look at generation and purchased power  
12 resources on a long-term basis; is that correct?

13          A.       Yes.

14          Q.       And as a part of that, then, you have  
15 familiarity with the sources of power that either are or  
16 could be available to Aquila; is that correct?

17          A.       Yes.

18          Q.       And you would have familiarity with the  
19 projected power requirements of Aquila; is that correct?

20          A.       By power requirements, I'm not sure what  
21 you mean.

22          Q.       With respect to your resource planning and  
23 looking to generation and purchased power resource, you  
24 also look to the future, don't you?

25          A.       Yes.

1           Q.       You're sponsoring testimony today with  
2   respect to the resource planning that led to the decision  
3   to build a three-CT plant on the utility side of Aquila;  
4   is that correct?

5           A.       Yes.

6           Q.       You are not, however, sponsoring testimony  
7   today with respect to the propriety of where that plant  
8   was located; is that correct?

9           A.       Correct.

10          Q.       Your resource planning is not site  
11   specific, in other words?

12          A.       In this case, it wasn't.

13          Q.       Now, I want to talk, if we can, about the  
14   process that led to the decision for Aquila to build a  
15   three-CT peaking plant, if we could.  Would that be okay?

16          A.       Yes.

17          Q.       And that is discussed in your direct and in  
18   your surrebuttal testimony; is that correct?

19          A.       Yes.

20          Q.       If I understand your testimony, the first  
21   request for proposal that would have been generated from  
22   the resource planning department was in 2001; is that  
23   correct?

24          A.       That's correct.

25          Q.       And then, again, a request for proposal was

1 issued in 2003; is that correct?

2 A. Yes.

3 Q. The request for proposal actually sought  
4 information from three general categories of potential  
5 power sources as you describe in your testimony; is that  
6 correct.

7 A. Um --

8 Q. Well, let me rephrase the question. You  
9 had a request for proposal. You also had what you call  
10 canvassing and you had self-build analysis, all of which  
11 would have been taken into consideration by you in  
12 resource planning; is that correct?

13 A. That's correct.

14 Q. The request for proposal would have been  
15 directed to folks who might be in a position to provide a  
16 formal bid for purchased power agreements; is that  
17 correct?

18 A. It was a formal way of identifying the need  
19 for power.

20 Q. Canvassing, by contrast, would have been an  
21 informal exploration Aquila would have utilized to see if  
22 partnerships or other arrangements could be explored with  
23 others in the utility business, correct?

24 A. Correct.

25 Q. And self-build analysis would involve a

1 determination that would have Aquila building a new plant  
2 of some sort; is that correct?

3 A. Yes.

4 Q. With respect to the self-build analysis,  
5 that's Terry Hedrick's role in this whole piece; is that  
6 correct?

7 A. His role as in developing cost, yes.

8 Q. And Mr. Hedrick, then, would be in a  
9 position to provide us testimony about the self-build  
10 analysis that would have been prepared as a part of the  
11 resource planning you describe in your testimony; is that  
12 correct?

13 A. The way I understand it, Terry provides the  
14 costs for self-build options.

15 Q. Well, did Mr. Hedrick provide a self-build  
16 analysis in connection with the resource planning which is  
17 the subject of your direct and surrebuttal testimony?

18 A. I'm having trouble with you saying analysis  
19 because it could be such a broad term. I'm having trouble  
20 putting a definition on it.

21 Q. And when you say analysis can be a broad  
22 term, you're referring to the fact that self-build  
23 analysis could cover many different potential options for  
24 types of plants or resources that could be constructed by  
25 Aquila?

1           A.       Well, my confusion is in the fact that I do  
2     analysis with self-build options and that analysis is for  
3     the integrated resource -- integrated resources of the  
4     company. So when you say self-build analysis, that's the  
5     part I do.

6           Q.       So I'm probably not using the right words,  
7     right?

8           A.       Terry develops costs for self-build  
9     options.

10          Q.       And really the question I'm trying to ask,  
11     and not very artfully -- and I apologize, Mr. Boehm. I  
12     don't know the lingo quite the way you-all may utilize it  
13     in the business, so I appreciate your patience with me.

14                   What I'm referring to is that in connection  
15     with this process that you described, which began in 2001  
16     and continued with another request for proposal in 2003,  
17     would Mr. Hedrick have been involved in providing you cost  
18     information for certain self-build options that might be  
19     available to Aquila in deciding how to handle its power  
20     needs?

21          A.       Yes.

22          Q.       Now, in your position as the manager of  
23     resource planning, are you familiar with all of the power  
24     sources then available to Aquila at any given time?

25          A.       No.

1           Q.     Are you available with -- or knowledgeable  
2     only about the resources available to Aquila on the  
3     regulated side?

4           A.     Yes.

5           Q.     Would your resource planning, then, in 2001  
6     and in 2003, continuing to the decision in January of 2004  
7     to self-build, have included any consideration whatsoever  
8     of the availability of the Calpine plant?

9           A.     I'm sorry. The question was rather long  
10    and I got lost in the timeline.

11          Q.     Let me ask it again just to make sure you  
12    understand it. The process you describe in your direct  
13    testimony that led to the decision in January of 2004 to  
14    self-build, did that process take into consideration in  
15    any respect the availability of the Calpine plant?

16          A.     Yes.

17          Q.     In what respect?

18          A.     The offers that were provided to us from  
19    Calpine.

20          Q.     And so the only respect given to the  
21    Calpine plant would have been the purchased power  
22    agreements it bid in response to the request for proposal?

23          A.     Yes.

24          Q.     During the time frame of 2001 through  
25    approximately 2003, was Aquila on its merchant side a

1 partner with Calpine?

2 A. I believe it was, yes.

3 Q. And so it was during this same time frame  
4 we are talking about, in fact on its merchant side through  
5 a subsidiary it wholly owned, a partner or owner of the  
6 Calpine plant; is that correct?

7 A. I'm getting lost again. Are you stating --  
8 are you asking me if Aquila had a -- had an ownership  
9 interest in Calpine at that time?

10 Q. Yes, sir.

11 A. Yes, it did.

12 Q. Were you then aware, Mr. Boehm, that in  
13 2002, as a part of resource planning, one of the options  
14 that Aquila considered was the expansion of the Calpine  
15 plant to add three CTs?

16 A. I don't know.

17 Q. You don't know. It could have been, it's  
18 just not something you were made aware of?

19 A. Yes. I don't know.

20 Q. You would have not been provided  
21 information, then, that representatives on behalf of  
22 Aquila had requested from the County its consent that the  
23 Calpine plant could be expanded to add three CTs in 2002?  
24 You're not aware of that?

25 A. I was not aware of that.



1           Q.       Would that not have been influential in  
2 your resource planning?

3           A.       No, I don't think so.

4           Q.       Were there not three CTs available that  
5 were intended to be used by Aquila in some manner during  
6 this time frame?

7           A.       I've learned that, yes, there were.

8           Q.       And you're telling me that the fact in  
9 2004, January, the decisions made through resource  
10 planning to self-build a three-CT plant bore no relation  
11 to a commitment secured from the County by Aquila in 2000  
12 to expand the Calpine plant to add three CTs?

13          A.       I have no knowledge of it.

14          Q.       The fact that you have no knowledge of it,  
15 though, of course, doesn't mean it didn't occur; is that  
16 correct?

17          A.       I guess so.

18          Q.       And the reality is, Mr. Boehm, you'd have  
19 to concede if your job is resource planning that it would  
20 certainly have been relevant to you to know that Aquila  
21 had secured the consent of the County in 2002 to expand  
22 the Calpine plant to add these very three CTs. Would that  
23 not have been relevant to you?

24          A.       No. What was relevant to me was the fact  
25 that there were three CTs available.

1           Q.       And if, in fact, those three CTs were going  
2     to be deployed and added to the Calpine plant and made  
3     available for power generation to Aquila, that would not  
4     have been relevant to resource planning?

5           A.       Only to the extent that Calpine was willing  
6     to offer that for sale.

7           Q.       Well, of course, in 2002, Aquila was still  
8     a partner or owner of Calpine; is that not correct?

9           A.       The Aquila merchant had a partnership with  
10    Calpine at that time.

11          Q.       So in 2002 when this request was made and a  
12    power source was deemed available because the County said  
13    it would consent to the expansion of Calpine to add those  
14    three CTs, that would have been the source of the three-CT  
15    power, wouldn't it?

16          A.       If we were taking power from those three  
17    CTs, that would have been the source of the three-CT  
18    power.

19          Q.       But you were never provided the information  
20    about that exploration by Aquila with the County, were  
21    you?

22          A.       I was not involved with any merchant  
23    activities with Aries and Calpine.

24          Q.       Now, in your testimony, and in particular  
25    if you could turn to your direct testimony on page 7, do

1     you have that in front of you?

2             A.       Yes, I do.

3             Q.       Starting on page 7, you describe the  
4     analysis that was made of the bits of information you  
5     received through this resource planning process we've  
6     talked about; is that correct?

7             A.       Yes.

8             Q.       And you indicated that after applying  
9     various models, a decision was made to build a three-CT  
10    plant, but again you verify on the top of page 8 that that  
11    was not a site-specific determination; is that correct?

12            A.       That's correct.

13            Q.       And you indicate that the folks who would  
14    have taken the laboring oar from the point the decision  
15    was made to build a three-CT plant would have been Terry  
16    Hedrick and Chris Rogers with respect to site selection;  
17    is that correct?

18            A.       Correct.

19            Q.       Now, if we could back up to page 6 of your  
20    direct testimony, please, sir. You talk about the  
21    difference between a preferred plan and a least-cost  
22    option plan; is that correct?

23            A.       Yes.

24            Q.       And if I understand -- and please correct  
25    me if I am wrong -- a least-cost option, to my way of

1 thinking that means it cost the least money. A preferred  
2 plan is a plan selected even though it's not the least  
3 cost for other reasons; is that correct?

4 A. Correct.

5 Q. And the difference in this case between the  
6 least-cost option and the preferred plan was, from a  
7 technical standpoint, the least-cost option would actually  
8 have been a five-CT peaking plant, not a three-CT peaking  
9 plant; is that correct?

10 A. That's what the study showed.

11 Q. And the preferred plan that you ended up  
12 with was the three-CT plan; is that correct?

13 A. Yes.

14 Q. And, of course, Aquila had already in its  
15 inventory three CTs that it pulled from the nonregulated  
16 side of its business; is that correct?

17 A. To my knowledge, yes.

18 Q. And it needed to use those turbines in some  
19 manner to justify their being on the regulated side of its  
20 business, didn't they?

21 A. I have no knowledge of that.

22 Q. Well, Mr. Boehm, are you aware of any other  
23 particular plans that Aquila might have had for the  
24 ability to move three CT turbines from the nonregulated  
25 side of its business to the regulated side of its

1 business, other than to reach a conclusion that it needed  
2 to build a three-CT plant?

3 A. I don't know.

4 Q. And the three CTs we're talking about that  
5 ultimately got incorporated into South Harper are, to the  
6 best of your knowledge, the same three CTs that would have  
7 been added to an expansion of Calpine; is that correct?

8 A. They could have been added other places,  
9 but I have no idea.

10 Q. But my question is, they are the same three  
11 turbines, aren't they?

12 A. They are three turbines that the merchant  
13 group owned.

14 Q. That eventually Aquila moved to the  
15 regulated side and had to find a use for; is that correct?

16 A. No.

17 Q. The decision was made at or about the time  
18 the turbines were moved to the regulated side that a  
19 three-CT plant was the preferred plan; would you agree  
20 with that statement?

21 A. We made a decision to have a three-CT plan  
22 independent of what they were doing with the CTs.

23 Q. Mr. Boehm, when the decision was made in  
24 January of 2004 to go with a self-build plan, which would  
25 have the construction of a three-CT plant, you knew, did

1     you not, that Aquila had a purchased power agreement with  
2     Calpine that would expire on May 31st of 2005?

3             A.       Correct.

4             Q.       And you knew, in fact, that one of the  
5     reasons you were looking at this resource planning was in  
6     connection with whether you wanted to replace that  
7     purchased power agreement; is that correct?

8             A.       Yes.

9             Q.       And so you knew when the decision was made  
10    in January of 2004 to build a three-CT plant that you had  
11    until May 31st, 2005 to get that done?

12            A.       Yes.

13            Q.       And so at that point in time, you've  
14    testified you turned the process over to Terry Hedrick and  
15    Chris Rogers to make decisions about where this three-CT  
16    plant could be built, correct?

17            A.       Well, I didn't turn anything over. I just  
18    made -- made the results of my analysis available to  
19    management.

20            Q.       And really that wasn't a fair question. By  
21    you, I meant Aquila. At that point the game shifts to  
22    Terry Hedrick and Chris Rogers, from your department to  
23    their department, with respect to siting this three-CT  
24    plant; is that correct?

25            A.       Once I present it to management, however

1 management hands it is -- I don't know what they did with  
2 it, actually.

3 Q. And so is it your testimony that once Terry  
4 Hedrick and Chris Rogers took charge of the site selection  
5 process, you had no involvement whatsoever in the planning  
6 or construction of the South Harper plant or whatever  
7 ideations preceded the South Harper plant?

8 A. I had no part in planning or constructing  
9 the South Harper plant.

10 Q. Did you have any role in the design of that  
11 plant with respect to future power needs that Aquila might  
12 have?

13 A. No.

14 Q. Did you have any input whatsoever with  
15 respect to how the South Harper plant should be  
16 constructed to anticipate future resource needs Aquila  
17 might have?

18 A. No.

19 Q. Had you made available to others, however,  
20 with Aquila your projections with respect to future  
21 resource needs Aquila might have?

22 A. Yes.

23 Q. And so that information was, to your  
24 knowledge, available to other folks with Aquila who could  
25 very well have been playing a role in the manner of the

1 design of the South Harper plant?

2 A. Yes.

3 Q. And with respect to that, if we could,

4 could you please turn in your testimony, and I believe --

5 let me double check to be sure -- that this is attached to

6 your direct testimony. Yes, it is. And I want you to

7 refer to Schedule JGB-6. This is a graphic. My version

8 is in color. I printed it off in that manner, and it's

9 actually quite helpful. It is a graphic that I understand

10 you've prepared, Mr. Boehm.

11 A. Okay.

12 Q. If you could confirm that for me.

13 A. Oh, okay. I'm sorry. I didn't have it

14 there for a second.

15 Q. Have you located what I'm looking at?

16 Let's make sure. I'm looking at this graph (indicating).

17 Is that the same graph?

18 A. Yes. I have a black-and-white version.

19 Q. Well, I think I may have the advantage over

20 you, but we'll try to take that into consideration. Did

21 you prepare JGB-6?

22 A. Yes.

23 Q. And did you also prepare the immediately

24 preceding page, JGB-5?

25 A. Yes.



1           Q.       And as I understand it -- and please  
2       correct me if I'm wrong -- JGB-5 and JGB-6 are  
3       interrelated documents, where JGB-5 is more in a table  
4       format projecting out needs Aquila may have, and JGB-6 is  
5       in a graph format. Is that a fair summary?

6           A.       There may be some slight differences, but  
7       in essence, they should be the same.

8           Q.       And what I'm intrigued by, Mr. Boehm, is  
9       that portion of JGB-6 that is on my copy red, but it would  
10      relate to the South Harper plant. Do you find the  
11      references I'm referring to, even though your chart is  
12      black and white?

13          A.       I believe so.

14          Q.       And I compared those to the references  
15      which on my chart are blue and are designated for  
16      CT other. Do you see those references?

17          A.       Yes.

18          Q.       Now, you are -- and by you I'm referring to  
19      you, the preparer of this graph -- projecting that in 2007  
20      Aquila will need to expand its CT source for power beyond  
21      the South Harper plant; is that correct?

22          A.       It will need to add -- in this plan, we  
23      will need to add a CT, yes.

24          Q.       In 2007?

25          A.       Yes.

1           Q.       And you show that growth of CT needs other  
2   than South Harper continuing all the way through 2024; is  
3   that correct?

4           A.       That's correct.

5           Q.       And to make sure we're clear, this CT other  
6   refers to other than the three CTs incorporated at South  
7   Harper; is that correct?

8           A.       Correct.

9           Q.       Now, turn back if you could to JGB-5.

10          A.       Okay.

11          Q.       Even more specifically on this table,  
12   you're showing that the projected plan of Aquila as of  
13   January 25th, 2005 is to build a 105-megawatt CT in 2007,  
14   correct?

15          A.       That's correct.

16          Q.       And to build a 105-megawatt CT in 2009; is  
17   that correct?

18          A.       Correct.

19          Q.       And to build a 105-megawatt CT in 2011; is  
20   that correct?

21          A.       Correct.

22          Q.       And those are three CTs similar to the  
23   three CTs employed at South Harper, but in addition to  
24   those; is that correct?

25          A.       Correct.

1           Q.       In fact, the three CTs at South Harper also  
2   total 315 megawatts, don't they?

3           A.       Correct.

4           Q.       Mr. Boehm, it's April 2006. What resource  
5   planning is Aquila doing right now in connection with the  
6   building of a 155 megawatt CT in 2007?

7           A.       Right now, we have request for proposals,  
8   and we're in the evaluation phase of the request for  
9   proposals of which we received outside offers and inside  
10  offers, self-build options.

11          Q.       Are you looking at self-build options; is  
12  that correct?

13          A.       Correct.

14          Q.       And can you tell me, Mr. Boehm, if any of  
15  those self-build options include expanding the South  
16  Harper plant?

17          A.       Specifically, the options presented to me  
18  did not say they were going to South Harper.

19          Q.       Are you generally familiar with the  
20  construction layout at the South Harper plant as far as  
21  the site design?

22          A.       No.

23          Q.       Have you been to the South Harper  
24  plant?

25          A.       No.

1           Q.       Are you aware that the South Harper plant  
2 was constructed with a mirror image site nearly or  
3 immediately adjacent to the existing 315 megawatt CTs?

4           A.       I'm not aware of that. I'm aware that  
5 there's expansion capabilities at the plant.

6           Q.       And that expansion capabilities were  
7 specifically designed into the South Harper plant site,  
8 weren't they?

9           A.       I would assume they are.

10           MS. MARTIN: May I approach, your Honor?

11           JUDGE PRIDGIN: You may.

12           MS. MARTIN: May I have that marked?

13           JUDGE PRIDGIN: I show I believe as Exhibit  
14 No. 34. Is that correct, Counsel? Anybody see anything  
15 different?

16                   And, Ms. Martin, at your leisure, if we  
17 could get extra copies for the Commissioners who are  
18 absent.

19           MS. MARTIN: Absolutely.

20                   (EXHIBIT NO. 34 WAS MARKED FOR  
21 IDENTIFICATION BY THE REPORTER.)

22           MS. MARTIN: May I proceed?

23           JUDGE PRIDGIN: Yes, ma'am.

24 BY MS. MARTIN:

25           Q.       Mr. Boehm, I've handed you what has been

1 marked as Exhibit 34, and do you know who Sega is?

2 A. If you mean Sega, yes, I do.

3 Q. Is it pronounced Sega? Thank you for  
4 clarifying that for me.

5 A. To my knowledge, it's pronounced Sega.

6 Q. And that's who Chris Rogers works for; is  
7 that correct?

8 A. That's correct.

9 Q. And Sega is an outside engineering company  
10 that Aquila has used in the past on site selection and on  
11 engineering; is that correct?

12 A. I don't know.

13 Q. Do you know if Sega was used in connection  
14 with the construction of the South Harper plant?

15 A. Yes.

16 Q. And do you see that this is, in fact, a  
17 copy of the Bremer site plan for the South Harper plant?

18 A. I recognize it as saying Bremer site plan.  
19 If that is the South Harper plant, then -- I don't know.

20 Q. Well, Mr. Boehm, I will represent to you  
21 that this is a page drawn directly from what was marked  
22 and entered into evidence as Aquila Exhibit 112 in the  
23 0248 proceedings as a document that it, Aquila, propounded  
24 for this Commission's consideration. And what I'm asking  
25 you, sir, is to verify for me that the diagram reflected

1 here with respect to the South Harper plant shows the  
2 actual location of the three CTs that were approved for  
3 self-build in January of 2004, correct?

4 A. I don't know, as I've never seen this  
5 before, and don't know if this is where they put the CTs.  
6 I can't say that.

7 Q. Well, would you at least acknowledge for me  
8 that this drawing that was prepared for Aquila indicates  
9 three CTs, and then a mirror image with nothing on it  
10 immediately adjacent?

11 A. I'm not quite familiar with this,  
12 interpreting the drawing, but it looks like it does, yes.

13 Q. In fact, as you acknowledged a moment ago,  
14 this plant was constructed with plans for expansion; is  
15 that correct?

16 A. I did not acknowledge that.

17 Q. You indicated that this plant was  
18 constructed with the design or possibility of expansion in  
19 mind. That was your testimony, Mr. Boehm?

20 A. Yes.

21 Q. And if you look at this map, it is pretty  
22 obvious to me, and I'm not an engineer, that it looks like  
23 there's room for expansion for three CTs. Do you not see  
24 that, Mr. Boehm?

25 A. Yes. You had previously asked me if I

1     could verify this is where the units were located. And  
2     having not been to the plant and having not had experience  
3     in interpreting these maps, I cannot make that  
4     distinction.

5             Q.     You know, that's a fair comment. So let me  
6     clarify my question to you.

7             A.     That was why I said that.

8             Q.     I appreciate that. And we always like to  
9     be clarified, if we can, or corrected, if we can, because  
10    I do want to make sure I understand your testimony.

11            When I look at this map, there is room for  
12    six CTs at South Harper. Would you agree with me?

13            A.     If this is a South Harper map, it appears  
14    that there is room for six CTs.

15            Q.     And Aquila is planning on building three  
16    additional CTs between now and 2011; is that correct?

17            A.     Aquila's exploring the possibility of doing  
18    that.

19            Q.     Are you prepared to commit to me,  
20    Mr. Boehm, today that Aquila has no plans to add  
21    additional CTs to the South Harper site?

22            A.     No.

23            Q.     You're not prepared to make that  
24    commitment, are you?

25            A.     No.

1           Q.       And so it's very possible that what this  
2       Commission is being asked to approve is not the South  
3       Harper site as we know and love it, but the South Harper  
4       site with plans for potential expansion to add up to three  
5       more CTs; is that correct?

6                   MR. SWEARENGEN: I'm going to object to  
7       that. First of all, it calls for a legal conclusion as to  
8       what we've asked for in this application. And second, we  
9       have made it clear on the record previously that in the  
10      event this company decides that it would like to locate  
11      additional CTs on that site, assuming this application is  
12      granted, that we would come back to the Commission and ask  
13      for that specific authority.

14                  JUDGE PRIDGIN: All right. Could you  
15      rephrase your question, please?

16                  MS. MARTIN: I will be happy to.

17      BY MS. MARTIN:

18           Q.       Mr. Boehm, you would agree with me that the  
19      South Harper site as constructed would allow for the plans  
20      you've projected, which would require three additional CTs  
21      by 2011 to be placed at this very same site?

22           A.       Yes.

23           Q.       And would you agree with me, Mr. Boehm,  
24      that six CTs at this site could be a significantly  
25      different impact with respect to land use and public



1 concerns than three CTs?

2 MR. SWEARENGEN: Objection. That's not  
3 relevant to this application. We're not asking for that  
4 type of authority. We're asking for authority with  
5 respect to what is there now.

6 MS. MARTIN: With all respect, I think it  
7 is relevant, your Honor, because I don't know that any of  
8 us are prepared to take the gamble that at some point in  
9 the future Aquila is actually going to come back for a  
10 specific CCN for any additional CTs, and even if it were,  
11 that at that point the Commission would ever, with respect  
12 its composition might be, would somehow feel that they  
13 needed to independently evaluate that application in light  
14 of approval of the South Harper plant should the  
15 Commission, in fact, extend that authority.

16 MR. SWEARENGEN: Well, I can tell you, your  
17 Honor, that if you grant this application for three CTs,  
18 we are not going to build four, five and six CTs there  
19 without additional authority. I can tell you that.

20 MS. MARTIN: My concern, your Honor, from  
21 the County's perspective is land use issues.

22 JUDGE PRIDGIN: All right. I understand.

23 MS. MARTIN: And this is relevant to land  
24 use issues and the determination I believe this Commission  
25 is required to make.

1 JUDGE PRIDGIN: All right. I understand.  
2 I'll overrule the objection, and I'll let the witness  
3 answer if he knows the answer.

4 BY MS. MARTIN:

5 Q. Do you recall the question?

6 A. Would you please restate it?

7 MS. MARTIN: Madam Court Reporter, I know  
8 you all hate this, but do you mind referring back to my  
9 previously asked question?

10 THE REPORTER: "Question: And would you  
11 agree with me, Mr. Boehm, that six CTs at this site could  
12 be a significantly different impact with respect to land  
13 use and public concerns than three CTs?"

14 THE WITNESS: I don't know.

15 BY MS. MARTIN:

16 Q. You don't know whether six CTs would be a  
17 significant different use of this site than three CTs?

18 MR. SWEARENGEN: Asked and answered.

19 Objection.

20 JUDGE PRIDGIN: Sustained.

21 BY MS. MARTIN:

22 Q. Mr. Boehm, I want to talk to you about  
23 another alternative that you mention in your direct  
24 testimony, and if you could turn to your direct testimony  
25 at pages 8 and 10. And specifically I'm looking at page 9

1 beginning on line 3. Just let me know when you've located  
2 that, sir.

3 A. I've located it.

4 MS. MARTIN: Your Honor, as a matter of  
5 housekeeping, I move admission of Exhibit 34.

6 JUDGE PRIDGIN: Any objections?

7 (No response.)

8 JUDGE PRIDGIN: Hearing none, Exhibit  
9 No. 34 is admitted.

10 (EXHIBIT NO. 34 WAS RECEIVED INTO  
11 EVIDENCE.)

12 JUDGE PRIDGIN: Ms. Martin, when you're  
13 ready.

14 MS. MARTIN: Thank you very much.

15 BY MS. MARTIN:

16 Q. Mr. Boehm, in connection with your direct  
17 examination, you talk about offers that were received by  
18 Calpine that, in fact, became competitive at some point,  
19 offers for purchased power agreements; is that correct?

20 A. Correct.

21 Q. And you describe those offers as, quote,  
22 too little too late; is that correct?

23 A. Yes.

24 Q. Now, you talk in that particular portion of  
25 your direct testimony about the fact, and I'm quoting from

1 line 8, that both offers came months after the decision to  
2 build and, while attractive, didn't excel over the  
3 decision to build. Did I read that correctly?

4 A. Correct.

5 Q. And by the decision to build that you  
6 reference in that sentence, you're referring to the  
7 decision to build in January of 2004?

8 A. Correct.

9 Q. And so when you say that Calpine submitted  
10 competitive bids within the months following January of  
11 2004, when do you recall receiving those?

12 A. I believe the unsolicited bids were  
13 received in July of 2004.

14 Q. And by July of 2004, nothing had been done  
15 by Aquila to build either the Camp Branch energy facility  
16 first sought to build or the South Harper plant with  
17 respect to land acquisition, grading or site improvements,  
18 to your knowledge; is that correct?

19 A. I don't know.

20 Q. And so when you testified that it was too  
21 little too late, you really don't know what the status --  
22 or what the status of self-build was as of July of '04; is  
23 that correct?

24 A. The -- at that time, I was told that we had  
25 engaged engineering for site development for building, and

1     so at that time we were well on the way into building the  
2     plant in our mind.

3             Q.       And if I told you, sir, that other  
4     testimony from Aquila witnesses indicate that the planning  
5     you've just described from engineering with respect to  
6     site selection didn't even come back until July 2004,  
7     would you have any reason to dispute that?

8             A.       I don't know.

9             Q.       And so by July of 2004, at best, based upon  
10    other Aquila testimony, Chris Rogers with Sega had  
11    provided site selection evaluations but no construction  
12    had commenced, is that correct, to your knowledge?

13            A.       To my knowledge.

14            Q.       And I ask you those questions, you say you  
15    don't know, but you were the one who propounded this  
16    testimony that the Calpine offers, which were competitive,  
17    were summarily rejected as too little too late. And so  
18    I'm testing why you made that conclusion.

19            A.       For one thing, they were past the deadline  
20    of submitting offers.

21            Q.       And let's just take that into consideration  
22    for a moment. Sir, when it then came to pass in January  
23    of 2005 that an injunction had been issued indicating that  
24    the South Harper plant could not be built in accordance  
25    with the law at that time, do you have any reason to know

1     why at that point Aquila would not have gone back to the  
2     Calpine offers for a short-term remedy while they appeal  
3     the decision of the trial court?

4             A.       I would have concerns that in -- in January  
5     of 2005 over a number of things that would happen for them  
6     to do that.

7             Q.       And I guess my point is simply this: In  
8     January of 2005, Calpine was seeking you out. You  
9     characterized the offers as unsolicited. They were coming  
10    to you wanting to do a deal, weren't they?

11            A.       I don't know what Calpine was doing in  
12    January 2005.

13            Q.       You know that when they solicit or when  
14    they provided you competitive bids in July of '04, they  
15    were unsolicited offers or bids?

16            A.       Correct.

17            Q.       And do you have any knowledge as you sit  
18    here today of any other purchased power agreements that  
19    Calpine had with anybody other than Aquila?

20            A.       No.

21            Q.       In fact, there weren't any others, were  
22    there?

23            A.       I don't know.

24            Q.       And so would it not have been reasonable to  
25    assume, Mr. Boehm, in January of 2005 when the plant's

1 construction was enjoined that there were, in fact,  
2 options to Aquila, reasonable options that would have  
3 allowed the appellate process to be complete before this  
4 plant was built?

5 A. I don't know.

6 MS. MARTIN: I have nothing further of this  
7 witness.

8 JUDGE PRIDGIN: Ms. Martin, thank you.

9 MS. MARTIN: Excuse me. That's not  
10 correct. I apologize. I'm very, very sorry.

11 BY MS. MARTIN:

12 Q. Mr. Boehm, did you have any role in the  
13 preparation of the application that was filed with this  
14 Commission with respect to these proceedings?

15 A. I submitted testimony.

16 Q. And I'm talking about the physical  
17 document, the application itself that was submitted to  
18 initiate these proceedings.

19 A. I may have read it, but I can't recall.

20 Q. Who is Keith Stamm?

21 A. Keith Stamm is the chief operating officer.

22 Q. And he verified this application based upon  
23 the application itself. Page 3, paragraph 5 of this  
24 application, Mr. Stamm characterizes the South Harper  
25 plant as a, quote, peaking power production facility

1 initially comprising three natural gas-fired combustion  
2 turbines. Were you aware of that characterization in this  
3 application?

4 A. I can't recall, no.

5 Q. And on page 8 of the same application,  
6 Mr. Stamm under verified testimony indicates in  
7 paragraph 14, again in discussing the application, that  
8 the application seeks permission to, among other things,  
9 acquire, construct, install, own and operate related  
10 facilities at a site now comprising 305 megawatt natural  
11 gas-fired combustion turbines. Were you aware of that  
12 testimony by Mr. Stamm in this application?

13 A. I can't recall it.

14 Q. Would his characterizations as initially  
15 comprising and now comprising be consistent with the  
16 potential expansion plans at this site?

17 A. Yes.

18 MS. MARTIN: Nothing further.

19 JUDGE PRIDGIN: All right. Thank you,  
20 Ms. Martin. Mr. Eftink?

21 CROSS-EXAMINATION BY MR. EFTINK:

22 Q. Good morning, Mr. Boehm.

23 A. Good morning.

24 Q. Now, you told Ms. Martin that Aquila  
25 adopted the preferred plan instead of the least-cost plan.



1 Was the least-cost plan a plan which included any kind of  
2 a base plan?

3 A. No.

4 Q. The least-cost plan then was what? Was  
5 that all CTs?

6 A. It was five CTs in 2005. If I may just  
7 correct, eventually there was going to be a base plant in  
8 there.

9 Q. Was the base plant included in the  
10 least-cost plan then?

11 A. Yes, in 2010.

12 Q. Now, on page 2 at line 20, your prefiled  
13 testimony, which is Exhibit 3, you say you will discuss  
14 reasons why Aquila did not adopt a new Calpine contract.  
15 But Aquila has adopted a contract with Calpine, correct?

16 A. Aquila I believe has a contract for 2006  
17 from Calpine.

18 Q. So that contract is in existence at this  
19 time?

20 A. I believe so.

21 Q. As resource manager, you know when Aquila  
22 entered into this new contract with Calpine, don't you?

23 A. Not specifically. I was told it was.

24 Q. Do you know how long that --

25 A. I couldn't specify the date.

1           Q.       That's a purchase agreement between Aquila  
2   and Calpine?

3           A.       Correct.

4           Q.       And Aquila is getting the power from the  
5   Aries plant, which is in Cass County at this time?

6           A.       That is a -- that is the proposed source  
7   from Calpine.

8           Q.       Well, it's not just a proposed source,  
9   you're actually under contract with Calpine at this time?

10          A.       I believe in the offer Calpine said they  
11   could provide power from other sources.

12          Q.       Okay. But there is a contract with Calpine  
13   that's in existence at this time for Aquila to acquire  
14   energy from Calpine?

15          A.       For the summer of 2006, I believe, yes.

16          Q.       And that began in October 2005?

17          A.       Okay.

18          Q.       Okay. When you say okay, you're --

19          A.       Yes.

20          Q.       -- aware of that, correct?

21          A.       I'm aware it began earlier.

22          Q.       Now, in Exhibit 3 at page 8, line 5, you  
23   said that Calpine's offer was a proposal that included  
24   higher prices, but didn't you tell us before that the  
25   one-year offer from Calpine would have saved about

1     \$1 million?

2             A.       I may have. I can't recall saying that.

3             Q.       Well, I've got what was marked last year as  
4     Aquila Exhibit 105. It's got HC marked on it. I just  
5     want to show you that. So I want to ask questions about  
6     this. I'll mark it as an exhibit.

7             JUDGE PRIDGIN: You may approach.

8             MR. SWEARENGEN: Maybe you need to go  
9     in-camera.

10            JUDGE PRIDGIN: You mean it was highly  
11    confidential in another case?

12            MR. EFTINK: It's in 0248.

13            MR. SWEARENGEN: We will need to go  
14    in-camera on this.

15            JUDGE PRIDGIN: Do I understand you're  
16    going to mark that, Mr. Eftink --

17            MR. EFTINK: Yes.

18            JUDGE PRIDGIN: -- as a proposed exhibit,  
19    and it contains some highly confidential material? I  
20    believe we will be up to No. 35.

21            MR. EFTINK: That's what I've got.

22            JUDGE PRIDGIN: And if you'll bear with me  
23    just a moment while we go in-camera.

24                    (EXHIBIT NO. 35HC WAS MARKED FOR  
25    IDENTIFICATION BY THE REPORTER.)

1                   (Reporter's note: At this point, an  
2 in-camera session was held, which is contained in  
3 Volume 4, pages 285 through 289 of the transcript.)

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1 JUDGE PRIDGIN: We are no longer in-camera.  
2 We're back in public forum. Mr. Eftink, when you're  
3 ready, sir.

4 BY MR. EFTINK:

5 Q. You were involved in meetings with the  
6 Public Service Commission regarding whether -- well, let  
7 me back up and try that again.

8 You were involved in meetings with the  
9 Public Service Commission about future resources?

10 A. Yes.

11 Q. And isn't it true that in 2003 Staff was  
12 telling you and Aquila that Aquila needed to have more  
13 base load resources?

14 A. Yes.

15 Q. Did Staff continue through 2004 to tell you  
16 guys that Aquila needed more base resources?

17 A. Yes.

18 Q. I believe that your prefiled testimony is  
19 marked as Exhibit 3, and if you would turn to what I think  
20 is page 5 of the appendix or the addendum. Actually says  
21 at the top Schedule JGB-6. So that would be page 6 of  
22 your attachment.

23 Now, this is a chart which shows how much  
24 capacity Aquila has and what it projects it needs to  
25 acquire; is that a correct statement?

1           A.       Correct.

2           Q.       For 2006, tell me if I'm wrong, but it  
3 looks like you have included South Harper and SPS and then  
4 some others, and it shows that you project that you meet  
5 the need for 2006; is that correct?

6           A.       I'm concerned that you're using -- that  
7 you're discussing highly confidential --

8           Q.       Well, if you think it's highly  
9 confidential, maybe we should go back into --

10                   JUDGE PRIDGIN: We'll go back into  
11 in-camera, if you'll bear with me just a moment.

12                   (Reporter's note: At this point, an  
13 in-camera session was held, which is contained in  
14 Volume 4, pages 292 through 293 of the transcript.)

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1 JUDGE PRIDGIN: We're back in public forum.

2 BY MR. EFTINK:

3 Q. On Schedule JGB-6, for the year 2006 it  
4 looks like you project that you meet your needs under your  
5 existing capacity and your existing contracts, correct?

6 A. On 2006?

7 Q. For 2006.

8 A. No, the SPS contract did not materialize.

9 Q. Okay. But on this chart, do you include  
10 the purchase agreement that you have with Calpine?

11 A. No.

12 Q. Do you know what the megawatts are that you  
13 are under contract to acquire from Calpine?

14 A. I'd be hesitant to give an exact number. I  
15 think it's around 200 megawatts.

16 Q. So you could add this 200 megawatts to the  
17 chart then, correct? And you know --

18 A. No, I can't.

19 Q. Do you know what the total capacity of  
20 Calpine's Aries operation is, don't you?

21 A. I believe it's -- has the capability of 585  
22 megawatts.

23 Q. Right. And the contract that Aquila has  
24 with Calpine at this time has Calpine delivering  
25 200 megawatts in 2006 to Aquila, correct?

1           A.       Roughly that number, I believe that's  
2     right.

3           Q.       And Calpine has been after Aquila to  
4     acquire -- to buy more power from it, correct?

5           A.       I'm not aware of any additional. You mean  
6     right now?

7           Q.       Yes.

8           A.       No. Calpine is not offering us any  
9     purchased power contracts at this time.

10          Q.       But the Aries plant has more unused  
11     capacity that --

12          A.       Yes.

13          Q.       Yes, it does. And it has up to about  
14     500 megawatts of capacity, and Aquila's only contract is  
15     to purchase 200 megawatts at this time?

16          A.       Correct.

17          Q.       So that would be about enough to replace  
18     the South Harper peaking facility if you got all of the  
19     capacity of Aries. That's correct, isn't it?

20          A.       Getting the capacity from that or any other  
21     plant could possibly replace Aries, yes.

22          Q.       When Ms. Martin was asking you about these  
23     offers from Calpine, actually, Calpine made an offer on  
24     June 16, 2004, correct?

25          A.       I don't know the exact date, but it was in



1 July of 2004 that we were aware of the bid.

2 Q. You didn't become aware of the bid, you  
3 say, until July.

4 MR. EFTINK: This needs to be marked as  
5 Exhibit 36.

6 (EXHIBIT NO. 36 WAS MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)

8 BY MR. EFTINK:

9 Q. I've handed you what's been marked for  
10 identification as Exhibit 36. Is that an e-mail to you  
11 dated June 16, 2004?

12 A. Yes.

13 Q. And does that e-mail tell you, here is the  
14 latest offer from Calpine that needs to be evaluated by  
15 the end of the day on Thursday?

16 A. Yes.

17 Q. Now, on June 16, 2004, can you tell us why  
18 you guys were in such a rush to evaluate the offer from  
19 Calpine by the end of Thursday?

20 A. No.

21 Q. So when you told Ms. Martin that there were  
22 no offers from Calpine until July 2004, you probably need  
23 to correct that and say that there were certainly offers  
24 on June 16, 2004?

25 A. Actually, I never told Ms. Martin that

1     there were no offers until July of 2004.

2             Q.       Well, there were offers prior to that time,  
3     then?

4             A.       There were a number of offers that came in  
5     from Calpine at different times.

6             Q.       And there were offers from Calpine  
7     throughout 2003 and 2004, correct?

8             A.       Correct.

9             Q.       This Aries plant is a combined cycle plant?

10            A.       The Aries plant is combined cycle, yes.

11            Q.       And it produces less in the way of  
12     pollutant than the South Harper facility?

13            A.       I don't have any knowledge of that.

14            Q.       In your affidavit, your rebuttal affidavit  
15     which is marked as Exhibit 4, on page 2, line 3, you talk  
16     about Mr. Blaha's contention about combined cycle  
17     efficiencies.

18            A.       If you'll excuse me, I'm trying to find my  
19     surrebuttal testimony. Okay. Position, please.

20            Q.       Page 2, line 3, you rebut or attempt to  
21     rebut Mr. Blaha's statements about the combined cycle  
22     efficiencies?

23            A.       Correct.

24            Q.       Actually, what Mr. Blaha said in his  
25     statement was that energy produced by Aries is --

1           A.       I'm sorry. Are you talking about  
2 Mr. Blaha?

3           Q.       Yes.

4           A.       In my surrebuttal testimony?

5           Q.       You address Mr. Blaha's testimony or his  
6 statement in your rebuttal testimony.

7                   MR. SWEARENGEN: I don't believe that's  
8 correct, your Honor.

9                   THE WITNESS: I did not.

10                  JUDGE PRIDGIN: If that's an objection,  
11 I'll sustain it. That's not what I'm reading.

12                  MR. EFTINK: If I could, I'd like to look  
13 at Exhibits 3 and 4. I was looking at the statement filed  
14 on April 24, 2006, filed by Mr. Boehm, and that's the one  
15 filed the week before.

16                  MR. SWEARENGEN: Well, your Honor, I don't  
17 think this witness, that we have identified or offered any  
18 testimony that deals with Mr. Blaha's filing or the filing  
19 referencing Mr. Blaha, to which we have an objection.

20                  JUDGE PRIDGIN: I think I understand what  
21 you're talking about now, Mr. Eftink. I guess that goes  
22 to the ultimate question of whether Mr. Blaha is going to  
23 be allowed to testify, and I think if I recall correctly,  
24 Aquila's objected, filed an objection to that testimony;  
25 is that correct?

1 MR. SWEARENGEN: That's correct, your  
2 Honor.

3 JUDGE PRIDGIN: So, Mr. Eftink, if you're  
4 planning to cross-examine Mr. Boehm as far as Mr. Blaha,  
5 and I don't think I've ruled on that objection, is  
6 Mr. Blaha going to be available for cross-examination?

7 MR. EFTINK: I don't know, but I'm going to  
8 ask Mr. Boehm about his statement contained in this  
9 pleading filed with the court. We were looking at the  
10 wrong document. I need to mark this as Plaintiff's  
11 Exhibit 37. This is something we downloaded, printed off  
12 from the EFIS system, so everybody's got one.

13 (EXHIBIT NO. 37 WAS MARKED FOR  
14 IDENTIFICATION BY THE REPORTER.)

15 MR. WILLIAMS: Jerry, do you mind if Staff  
16 gets a look at what you're holding there?

17 MR. EFTINK: The title of Exhibit 37 is  
18 Objection to Affidavit, Motion in Limine, or in the  
19 Alternative, Motion for Leave to File Supplemental  
20 Surrebuttal Testimony, and what I'm turning to is the  
21 statement of Jerry Boehm.

22 JUDGE PRIDGIN: And I guess -- and I  
23 understand what you've got marked. And, Mr. Eftink, if  
24 you don't know if Mr. Blaha's going to be available for  
25 cross-examination, I don't know that I would let his

1 testimony in, and I don't know that Mr. Boehm's  
2 supplemental surrebuttal would be relevant.

3 MR. EFTINK: Well, I'm asking Mr. Boehm  
4 about something that he says is a valid point made by  
5 Mr. Blaha. That's all I want to ask him about. If he  
6 says that a point made by Mr. Blaha is a valid point, I  
7 think I'm entitled to ask Mr. Boehm about that.

8 JUDGE PRIDGIN: But if the other counsel  
9 are not able to cross-examine Mr. Blaha about what it is  
10 that may or may not be a valid point, I mean, he's  
11 responding to testimony that I may not admit. And so I'm  
12 not inclined to let you talk about that, unless I know  
13 that counsel have the chance, because you had submitted  
14 some of Mr. Blaha's testimony from a prior rate case as  
15 testimony in this case.

16 MR. EFTINK: Well, let me make an offer of  
17 proof for the record.

18 JUDGE PRIDGIN: All right. I'll let you  
19 make an offer of proof. And you've got that as Exhibit  
20 No. 37 for identification purposes?

21 MR. EFTINK: Right. Here's my offer of  
22 proof.

23 JUDGE PRIDGIN: Can I trouble you to go  
24 back to the mic just for the public?

25 MR. EFTINK: Sure.

1 JUDGE PRIDGIN: Thank you.

2 MR. EFTINK: Okay. Here's my offer of  
3 proof. On Exhibit No. 37, the last three pages purport to  
4 be a statement by Mr. Boehm. On the next to the last  
5 page, he's talking about statements made by Mr. Blaha.  
6 Starting at line 1 on that next to the last page, here's  
7 what I wanted to get into:

8 He says about Mr. Boehm, the first error is  
9 that he argues for the operating efficiency of a combined  
10 cycle unit, while ignoring Calpine's overpricing of the  
11 power from the Aries plant. His arguments about combined  
12 cycle efficiencies were valid.

13 That's what I'm trying to get into  
14 evidence. And I think that is something that is relevant  
15 because this man is comparing all these pricing, all this  
16 pricing, and he's admitted that the combined cycle units  
17 at the Aries plant are efficient.

18 What Mr. Blaha said was they were more  
19 efficient than South Harper. I want to ask him questions  
20 about this because this man made the statement.

21 JUDGE PRIDGIN: You can ask questions.  
22 Counsel may object and I may sustain.

23 BY MR. EFTINK:

24 Q. Mr. Boehm, you said that Mr. Blaha's  
25 argument about combined cycle efficiencies was valid. Do

1     you remember that?

2             A.       Could I see the document, please?

3                     Would you repeat the question, please?

4             Q.       In this document, you say that Mr. Blaha's  
5     statements about the efficiencies of combined cycle are  
6     valid points.

7                     MR. SWEARENGEN: Your Honor, I'm going to  
8     renew my objection on the basis that he's asked about  
9     something that someone supposedly has said to which we  
10    have an outstanding objection.

11                    JUDGE PRIDGIN: I'll sustain, and I'll let  
12    Mr. Eftink make his offer of proof. You can go ahead and  
13    ask the question. I'm sustaining the objection. I don't  
14    know if Mr. Blaha's testimony is going to be offered, much  
15    less admitted.

16                    MR. SWEARENGEN: So you're asking the  
17    witness to answer as an offer?

18                    JUDGE PRIDGIN: Yes.

19                    MR. EFTINK: Please go ahead and answer.

20                    THE WITNESS: I'm confused as to what the  
21    question is now.

22                    JUDGE PRIDGIN: If you can ask the  
23    question.

24    BY MR. EFTINK:

25             Q.       Okay. To back up, you say that Mr. Blaha's

1 point about the efficiency of the combined cycle units is  
2 a valid point, correct?

3 A. No. I'm saying his arguments about  
4 combined cycle efficiencies were valid.

5 Q. Right. And I want to ask you, if you agree  
6 with his statement -- is this what you mean, you agree  
7 with his statement where he says that the combined cycle  
8 is 40 percent less polluting than the simple cycle, which  
9 is the kind of operation you have at South Harper?

10 A. I was referring to heat rate efficiencies.

11 Q. So when you were saying this, you were  
12 saying that the heat rate efficiency was more efficient at  
13 a combined cycle plant like Aries?

14 A. Right.

15 Q. How much do you know about the Aries  
16 operation to be able to make this kind of a statement?

17 A. This wasn't specifically about Aries.

18 Q. You have said in other statements that  
19 although the combined cycle is more efficient, that it  
20 takes longer to start it up, correct?

21 A. As a general rule, yes.

22 Q. Okay. But isn't the combined cycle so much  
23 more efficient that that loss of efficiency or loss of  
24 cost effectiveness is overcome in about two hours of  
25 operation?



1           A.       I don't know.

2           Q.       You don't know. Isn't it true that the  
3 combined cycle produces about five times less as much  
4 pollution as a simple cycle?

5           A.       I -- I'm not an expert on pollution. I  
6 don't know.

7           Q.       I guess I need to tie up this loose end.  
8 In Exhibit 35 you talked about the cost effectiveness of  
9 this offer from Calpine. I'm not going to mention the  
10 dollar amount or anything like that. But tell me when  
11 that offer was made by Calpine you were referring to.

12          A.       The cost effectiveness?

13          Q.       Yes. It was the one in your proposal.

14          A.       The proposal as we had it defined by July  
15 of 2004 was -- the one-year proposal was cost effective by  
16 a small margin.

17          Q.       In Exhibit 3 on page 9, line 22, you said  
18 that Aries appeared to be a bad fit.

19          A.       Are you talking about my direct testimony?  
20 I'm sorry. I don't really have them marked.

21          Q.       Yes, it's your direct testimony.

22          A.       And what page, please?

23          Q.       Page 9, line 22, if we're looking at the  
24 same document. I believe it is Exhibit 3, your direct  
25 testimony. You said Aries was a bad fit?

1           A.       That's correct.

2           Q.       Now, when there was an offer from Aries in  
3   June 2004, Calpine -- I should say Calpine instead of  
4   Aries, so let me back up.

5                    When there was an offer from Calpine  
6   received by Aquila in June 2004, Aquila was still under  
7   contract with Calpine for another 11 or 12 months,  
8   correct?

9           A.       Yes.

10          Q.       Okay. And then after that contract expired  
11   in May or June 2005, Aquila entered into another contract  
12   with Calpine in September or October 2005, correct?

13          A.       Correct.

14          Q.       So what is it about Calpine that's such a  
15   bad fit if Aquila entered into a contract with it again  
16   within a few months after the contract had expired?

17          A.       The pricing mechanism coupled with the --  
18   how we plan -- how we needed and planned to use the unit.

19          Q.       Now, on page 12, line 1 of your direct  
20   testimony -- if you found that location I'll ask you now.

21          A.       Okay.

22          Q.       You talk about the need for peaking power.  
23   Isn't it true that in 2004 Aquila actually needed to  
24   acquire more base load instead of more peaking power?

25          A.       No.

1           Q.       But Staff was telling Aquila that it needed  
2   to acquire more base load?

3           A.       Yes.

4                   MR. EFTINK:   This next exhibit I think is  
5   38.

6                               (EXHIBIT NO. 38 WAS MARKED FOR  
7   IDENTIFICATION BY THE REPORTER.)

8       BY MR. EFTINK:

9           Q.       Now, the court reporter has handed you  
10   what's been marked as Exhibit 38, and I represent to you  
11   that we took this from one of your resource planning  
12   documents.

13                   MR. SWEARENGEN:   Excuse me, Judge.   Before  
14   we get into any questions on this, it looks as though it  
15   says highly confidential, do not copy.   I need to -- and  
16   also has a 1999 date on it, so I need to do some checking  
17   with our clients to see what the status of this  
18   information is.

19                   JUDGE PRIDGIN:   All right.   Mr. Eftink, if  
20   you'll hang on just a moment.

21                   MR. SWEARENGEN:   It may take more than just  
22   a minute.

23                   JUDGE PRIDGIN:   I understand.

24                   MR. SWEARENGEN:   My non-lawyer clients tell  
25   me that it's irrelevant, it's out of date, so it's not HC.

1 JUDGE PRIDGIN: Then we'll stay in public  
2 forum.

3 MR. SWEARENGEN: Thank you.

4 BY MR. EFTINK:

5 Q. Now, does Exhibit 38 show that Aquila had  
6 more peaking power than what it should have and less base  
7 load than what it should have?

8 A. That's correct.

9 Q. And it also shows that Aquila at that time  
10 had less intermediate load than it should have?

11 A. That's correct.

12 MR. EFTINK: I've only got a few copies of  
13 this, but it was produced by Aquila. I'm going to have it  
14 marked as Exhibit 39.

15 JUDGE PRIDGIN: And I will eventually need  
16 copies of all these exhibits.

17 (EXHIBIT NO. 39HC WAS MARKED FOR  
18 IDENTIFICATION BY THE REPORTER.)

19 MR. SWEARENGEN: It says highly  
20 confidential, do not copy, so we need to inquire.

21 JUDGE PRIDGIN: Certainly. Mr. Eftink, if  
22 you'll hang on just a second, please.

23 MR. SWEARENGEN: We believe this is highly  
24 confidential.

25 MR. EFTINK: Then let's go in-camera.

1 JUDGE PRIDGIN: We'll go in-camera, if  
2 you'll hang on. And just to be safe, when we go in-camera  
3 let's make sure that microphones are off, just so we don't  
4 inadvertently -- or if you can just step away from the  
5 microphones, that's fine. Give me just a second.

6 (Reporter's note: At this point, an  
7 in-camera session was held, which is contained in  
8 Volume 4, pages 309 through 312 of the transcript.)

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1 JUDGE PRIDGIN: I think we're back on.

2 Mr. Eftink, go ahead.

3 BY MR. EFTINK:

4 Q. In your Schedule JCB-1, does the document  
5 say that for peaking?

6 A. I'm sorry. I have no Schedule J -- I have  
7 a Schedule JGB-1, George being my middle name.

8 Q. I wrote it down as a C, though.

9 A. I'm sorry.

10 Q. I'll correct that. Okay. Schedule JGB-1,  
11 does the report say that for peaking, the energy cost is  
12 three to six times higher than the cost of base load?

13 JUDGE PRIDGIN: And I'm sorry. Could I get  
14 you to go back to the mic? I apologize. I know this is  
15 awkward. Thank you.

16 BY MR. EFTINK:

17 Q. I'll repeat. On Schedule JGB-1, does it  
18 say that for peaking, the energy cost is three to six  
19 times higher than the energy cost for base?

20 A. As a general rule, yes.

21 Q. And is that true today or has the ratio  
22 changed?

23 A. I don't know.

24 Q. The price of natural gas has gone up quite  
25 a bit since 2004, hasn't it?

1           A.       Yes, the price of all fuels have grown.

2           Q.       Well, we're concerned about natural gas  
3   that is used for a gas-fired peaking facility. How much  
4   has the price of natural gas gone up since July 2004?

5           A.       I am not prepared to run numbers for that.  
6   I don't know.

7           Q.       On that same attachment, on the next page,  
8   there's a chart that deals with capacity factors, correct?

9           A.       Yes.

10          Q.       And doesn't it show a capacity factor of  
11   10 percent for a simple cycle? Is that what it shows?

12          A.       Basically, this chart, which is an example,  
13   says that capacity factors of 10 percent or lower  
14   approximately should be filled by simple cycle.

15          Q.       And that's dependent upon the cost of fuel,  
16   correct?

17          A.       Fuel cost makes that -- adjusts that up and  
18   down, yeah.

19          Q.       So the capacity factor may be lower when  
20   the fuel cost goes up for natural gas for simple cycle  
21   peaking facilities?

22          A.       It's a possibility. It's a relationship.

23          Q.       So what this chart is telling us is that  
24   you don't want to run that peaking plant more than  
25   10 percent of the time because it becomes too expensive to

1     operate?

2             A.       As a general rule, yes.

3             Q.       I apologize. Some of this may have already  
4     been covered, but I'll try to talk fast. In 2002, when  
5     Aries or Calpine was working with Aquila and Aquila was  
6     talking about putting in those three combustion turbines  
7     next to Aries, you were familiar with that, weren't you?

8             A.       No.

9             Q.       You were told that Aquila had these three  
10    combustion turbines that they had to utilize in some  
11    fashion, correct?

12            A.       I was told that there were three CTs  
13    available.

14            Q.       Do you know the purchase price of those  
15    CTs?

16            A.       No.

17            Q.       Do you know what they were worth when they  
18    were switched from the merchant side over to the  
19    regulated?

20            A.       No.

21            Q.       Do you know what value has been placed on  
22    them in actions in front of the Public Service Commission?

23            A.       I'm not aware of the exact number, no.

24            Q.       In doing your analysis where you determined  
25    whether the preferred plan is better than the least-cost



1 plan, did you consider the cost of such things as interest  
2 on bond money? Is that part of the formula?

3 A. Any identifiable costs for the future are  
4 added into the mix, yes.

5 Q. And the cost of taxes?

6 A. Yes.

7 Q. So in this case with South Harper, did you  
8 make assumptions in your analysis about what kind of costs  
9 Aquila would have if it got bond money from the City of  
10 Peculiar and had an agreement where it would not have to  
11 pay taxes?

12 A. I was not involved with that.

13 Q. But was that part of your assumptions in  
14 doing your analysis?

15 A. The assumptions I had were based on the  
16 cost information given to me by Mr. Hedrick.

17 Q. So you don't know what assumptions  
18 Mr. Hedrick made in those numbers that he gave to you?

19 A. He provided me with the cost of a built  
20 plant.

21 Q. Okay. I guess I'll have to ask him about  
22 that.

23 I want to ask you about the current amounts  
24 of megawatts that Aquila has for base, intermediate and  
25 peaking, and I don't know if you want to go into in-camera

1 session for that or not, but that's what I'm going to ask  
2 him about.

3 At the present time, can you tell us how  
4 much capacity either through owned operations or through a  
5 contract that Aquila has in terms of megawatts for base?

6 A. I'm afraid I don't have that committed to  
7 memory.

8 Q. Can you provide that for us later on, over  
9 the next few days?

10 A. I can have that information provided.

11 MR. EFTINK: I pass the witness.

12 JUDGE PRIDGIN: Mr. Eftink, thank you. I  
13 don't see Mr. Coffman. I think he's the next counsel.  
14 Let me see if we have -- I don't see any other counsel  
15 that haven't had a chance to cross-examine, and I don't  
16 have any questions.

17 Mr. Chairman, any questions for Mr. Boehm?

18 CHAIRMAN DAVIS: None that are relevant to  
19 the site in this case, Judge.

20 JUDGE PRIDGIN: Since we have no questions  
21 from the Bench, I see no need for recross or redirect.  
22 Mr. Eftink?

23 MR. EFTINK: Just as a matter of formality,  
24 I need to offer Exhibits 36, 38 and 39. You have already  
25 ruled on 37.

1 JUDGE PRIDGIN: Exhibits 36, 38, 39 have  
2 been offered.

3 MR. SWEARENGEN: We have no objections. I  
4 do have a couple redirect if I could, please.

5 JUDGE PRIDGIN: Sure. That's fine.

6 MR. SWEARENGEN: Are we at that point?

7 JUDGE PRIDGIN: Yes, sir.

8 REDIRECT EXAMINATION BY MR. SWEARENGEN:

9 Q. Mr. Boehm, there were some questions put to  
10 you by counsel from the other parties about the fact that  
11 Commission Staff had suggested on several occasions that  
12 Aquila, the regulated company, needed to increase its base  
13 load capacity. Do you remember those questions?

14 A. Yes.

15 Q. Can you tell the Commission what, if  
16 anything, the company has done in that direction?

17 A. Most recently, last year we added  
18 75 megawatts of capacity and energy through a base load  
19 contract, purchased power contract.

20 Q. Are you aware of any plans that the company  
21 might have to enter into arrangements to take an ownership  
22 interest in a base load unit?

23 A. Yes. We are now actively pursuing  
24 ownership in Iatan 2, base load coal unit. We are also  
25 evaluating base load options presented to us in our most

1 recent request for proposals.

2 Q. And in connection with Iatan 2, assuming  
3 it's not highly confidential, can you tell the Commission  
4 what percentage or amount or what capacity you would be  
5 acquiring in that plant?

6 A. There's no exact number right now, but for  
7 planning purposes we've been using roughly 150 megawatts.

8 Q. You also made the statement, I think, that  
9 Aquila had an ownership interest in Calpine when you were  
10 discussing the relationship with the Aries power plant.  
11 Did you mean to say that Aquila, through a nonregulated  
12 subsidiary, had an interest in the Aries plant?

13 A. Yes. As I understand it, Aquila entered  
14 into a -- Aquila as a company had a merchant division that  
15 was positioned with Calpine in that plant.

16 Q. So the ownership interest would have been  
17 in the plant directly and not in Calpine, the company; is  
18 that correct?

19 A. That's correct.

20 Q. There were some questions put to you about  
21 a statement you made on page 9 of your direct testimony,  
22 if you could turn to that for a minute, please. Do you  
23 have that in front of you?

24 A. Yes, I do. Thank you.

25 Q. Beginning on line 8, you discuss some

1 offers that came, I think you later said, in July of 2004,  
2 and you said by the time the offers were received, Aquila  
3 had incurred some cost in pursuit of the self-build  
4 option. Can you give us some examples of those some  
5 costs?

6 A. Actually, the cost of the -- the cost of  
7 the commitment to other projects, including a -- the base  
8 load contract I mentioned. Also, there's the cost of the  
9 plant that was purchased so far, and the engineering and  
10 other aspects of it.

11 Q. When you say the engineering and the other  
12 aspects and the cost of the plant purchase so far, are you  
13 talking about the cost the company may have incurred up to  
14 that time in connection with the South Harper site?

15 A. Correct.

16 MR. SWEARENGEN: Thank you. That's all I  
17 have. Thank you.

18 JUDGE PRIDGIN: Mr. Swearengen, thank you.  
19 If there's nothing further from counsel --

20 MS. MARTIN: Just as a matter of correcting  
21 the record, I made reference with respect to Exhibit 34 to  
22 that having been a part of Exhibit 112, Aquila offered in  
23 the 0248 case. It was actually part of Exhibit 107. I  
24 just wanted to correct that for the record.

25 JUDGE PRIDGIN: Thank you very much. If

1     there's nothing further from counsel, this looks to be a  
2     convenient time -- Mr. Boehm, I'm sorry. You may step  
3     down.

4                     (Witness excused.)

5                     JUDGE PRIDGIN: This looks to be a  
6     convenient time to break for lunch. I'm showing the clock  
7     at the back of the room at roughly 12:20. I plan on  
8     reconvening at 1:30. If there's nothing further, we will  
9     go into intermission.

10                    And because I did not go to film school,  
11     please understand that I'm broadcasting this on the web.  
12     But if you want -- just be sure to step away from the  
13     microphone any time that you're discussing something that  
14     you do not necessarily want to be made public. I try to  
15     mute the mics, but I may goof up and I just -- if you're  
16     going to talk with a client or something or say something  
17     you don't want the people on the Internet to hear, step  
18     away from the microphones.

19                    All right. Thank you very much. We're off  
20     the record.

21                    (A BREAK WAS TAKEN.)

22                    JUDGE PRIDGIN: All right. We are back on  
23     the record. I believe -- I see everyone here except  
24     Mr. Coffman, and I think I saw that he left earlier.

25                    MS. MARTIN: Mr. Uhrig is now here.

1 JUDGE PRIDGIN: Oh, thank you. Mr. Uhrig,  
2 I didn't recognize you. I apologize.

3 I want to go on to the next witness, and  
4 before I do that, Kellene, the court reporter had pointed  
5 out to me, I think I had failed to formally admit some  
6 exhibits that had been offered and had no objection. And  
7 I believe those are exhibits, if I remember correct or if  
8 she told me correctly, Exhibit 36, 38 and 39.

9 Kellene, was that our discussion?

10 THE REPORTER: Yes.

11 JUDGE PRIDGIN: I believe they were  
12 offered, no objection made, and so I'm simply going to be  
13 sure and show for the record that those are admitted.

14 (EXHIBIT NOS. 36, 38 AND 39 WERE RECEIVED  
15 INTO EVIDENCE.)

16 JUDGE PRIDGIN: And, Mr. Swearengen, did I  
17 understand your next witness would be Mr. Hedrick?

18 MR. SWEARENGEN: That's correct, your  
19 Honor. We'd call Mr. Hedrick at this time.

20 JUDGE PRIDGIN: If Mr. Hedrick would come  
21 forward and be sworn, please.

22 (Witness sworn.)

23 JUDGE PRIDGIN: Thank you very much. Sir,  
24 if you would please have a seat. And, Mr. Swearengen,  
25 when you're ready, sir.

1 MR. SWEARENGEN: Thank you, Judge.

2 TERRY S. HEDRICK testified as follows:

3 DIRECT EXAMINATION BY MR. SWEARENGEN:

4 Q. Would you state your name for the record,  
5 please.

6 A. Terry S. Hedrick.

7 Q. Mr. Hedrick, did you cause to be filed in  
8 this proceeding certain direct testimony in question and  
9 answer form?

10 A. Yes.

11 Q. And do you have a copy of that testimony  
12 with you on the witness stand this afternoon?

13 A. I do.

14 Q. Are there any changes, corrections that you  
15 need to make at this time with respect to that testimony?

16 A. No.

17 Q. If I asked you the questions that are  
18 contained in that testimony, which has been marked as  
19 Exhibit 5, would your answers be the same?

20 A. Yes.

21 Q. And would those answers be true and correct  
22 to the best of your knowledge, information and belief?

23 A. Yes.

24 MR. SWEARENGEN: With that, your Honor, I  
25 would offer into evidence Exhibit 5, and tender the



1 witness for cross-examination.

2 JUDGE PRIDGIN: Mr. Swearengen, thank you.

3 Any objections to Exhibit No. 5?

4 (No response.)

5 JUDGE PRIDGIN: Hearing none, Exhibit No. 5  
6 is admitted into evidence.

7 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

8 MR. SWEARENGEN: Judge, if I could just  
9 interrupt.

10 JUDGE PRIDGIN: Yes, sir.

11 MR. SWEARENGEN: Housekeeping matter. I  
12 don't know what the schedules look like on the  
13 Commission's copy or your copy. There are three pictures.  
14 Mine's not real clear, and we have made some additional  
15 copies at least of Schedule 1, which is a picture of the  
16 South Harper facility, that are in color, and with the  
17 Commission's permission, I would hand those out at this  
18 time. It might be of some assistance.

19 JUDGE PRIDGIN: That's certainly fine.

20 MR. SWEARENGEN: Thank you, your Honor.

21 JUDGE PRIDGIN: Mr. Swearengen, thank you.  
22 Staff, I assume no cross-examination?

23 MS. SHEMWELL: That's correct. Thank you.

24 JUDGE PRIDGIN: And Southwest Power Pool?

25 MR. LINTON: None.

1 JUDGE PRIDGIN: And, Mr. Wheatley, anything  
2 from OPC?

3 MR. WHEATLEY: No questions.

4 JUDGE PRIDGIN: All right. Thank you.  
5 Cass County, Mr. Comley or Ms. Martin? Ms. Martin, thank  
6 you. Whenever you're ready, ma'am.

7 MS. MARTIN: Thank you for your indulgence  
8 as I get myself organized. One last trip.

9 May I proceed?

10 JUDGE PRIDGIN: Yes, ma'am.

11 MS. MARTIN: Thank you very much.

12 CROSS-EXAMINATION BY MS. MARTIN:

13 Q. Good afternoon, Mr. Hedrick. How are you?

14 A. Good.

15 Q. Nice to see you again.

16 A. Yes.

17 Q. I appreciate the opportunity to ask you a  
18 few questions about the matters raised in your direct  
19 testimony for this proceeding, if I could, please?

20 A. Yes.

21 Q. I understand the process that you have  
22 described in your proceeding involves your role as the  
23 generation services manager; is that correct?

24 A. That is correct.

25 Q. And in that role, you provided certain

1 information in response to a request for proposal that had  
2 been issued on January the 22nd of 2003; is that correct?

3 A. That is correct.

4 Q. Is that the same 2003 request for proposal  
5 that you heard Mr. Boehm testify about earlier today?

6 A. I believe so.

7 Q. The information that you provided him, I  
8 was incorrectly characterizing that as a self-build  
9 analysis. What information -- or how would you  
10 characterize the information you provided to Mr. Boehm in  
11 response to his request for proposal?

12 A. A self-build estimate.

13 Q. So I was close, but not quite right as far  
14 as how I was characterizing that information?

15 A. It was close.

16 Q. And when you provided him a self-build  
17 estimate, did you provide him more than one self-build  
18 estimate or only one self-build estimate?

19 A. There would probably be more than one  
20 self-build estimate.

21 Q. Do you recall how many you provided?

22 A. I don't.

23 Q. Do you recall if one of the self-build  
24 estimates that you provided presumed the use of three  
25 available CTs?

1           A.       That's correct.

2           Q.       And you had been aware that there were  
3   three available CTs that have been moved from Aquila's  
4   nonregulated side to Aquila's regulated side that were  
5   required to be incorporated into a project?

6           A.       Into Aquila Equipment, LLC, yes.

7           Q.       And so the answer to my question was yes,  
8   that there were three turbines available that needed to be  
9   used on a project?

10          A.       Yes.

11          Q.       And so one of the self-build analyses or  
12   estimates that you came up with was an estimate that  
13   anticipated the use of those three CTs; is that correct?

14          A.       That is correct.

15          Q.       In fact, that ended up being the self-build  
16   estimate that was selected in response to all of the  
17   information provided Mr. Boehm in answering the request  
18   for proposal; is that correct?

19          A.       That was the option selected.

20          Q.       That decision or selection, I should say,  
21   occurred in approximately January of 2004?

22          A.       That's the approximate time frame.

23          Q.       You were referring to a document. Were you  
24   referring to your testimony, Mr. Hedrick, or some other  
25   document?

1           A.       To a CT installation chronology, not part  
2 of the testimony.

3           Q.       And if I showed you a copy of that same  
4 document, could you compare it to what you have so we can  
5 make sure we're looking at the same thing? And if so,  
6 I'll have this document marked as an exhibit. Would that  
7 be okay?

8           A.       Yes.

9           MS. MARTIN: May I approach?

10          JUDGE PRIDGIN: You may.

11          MS. MARTIN: If I could, your Honor, first  
12 I'd like him to compare and make sure I have the same or  
13 similar document before I mark this as an exhibit.

14          JUDGE PRIDGIN: All right.

15          THE WITNESS: The one I'm working from has  
16 been updated. It's simi-- this one's similar. It will  
17 have -- the one I'm working from will have all these dates  
18 on it, I believe, and they're divided up a little bit  
19 differently.

20                   (EXHIBIT NO. 40 WAS MARKED FOR  
21 IDENTIFICATION BY THE REPORTER.)

22          MS. MARTIN: Your Honor, I've had marked a  
23 version of Mr. Hedrick's chronology, which is similar to  
24 the one he was referring to, and I'm not quite sure which  
25 exhibit number we're up to.

1 JUDGE PRIDGIN: I believe we're up to 40,  
2 if that's correct.

3 MS. MARTIN: I will go ahead, if I can, and  
4 ask a couple of foundation questions and move admission of  
5 this document.

6 BY MS. MARTIN:

7 Q. Mr. Hedrick, is the CT chronology that has  
8 been handed to you marked Exhibit 40 a document that you  
9 prepared or you participated in preparing?

10 A. I prepared this document.

11 MS. MARTIN: I move admission of  
12 Exhibit 40.

13 JUDGE PRIDGIN: Any objections?

14 (No response.)

15 JUDGE PRIDGIN: Hearing none, Exhibit  
16 No. 40 is admitted into evidence.

17 (EXHIBIT NO. 40 WAS RECEIVED INTO  
18 EVIDENCE.)

19 BY MS. MARTIN:

20 Q. If we could circle back, then, you had  
21 referred to a slightly updated but very similar version of  
22 this chronology in answering my earlier question, which  
23 had to do with when the decision was made to self-build a  
24 three-CT peaking plant, and you indicated that that was in  
25 approximately January of 2004; is that correct?

1           A.       That's an approximate time frame.

2           Q.       I notice on this chronology that the  
3 beginning dates are actually in March of 2004, so may I  
4 assume that there really wasn't anything on this  
5 chronology that assisted your memory with respect to that  
6 time frame?

7           A.       Other than it's -- the beginning of this  
8 chronology is very close to that time frame.

9           Q.       In any event, I don't think there's much  
10 dispute. Mr. Boehm also testified that the decision was  
11 made to move forward with a self-build three CT in about  
12 January of 2004. He has indicated that the way things  
13 would work at Aquila at that point in time, the project  
14 would in essence be turned over to you and to your  
15 department. Would you agree with that characterization?

16                   MR. SWEARENGEN: I'm going to object. I  
17 don't think the witness's testimony this morning would  
18 reflect that at all. He said he would just give it to  
19 management and he didn't know what would happen to it. So  
20 I think she's mischaracterized the witness's testimony  
21 this morning.

22                   JUDGE PRIDGIN: I'll sustain it,  
23 Ms. Martin. If you could rephrase your question.

24                   MS. MARTIN: I'll be very happy to do that.

25 BY MS. MARTIN:

1           Q.       Mr. Hedrick, once the decision to  
2 self-build was made in January of 2004, did you play a  
3 role in the process from that point forward?

4           A.       Yes.

5           Q.       And what was your role?

6           A.       Project manager.

7           Q.       And as the project manager, can you  
8 describe what your duties and responsibilities would have  
9 been?

10          A.       Would start working with individuals within  
11 the company, assembling a team, and at the same time  
12 identifying outside consultants, engineering consultants  
13 to perform different aspects of the project.

14          Q.       As the project manager, you were then the  
15 principal representative of Aquilla moving forward on this  
16 self-build; is that correct?

17          A.       As the project manager, I was assembling  
18 this team to begin the project.

19          Q.       And the first thing that you did or one of  
20 the first things that you did that you just mentioned was  
21 engage in -- an engineer to assist in the site selection  
22 evaluation process; is that correct?

23          A.       That is correct.

24          Q.       The individual that you selected was Chris  
25 Rogers with Sega?



1           A.       Chris Rogers is an employee of Sega. We  
2 engaged with Sega.

3           Q.       Aquila had previously worked with Sega on  
4 other projects?

5           A.       That is correct.

6           Q.       And so you had a relationship with  
7 Mr. Rogers?

8           A.       Yes.

9           Q.       And when Mr. Rogers was retained or Sega  
10 was retained by Aquila, his charge would have been to  
11 assist in a site evaluation; is that correct?

12          A.       That was one of the things we engaged them  
13 to do.

14          Q.       When did you retain Sega?

15          A.       I don't have that date.

16          Q.       Would it have been shortly after the  
17 decision was made to self-build in January of 2004?

18          A.       I cannot say that for certain. We may have  
19 had them prior to.

20          Q.       In any case, when Sega would have been  
21 retained, would Aquila have provided Sega with information  
22 about potential sites it had already been evaluating?

23          A.       Yes.

24          Q.       Where would that information have come  
25 from?

1           A.       At the time Sega was employed to do this,  
2       there was only one or two sites that had been considered.

3           Q.       And when you say had been considered, by  
4       whom?

5           A.       Internally.

6           Q.       By whom?

7           A.       Dave Kreimer.

8           Q.       K-r-e-i-m-e-r?

9           A.       Yes.

10          Q.       And who else?

11          A.       Dave Kreimer worked within my group.

12          Q.       Mr. Kreimer was the person you were  
13       referring to, in other words?

14          A.       Yes.

15          Q.       And he had independently selected or  
16       developed or come up with two potential sites that he felt  
17       should be evaluated by Mr. Rogers?

18          A.       I would say he identified a couple of areas  
19       to get the process started.

20          Q.       And so that information would have been  
21       provided to Mr. Rogers so that he could begin the site  
22       evaluation process?

23          A.       That is correct.

24          Q.       And you expected, I take it, Mr. Rogers to  
25       generate a report from that process, correct?

1           A.       That would be one of the work product he  
2 would produce.

3           Q.       And he did so?

4           A.       Yes.

5           Q.       Do you have a recollection how long it took  
6 him to do so?

7           A.       I do not.

8           Q.       Do you have a recollection of receiving a  
9 report from him?

10          A.       Yes.

11          Q.       Would you -- do you have access to  
12 Mr. Rogers' testimony in front of you?

13          A.       I do not.

14                   MS. MARTIN: May I approach?

15                   JUDGE PRIDGIN: You may.

16 BY MS. MARTIN:

17          Q.       I think the easiest thing for me to do,  
18 Mr. Hedrick, if I can with your permission is to just pull  
19 if I can what is Schedule CR-1 from Mr. Rogers' direct  
20 testimony and ask you to take a look at that, and then  
21 I'll return back to the mic, if I can do that. Okay?

22          A.       Yes.

23          Q.       Mr. Hedrick, I realize Mr. Rogers' direct  
24 testimony has not yet been admitted, but my question goes  
25 to a different issue. Is the document before you, which

1 is CR-1, a document you have seen before?

2 A. Yes.

3 Q. And it shows as a date toward the bottom  
4 June of 2004. Is that about the time you would have first  
5 seen this document?

6 A. I would say that's a possible time frame.

7 Q. This document is a site evaluation  
8 spreadsheet more or less with respect to a certain number  
9 of sites that Mr. Rogers evaluated on Aquila's behalf?

10 A. Yes.

11 Q. And it was from this site -- well, let me  
12 ask you the question. Is this particular spreadsheet the  
13 result of your engagement of Mr. Rogers to evaluate sites  
14 for the self-build?

15 A. This is a result of his site investigation.

16 Q. Do you have an idea of the approximate  
17 amount of time it took him to prepare this document?

18 A. I do not.

19 Q. Do you recall that you retained Mr. Rogers  
20 and his company shortly after the self-build decision was  
21 made in January of 2004?

22 A. I think I said sometime in that time frame.

23 Q. And this particular spreadsheet is dated in  
24 June of 2004. Does that refresh your memory, sir, as to  
25 how long it might have taken this report to be generated?

1           A.       I can see that that's about a six-month  
2 time frame, somewhere in there.

3           Q.       Is that a typical amount of time for the  
4 site evaluation process to take place with your outside  
5 engineering assistants?

6           A.       That would be appropriate for him to  
7 respond to.

8           Q.       And so if I understand the process,  
9 Mr. Rogers would have taken the very preliminary areas  
10 Mr. Kreimer had come up with, and he himself then, as a  
11 skilled engineer, would have evaluated potential sites and  
12 given you information about those?

13          A.       That would be one component of it. He  
14 would do investigations looking at transmission, gas,  
15 infrastructure and compile all that data.

16          Q.       And, in fact, the spreadsheet you're  
17 looking at, with is again CR-1, identifies the criteria  
18 that he looks at at the top; is that correct? It has  
19 various columns of information and material?

20          A.       The columns he's identified are the basic  
21 criteria for site evaluation, yes.

22          Q.       And based upon those criteria that he  
23 identified, the Camp Branch energy facility center was  
24 located as the top pick for Aquila; is that correct?

25          A.       That is correct.

1 MS. MARTIN: May I approach?

2 JUDGE PRIDGIN: You may.

3 MS. MARTIN: Your Honor, I'm not intending  
4 at this time to separately mark this document unless you  
5 feel for the record I should. I don't anticipate an issue  
6 with Mr. Rogers' testimony being admitted, though I can't  
7 foresee the future, but if there is some problem, I would  
8 reserve the opportunity to later mark this and enter it as  
9 a separate exhibit, if that's okay.

10 JUDGE PRIDGIN: Understood. Yes.

11 MS. MARTIN: Thank you.

12 BY MS. MARTIN:

13 Q. I note in looking at the categories of  
14 materials that Mr. Rogers evaluates in selecting sites no  
15 category with respect to zoning; is that correct? Would  
16 you like to look at it again?

17 A. If you're saying there's no zoning  
18 category, then I would agree with that.

19 Q. And no category with respect to local land  
20 use issues at all?

21 A. On that matrix.

22 Q. Which you identified as the matrix  
23 identifying his categories for site evaluation, correct?

24 A. That is the summary matrix.

25 Q. Now, with respect to the factors you

1 identified in your direct testimony, if you have that  
2 before you, Mr. Hedrick, on page 4, you were asked a  
3 question in your direct testimony, what are the major  
4 components of typical site selection criteria? Do you see  
5 that question?

6 A. Line 9?

7 Q. Yes, sir.

8 A. Yes.

9 Q. I should have pointed that out. I  
10 apologize. And you provided a response beginning at  
11 line 10, correct?

12 A. Yes.

13 Q. And you identified four -- excuse me --  
14 five different site selection criteria; is that correct?

15 A. Five, yes.

16 Q. Electric transmission access, natural gas  
17 supply, air permit considerations, delivery infrastructure  
18 and potable water supply; is that correct?

19 A. That is correct.

20 Q. Those are the five selection criteria that  
21 Aquila uses, correct?

22 A. That is correct.

23 Q. And again, there is absolutely no reference  
24 of local land use issues in that list, is there?

25 A. That is not listed here.

1 Q. Zoning compatibility is not listed, is it?

2 A. It is not.

3 Q. Public impact with respect to land use is  
4 not listed; is that correct?

5 A. That is correct.

6 Q. The aesthetics, effect on property values,  
7 any other matters that might be of interest to a local  
8 authority in evaluating zoning are not listed in your site  
9 selection criteria, are they?

10 A. They're not listed on this page here.

11 Q. Well, you were asked the question for the  
12 major components of typical site selection criteria,  
13 correct, and you identified those?

14 A. In this testimony here, yes.

15 Q. I suspect what you're referring to are  
16 comments that you made beginning over on page 6 with the  
17 reference here in your answer, and I wanted to ask you  
18 actually about your testimony on page 6, line 6.

19 You testified, and I quote, the ideal power  
20 plant site would be one in a load center, with all  
21 required infrastructure, transmission, gas, water, rail  
22 access, on or near the site, with no nearby residents,  
23 close quote. That would be the ideal site, wouldn't it?

24 A. That is what it says here.

25 Q. And back on page 3 of your direct



1 testimony, on line 12, you indicated that to the extent  
2 possible, given other considerations that I will discuss  
3 later, Aquila siting plans do take into consideration the  
4 impact on nearby landowners. Is that what you testified?

5 A. That is correct.

6 Q. Now, your reference in that sentence to,  
7 quote, given other considerations that I will discuss  
8 later, was reference to the site selection criteria, those  
9 five items we went through just a moment ago, correct?

10 A. That is correct.

11 Q. And so when you turn back to page 6 of your  
12 direct testimony, line 10, having identified the ideal  
13 plant site as one with no nearby residents, you conclude  
14 in that same answer that during the site selection review  
15 potentially suitable sites that contained no residents  
16 within a mile radius were not identified; is that correct?

17 A. That is correct.

18 Q. And so if I'm understanding your testimony,  
19 Mr. Hedrick, you used the five site selection criteria  
20 that you identified, the electric transmission, potable  
21 water, et cetera, you find your perfect site, and if it  
22 works out that it can be in a place where there are no  
23 nearby residents, great, otherwise that's just not really  
24 a consideration; would that be a fair summary?

25 A. I don't think that's a fair summary.

1           Q.       In this particular instance, Mr. Hedrick,  
2     tell me where in your site evaluation or on Sega's site  
3     evaluation you specifically indicate the manner in which  
4     you take into consideration local land use issues.

5           A.       I'll refer to two things, and one of those  
6     is Jon Empson this morning when he discussed -- he covered  
7     some of those issues. Chris Rogers will also address some  
8     of those issues. He has more familiarity with siting of  
9     these type of facilities in rural locations.

10          Q.       But with respect, sir, to your direct  
11     testimony, which is what I'm here to talk to you about at  
12     this point, when you go through on line 7 and 8 and talk  
13     about the site selection process, the analysis that you  
14     have here addresses the five criteria you identified, none  
15     of which are land use related?

16          A.       That's correct.

17          Q.       And it just so happens then, as it happened  
18     here, that when you take the five selection criteria  
19     you've identified as important and you locate a site, if  
20     residents are nearby, that does not eliminate that site as  
21     an available site; is that correct?

22          A.       Would you repeat that question one more  
23     time?

24          Q.       Having utilized your five criteria, located  
25     what you felt based on those criteria was the favored

1 site, the fact that there were, in fact, residents within  
2 a one-mile radius did not cause Aquila to discount that as  
3 an appropriate site; is that correct?

4 A. What is correct if you go back to page 1 on  
5 the testimony, I talk that this testimony is from the  
6 approach of the utility. The utility will lay out the  
7 basic criteria. The engineering firm is brought on to  
8 address more of those type issues.

9 Q. Okay. And I think then we're talking in  
10 the same language, and I don't mean to imply that  
11 Mr. Rogers may or may not have other testimony. I'm  
12 trying to get a handle on what your testimony is, and I  
13 think you've just confirmed the answer to my question.

14 From Aquila, the utility's standpoint, you  
15 are not looking at land use issues as a significant  
16 criteria in siting plants, correct?

17 MR. SWEARENGEN: Your Honor, I'm going to  
18 object. I don't think that's what the witness said at  
19 all. I think he said, we start out with these criteria  
20 and then we bring in someone else who adds this zoning or  
21 land use flavor to the process, so I think she's  
22 mischaracterizing his testimony.

23 MS. MARTIN: My question actually  
24 anticipated that it was limited to Aquila's evaluation,  
25 independent of the engineering evaluation, your Honor.

1 JUDGE PRIDGIN: I'll overrule and let him  
2 answer to the extent he knows.

3 THE WITNESS: One more time, please.

4 BY MS. MARTIN:

5 Q. What you've just indicated to me is that  
6 from the utility's perspective, independent of engineering  
7 input, the site criteria you, Aquila, utilize do not  
8 include land use concerns, correct?

9 A. And please define land use concerns.

10 Q. Let me state the question differently. The  
11 site criteria you utilize are the five identified in your  
12 direct testimony?

13 A. In general, yes.

14 Q. Now, that process that we've been talking  
15 about in general as I indicated a moment ago first led you  
16 to the Camp Branch facility, correct?

17 A. Yes.

18 Q. And I note that Mr. Rogers' report or his  
19 summary table prepared in June of 2004 makes no mention  
20 whatsoever of any evaluation of any property anywhere near  
21 the South Harper site. Would you agree with that?

22 A. I would have to look at the document again.  
23 Site No. 4 and site No. 6 were two sites that were looked  
24 at on the western side of the Aquila system, which would  
25 be the same system that was -- that South Harper is in.

1           Q.       How close are those two sites to the  
2       current South Harper site, Mr. Hedrick?

3           A.       It would be an estimate.   Section 33,  
4       within 9 miles.   No. 6, Turner Road, 10 to 15 miles.

5           Q.       In connection with the Camp Branch  
6       facility, Aquila submitted a special use permit  
7       application; is that correct?

8           A.       An application was submitted, yes.

9                   MS. MARTIN:   May I approach?

10                  JUDGE PRIDGIN:   You may.

11                               (EXHIBIT NO. 41 WAS MARKED FOR  
12       IDENTIFICATION BY THE REPORTER.)

13       BY MS. MARTIN:

14           Q.       Mr. Hedrick, I think you have in front of  
15       you what's been marked as Exhibit 41, which is the Cass  
16       County, Missouri special use permit application submitted  
17       by Aquila in June of 2004 for the Camp Branch Energy; is  
18       that correct?   Is that correct?

19           A.       Correct.

20           Q.       And you'll note on the second page of this  
21       document that the area where the Camp Branch facility was  
22       proposed to be constructed was agricultural; is that  
23       correct?

24           A.       Present zoning agricultural it says.

25           Q.       And present use of property, also

1 agricultural; is that correct?

2 A. That is correct.

3 Q. And so Aquila recognized that a power plant  
4 such as what the Camp Branch facility was intended to be  
5 would not be a consistent use under Cass County zoning  
6 with agricultural classification; is that correct?

7 A. The question you're describing is one that  
8 was not part of my job scope.

9 Q. As the project manager, you were  
10 nonetheless aware that a special use application had been  
11 filed --

12 A. Yes.

13 Q. -- to secure the necessary authority from  
14 Cass to construct a facility of this nature on  
15 agriculturally zoned land; is that correct?

16 A. I was aware it was filed, yes.

17 Q. For that purpose.

18 MR. SWEARENGEN: Objection. I think he  
19 said he didn't -- his job category or description doesn't  
20 fall into that area, and he doesn't know why it was filed.  
21 All he knows is it was filed.

22 JUDGE PRIDGIN: Sustained.

23 MS. MARTIN: Your Honor, move admission of  
24 Exhibit 41.

25 JUDGE PRIDGIN: Any objections?

1 (No response.)

2 JUDGE PRIDGIN: Hearing none, Exhibit  
3 No. 41 is admitted into evidence.

4 (EXHIBIT NO. 41 WAS RECEIVED INTO  
5 EVIDENCE.)

6 BY MS. MARTIN:

7 Q. Now, Mr. Hedrick, on page 7 of your direct  
8 testimony, you claim that Aquila's -- and this is on  
9 line 10. Aquila's request for a special use permit from  
10 Cass County was denied?

11 A. Correct.

12 Q. And you know that's not a correct  
13 statement, do you not?

14 A. If you're referring to the planning board?

15 Q. I'm referring to the application being  
16 denied in a manner you've suggested with your direct  
17 testimony.

18 MR. SWEARENGEN: Well, I'm going to object,  
19 your Honor. I don't know that it suggests any manner, so  
20 object to the question.

21 MS. MARTIN: I'll be happy to rephrase.

22 BY MS. MARTIN:

23 Q. Mr. Hedrick, you would agree with me that  
24 the special use permit that Aquila submitted for the Camp  
25 Branch energy facility was never denied by the board of

1 zoning adjustments in Cass County; is that correct?

2 A. I would agree with that.

3 Q. You would agree with me, in fact, that  
4 after the preliminary recommendation of denial by the  
5 planning board, that Aquila requested the hearing before  
6 the BZA be continued; you're aware of that?

7 A. I am aware of that.

8 Q. You're aware ultimately the special use  
9 application was actually withdrawn by Aquila for the Camp  
10 Branch energy facility; is that correct?

11 A. That is correct.

12 Q. And so the application was not denied in a  
13 final sense by the final authority in Cass County; is that  
14 correct?

15 A. That would be correct.

16 Q. You go on in your testimony, immediately  
17 following where we were just referencing, and you say  
18 that, as a result, the comprehensive site evaluation  
19 summary sheet was updated, at which time the South Harper  
20 site was first identified and became the preferred site.  
21 Is that your testimony?

22 A. I see that, yes.

23 Q. And if I were reading that without a sense  
24 of history in this case, Mr. Hedrick, I would take from  
25 that that at the point in time when the planning board



1 recommended denial of the SUP application for Camp Branch,  
2 Aquila took a step back and sent Mr. Rogers out again to  
3 do several months of site evaluation to locate the South  
4 Harper plant. Is that what you meant by that testimony?

5 A. What was meant by this is following that --  
6 following that denial, the site evaluation study was  
7 reevaluated by Chris Rogers.

8 Q. And did Mr. Rogers receive a charge from  
9 Aquila at that point to go out and independently evaluate  
10 new sites, just as he had received a charge from Aquila  
11 back in January of 2004 to evaluate sites, or was the  
12 process a little different, Mr. Hedrick?

13 A. We would have asked him to go out and do  
14 another evaluation.

15 Q. And what information did you give him to  
16 allow him to conduct this new evaluation?

17 A. As far as what are you looking for?

18 Q. New sites.

19 A. I don't know.

20 Q. New sites to evaluate.

21 Well, isn't the fact of the matter,  
22 Mr. Hedrick, that at this point in time Aquila had been  
23 approached by the City of Peculiar about a prospective  
24 site or sites in or near the City of Peculiar?

25 A. Our economic development department was

1     approached by a couple of different communities, Peculiar  
2     being one of them. And I would answer yes to that, that  
3     we did ask Chris Rogers to look at sites in and around  
4     Peculiar.

5             Q.     And I want to talk with you, if I can,  
6     about that process of your communications with the City of  
7     Peculiar, if we could do that. Do you have a recollection  
8     as you sit here today when those communications began?

9             A.     I believe economic development first  
10    communicated with them in early July, and I believe my  
11    first communications were mid to late July 2004.

12                   (EXHIBIT NO. 42 WAS MARKED FOR  
13    IDENTIFICATION BY THE REPORTER.)  
14    BY MS. MARTIN:

15             Q.     Mr. Hedrick, I've handed you what's been  
16    marked I believe as Exhibit 42.

17             A.     Yes.

18             Q.     This is an e-mail communication from Mark  
19    Dawson to Glenn Keefe, both of whom are Aquila employees;  
20    is that correct?

21             A.     Glenn Keefe has recently retired.

22             Q.     At the time of this e-mail communication,  
23    were both Mr. Dawson and Mr. Keefe Aquila employees?

24             A.     Correct.

25             Q.     And the subject matter of this particular

1 exhibit is a set of notes prepared from a conversation  
2 Mr. Dawson had with Mike Fisher; is that correct?

3 A. It says that they are project notes from a  
4 conversation with Mike Fisher.

5 Q. And Mike Fisher you understand to be the  
6 City administrator for the City of Peculiar; is that  
7 correct?

8 A. That is correct.

9 Q. The date of this e-mail is July the 5th,  
10 2005?

11 A. Yes.

12 MS. MARTIN: I move admission of  
13 Exhibit 42.

14 JUDGE PRIDGIN: Any objections?  
15 (No response.)

16 JUDGE PRIDGIN: Hearing none, Exhibit 42 is  
17 admitted.

18 (EXHIBIT NO. 42 WAS RECEIVED INTO  
19 EVIDENCE.)

20 MS. MARTIN: And, your Honor, could you  
21 please advise whether I admitted Exhibit 41, the Camp  
22 Branch SUP application?

23 JUDGE PRIDGIN: I show that it's admitted,  
24 but I've been wrong before.

25 MS. MARTIN: I apologize for my memory.

1 BY MS. MARTIN:

2 Q. Let's go back to Exhibit 42. Sorry for  
3 that diversion. In this particular e-mail, with the  
4 project notes, Mr. Dawson is relaying that he feels that  
5 he already has at least one or two council members who  
6 could be swayed in favor of a site near Peculiar.

7 A. I'll need to take a second to read and find  
8 that.

9 Q. Please do. It's in the section called city  
10 council member tours.

11 A. Yes, I see that.

12 Q. And the last sentence of that section,  
13 Mr. Dawson indicates that it was reported to him, quote,  
14 we currently have a solid three-three vote with Mayor  
15 Lewis for us to break the tie. Do you see that reference?

16 A. I see that reference.

17 Q. On the second page of this document,  
18 there's a section called Title Search Along 243rd to C.  
19 Do you see that?

20 A. Yes.

21 Q. And the discussion is that research is  
22 ongoing on ownerships along this route and options that we  
23 could consider. Do you see that reference?

24 A. Yes.

25 Q. Did you understand, Mr. Hedrick, that at

1    this particular time no particular sites had been  
2    identified, but rather just that general areas were being  
3    explored about possible sites in or near the City of  
4    Peculiar?

5           A.       Since this is dated July 5th, I would say  
6    general sites.

7           Q.       But it was already the thought that  
8    whatever site was selected would be eligible for  
9    annexation hopefully; is that correct?

10          A.       I'm not sure I saw --

11          Q.       On page 1 of these notes, do you not see  
12   reference to annexation?

13          A.       Yes.

14          Q.       I'm going to hand you another document that  
15   I'm going to have marked as Exhibit 43.

16                   (EXHIBIT NO. 43 WAS MARKED FOR  
17   IDENTIFICATION BY THE REPORTER.)

18   BY MS. MARTIN:

19          Q.       I believe the court reporter has handed you  
20   what's been marked as Exhibit 43; is that correct?

21          A.       Correct.

22          Q.       And this is a series of e-mails between  
23   Mr. Dawson and Mr. Fisher dated July 7th and July 8th of  
24   2004; is that correct?

25          A.       Correct.

1 Q. By the way, who is Mark Dawson?

2 A. He works for Aquila within economic  
3 development.

4 Q. And would he have been coordinating with  
5 you and talking with you about his discussions with  
6 Mr. Fisher?

7 A. That is possible, yes.

8 Q. In fact, it occurred; is that not correct?

9 A. Which discussions are you referring to?

10 Q. Were you generally aware, in early July of  
11 2004 that Mr. Dawson was visiting with Mr. Fisher about  
12 possible sites near the City of Peculiar?

13 A. He had made me aware of Peculiar's  
14 interest.

15 Q. In this particular e-mail, Exhibit 43,  
16 Mr. Dawson specifically asks Mike Fisher, could you  
17 provide to me the approximate location of the land you  
18 have in mind for consideration by Aquila? Do you see that  
19 reference?

20 A. Yes.

21 Q. So at this point in time in early July of  
22 2004, no specific sites have been identified by Aquila  
23 utilizing its site selection criteria in this area; is  
24 that correct?

25 A. In and around Peculiar?

1           Q.       In and around Peculiar and eligible for  
2 annexation.

3           A.       I think I describe the sites that were in  
4 the area, that were in the site matrix.

5           Q.       About seven to ten miles away; is that  
6 correct?

7           A.       That is correct.

8           Q.       What I'm asking you here is with respect to  
9 this e-mail, Mr. Dawson is asking Mr. Fisher to identify  
10 potential sites; is that correct?

11          A.       That is correct.

12          Q.       And those would not, then, be sites that  
13 Aquila had identified based upon its site selection  
14 criteria; is that correct?

15          A.       I do not believe these had been identified  
16 by our site selection criteria.

17                   MS. MARTIN: I move admission of  
18 Exhibit 43.

19                   JUDGE PRIDGIN: Any objections?

20                   (No response.)

21                   JUDGE PRIDGIN: Hearing none, Exhibit  
22 No. 43 is admitted.

23                   (EXHIBIT NO. 43 WAS RECEIVED INTO  
24 EVIDENCE.)

25                   (EXHIBIT NO. 44 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 BY MS. MARTIN:

3 Q. Mr. Hedrick, I've handed you what's been  
4 marked as Exhibit 44. Do you have that document in front  
5 of you?

6 A. I do.

7 Q. And this is yet another communication  
8 between Mr. Dawson and Mr. Fisher dated July the 8th of  
9 2004; is that correct?

10 A. Correct.

11 Q. And it appears that in response to  
12 Mr. Dawson's inquiry of July 7th, 2004, Mr. Fisher  
13 e-mailed back that he has a copy of the plat annotated for  
14 utilities, gas, et cetera, and that he intends to be  
15 sending it. This would appear to be that document, isn't  
16 it?

17 A. This document does have the plat and talks  
18 about the surrounding area, yes.

19 Q. Now, in the first paragraph, Mr. Fisher  
20 says, attached is a plat of the site and surrounding area.  
21 Do you see that reference?

22 A. I see that.

23 Q. What site is Mr. Fisher referring to, if  
24 you know?

25 A. There's no site indicated.



1           Q.       Would you agree with me that in July -- or  
2   on July the 8th of 2004, a site other than the Bremer site  
3   was being evaluated?

4           A.       I can't speculate to which site Mike Fisher  
5   referred to when he said site in this. I don't know what  
6   it is.

7           Q.       And I understand that. My question was a  
8   little bit different question. Would you agree with me  
9   that the first site Mr. Fisher was recommending to Aquila  
10  was not the Bremer site?

11          A.       Correct.

12                   MS. MARTIN: I move admission of  
13  Exhibit 44.

14                   JUDGE PRIDGIN: Any objections?

15                   (No response.)

16                   JUDGE PRIDGIN: Hearing none, Exhibit  
17  No. 44 is admitted.

18                   (EXHIBIT NO. 44 WAS RECEIVED INTO  
19  EVIDENCE.)

20  BY MS. MARTIN:

21          Q.       I'm going to hand you a document that will  
22  be marked as Exhibit 45.

23                   (EXHIBIT NO. 45 WAS MARKED FOR  
24  IDENTIFICATION BY THE REPORTER.)

25  BY MS. MARTIN:

1 Q. Do you recognize Exhibit 45, Mr. Hedrick?

2 A. I do have Exhibit 45 in front of me. Let  
3 me read it and I'll tell you if I can identify it. Yes.

4 Q. And when you say yes, you mean you  
5 identify -- you recognize this document?

6 A. I recognize this document.

7 Q. In fact, it's an e-mail from you to Glenn  
8 Keefe; is that correct?

9 A. That is correct.

10 Q. Dated July the 15th, 2004?

11 A. Yes.

12 Q. And you're acknowledging that Mr. Fisher  
13 has been expressing interest in Aquila locating the plant  
14 near the City of Peculiar; is that correct?

15 A. Yes.

16 Q. What was Mr. Keefe's role with Aquila at  
17 this time?

18 A. Mr. Keefe is the VP of operations, the  
19 generation department, and that's who I directly reported  
20 to.

21 Q. In your notes on this particular e-mail,  
22 you advise Mr. Keefe during the site study phase, this  
23 area was reviewed but did not make the short list. Did I  
24 read that correctly?

25 A. Yes, you did.

1           Q.       And so this very area where you're now  
2     visiting with Mr. Fisher about placing this plant had, in  
3     fact, been reviewed by Aquila but did not make the short  
4     list of items or areas given to Mr. Rogers; is that  
5     correct?

6           A.       That's what this says, yes.

7                   MS. MARTIN:   Move admission of Exhibit 45.

8                   JUDGE PRIDGIN:  Objections?

9                   (No response.)

10                  JUDGE PRIDGIN:  Exhibit 45 is admitted.

11                  (EXHIBIT NO. 45 WAS RECEIVED INTO  
12     EVIDENCE.)

13                  (EXHIBIT NO. 46 WAS MARKED FOR  
14     IDENTIFICATION BY THE REPORTER.)

15     BY MS. MARTIN:

16           Q.       Mr. Hedrick, I've handed you what's been  
17     marked as Exhibit 46.  This is another e-mail from you to  
18     Mr. Keefe dated July 26, 2004; is that correct?

19           A.       Yes.

20           Q.       And you are advising Mr. Keefe that on the  
21     28th of July, we will be meeting with Mike Fisher; is that  
22     correct?

23           A.       Yes.

24           Q.       One of the things that you indicate is a  
25     goal for the meeting is identified as Item No. 5.  Do you

1 see that item?

2 A. I see Item No. 5, yes.

3 Q. And the goal you have for this meeting with  
4 Mr. Fisher is to determine the status of the land, is it  
5 available, can we have access to the land, et cetera?

6 A. That is correct.

7 Q. Again, do you have a recollection as you  
8 sit here today, Mr. Hedrick, what land or site in  
9 particular was being identified or discussed at this point  
10 in time?

11 A. Let me read through this if I could to see  
12 if there's any information that identifies the particular  
13 site.

14 Q. Please do.

15 A. This e-mail does not identify a particular  
16 site.

17 Q. Do you have recollection, however,  
18 Mr. Hedrick, that at this point in time as of July 15,  
19 2004, you were not discussing the Bremer site, were you?

20 A. That is correct.

21 Q. The Bremer site, of course, for the record  
22 is the site that was ultimately the site selected for the  
23 South Harper plant; is that correct?

24 A. Correct.

25 Q. So at this point you were actually talking

1 about different sites with the City of Peculiar that the  
2 City has scoped out and found which may be available and  
3 potentially available for annexation; is that correct?

4 A. This e-mail is referring to other sites  
5 other than Bremer.

6 Q. And again, these are sites that were not  
7 selected or identified based upon Aquila's site selection  
8 criteria through its processes; is that correct?

9 A. That is correct.

10 MS. MARTIN: I move admission of  
11 Exhibit 46.

12 JUDGE PRIDGIN: Objections?

13 (No response.)

14 JUDGE PRIDGIN: Seeing none, Exhibit No. 46  
15 is admitted.

16 (EXHIBIT NO. 46 WAS RECEIVED INTO  
17 EVIDENCE.)

18 (EXHIBIT NO. 47 WAS MARKED FOR  
19 IDENTIFICATION BY THE REPORTER.)

20 BY MS. MARTIN:

21 Q. Mr. Hedrick I've handed you now what's been  
22 marked as Exhibit 47. This is yet another e-mail from you  
23 dated Monday, July the 26th, 2004 to Mr. Fisher and others  
24 at Aquila; is that correct?

25 A. Correct.

1           Q.       And in that particular e-mail, you are  
2 talking with Mike about notes for the upcoming meeting on  
3 the 28th of July; is that correct?

4           A.       The first line indicates that there are  
5 some notes for the meeting, yes.

6           Q.       And so -- and one of the folks that you  
7 indicate who's going to be available for the meeting is  
8 Chris Rogers; is that right?

9           A.       Yes.

10          Q.       So here we are, it's July 26th, you're  
11 going to be meetings with Peculiar on July 28th about a  
12 site or sites that Mike Fisher has identified, but Chris  
13 Rogers is just now being involved in the loop; is that  
14 correct?

15          A.       This would be the first meeting with Chris  
16 Rogers and the City of Peculiar, yes.

17          Q.       And up to this point, then, neither Chris  
18 Rogers as the engineer retained by Aquila nor Aquila  
19 through its own site selection criteria had anything to do  
20 with the sites Mr. Fisher was selecting; would that be  
21 correct?

22          A.       I'll let Mr. Rogers answer for himself, but  
23 as far as I know, that is correct.

24          Q.       One of the things that you mentioned in the  
25 e-mail that we're looking at, Exhibit 47, that you hoped

1 to do on the 28th is make a general visit of the site; is  
2 that correct?

3 A. Can I read it?

4 Q. Please do.

5 A. I see a bullet point, make a general visit  
6 of the site.

7 Q. So at this point, Mr. Hedrick, you haven't  
8 even visited the site, have you?

9 A. I believe this is my first meeting with  
10 Mr. Fisher.

11 Q. And once again, the site that you're  
12 talking about is not the site ultimately that the South  
13 Harper plant was built on; is that correct?

14 A. That is correct.

15 (EXHIBIT NO. 48 WAS MARKED FOR  
16 IDENTIFICATION BY THE REPORTER.)

17 BY MS. MARTIN:

18 Q. Mr. Hedrick, I've handed you Exhibit  
19 No. 48. This is another e-mail between yourself and --  
20 actually, it's a string of e-mails between yourself and  
21 Mr. Fisher; is that correct?

22 A. Exhibit No. 48 appears to be two e-mails,  
23 yes.

24 Q. And the earliest of the two appears  
25 beginning at the bottom of page 1 of Exhibit 48; is that

1 correct?

2 A. Correct.

3 Q. And that is an e-mail from you to  
4 Mr. Fisher dated July 28th of 2004; is that correct?

5 A. Yes.

6 Q. And this e-mail followed the meeting that  
7 you had with Mr. Fisher on that same day?

8 A. Yes.

9 Q. And, in fact, one of the things that you  
10 summarize in your e-mail is the identity of property at YY  
11 and South Harper Road; is that correct?

12 A. There's a bullet point that says the  
13 property at YY and South Harper Road was discussed.

14 Q. And the bullet points that continue down  
15 there also identify another property approximately  
16 40 acres due west is currently for sale; is that correct?

17 A. I see a bullet point discussing a 40-acre  
18 area.

19 Q. Now, at this point, Mr. Hedrick, the  
20 discussions that you were having with Mr. Fisher  
21 definitely involved the subject of annexation, didn't  
22 they?

23 A. Yes.

24 Q. And they definitely involved the notion of  
25 Chapter 100 financing as a potential economic package,



1     didn't they?

2             A.       Yes.

3             Q.       And you were, as Aquila's project manager  
4     for this particular CT plant that needed to be built,  
5     essentially allowing Mr. Fisher to find or locate sites  
6     that he felt could be annexed into the City of Peculiar;  
7     is that correct?

8             A.       I'm not sure that's an accurate  
9     representation. That's probably part of the  
10    investigation.

11            Q.       The site at YY and South Harper Mr. Fisher  
12    identified, correct?

13            A.       Yes.

14            Q.       The south -- or the approximate 40 acres  
15    due west that you identify as currently for sale  
16    Mr. Fisher identified; is that correct?

17            A.       I'm not looking at the right line on that  
18    one.

19            Q.       Mr. Hedrick, my point is that the sites  
20    that were being evaluated at this time were sites that  
21    were coming to Aquila's attention through a different  
22    process than the process Aquila had utilized beginning in  
23    January of 2004 to identify Camp Branch. Would you agree  
24    with me at least as to that?

25            A.       Yes.

1           Q.       And the process was different because  
2     instead of Aquila employing its site selection evaluation  
3     criteria and instead of hiring an engineer to spend a few  
4     months evaluating potential sites, you were looking to the  
5     city administrator for Peculiar to identify sites he felt  
6     he could annex into the City where this plant could be  
7     built?

8           A.       I would not characterize it that way. Once  
9     again, we did ask Segal to do another site evaluation. As  
10    part of that economic development that came to us and  
11    said, let's look at these sites, and that's what we did.

12          Q.       And I guess that's really the meat of my  
13    question, Mr. Hedrick, because in your direct testimony,  
14    you'll recall where we started with this whole line of  
15    e-mails, your testimony implied that Mr. Rogers went out  
16    after the initial denial by the planning board of the Camp  
17    Branch SUP application and conducted a new search, much  
18    like he had the first time around.

19                 The reality is, you had sites presented to  
20    you by the city administrator for the City of Peculiar,  
21    and you then asked Mr. Rogers to look at those sites  
22    versus those sites coming to Mr. Rogers' attention based  
23    on Aquila's site selection criteria; is that correct?

24          A.       Yes. Once again, we looked at sites in and  
25    around that area, and then Mr. Fisher did bring to our

1 attention some other sites.

2 Q. And lest there be any confusion, this area  
3 had originally been evaluated by Aquila but did not make  
4 the short list?

5 A. Correct.

6 Q. Now, on the second page of Exhibit 48, the  
7 last bullet point in your e-mail to Mr. Fisher follows a  
8 heading, action items requested of Mike Fisher, colon.  
9 And the last bullet point is, provide information on the  
10 rezoning application requirements. Do you see that  
11 reference?

12 A. I see that reference.

13 Q. You were asking Mr. Fisher to give you that  
14 information because Aquila fully expected to seek whatever  
15 necessary rezoning or other land use approval from  
16 Peculiar would be required to build a plant at a site  
17 located by Peculiar?

18 A. I think these notes are described as  
19 discussion items, and that is one of the discussion items,  
20 yes.

21 Q. Because Aquila intended to go through  
22 Peculiar's land use approval process; is that correct?

23 A. It was being discussed at this time.

24 Q. So the answer is yes?

25 MR. SWEARENGEN: Objection. That's not

1     what he said.

2     BY MS. MARTIN:

3             Q.     It was being discussed as something you  
4     anticipated doing; is that correct?

5                     MR. SWEARENGEN:   That's not what he said.  
6     Objection.

7                     MS. MARTIN:   I've rephrased the question  
8     actually.

9                     JUDGE PRIDGIN:   All right.   I'll overrule  
10    and let him answer.

11                    THE WITNESS:   I don't think anticipation is  
12    how I would describe it.   These were discussion items.   We  
13    were meeting with the City.   We discussed many items.

14    BY MS. MARTIN:

15             Q.     Well, you would agree with me that Aquila  
16    asked for this information from Mr. Fisher?

17             A.     Correct.

18             Q.     Okay.   And Aquila asked for this  
19    information because it wanted to have it, it felt it  
20    needed it, correct?

21             A.     That is correct.

22                     MR. SWEARENGEN:   Objection.

23                     JUDGE PRIDGIN:   He's already answered.  
24    Overruled.

25    BY MS. MARTIN:

1 Q. And the answer was, that's correct?

2 A. For discussion purposes, yes.

3 MS. MARTIN: Move admission of Exhibit 48.

4 JUDGE PRIDGIN: Any objection?

5 (No response.)

6 JUDGE PRIDGIN: Exhibit No. 48 is admitted.

7 (EXHIBIT NO. 48 WAS RECEIVED INTO

8 EVIDENCE.)

9 (EXHIBIT NO. 49 WAS MARKED FOR

10 IDENTIFICATION BY THE REPORTER.)

11 BY MS. MARTIN:

12 Q. Do you have in front of you, Mr. Hedrick,  
13 Exhibit 49?

14 A. Yes.

15 Q. And do you see that this is a two-page  
16 document, the first page being an e-mail from you dated  
17 August the 4th, 2004 to Glenn Keefe and others who work  
18 for Aquila?

19 A. Yes.

20 Q. And there's a carbon copy to Mr. Fisher; is  
21 that correct?

22 A. Yes.

23 Q. And you are telling the folks who received  
24 this e-mail that you and Mr. Dawson met with Mr. Fisher  
25 that same day, and you are summarizing the results of that

1 meeting; is that correct?

2 A. Can I read it to make sure?

3 Q. Please do.

4 A. Yes. This is a summary of the meeting  
5 notes.

6 Q. The first bullet point in your summary  
7 talks about Steve Sparling. Do you see that reference?

8 A. Yes.

9 Q. Mr. Sparling was the owner of that first  
10 site that Mr. Fisher had identified, wasn't he?

11 A. To the best of my knowledge, yes.

12 Q. And Mr. Sparling indicated he didn't want  
13 to talk to Peculiar about selling his land to Aquila and  
14 being annexed into the City of Peculiar; is that correct?

15 A. Yes.

16 Q. And so as a result, you, in fact, followed  
17 up to call Mr. Sparling to see if, in fact, that was his  
18 position; is that correct?

19 A. I followed up the meeting, and it was  
20 determined during that call that he did not want to work  
21 with Aquila on the project.

22 Q. So this first site that Mr. Fisher has  
23 identified has now been ruled -- or determined unavailable  
24 as of August the 4th, 2004; is that correct?

25 A. That is correct.

1           Q.       And Mr. Fisher has identified other  
2 properties in the general area that he's going to attempt  
3 to contact that day. Do you see that bullet point?

4           A.       Yes.

5           Q.       One of them is identified as a Jay Wilson;  
6 is that correct?

7           A.       Yes.

8           Q.       Once again, we're still not yet talking  
9 about the Bremer site, are we?

10          A.       Correct.

11          Q.       And once again, the site identified owned  
12 by Jay Wilson is a site Mr. Fisher identified; is that  
13 correct?

14          A.       That is correct.

15          Q.       And you'll see a little bit further down on  
16 the first page of Exhibit 49, the next -- or the second to  
17 the last bullet point, rezoning details. Do you see that?

18          A.       On my page 1, second to the last bullet  
19 point?

20          Q.       Uh-huh. Rezoning details: City  
21 ordinances, conceptual plans, et cetera.

22          A.       Yes, I see that.

23          Q.       So one of the things that you and Mark  
24 Dawson talked about with Mr. Fisher on August the 4th,  
25 2004 was what you were going to have to do to get any land

1     you acquired rezoned in accordance with the City of  
2     Peculiar's land use rules and regulations; is that  
3     correct?

4             A.       These items were discussed, yes.

5             Q.       And they were discussed, Mr. Hedrick,  
6     because Aquila expected that it would be going through  
7     that process, didn't it?

8             MR. SWEARENGEN:  Objection, your Honor.  I  
9     don't think that's what his testimony was.

10            MS. MARTIN:  I'm asking if that's, in fact,  
11   the intention for the discussion.

12            JUDGE PRIDGIN:  Overruled.

13            THE WITNESS:  One more time, please.

14   BY MS. MARTIN:

15            Q.       This was being discussed, and by that I  
16   mean rezoning details, because Aquila was expecting to  
17   have to go through whatever process the City of Peculiar  
18   required to properly zone a site located and annexed into  
19   the City for a power plant?

20            A.       There was a potential to go through this  
21   process, yes.

22            Q.       And you're equivocating a bit with me,  
23   Mr. Hedrick.  What I'm gathering from these e-mails is,  
24   Mr. Fisher was telling you, Aquila, that in order to get  
25   city council support for a project, you-all were going to



1 have to go through the City's requirements for zoning?

2 MR. SWEARENGEN: Objection, your Honor. I  
3 think the e-mails speak for themselves and they don't say  
4 that.

5 MS. MARTIN: I'm asking him his  
6 recollection at this point in time.

7 JUDGE PRIDGIN: I'll let him answer to what  
8 he remembers, then.

9 BY MS. MARTIN:

10 Q. You were about to answer my question yes,  
11 weren't you, Mr. Hedrick?

12 A. That Mr. Fisher was going to give us all  
13 this information, yes.

14 Q. And Mr. Fisher had related to you that in  
15 order to secure the support of the city council for this  
16 annexation, you would need to comply with the City's land  
17 use regulatory requirements, including zoning; is that  
18 correct?

19 A. That is correct.

20 Q. The second page of this exhibit is actually  
21 an agenda, is it not, from the August 4th, 2004 meeting;  
22 is that correct?

23 A. It appears to be.

24 Q. And, in fact, just to confirm the  
25 summarization in your e-mail, which is page 1 of the

1 exhibit, rezoning is a separate item, discuss timing

2 rezoning was one of the agenda items, wasn't it?

3 A. You're referring to which page?

4 Q. The second page of the e-mail, about

5 two-thirds down the page.

6 A. Correct.

7 MS. MARTIN: I move admission of

8 Exhibit 49.

9 JUDGE PRIDGIN: Any objections?

10 (No response.)

11 JUDGE PRIDGIN: Hearing none, Exhibit

12 No. 49 is admitted.

13 (EXHIBIT NO. 49 WAS RECEIVED INTO

14 EVIDENCE.)

15 (EXHIBIT NO. 50 WAS MARKED FOR

16 IDENTIFICATION BY THE REPORTER.)

17 BY MS. MARTIN:

18 Q. Mr. Hedrick, you now have in front of you

19 what's been marked as Exhibit 50; is that correct?

20 A. Correct.

21 Q. Exhibit 50 is an e-mail from Mike Fisher to

22 you dated August the 5th at the top and from you to Mike

23 Fisher dated August the 5th at the bottom; is that

24 correct?

25 A. Correct.

1           Q.       Now, I want to start with your e-mail, if  
2 we could, to Mr. Fisher, which is the e-mail at the bottom  
3 of the page dated August the 5th; is that correct?

4           A.       Yes.

5           Q.       And you relay to Mr. Fisher that your  
6 conversation with Steve Sparling was very clear that he  
7 would not sell the property, correct?

8           A.       Correct.

9           Q.       And you note in the next bullet point,  
10 quote, to stay on this aggressive schedule, an alternate  
11 property needs to be identified ASAP, close quote; is that  
12 correct?

13          A.       Correct.

14          Q.       The aggressive schedule that you're talking  
15 about is the fact that you knew, Mr. Hedrick, that this  
16 three-CT plant had to be built from Aquila's standpoint by  
17 the time the Aries plant purchased power agreement expired  
18 in May, late May of 2005; is that correct?

19          A.       As project manager I'm given certain time  
20 constraints, yes.

21          Q.       And those were your time constraints,  
22 weren't they?

23          A.       Give me that date one more time.

24          Q.       You were told to have a three-CT peaking  
25 plant online and ready to operate by the end of May of

1 2005?

2 A. That was the target time frame, yes.

3 Q. And you understood the reason for that was  
4 because Aquila had purchased power agreements expiring at  
5 that time?

6 A. I understood that, yes.

7 Q. Now, you are telling Mr. Fisher as a result  
8 that essentially here we are in early August, over a month  
9 has passed from the first e-mail we looked at, and not a  
10 site has been selected anywhere near Peculiar that could  
11 be eligible for the annexation at this point?

12 A. Site has not been selected at this point.

13 Q. So alternate properties are being  
14 discussed, and three in particular are mentioned here:  
15 Jay Wilson whom we've already talked about, Effren  
16 brothers to the north, and to the east adjacent to  
17 71 Highway; is that correct?

18 A. That is correct.

19 Q. And you go on to report that you would  
20 prefer to stay in the City or in a spot where the City can  
21 annex in a timely manner; is that correct?

22 A. That is correct.

23 Q. And that was your preference because at  
24 this point Mr. Fisher was reporting to you he thought he  
25 had the votes on the council to approve any rezoning

1 necessary for a site; is that correct?

2 A. That is correct.

3 Q. And at this same point in time, which is in  
4 early August of 2004, you've just come about two weeks  
5 past the preliminary denial by the planning board of the  
6 Camp Branch application in the County; is that correct?

7 A. It's close to that time frame.

8 Q. And so your preference expressed to  
9 Mr. Fisher at this time is that you wanted to develop in  
10 the City, not in the County; is that correct?

11 A. That's what we were attempting to do, yes.

12 Q. Because you understood that if you did  
13 develop in the City on land annexed by the City, the  
14 County's land use rules would not apply?

15 A. Once again, the City had asked us to come  
16 there and we were attempting to work with them, yes.

17 Q. And so the answer to my question is, yes,  
18 you understood that if you were able to work out an  
19 arrangement with the City where land could be annexed into  
20 the City, the County would have no ability to object to  
21 your land use; is that correct?

22 A. I would say that's -- there was a potential  
23 for that. I'm not a land use lawyer, but in general, I  
24 would say yeah.

25 Q. Okay. And you report toward the end of

1    this e-mail, we need to identify some property quickly  
2    that will not have an impact to the surrounding area.  Do  
3    you see that reference?

4           A.       I do.

5           Q.       And your reference to not having an impact  
6    to the surrounding area meant what?

7           A.       We have other peaking facilities, so I'm  
8    familiar with where they're sited, what type of residences  
9    are in the area, and so it was referring to finding  
10   something that would meet those type requirements.

11          Q.       And so you'd agree with me at this point  
12   the Steve Sparling site's been evaluated and is not  
13   available, and three other sites have now been evaluated  
14   or at least are being looked at, none of which are the  
15   Bremer site?

16          A.       That is correct.

17          Q.       You also report in this e-mail that Aquila  
18   is in the final stages of the Camp Branch decision-making  
19   process.  Did I read that correctly?

20          A.       Correct.

21          Q.       And do I understand that to mean that  
22   Aquila was in the final pages of deciding whether or not  
23   it was going to continue its application for Camp Branch  
24   approval that was scheduled to be heard by the BZA in the  
25   County?

1           A.       I would believe that would be part of it,  
2   yes.

3                   MS. MARTIN: I move admission of  
4   Exhibit 50, please.

5                   JUDGE PRIDGIN: Any objections?

6                   (No response.)

7                   JUDGE PRIDGIN: Exhibit No. 50 is admitted  
8   into evidence without objection.

9                   (EXHIBIT NO. 50 WAS RECEIVED INTO  
10   EVIDENCE.)

11                   (EXHIBIT NO. 51 WAS MARKED FOR  
12   IDENTIFICATION BY THE REPORTER.)

13   BY MS. MARTIN:

14           Q.       Mr. Hedrick, I've handed you what's been  
15   marked as Exhibit 51. Do you have that in front of you?

16           A.       Yes.

17           Q.       This is an e-mail from Mark Dawson to you  
18   and to others with Aquila dated August the 11th, 2004; is  
19   that correct?

20           A.       Yes.

21           Q.       And Mr. Dawson is telling you that he has  
22   talked with Mr. Fisher, and that Mr. Fisher would have no  
23   problem coordinating with Aquila for a potential press  
24   release coming both from the City and Aquila?

25           A.       That's what the first line says, yes.

1           Q.       And the second line says he would like to  
2     have a chance to make sure it doesn't sound like a slam  
3     dunk, since city regulatory political bodies must  
4     authorize the project. Do you see that reference?

5           A.       I see that sentence, yes.

6           Q.       So Aquila understood that the City was  
7     going to require that Aquila comply with its land use  
8     regulatory scheme?

9           A.       I'm not sure that's what this sentence is  
10    saying.

11          Q.       Well, you certainly understood the City had  
12    to authorize the project in some respect?

13          A.       Correct.

14          Q.       And in the second paragraph, Mr. Dawson  
15    reports to you that Mr. Fisher has advised after a closed  
16    session he believes he's got a 6-0 or a 5-1 vote?

17          A.       That's in the second paragraph.

18          Q.       And he says then in the second sentence, he  
19    feels the vote at P&Z is the same margin as well.

20          A.       In that same paragraph, I see that.

21          Q.       So do you take from that, Mr. Hedrick, what  
22    I do, that in the first part of this, Mr. Fisher is  
23    talking about having a 6-0 or 5-1 vote for the Chapter 100  
24    financing, and the same margin with respect to planning  
25    and zoning approvals?



1           A.       I'm not sure I can conclude that from this.

2           Q.       But you can conclude that there was some  
3 discussion about P&Z or planning and zoning; is that  
4 correct?

5           A.       Correct.

6           Q.       And discussion about a vote?

7           A.       I see that, yes.

8                   MS. MARTIN: I move admission of  
9 Exhibit 51.

10                   JUDGE PRIDGIN: Objections?

11                   (No response.)

12                   JUDGE PRIDGIN: Hearing none, Exhibit 51 is  
13 admitted.

14                   (EXHIBIT NO. 51 WAS RECEIVED INTO  
15 EVIDENCE.)

16                   (EXHIBIT NO. 52 WAS MARKED FOR  
17 IDENTIFICATION BY THE REPORTER.)

18 BY MS. MARTIN:

19           Q.       Mr. Hedrick, you've been handed what's been  
20 marked Exhibit 52; is that correct?

21           A.       Yes.

22           Q.       This is an e-mail from Mr. Fisher to Mark  
23 Dawson, dated August the 17th of 2004, discussing an  
24 August 21st work session; is that correct?

25           A.       Yes.

1           Q.       And the discussion is a proposed agenda for  
2   that work session; is that correct?

3           A.       It says that it is a proposed agenda, yes.

4           Q.       In the third -- excuse me -- fourth  
5   sentence of the first paragraph of that e-mail, do you see  
6   Mr. Fisher's statement that, quote, my goal for Saturday  
7   is to get the council and planning and zoning very  
8   comfortable with the peaking facility?

9           A.       I see that, yes.

10          Q.       And you see discussion in the next to the  
11   last paragraph, the paragraph that begins with the word  
12   obviously, and the second sentence, quote, I want counsel  
13   and P&Z to ask all the questions they would like. Do you  
14   see that reference?

15          A.       Yes, I see that.

16          Q.       Again, Mr. Hedrick, as of August the 17th,  
17   2004, Aquila is expecting and intending to go through the  
18   City of Peculiar's zoning process, isn't it?

19          A.       If a project happens, yes.

20          Q.       And expecting and presuming that a site, if  
21   located, is going to be annexed into the City of Peculiar,  
22   correct?

23          A.       Yes.

24          Q.       And expecting and presuming, therefore,  
25   that the County would not be the authority to whom Aquila

1 would have to go to secure land use authority, correct?

2 A. To my knowledge as project manager, yes.

3 MS. MARTIN: I move Exhibit 52 into  
4 evidence.

5 JUDGE PRIDGIN: Any objections?

6 (No response.)

7 JUDGE PRIDGIN: Hearing none, Exhibit 52 is  
8 admitted.

9 (EXHIBIT NO. 52 WAS RECEIVED INTO  
10 EVIDENCE.)

11 (EXHIBIT NO. 53 WAS MARKED FOR  
12 IDENTIFICATION BY THE REPORTER.)

13 BY MS. MARTIN:

14 Q. Do you recognize Exhibit 53, Mr. Hedrick?

15 A. I have 53. I'll read it to tell you  
16 whether I recognize it. I was not copied on this e-mail,  
17 but I -- I was aware of some of this information, yes.

18 Q. And I did see that you're not copied and  
19 that was my question. Were you aware that on August the  
20 19th of 2004, Mr. Kreimer on behalf of Aquila notified  
21 Gary Mallory that Aquila wished to postpone the BZA  
22 hearing for the Camp Branch energy center scheduled for  
23 August the 26th?

24 A. I can't say that at that exact date and  
25 time I was aware of it. At some time in this general time

1 frame I became aware of these type activities, yes.

2 Q. Well, in fact, in an earlier e-mail you  
3 identified that Aquila was in the process of making its  
4 decisions with respect to this very application for Camp  
5 Branch; is that correct?

6 A. Based on word down from management to me,  
7 yes.

8 Q. And that was also based on the progress you  
9 were making with the City of Peculiar; is that correct?

10 A. That was a component of it, yes.

11 Q. Do you see any mention in Exhibit 53 by  
12 Mr. Kreimer to Mr. Mallory to advise that the reason  
13 Aquila wanted to postpone the BZA hearing was because they  
14 were considering a site that would be annexed into the  
15 City of Peculiar?

16 A. I do not see that reference.

17 MS. MARTIN: I move admission of  
18 Exhibit 53.

19 JUDGE PRIDGIN: Any objections?

20 (No response.)

21 JUDGE PRIDGIN: Exhibit 53 is admitted.

22 (EXHIBIT NO. 53 WAS RECEIVED INTO  
23 EVIDENCE.)

24 (EXHIBIT NO. 54 WAS MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 BY MS. MARTIN:

2 Q. Mr. Hedrick, you've been handed what's been  
3 marked as Exhibit 54. This is an e-mail from you to Mark  
4 Dawson and others at Aquila dated September the 2nd; is  
5 that correct?

6 A. Correct.

7 Q. And you are attaching to this e-mail a  
8 draft agenda for use at an anticipated 10 a.m. meeting  
9 with Mike Fisher; is that correct?

10 A. Correct.

11 Q. You mention in the e-mail that the primary  
12 purpose for the meeting is to discuss the transmission  
13 issue; is that correct?

14 A. Yes.

15 Q. You're referring to the fact that, in  
16 addition to finding a plant site, you are also wanting or  
17 needing to find a separate substation or transmission  
18 site; is that correct?

19 A. Correct.

20 Q. And, in fact, on the agenda that you have  
21 attached as the second page to this document, the first  
22 category of discussion references certain potential sites  
23 for substations; is that correct?

24 A. That is correct.

25 Q. And I won't go through what those are, but

1 would it be fair to conclude that none of these sites were  
2 being discussed for prospective annexation into the City  
3 of Peculiar?

4 A. According to this agenda, that's true.

5 Q. The second category to be discussed at the  
6 agenda related to annexation by the City of a portion of  
7 the road in order to get access to a site selected for a  
8 plant; is that correct?

9 A. That's correct.

10 Q. Then the third category, once again we're  
11 talking about rezoning, aren't we?

12 A. Yes.

13 Q. And you have in the agenda that you  
14 prepared, Mr. Hedrick, for the meeting with Mr. Fisher on  
15 this date, can the project move dirt prior to rezone; is  
16 that correct?

17 A. That's correct.

18 Q. At this point in time, Aquila was  
19 anticipating rezoning whatever site it selected for the  
20 plant; is that correct?

21 A. That is correct.

22 Q. In accordance with the City of Peculiar  
23 land use regulatory scheme; is that correct?

24 A. To the best of our knowledge, correct.

25 MS. MARTIN: I move admission of

1 Exhibit 54.

2 JUDGE PRIDGIN: Any objections?

3 (No response.)

4 JUDGE PRIDGIN: Exhibit 54 is admitted.

5 (EXHIBIT NO. 54 WAS RECEIVED INTO  
6 EVIDENCE.)

7 (EXHIBIT NO. 55 WAS MARKED FOR  
8 IDENTIFICATION BY THE REPORTER.)

9 BY MS. MARTIN:

10 Q. Mr. Hedrick, you've been handed what's been  
11 marked as Exhibit 55.

12 A. Yes.

13 Q. And this is a facsimile from Mike Fisher to  
14 Mark Dawson; is that correct?

15 A. Yes.

16 Q. Have you seen this document before?

17 A. I recognize the facsimile.

18 Q. And I won't spend a lot of time talking  
19 with you about the details in this facsimile. I'll visit  
20 with Mr. Fisher about those when he's here to testify.  
21 But would you agree with me in summary, Mr. Hedrick, that  
22 this facsimile and attached letter discuss in great detail  
23 the process that Aquila is going to be required to go  
24 through with the City of Peculiar to honor its land use  
25 regulatory scheme?

1           A.       I didn't read the Gilmore and Bell pieces  
2 of it.

3           Q.       Do you generally recognize and recall this  
4 facsimile to address that subject matter?

5           A.       In general. In general.

6           MS. MARTIN: I move admission of  
7 Exhibit 55.

8           JUDGE PRIDGIN: Any objections?

9           (No response.)

10          JUDGE PRIDGIN: Okay. Exhibit 55 is  
11 admitted.

12          (EXHIBIT NO. 55 WAS RECEIVED INTO  
13 EVIDENCE.)

14          (EXHIBIT NO. 56 WAS MARKED FOR  
15 IDENTIFICATION BY THE REPORTER.)

16 BY MS. MARTIN:

17          Q.       Mr. Hedrick, you've been handed what's been  
18 marked as Exhibit 56. This is an e-mail from you dated  
19 September the 24th, 2004; is that correct?

20          A.       Correct.

21          Q.       And this relates to the substation; is that  
22 correct?

23          A.       Yes.

24          Q.       And on September 24th, you tell the folks  
25 to whom you've sent this e-mail that you spoke with Mike



1 Fisher that same morning, who met with Gary Mallory that  
2 morning, and the following is a summary of that  
3 discussion. Do you see that reference?

4 A. I see that reference.

5 Q. And do you tell the folks at Aquila, quote,  
6 need to rezone I1, this is consistent with other Cass  
7 County substations. Do you see that reference?

8 A. I see that reference.

9 Q. The application will go before the P&Z.  
10 They do not anticipate any issues. Do you see that  
11 reference?

12 A. Yes.

13 Q. You expected the County's cooperation on  
14 the substation application; is that correct?

15 A. That's what this would refer to, yes.

16 Q. And the application will require a public  
17 hearing; is that correct?

18 A. That is correct.

19 Q. And so we are now confirming that the  
20 subsection -- or excuse me -- the substation site that was  
21 being looked at by Aquila with respect to this development  
22 was going to remain in unincorporated Cass County; is that  
23 correct?

24 A. I believe that to be correct.

25 Q. So as of September 24th, 2004, Mr. Mallory

1 was making it clear to Aquila that to the extent you had  
2 any developments in unincorporated Cass, he would expect  
3 you to comply with the County's zoning requirements; is  
4 that correct?

5 A. From the meeting Mr. Mallory had with  
6 Mr. Fisher, that was his indication, yes.

7 Q. And as of September 24, 2004, there was no  
8 expectation that the plant was going to be constructed in  
9 unincorporated Cass, but rather an annexed area into the  
10 City of Peculiar?

11 A. In that time frame, that would be the plan.

12 Q. But it would not have surprised you in  
13 September of 2004 that had Mr. Mallory expected that the  
14 plant was going to be constructed in unincorporated Cass,  
15 he would have had the same requirements of you as for the  
16 substation? That wouldn't surprise you, would it?

17 A. It would not surprise me.

18 MS. MARTIN: Move admission of Exhibit 56.

19 JUDGE PRIDGIN: Objections?

20 (No response.)

21 JUDGE PRIDGIN: Exhibit No. 56 is admitted.

22 (EXHIBIT NO. 56 WAS RECEIVED INTO  
23 EVIDENCE.)

24 (EXHIBIT NO. 57 WAS MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 BY MS. MARTIN:

2 Q. Mr. Hedrick, you've now been handed  
3 Exhibit 57.

4 A. Yes.

5 Q. Do you recognize this to be the rezoning  
6 application form filed by Aquila in connection with the  
7 substation that was just being discussed in Exhibit 56?

8 A. It appears to be.

9 Q. And the present zoning identified for this  
10 particular site and the present use of property for this  
11 particular site is agricultural; is that correct?

12 A. Present zoning, agricultural; present use  
13 of property, agricultural farm land, yes.

14 Q. And the requested zoning was I1 light  
15 industrial; is that correct?

16 A. That's correct.

17 Q. Aquila understood that I1 light industrial  
18 is required for a power plant under the County's zoning  
19 scheme for unincorporated areas in the County?

20 A. I did not generate this document or file  
21 it.

22 Q. Do you have any reason to dispute the  
23 information contained on Aquila's application?

24 A. No.

25 MS. MARTIN: I move admission of

1 Exhibit 57.

2 JUDGE PRIDGIN: Objections?

3 (No response.)

4 JUDGE PRIDGIN: Hearing none, Exhibit 57 is  
5 admitted.

6 (EXHIBIT NO. 57 WAS RECEIVED INTO  
7 EVIDENCE.)

8 (EXHIBIT NO. 58 WAS MARKED FOR  
9 IDENTIFICATION BY THE REPORTER.)

10 BY MS. MARTIN:

11 Q. Mr. Hedrick, I'm handing you what's been  
12 marked as Exhibit 58.

13 A. Yes.

14 Q. This is a series of e-mails involving a lot  
15 of different people, yourself, Mark Dawson, Gary Mallory  
16 at various points. But you'd agree with me the general  
17 subject matter of this series of e-mails is whether a  
18 grading permit is required to begin moving dirt at the  
19 South Harper peaking facility?

20 A. I see the names of those people and I see  
21 grading permit as the subject, yes.

22 Q. And with respect to this particular  
23 exhibit, and I'm looking at page 1 of the exhibit, the  
24 first e-mail -- excuse me -- the second e-mail from Mike  
25 Blake to Chris Rogers and Terry Hedrick dated

1     september 29th of 2004. Do you find that?

2             A.       Yes.

3             Q.       And it says, according to Gary Mallory,  
4     there is no grading permit required for the South Harper  
5     peaking facility to proceed. We are clear to start moving  
6     dirt. Do you see that reference?

7             A.       I see that reference.

8             Q.       You understood, Mr. Hedrick, that Cass  
9     County didn't require a grading permit of Aquila because  
10    it doesn't require grading permits to move dirt for anyone  
11    in unincorporated Cass; is that correct?

12            A.       Via this e-mail I was relying on our  
13    consulting firm to advise me of that, and that's what they  
14    did.

15            Q.       And that's what you understood this  
16    information to mean; is that correct?

17            A.       I understood it to mean that a grading  
18    permit was not needed for us to move dirt.

19            Q.       Okay. And you had no reason to believe  
20    that that was some special benefit that had been extended  
21    to Aquila by Cass County, but rather just a recognition  
22    that it was their practice not to require grading permits  
23    to move dirt; is that correct?

24            A.       I would have to refer to Sega on that.  
25    They're the ones who had the actual conversation.

1           Q.       And if Mr. Mallory testifies to that  
2 effect, you'd have no reason to dispute that, would you?

3           A.       I would have no reason to dispute that.

4           MS. MARTIN: Move admission of Exhibit 58.

5           JUDGE PRIDGIN: Objections?

6           (No response.)

7           JUDGE PRIDGIN: Exhibit 58's admitted.

8           (EXHIBIT NO. 58 WAS RECEIVED INTO  
9 EVIDENCE.)

10           (EXHIBIT NO. 59 WAS MARKED FOR  
11 IDENTIFICATION BY THE REPORTER.)

12 BY MS. MARTIN:

13           Q.       You've been handed Exhibit 59; is that  
14 correct?

15           A.       Yes.

16           Q.       This is a facsimile to you from Mr. Fisher  
17 dated September the 29th of 2004; is that correct?

18           A.       Yes.

19           Q.       And for the first time, I see reference to  
20 the Bremer property on the fax cover sheet for this  
21 particular document; is that correct?

22           A.       The Bremer property is referenced on the  
23 front of this fax.

24           Q.       When, Mr. Hedrick, do you recall the Bremer  
25 property being first identified as a potential site for

1 the South Harper plant?

2 A. May I refer to my chronology?

3 Q. You may.

4 A. The first notes I have on this are 8/10/04.

5 There was -- the site had been identified prior to that.

6 Q. And you're referring to a reference, met  
7 with landowner at Peculiar site adjacent to compressor  
8 station?

9 A. Yes.

10 Q. Is it your specific recollection that that  
11 was the Bremer site?

12 A. Yes.

13 Q. Attached to Exhibit 59 is a checklist for a  
14 concept plan and a petition for annexation; is that  
15 correct?

16 A. It appears to be.

17 Q. And do you see reference by Mr. Fisher that  
18 this attached checklist for the concept plan is something  
19 that the City will need back for the Bremer property; is  
20 that correct?

21 A. That is correct.

22 Q. And the site plan or concept plan  
23 discussions on the next several pages include various land  
24 use regulatory requirements of the City, including zoning;  
25 is that correct?

1           A.       As I scan the three pages, I see the words  
2     planning and zoning.

3           Q.       And once again, not to beat a dead horse,  
4     Mr. Hedrick, but the fact is that Aquila was prepared and  
5     absolutely intended to comply with the City of Peculiar's  
6     land use regulatory scheme in connection with the South  
7     Harper site; is that correct?

8           A.       As part of this project, Aquila was working  
9     with the City of Peculiar, and annexation was part of  
10    that.

11          Q.       And compliance with zoning for the City?

12          A.       Zoning and annexation, yes, both.

13                 MS. MARTIN: I move admission of  
14    Exhibit 59.

15                 JUDGE PRIDGIN: Any objections?

16                 (No response.)

17                 JUDGE PRIDGIN: Exhibit 59 is admitted.

18                 (EXHIBIT NO. 59 WAS RECEIVED INTO  
19    EVIDENCE.)

20                 (EXHIBIT NO. 60 WAS MARKED FOR  
21    IDENTIFICATION BY THE REPORTER.)

22    BY MS. MARTIN:

23          Q.       Mr. Hedrick, you've been handed what's been  
24    marked as Exhibit 60.

25          A.       Yes.



1           Q.       This is an e-mail from Mr. Fisher to you  
2   and others at Aquila dated October the 4th of 2004; is  
3   that correct?

4           A.       There's a few people that are not from  
5   Aquila, but in general, yes, it's from Mike Fisher and to  
6   some Aquila people and others.

7           Q.       And again, the discussion is had about  
8   attached -- an attached revised schedule for the  
9   annexations and approval of the development plan and use  
10   designation for utilities. Do you see that discussion?

11          A.       I see that, yes.

12          Q.       And there is a fairly detailed time frame,  
13   in fact, attached with respect to the dates on which  
14   various meetings of the aldermen and planning and zoning  
15   folks were expected to occur where planning and zoning  
16   would be submitted for approval?

17          A.       I see that, yes.

18                   MS. MARTIN: I move admission of  
19   Exhibit 60.

20                   JUDGE PRIDGIN: Any objections?

21                   (No response.)

22                   JUDGE PRIDGIN: Exhibit 60 is admitted.

23                   (EXHIBIT NO. 60 WAS RECEIVED INTO  
24   EVIDENCE.)

25                   (EXHIBIT NO. 61 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 BY MS. MARTIN:

3 Q. I've handed you now what's been marked as  
4 Exhibit 61, Mr. Hedrick.

5 A. Yes.

6 Q. Do you recognize this to be the deed where  
7 Aquila took title to the Bremer site?

8 A. This appears to be the deed.

9 Q. And it's recorded as of October the 7th,  
10 2004; is that correct?

11 A. Correct.

12 Q. Mr. Hedrick, you indicated a moment ago  
13 you'd been in discussions or at least had identified the  
14 Bremer site as early as August the 10th of 2004; is that  
15 correct?

16 A. Met with landowner, yes.

17 Q. And were your negotiations with Mr. Bremer  
18 protracted or difficult or did Aquila simply wait to this  
19 point to acquire the property to have a comfort zone with  
20 respect to Peculiar's intention to annex and properly zone  
21 this site?

22 A. There was nothing difficult about obtaining  
23 the site.

24 Q. From Mr. Bremer; is that correct?

25 A. I don't know of any problems that were

1 encountered.

2 Q. So would you agree with me that Aquila  
3 waited to acquire title to the property until around  
4 October the 7th, after it had reached a comfort level that  
5 it appeared Peculiar would, in fact, annex the site and  
6 approve zoning for a power plant on the site?

7 A. I can't say that.

8 Q. Was Aquila interested before sinking its  
9 assets into acquiring this land for a site to have at  
10 least some comfort level that it appeared Peculiar was  
11 going to annex the site and approve zoning for the site?

12 A. That would have to be an element, yes.

13 Q. And three days prior Exhibit 60 that we  
14 identified was this agenda that had all of the various  
15 dates where those approvals would be expected to occur; is  
16 that correct?

17 A. I see those dates.

18 Q. And so would it be a fair assessment,  
19 Mr. Hedrick, that sometime at or shortly after  
20 October the 4th, in keeping with Mr. Fisher's e-mail  
21 outlining the dates when he expected to be able to extend  
22 to Aquila the approvals for annexation and for planning  
23 and zoning, that Aquila went forward and decided to close  
24 on the transaction with Mr. Bremer?

25 A. I do not know if that is the case.



1 have several more exhibits to identify.

2 JUDGE PRIDGIN: Okay.

3 MS. MARTIN: Unfortunately, I feel they're  
4 very important to the process.

5 JUDGE PRIDGIN: I understand. Normally I  
6 would hate to break in the middle of a witness, but since  
7 he's been going for a while and our court reporter has  
8 been going for a while, I would like to take a break as  
9 soon as we could.

10 MS. MARTIN: I understand. I don't have a  
11 problem with that.

12 JUDGE PRIDGIN: I show the clock to say  
13 3:15 at the back of the wall. If we could reconvene at  
14 3:30. So we are off the record momentarily.

15 (A BREAK WAS TAKEN.)

16 JUDGE PRIDGIN: We're ready to go back on  
17 the record. Mr. Hedrick, you can take your seat. I'll  
18 remind you you're still under oath. Ms. Martin --  
19 Mr. Chairman, did you have anything before we begin?

20 CHAIRMAN DAVIS: Your Honor, can I ask  
21 Ms. Martin a couple questions here?

22 JUDGE PRIDGIN: You may. I hope your  
23 microphone's on. I'm not sure that it is.

24 CHAIRMAN DAVIS: Is it on now?

25 Ms. Martin, a couple of brief questions.

1     What is our standard, what do you think our standard is  
2     for granting a certificate of convenience and necessity?

3                     MS. MARTIN:   In light of the Court of  
4     Appeals decision?

5                     CHAIRMAN DAVIS:  In light of the Court of  
6     Appeals decision.

7                     MS. MARTIN:  I believe the Commission is  
8     obligated to extend consideration of land use issues in a  
9     manner that's independent from the issue of need and  
10    functionally equivalent to the process that would be  
11    afforded by the County.

12                    CHAIRMAN DAVIS:  Okay.  Not saying that I  
13    agree with that, but I'm just going to move along here.  
14    Do you read some sort of new or should-have-known standard  
15    into that?

16                    MS. MARTIN:  From the perspective of Aquila  
17    or from whose perspective?

18                    CHAIRMAN DAVIS:  From the perspective of  
19    Aquila ,because I'm just going to confess to you, you  
20    know, I do not understand your whole line of  
21    cross-examination.

22                    MS. MARTIN:  That's always frightening,  
23    your Honor.

24                    CHAIRMAN DAVIS:  So --

25                    MS. MARTIN:  I'd be happy to enlighten you

1 on that, your Honor.

2 CHAIRMAN DAVIS: I would appreciate you  
3 enlightening me on where you're going, because so far I'm  
4 just not getting it.

5 MS. MARTIN: I'd be happy to. There are a  
6 number of points I think that are made with this line of  
7 cross-examination, not the least of which is Aquila's  
8 recognition of the importance of securing local authority  
9 for plants of this nature. If anything, I believe that  
10 importance has been enhanced by the Court of Appeals  
11 opinion, which describes that land use issues must be  
12 considered in an appropriate manner where they can be  
13 independently evaluated.

14 And whether that's in front of the County  
15 or the Commission, the Court of Appeals envisioned, in my  
16 opinion, a functionally equivalent proceeding that allowed  
17 public concerns to be addressed and land use issues such  
18 as zoning to be fairly considered. Aquila has been  
19 willing to go down this path, recognizing that zoning is  
20 an independent issue from need for the plant, as evaluated  
21 by the Commission.

22 In addition, I think that this line of  
23 questioning indicates a recognition by Aquila that,  
24 notwithstanding its earlier testimony that somehow or  
25 other they magically expected Gary Mallory to be objecting

1 to land use issues involving land that was going to be  
2 annexed into the City, that they fully recognized the  
3 authority they were dealing with on land use issues was  
4 the City and not the County with respect to the proposed  
5 plant site.

6 CHAIRMAN DAVIS: And what do those  
7 realizations have to do with the matter that's here in  
8 front of us?

9 MS. MARTIN: They have to do with the fact  
10 that if this board, if this Commission is to evaluate land  
11 use issues, it should require Aquila to go through the  
12 same type of evaluation with respect to those issues as  
13 would have been afforded the public and the City of  
14 Peculiar with respect to this plant had it been annexed  
15 into the City of Peculiar, or in the County, had an  
16 application been filed in the County.

17 CHAIRMAN DAVIS: And you're reading that  
18 from the Court of Appeals decision; you're certainly not  
19 reading it from our statutes, correct?

20 MS. MARTIN: I'm reading it from the Court  
21 of Appeals decision, which indicates if land use is to be  
22 fairly considered, it has to be considered independent of  
23 other issues. Otherwise, it makes no sense that the Court  
24 of Appeals would allow an either/or opportunity for those  
25 land use issues to be evaluated if they're not going to be



1 treated in a functionally equivalent manner.

2 I do not agree that the Court of Appeals  
3 would allow land use to be one of many factors that the  
4 Commission looks at in connection with need for a plant.  
5 In my view, with due respect, Commissioner, the effect of  
6 that type of an analysis would have land use being  
7 relegated to essentially no factor should the Commission  
8 or utility believe the need for a plant is so important as  
9 to outweigh other issues.

10 That would put you right back where the  
11 Court of Appeals said we can't be, which is utilities  
12 building plants wherever they want them to be built,  
13 without regard in a meaningful manner to land use issues  
14 and citizens' concerns.

15 CHAIRMAN DAVIS: Well, all right. Thank  
16 you, Ms. Martin. Thank you. I have no further questions  
17 at this time, Judge.

18 JUDGE PRIDGIN: All right. Thank you. I  
19 would like to resume with Ms. Martin's cross-examination  
20 of Mr. Hedrick and, Mr. Hedrick, you are still under oath,  
21 sir. And, Ms. Martin, whenever you are ready.

22 MS. MARTIN: Thank you. I took advantage  
23 of the break to try to streamline where we are going with  
24 respect to the exhibits I have left, and I'm down to a  
25 much shorter stack than I thought, so the break was worth

1     our while.

2                     JUDGE PRIDGIN:   Very good.   Thank you.

3                     MS. MARTIN:   I will at this point, if I  
4     could, approach again with Exhibit 62.   I think that's  
5     where we are, Madam Court Reporter?

6                     THE REPORTER:   Yes.

7                     JUDGE PRIDGIN:   Yes, ma'am, you may.

8                     (EXHIBIT NO. 62 WAS MARKED FOR  
9     IDENTIFICATION BY THE REPORTER.)

10    BY MS. MARTIN:

11                    Q.     Mr. Hedrick, Exhibit 62 is the letter that  
12    was sent out by you to residents in the neighborhood with  
13    respect to Aquila's intentions to commence grading  
14    activities on the South Harper site; is that correct?

15                    A.     Can I read it?

16                    Q.     You sure can.

17                    A.     This is a letter I signed going to some of  
18    the people in the community, advising them of some of the  
19    activities that were going to take place, yes.

20                    Q.     Is this the first official notification  
21    from Aquila to residents in or near the South Harper site,  
22    the Bremer site that Aquila intended to commence activity  
23    in constructing a power plant at that site?

24                    A.     I can't say this is the first  
25    communication.   There were other public meetings and that

1 sort of thing, so there was other notifications.

2 Q. I'm aware that there were public meetings,  
3 but as far as a letter actually going out directly to  
4 residents informing them of Aquila's intentions to move  
5 forward with construction activities on the Bremer site,  
6 do you recall this being the first such notification, as  
7 to a time frame for those activities?

8 A. As far as a letter going to these nearby  
9 residences, I would say that is probably true.

10 Q. As of October 14th, 2004 when this letter  
11 went out, again, Aquila was anticipating that this site  
12 would be annexed imminently into the City of Peculiar?

13 A. Working with the City of Peculiar.

14 Q. And the site would be annexed into the City  
15 of Peculiar?

16 A. Once again, I've described our activities  
17 with them on the annexation.

18 MS. MARTIN: I move admission of  
19 Exhibit 62.

20 JUDGE PRIDGIN: Any objections?

21 (No response.)

22 JUDGE PRIDGIN: Exhibit 62 is admitted.

23 (EXHIBIT NO. 62 WAS RECEIVED INTO  
24 EVIDENCE.)

25 (EXHIBIT NO. 63 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 BY MS. MARTIN:

3 Q. Mr. Hedrick, you've been handed Exhibit 63.  
4 Do you recognize this as an e-mail from you to Mike Fisher  
5 dated October the 19th of 2004?

6 A. I see Exhibit 63, e-mail from Terry Hedrick  
7 to Mike Fisher, yes.

8 Q. And in this e-mail you're asking  
9 Mr. Fisher for some sort of a note directed to Cass County  
10 indicating the City of Peculiar's support for the  
11 substation rezoning application pending in Cass County; is  
12 that correct?

13 A. I see that sentence.

14 Q. And do you see on the second page where you  
15 actually sent Mr. Fisher some proposed language to reflect  
16 the City of Peculiar's support for the substation  
17 application?

18 A. I see that.

19 MS. MARTIN: I move admission of  
20 Exhibit 63.

21 JUDGE PRIDGIN: Objections?

22 (No response.)

23 JUDGE PRIDGIN: Seeing none, Exhibit 63 is  
24 admitted.

25 (EXHIBIT NO. 63 WAS RECEIVED INTO

1 EVIDENCE.)

2 (EXHIBIT NO. 64 WAS MARKED FOR  
3 IDENTIFICATION BY THE REPORTER.)

4 BY MS. MARTIN:

5 Q. Mr. Hedrick, you've been handed Exhibit 64,  
6 and this is another e-mail from you to Mike Fisher dated  
7 October the 21st, 2004; is that correct?

8 A. That is correct.

9 Q. And you're discussing in this e-mail that  
10 you-all, meaning Beth and others with Aquila and yourself,  
11 would like to meet with Mike to discuss options on the  
12 Chapter 100. You say, it is believed the City can still  
13 utilize the Chapter 100 tool; is that correct?

14 A. That is correct.

15 Q. And your reference to being still able to  
16 use the Chapter 100 tool, had something occurred at about  
17 this date that caused you to be talking in terms of still  
18 using Chapter 100? Had there been an occurrence that  
19 perhaps called into question the ability to do that?

20 A. Carbon copied on this, Beth Armstrong and  
21 Davis Rooney, and they're the ones who conducted that.  
22 They would have to answer that.

23 MS. MARTIN: I move admission of  
24 Exhibit 64.

25 JUDGE PRIDGIN: Objections?

1 (No response.)

2 JUDGE PRIDGIN: 64 is admitted.

3 (EXHIBIT NO. 64 WAS RECEIVED INTO  
4 EVIDENCE.)

5 (EXHIBIT NO. 65 WAS MARKED FOR  
6 IDENTIFICATION BY THE REPORTER.)

7 BY MS. MARTIN:

8 Q. Exhibit 65 is an e-mail from Mr. Dawson to  
9 Mr. Fisher, and it follows an e-mail from you to  
10 Mr. Dawson dated in reverse october 21st and October 22nd,  
11 2004; is that correct?

12 A. Yes.

13 Q. And this, again, is an e-mail from you to  
14 Mark asking Mark to solicit from Mr. Fisher a letter of  
15 support with respect to these projects; is that correct?

16 A. Yes. This has bullet points talking about  
17 the City, getting support from the City, yes.

18 MS. MARTIN: I move admission of  
19 Exhibit 65.

20 JUDGE PRIDGIN: Seeing no objections, 65 is  
21 admitted.

22 (EXHIBIT NO. 65 WAS RECEIVED INTO  
23 EVIDENCE.)

24 (EXHIBIT NO. 66 WAS MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 BY MS. MARTIN:

2 Q. Mr. Hedrick you've been handed what's been  
3 marked as Exhibit 66.

4 A. Yes.

5 Q. This is an e-mail from Mark Dawson to you  
6 dated October the 23rd of 2004, a Saturday; is that  
7 correct?

8 A. Yes.

9 Q. And this is probably one of those days you  
10 remember very well, isn't it, Mr. Hedrick?

11 A. This is an e-mail from Mike -- or from Mark  
12 Dawson talking about the city council holding a special  
13 session agreeing not to proceed with annexation.

14 Q. And so on October the 23rd, 2004, Aquila  
15 learned that, despite the fact that it invested time since  
16 early July of 2004 in a direction for this plant that  
17 would have Aquila acquiring a site annexed into the City  
18 of Peculiar, now the City would not be moving forward with  
19 those plans; is that correct?

20 A. This appears to be the notification that  
21 they are not proceeding with the annexation, first  
22 notification to Aquila, yes.

23 Q. And by this date Aquila has already bought  
24 the Bremer site. We've established that, haven't we?

25 A. Yes.

1           Q.       And by this date, Aquila's already sent a  
2       notification to area residents that it's commencing  
3       grading operations on the Bremer site. We've established  
4       that, haven't we?

5           A.       That is correct.

6           Q.       And by this date, October 23rd, 2004, you  
7       still have, do you not, Mr. Hedrick, your marching orders  
8       to bring this plant online by May 31st of 2005; is that  
9       correct?

10          A.       I described that I'm project manager and  
11       I've been given schedules and I was trying to work within  
12       those time constraints.

13          Q.       And that was your time constraints, wasn't  
14       it, May 31st of 2005?

15          A.       We targeted that time frame.

16          Q.       Correct.

17          A.       Yes. We targeted that time frame.

18          Q.       And so now on October 23rd, you're stuck  
19       with a situation where you have a site purchased for a  
20       plant, but the plans have all changed with respect to  
21       which local government you will have to deal with with  
22       respect to land use regulatory authority; is that correct?

23          A.       I can't answer that question because that's  
24       a management and legal question.

25          Q.       What you can tell me, though, is you knew



1 on October 23rd of 2004 the site that had been purchased  
2 by Aquila for the South Harper plant and on which you, as  
3 project manager, had already directed grading operations  
4 was now not going to be annexed into the City of Peculiar?

5 MR. SWEARENGEN: Objection, asked and  
6 answered.

7 JUDGE PRIDGIN: I'll overrule. Let him  
8 answer.

9 THE WITNESS: From this e-mail, that's all  
10 I can ascertain from this e-mail is they were not going to  
11 do annexation at this point.

12 BY MS. MARTIN:

13 Q. Mr. Hendricks -- or Hedrick, were you then  
14 involved in meetings with other management representatives  
15 of Aquila on or after the 23rd of October to discuss what  
16 Aquila was going to do next?

17 A. Once again, as project manager, I'm in  
18 constant communication with upper management and the team,  
19 the management team.

20 Q. And did that constant communication from  
21 and after October the 23rd, 2004, include what in the  
22 world Aquila was going to do next with respect to this  
23 site and its plans to build the South Harper plant?

24 A. I mean, this e-mail gives us one more  
25 factor in the case, and I'm sure that was evaluated.

1           Q.       Do you have a recollection of discussing on  
2       or after October the 23rd, 2004 whether Aquila intended to  
3       proceed with this plant, even though the land was now in  
4       unincorporated Cass and would not be annexed into the City  
5       of Peculiar?

6           A.       Management made those decisions.

7           Q.       Were you involved in any of those meetings,  
8       Mr. Hedrick, where that subject was discussed?

9           A.       You're talking very general. We met  
10       constantly, numerous meetings.

11          Q.       Were you involved -- I didn't mean to  
12       interrupt you.

13          A.       But --

14          Q.       Were you finished with your answer?

15          A.       I think so.

16          Q.       I apologize. Were you involved in any  
17       meetings where plans were made to have a meeting with Gary  
18       Mallory on November the 5th of 2004 to discuss the  
19       possibility of building the South Harper plant on this  
20       site, though it was in unincorporated Cass County?

21          A.       I can't specifically agree to that without  
22       seeing a document.

23          Q.       Did you participate in a meeting on  
24       November the 5th of 2004 with Gary Mallory?

25          A.       No.

1           Q.       But your chronology does reflect that a  
2 meeting was conducted on November 5th of 2004 with Cass  
3 County involving Keith Stamm, Glenn Keefe, Andrew Bailey,  
4 Mr. Thompson, Mike Fisher, Gary Mallory and Debbie Moore;  
5 is that correct?

6           A.       It does refer to a meeting with Cass County  
7 and Peculiar, yes.

8           Q.       And do you have any independent knowledge,  
9 based on information that's been provided to you,  
10 Mr. Hedrick about what was discussed during that meeting?

11          A.       That would be for one of these people or  
12 other management to answer.

13          Q.       So you don't have knowledge, nothing has  
14 been reported to you about what was discussed during that  
15 meeting?

16          A.       Project information was reported to me.

17          Q.       You could agree with me, though, could you  
18 not, Mr. Hedrick, that you personally had never spoken  
19 with Gary Mallory about the possibility of the South  
20 Harper plant being built in unincorporated Cass County at  
21 any time before October the 23rd of 2004? Would you agree  
22 with me?

23          A.       You're referring to me?

24          Q.       Yes, sir.

25          A.       I have not, that is correct.

1           Q.       And you're not aware of any other  
2       representative of Aquila who at any time prior to October  
3       the 23rd, 2004 spoke with Gary Mallory about building the  
4       South Harper plant in unincorporated Cass County?

5           A.       I can't answer that.

6                   MS. MARTIN: I move admission of  
7       Exhibit 66.

8                   JUDGE PRIDGIN: Any objections?

9                   (No response.)

10                  JUDGE PRIDGIN: Seeing none, 66 is  
11       admitted.

12                   (EXHIBIT NO. 66 WAS RECEIVED INTO  
13       EVIDENCE.)

14                   (EXHIBIT NO. 67 WAS MARKED FOR  
15       IDENTIFICATION BY THE REPORTER.)

16       BY MS. MARTIN:

17           Q.       Mr. Hedrick, Exhibit 67 is a continuation  
18       of your discussions with Mr. Fisher about a letter of  
19       support being prepared by the City of Peculiar for the  
20       substation application that was pending before Cass  
21       County; is that correct?

22           A.       This is discussing a letter of support for  
23       Cass County and there is reference to a substation, yes.

24           Q.       And this is the letter that Mr. Fisher  
25       prepared per your request in the e-mail we identified

1 earlier; is that correct?

2 A. It appears to be, yes.

3 Q. And to your knowledge, you -- well, the  
4 e-mail, in fact, says, yes, please approve and send; is  
5 that correct?

6 A. That's what it says, yes.

7 MS. MARTIN: Move admission of Exhibit 67.

8 JUDGE PRIDGIN: Seeing no objection, 67 is  
9 admitted.

10 (EXHIBIT NO. 67 WAS RECEIVED INTO  
11 EVIDENCE.)

12 (EXHIBIT NO. 68 WAS MARKED FOR  
13 IDENTIFICATION BY THE REPORTER.)

14 BY MS. MARTIN:

15 Q. Now, as of this e-mail that we were just  
16 looking at, which was Exhibit 67, and dated October the  
17 25th, 2004, the substation application was still pending  
18 in Cass County; is that correct?

19 A. As of October 25th, that's what it appears.

20 Q. And by letter of October 25th, 2004, you  
21 see on Exhibit 68 that Andrew Bailey, an attorney with  
22 Blackwell Sanders, counsel for Aquila, requested that that  
23 application be continued for the public hearing that was  
24 scheduled in front of the planning board in Cass County;  
25 is that correct?

1           A.       Exhibit 68 is a request for continuance.

2           MS. MARTIN:   Move admission of Exhibit 68.

3           JUDGE PRIDGIN:   Seeing no objections, 68 is  
4 admitted.

5                   (EXHIBIT NO. 68 WAS RECEIVED INTO  
6 EVIDENCE.)

7                   (EXHIBIT NO. 69 WAS MARKED FOR  
8 IDENTIFICATION BY THE REPORTER.)

9 BY MS. MARTIN:

10          Q.       Exhibit 69, Mr. Hedrick, do you recognize  
11 this document as an e-mail from you to Jon Empson with a  
12 copy to Glenn Keefe?

13          A.       I see that it is an e-mail from me to Jon  
14 Empson and Glenn Keefe, yes.

15          Q.       And it's dated October the 29th, 2004; is  
16 that correct?

17          A.       That is correct.

18          Q.       And at this point in time, it will be fair  
19 to say that Aquila is exploring what its options are  
20 respect to the South Harper plant, given the City of  
21 Peculiar's determination not to annex the site; is that  
22 correct?

23          A.       You're referring to the content of the  
24 e-mail?

25          Q.       I am.

1           A.       I'll read it quickly. It appears to be a  
2     compilation of many meetings that are being planned, some  
3     meetings that have been taking place and some work  
4     products that are being produced.

5           Q.       And summarized by you in this e-mail?

6           A.       Correct.

7           Q.       And one of the things that you mention in  
8     here is a meeting that is being planned with the County on  
9     November the 5th involving Andrew Bailey and Spencer  
10    Thompson; is that correct?

11          A.       That appears to be the first bullet point  
12    item on here.

13          Q.       You understand both Mr. Bailey and  
14    Mr. Thompson are attorneys; is that correct?

15          A.       That is correct.

16          Q.       And that meeting -- well, strike that.

17                    The next bullet point talks about a  
18    conversation Mr. Fisher had with Gary Mallory; is that  
19    correct?

20          A.       It says that Mike Fisher met with Gary  
21    Mallory.

22          Q.       And Mr. Mallory advised Mr. Fisher that the  
23    County would oppose a special use permit at the South  
24    Harper site; is that correct?

25          A.       It says that it was indicated the County

1 will oppose.

2 Q. Now, once again, Mr. Hedrick, as you sit  
3 here today, do you know of anyone with Aquila who at any  
4 time prior to this e-mail of October the 29th, 2004 had  
5 ever talked with Gary Mallory about the possibility that  
6 the South Harper plant would be built in unincorporated  
7 Cass, as opposed to annexed land into the City of  
8 Peculiar?

9 A. I don't know.

10 MS. MARTIN: Move admission of Exhibit 69.

11 JUDGE PRIDGIN: Objections?

12 (No response.)

13 JUDGE PRIDGIN: 69's admitted.

14 (EXHIBIT NO. 69 WAS RECEIVED INTO  
15 EVIDENCE.)

16 (EXHIBIT NO. 70 WAS MARKED FOR  
17 IDENTIFICATION BY THE REPORTER.)

18 BY MS. MARTIN:

19 Q. Exhibit 70, Mr. Hedrick, appears to be an  
20 e-mail similar to Exhibit 69. It's from you to Mr. Empson  
21 dated November the 1st, 2004, appearing to be a  
22 compilation of information about what's going in the  
23 Aquila decision-making process about the plant at this  
24 time; would you agree?

25 A. Once again, it has various items on it,



1 meetings that are being planned and different information,  
2 yes.

3 Q. And under the section that says, the  
4 following is a summary, you see reference to Mr. Fisher  
5 having met with Gary Mallory twice, and Mr. Mallory's  
6 statement that the County would prefer the City to take  
7 the ownership of the land and build the plant. Do you see  
8 that reference?

9 A. I see where he has met with Gary Mallory  
10 twice. And then the last sentence, is that what you're  
11 referring to?

12 Q. Yes.

13 A. The County would prefer the City take the  
14 ownership of the land and build the plant.

15 Q. You see that reference?

16 A. I see that reference.

17 Q. And all along that had been what Aquila was  
18 planning; is that correct?

19 A. I can't say that.

20 Q. Your discussions with Peculiar from July  
21 until October 23rd had anticipated Peculiar annexing the  
22 land for the site, correct?

23 A. Once again, you've lost me on your line of  
24 questioning.

25 Q. The discussions Aquila had with Peculiar

1     until it received word on October 23rd, 2004 that Peculiar  
2     would not annex the site had presumed annexation of the  
3     site by Peculiar; is that correct?

4             A.       By Peculiar.

5             Q.       Correct.

6             A.       That was what they were proposing, yes.

7             Q.       And you have no reason to believe that Gary  
8     Mallory had not expected that that, in fact, would be what  
9     would occur during that same time frame?

10            A.       I can't answer for Gary Mallory.

11            Q.       You don't know of any reason based upon any  
12     communications Aquila would have had with Gary Mallory  
13     where Gary Mallory would have had any reason to believe  
14     that this plant was being proposed to be constructed in  
15     unincorporated Cass County until the time frame of these  
16     last couple of e-mails; would you agree with me on that?

17            A.       I cannot speculate on what Gary Mallory was  
18     thinking at the time.

19            Q.       My question was, you don't know of anyone  
20     from Aquila who said anything to Mr. Mallory to suggest  
21     that that plant was going to be built in unincorporated  
22     Cass County until the time frame of these last two  
23     e-mails; is that correct?

24            A.       That is correct.

25                    MS. MARTIN: Move admission of Exhibit 70.

1 JUDGE PRIDGIN: Any objections?  
2 (No response.)  
3 JUDGE PRIDGIN: 70 is admitted.  
4 (EXHIBIT NO. 70 WAS RECEIVED INTO  
5 EVIDENCE.)  
6 MR. WILLIAMS: Judge, may I ask a question?  
7 JUDGE PRIDGIN: You may.  
8 MR. WILLIAMS: I notice on Exhibit 70,  
9 there's a reference to SUP. Would you explain what SUP  
10 is?  
11 MS. MARTIN: Special use permit.  
12 MR. WILLIAMS: And perhaps more  
13 importantly, what CPCN stands for?  
14 BY MS. MARTIN:  
15 Q. Mr. Hedrick, what do you mean by CPCN on  
16 this e-mail?  
17 A. That's referring to the certificate of  
18 public convenience and need -- necessity.  
19 MR. WILLIAMS: Thank you.  
20 MS. MARTIN: I presumed as much, but we'll  
21 go straight to the author. One last document I want to  
22 hand to you, Mr. Hedrick.  
23 (EXHIBIT NO. 71 WAS MARKED FOR  
24 IDENTIFICATION BY THE REPORTER.)  
25 BY MS. MARTIN:

1           Q.       This is Exhibit 71, Mr. Hedrick. Do you  
2 see that?

3           A.       I see it.

4           Q.       And you were aware that on or about the  
5 19th of November 2004, as is evidenced in this letter from  
6 Andrew Bailey to Darrell Wilson with Cass County, that  
7 Aquila withdrew the substation rezoning application it had  
8 filed for the substation site; is that correct?

9           A.       I see that.

10           MS. MARTIN: And by this time -- well, I'll  
11 go ahead and move admission, your Honor, of Exhibit 71.

12           JUDGE PRIDGIN: Any objections?

13           (No response.)

14           JUDGE PRIDGIN: 71's admitted.

15           (EXHIBIT NO. 71 WAS RECEIVED INTO  
16 EVIDENCE.)

17 BY MS. MARTIN:

18           Q.       By the 19th of November 2004, Aquila had  
19 determined to go forward with construction of the South  
20 Harper plant on the Bremer site without securing County  
21 zoning; is that correct?

22           A.       November of 2004.

23           Q.       By November 19th when the special -- or  
24 excuse me -- the rezoning application for the substation  
25 site was formally withdrawn, Aquila had by that time made

1 the decision to proceed with construction of both the  
2 substation and the South Harper plant without securing  
3 County zoning; is that correct?

4 A. Yes.

5 Q. Now, I want to ask you a couple of  
6 questions that go to the matters that Commissioner Davis  
7 raised with me that relate to the relevance of your  
8 testimony here, Mr. Hedrick. You understood that in going  
9 through the process of rezoning in the City of Peculiar,  
10 that process would have involved public hearings, correct?

11 A. I understand the zoning processes require  
12 public hearings, yes.

13 Q. And you understood that the ultimate  
14 decision, then, that would have been made with respect to  
15 the ability to construct the plant on a particular site  
16 would have been made by that local government, in this  
17 case the City of Peculiar, correct?

18 A. I can't say that. That's -- that's for  
19 others -- attorneys to answer that question.

20 Q. Well, Mr. Hedrick, you were certainly aware  
21 that the zoning process would be taking place in front of  
22 the board of aldermen and the planning and zoning board  
23 for the City of Peculiar, correct?

24 A. That is correct.

25 Q. And you presumed, did you not, that they

1 would be making the decision with respect to the propriety  
2 of zoning for the South Harper site; is that correct?

3 A. That Peculiar would take those actions,  
4 yes.

5 Q. And that would have been after the City's  
6 prescribed procedures with respect to zoning or  
7 comprehensive planning had been followed; is that correct?

8 A. That would be for them to answer.

9 Q. That would have been after whatever  
10 procedures Peculiar had been putting you on notice of,  
11 Mr. Hedrick, had been followed; is that correct?

12 A. After all their procedures.

13 Q. And those procedures, as I indicated, would  
14 have involved a chance for people to speak to their  
15 elected officials with respect to their views on the  
16 zoning consideration for this plant. Would you agree with  
17 me about that?

18 A. Once again, I'm not an attorney, but that  
19 would be the best of my understanding.

20 Q. And you'd agree with me that the City of  
21 Peculiar would be evaluating the zoning for this plant  
22 independent of any determination that say the Public  
23 Service Commission might make with respect to the need for  
24 the plant?

25 A. I do not understand that.

1           Q.       Do you understand that -- or do you  
2 believe, Mr. Hedrick, that the City of Peculiar's planning  
3 and zoning board would have the ability to address public  
4 convenience and necessity for a plant?

5           A.       I believe that there's differences between  
6 cities and counties, and that's for attorneys to answer  
7 that question.

8           Q.       And my question of you is, Mr. Hedrick, you  
9 understand that when a local government is evaluating  
10 zoning, they're looking at different issues than the  
11 Public Service Commission is looking at when it evaluates  
12 public convenience and necessity for a plant?

13          A.       You're asking me questions that are not in  
14 my responsibility.

15          Q.       Well, in the last e-mail that you prepared  
16 for Mr. Empson, you specifically talked about the CPCN  
17 approach. Do you remember that, in Exhibit 70?

18          A.       I do remember that.

19          Q.       And you knew what you meant when you put  
20 that in that e-mail, didn't you?

21          A.       I had a general understanding of that.

22          Q.       You understood that meant that Aquila would  
23 rely on its certificate of public convenience and  
24 necessity issued by the Commission, the Public Service  
25 Commission, to authorize the construction of a plant,

1 correct?

2 A. Once again, you're asking questions that  
3 were not my responsibility to answer.

4 Q. I am not asking you whether they were your  
5 responsibility to answer. I'm asking what you understood  
6 when you prepared this e-mail summarizing the options  
7 available to Aquila. You appreciated there was a  
8 difference between a special use permit application to a  
9 county or a city and a certificate of public convenience  
10 and necessity that might be issued by the Public Service  
11 Commission, correct?

12 A. As I stated before, those e-mails you're  
13 referring to are compilations of numerous meetings and  
14 activities, attorneys, upper management, middle  
15 management, and that's my role as project manager. I'm  
16 not in a position to make judgments on those type issues.

17 Q. I'm not asking you to make judgments. You  
18 understood them sufficiently to summarize them in an  
19 e-mail to Mr. Empson. All I'm asking you, Mr. Hedrick, is  
20 that you appreciated the difference between a specific --  
21 or excuse me -- a certificate of public convenience and  
22 necessity and some sort of a process approving either an  
23 SUP application or rezoning, you understood the difference  
24 between those two?

25 MR. SWEARENGEN: I'm going to object on the



1 basis that she's asked that question, he's tried to answer  
2 it the best he can, and I think she's just arguing with  
3 him at this point.

4 JUDGE PRIDGIN: I'm going to overrule, but  
5 it's about to get to the point that it's asked and  
6 answered. And the types of answers should be yes or no  
7 and I don't know. If you don't know the answer, it's okay  
8 to say I don't know. We seem to be going in circles here.

9 BY MS. MARTIN:

10 Q. And which is why I keep asking the question  
11 because I don't feel like it's being answered. At this  
12 point, I don't mean, Mr. Hedrick, to repeat questions over  
13 and over. No one ever wants us to be bored with that  
14 process.

15 You discussed a scenario that discusses two  
16 different approaches. You were involved in meetings where  
17 those approaches were discussed; is that correct?

18 A. That is correct.

19 Q. And so you knew that there was a difference  
20 between the type of authority Aquila could secure from a  
21 local government with respect to land use and a  
22 certificate of public convenience and necessity that might  
23 be secured from the Public Service Commission?

24 A. There is a difference.

25 Q. And you knew and understand even today,

1 Mr. Hedrick, that if Aquila were to file an application  
2 seeking local land use authority for the South Harper  
3 plant, that decision made by a local entity would be  
4 independent from any decision with respect to need, in  
5 other words, any decision with respect to public  
6 convenience and necessity for the plant, correct?

7 A. Once again, my role in this project would  
8 be to refer that to counsel.

9 Q. You would expect them to address those  
10 matters for Aquila but, Mr. Hedrick, my question goes to  
11 your understanding of the difference of the two processes.  
12 And I think that's a fair question given the  
13 summarizations in your e-mails.

14 You appreciate that if land use is  
15 evaluated on a local level, the decision ultimately made  
16 about land use will be independent of any determination of  
17 need for a plant made by a Public Service Commission.  
18 Would you agree with me?

19 A. Once again, I've acknowledged that there is  
20 a difference.

21 Q. Now, in agreeing to go through the process  
22 of zoning with the City of Peculiar, Aquila understood it  
23 was subjecting itself to a process that would allow public  
24 input and local decision-making about whether this plant  
25 would or would not be constructed; is that correct?

1           A.       It's my understanding that would be part of  
2 a process -- of going through that process.

3                   MS. MARTIN: I have one last document I  
4 want to show you that's been previously marked and  
5 introduced into evidence as Exhibit 34. The original of  
6 that document, Madam Court Reporter.

7 BY MS. MARTIN:

8           Q.       Do you recognize Exhibit 34, Mr. Hedrick?

9           A.       Exhibit 34 says that it is the Bremer site  
10 plan.

11          Q.       As the project manager for the South Harper  
12 plant, do you recognize Exhibit 34 to be the site plan for  
13 the South Harper plant?

14          A.       Yes.

15          Q.       And has, in fact, the South Harper plant  
16 been constructed in essentially an equivalent manner as is  
17 depicted upon Exhibit 34?

18          A.       In a similar fashion.

19          Q.       And so when one is out at the South Harper  
20 plant today, you will see that there is a land mass  
21 immediately adjacent to the existing three CTs that is  
22 nearly identical in size and dimension as the portion of  
23 this site where the three CTs are located; is that  
24 correct?

25          A.       That is correct.

1           Q.       And, in fact, Mr. Hedrick, are you aware  
2       that Aquila had this particular site designed with the  
3       intent to allow for expansion for additional CTs to be  
4       placed on this site?

5           A.       Yes.

6           Q.       And are you aware, Mr. Hedrick, that  
7       Aquila's future power resource requirements, which you  
8       heard Mr. Boehm testify to, will require building  
9       additional CTs, include the prospect of placing additional  
10      CTs at the South Harper site?

11          A.       My answer to that is that would be an  
12      option, but once again, the self-build would have to look  
13      at other sites.

14          Q.       So it is an option?

15          A.       There is available real estate there.  
16      That's as far as the option goes.

17          Q.       And the plant was designed purposefully to  
18      allow for the potential to place up to six CTs at this  
19      site?

20          A.       The plant was designed with the available  
21      real estate, that is correct.

22          Q.       For six CTs?

23          A.       There's three existing, and there's a site  
24      like you described to the south. And when Sega designed  
25      it, they laid it out for additional units.

1 Q. Per Aquila's request to do so, correct?

2 A. Both Aquila and Sega would agree that any  
3 time you're going to place units on a site, you would  
4 evaluate it for future expansion. Some sites may have it,  
5 some sites may not.

6 MS. MARTIN: That's all I have of  
7 Mr. Hedrick. Thank you, your Honor.

8 JUDGE PRIDGIN: Ms. Martin, thank you very  
9 much.

10 Mr. Eftink, I believe, do you have any  
11 questions, sir?

12 MR. EFTINK: Yes, your Honor.

13 CROSS-EXAMINATION BY MR. EFTINK:

14 Q. Mr. Hedrick, this is the first time you  
15 have ever managed the construction of a power plant?

16 A. When you say manage construction of a power  
17 plant, you mean from concept to design to completion?

18 Q. Yes.

19 A. Yes.

20 Q. Now, on page 4, line 1 of your prefiled  
21 statement, you talked about residential growth near other  
22 sites, and you refer to Independence and you refer to the  
23 Independence Power & Light site.

24 A. Page 4, line?

25 Q. Line 1.

1           A.       On line 3 it talks about Independence  
2   Power & Light facility, an aerial photograph.

3           Q.       Okay. Do you have any photographs of the  
4   houses so we can see what kind of houses are around that  
5   facility?

6           Q.       I have an aerial photograph that shows all  
7   the houses.

8           Q.       Well, you can't tell much from looking down  
9   on top of the rooftops, can you? My question is, do you  
10   have any photographs of what the houses look like from a  
11   side view?

12          A.       I do not have any side view photos.

13          Q.       Now, can you tell us how many megawatts or  
14   kilowatts are in that Independence Power & Light facility?

15          A.       I cannot.

16          Q.       On page 8, line 1 of your prefiled  
17   testimony, you say that a gas interconnection was made  
18   with Panhandle Eastern. Now, that line had to be laid  
19   over two miles to go to the South Harper site, correct?

20          A.       Page 8, line?

21          Q.       Line 1.

22          A.       That discusses the Southern Star compressor  
23   station.

24          Q.       Well, Aquila had to lay a line over two  
25   miles to Panhandle Eastern, too, correct?

1           A.     On line 5, an interconnection was also  
2     accomplished with Panhandle.

3           Q.     Right.

4           A.     Panhandle performed that construction.

5           Q.     Were you involved in the study of the cost  
6     of disassembling the South Harper plant?

7           A.     Could you be more specific on what you're  
8     referring to?

9           Q.     Well, a study was done called the  
10    Demobilization Study for South Harper Peaking Facility.

11          A.     Is that the Burns and McDonnell study?

12          Q.     Yes. Were you involved in that?

13          A.     Yes.

14          Q.     Do you know when Aquila made the decision  
15    to have the study done as to the cost of demobilizing the  
16    power plant?

17          A.     Do I know when or do I know the cost?

18          Q.     My first question is, do you know when  
19    Aquila decided to have that study done as to the cost of  
20    demobilizing?

21          A.     I do not have that date.

22          Q.     Have you read the report?

23          A.     I have read the report.

24          Q.     And doesn't it give a figure for what it  
25    would cost to break down and move the power plant to some

1 other site?

2 A. It gives some estimates in there.

3 Q. Do you recall the estimates?

4 A. I don't recall the exact numbers. If you  
5 have the report there and recite the numbers, I can  
6 probably confirm them.

7 Q. What I see on page 11 of that study is an  
8 estimate of 18 million down to \$14,200,000 for  
9 demobilization. Does that sound about right?

10 A. Those sound reasonable from the last time I  
11 read that report.

12 Q. Now, have you seen the actual emissions  
13 report that was filed with the Missouri Department of  
14 Natural Resources by Aquila for the South Harper facility?

15 A. I don't know if I've seen this report.

16 Q. Are you involved in gathering information  
17 to report to the State the amount of the emissions or the  
18 pollutants that come out of the South Harper facility?

19 A. I am not. Block Andrews is the one in  
20 charge of that.

21 Q. And you're saying you've never seen that  
22 report?

23 A. I can't say that I've never seen it.

24 Q. Do you know if you monitor particulate  
25 matter 2.5 at the plant?



1           A.       Block Andrews will have to address that.

2           MR. EFTINK: I'd like to have this marked  
3 as the next exhibit.

4           JUDGE PRIDGIN: I believe we're up to 72.  
5 Let's have this marked as Exhibit 72.

6                   (EXHIBIT NO. 72 WAS MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)

8           JUDGE PRIDGIN: Mr. Eftink, will you have  
9 copies for the Bench at some time?

10          MR. EFTINK: Actually, on the ones I  
11 introduced this morning, I have copies now, but I thought  
12 at a break or tomorrow morning I would substitute those,  
13 and I can make copies of these. I had two. I gave one to  
14 Aquila's attorney.

15          JUDGE PRIDGIN: All right. Thank you.

16          MR. EFTINK: I'll make more copies later  
17 on.

18 BY MR. EFTINK:

19          Q.       Now, Mr. Hedrick, do you have Exhibit 72 in  
20 front of you?

21          A.       Yes.

22          Q.       Is this a construction permit that went to  
23 Cass County?

24          A.       It is a construction permit and it says  
25 Cass County at the top.

1           Q.       And it's got your name on as the person for  
2 the applicant who's responsible?

3           A.       I see my name on here.

4           Q.       Okay. Have you seen Exhibit 72 before?

5           A.       I believe so.

6           Q.       Toward the bottom it says, I, Terry  
7 Hedrick, hereby certify that I am builder. Is it correct  
8 that you were aware that this application was submitted to  
9 Cass County?

10          A.       I believe so.

11          Q.       Okay. And when this was submitted, the  
12 Circuit Court had already issued its injunction because  
13 its injunction was issued in January of 2005, isn't that  
14 correct, and this is dated after the court's injunction?

15          A.       I believe that to be correct timing.

16          Q.       If you would look to the paragraph right  
17 above the signature block, and this was submitted to Cass  
18 County, doesn't it say that the applicant hereby agrees to  
19 abide by and comply with the provisions of all building  
20 codes, health laws and the zoning order of Cass County,  
21 Missouri and any other law or ordinance governing this  
22 type of work whether specified herein or not? Did I read  
23 that correctly?

24          A.       I see that, yes.

25               MR. EFTINK: Okay. Move for introduction

1 into evidence of Exhibit 72.

2 JUDGE PRIDGIN: All right. Any objections?

3 (No response.)

4 JUDGE PRIDGIN: Hearing none, 72's  
5 admitted.

6 (EXHIBIT NO. 72 WAS RECEIVED INTO  
7 EVIDENCE.)

8 BY MR. EFTINK:

9 Q. Now, when Mr. Boehm testified this morning,  
10 I was asking him questions about the costs that went into  
11 his analysis, and he said that he thought some of the  
12 figures came from you; would that be correct?

13 A. The figures -- the figures that would come  
14 from me would be the self-build estimate.

15 Q. Right. And in coming up with figures for  
16 self-building, did you have to make assumptions regarding  
17 taxes?

18 A. They are estimates.

19 Q. And you had to make assumptions regarding  
20 things like bond money and whether you could save interest  
21 on the self-build project?

22 A. They are general estimates.

23 Q. Okay. And when you came up with the  
24 figures that you gave to Mr. Boehm, did that include an  
25 assumption that working through one of the cities there

1 would be a tax abatement?

2 A. Those self-build proposals are estimates,  
3 and the numbers that are included in there are general  
4 numbers that don't specify one type of financing over the  
5 other.

6 Q. But in the figures you gave to Mr. Boehm,  
7 did you operate on the assumption that Peculiar was going  
8 to issue these tax-exempt bonds?

9 A. The self-build option was presented to the  
10 integrated resource plan well before we had any contact  
11 with the City of Peculiar.

12 Q. In the documents we looked at, which  
13 Ms. Martin was showing to you, it appears that efforts  
14 were made in July and August to keep Cass County from  
15 knowing what you were doing with the City of Peculiar and  
16 Mike Fisher. Would that be a correct statement?

17 A. I can't say that that's correct.

18 Q. Well, you were involved in that process,  
19 weren't you, so you should be able to tell us if efforts  
20 were made to keep Cass County from knowing of the  
21 communications between you guys and Mike Fisher and the  
22 City of Peculiar.

23 A. As project manager, I was working with both  
24 sites.

25 Q. Well, my question is if you guys kept

1 information from Cass County for a while. You, in July  
2 and August, didn't call anybody with Cass County and tell  
3 them that you were also talking to the City of Peculiar,  
4 correct?

5 A. When you say I did not call anyone in Cass  
6 County, you're referring to Gary Mallory or who?

7 Q. Well, anybody else in Cass County. I don't  
8 know all their names.

9 A. I did not call Gary Mallory.

10 Q. Okay. And there was in reference  
11 Exhibit 53 -- strike that.

12 There's reference in Exhibit 51 to the City  
13 of Peculiar having a closed session in August 2004 to talk  
14 about this proposal. Do you recall that? That was in an  
15 e-mail from you.

16 A. I would have to look at it again to  
17 specifically understand the content.

18 MR. EFTINK: I've got a copy of Exhibit 51.  
19 May I approach, your Honor?

20 JUDGE PRIDGIN: You may.

21 BY MR. EFTINK:

22 Q. In this e-mail to you, doesn't it indicate  
23 that the city council went into a closed session to  
24 discuss the project?

25 A. That is correct.

1 Q. And that's dated August 11, 2004?

2 A. That is correct.

3 MR. EFTINK: I offer Exhibit 72 in  
4 evidence.

5 JUDGE PRIDGIN: Any objections?

6 (No response.)

7 JUDGE PRIDGIN: 72 is admitted.

8 (EXHIBIT NO. 72 WAS RECEIVED INTO  
9 EVIDENCE.)

10 MR. EFTINK: I'd like to have this marked  
11 as 73.

12 (EXHIBIT NO. 73 WAS MARKED FOR  
13 IDENTIFICATION BY THE REPORTER.)

14 BY MR. EFTINK:

15 Q. Mr. Hedrick, do you have Exhibit 71 in  
16 front of you -- excuse me -- 73 in front of you?

17 A. Yes.

18 MR. SWEARENGEN: Judge, before we have any  
19 questions about this exhibit, I note that it's marked HC.

20 MR. EFTINK: I'm not sure there's anything  
21 confidential in it. If you would, take a minute to look  
22 at it.

23 JUDGE PRIDGIN: Mr. Swearengen, if you need  
24 time to consult with your clients.

25 MR. SWEARENGEN: Thank you.

1 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

2 MR. SWEARENGEN: We don't need to go into  
3 in-camera to discuss this. It's not highly confidential.

4 JUDGE PRIDGIN: Mr. Swearengen, thank you  
5 for that.

6 Mr. Eftink, when you're ready, sir.

7 BY MR. EFTINK:

8 Q. Yes. Mr. Hedrick, this is an e-mail dated  
9 October 12, 2004, correct?

10 A. October 12, 2004.

11 Q. And you were copied on this e-mail, right?

12 A. I am the CC.

13 Q. And I would like to ask you about the last  
14 two sentences -- actually, the last sentence which you'll  
15 find on page 2, which says in this e-mail that was copied  
16 to you that the folks in that area do not have a vote on  
17 this, they do not reside within the Peculiar town limits,  
18 and once they realize this, I think it was even more  
19 frustrating for them. I read that correctly, didn't I?

20 A. I believe so.

21 Q. So by October 12, 2004, you were aware that  
22 there was opposition to the location of the power plant on  
23 the Bremer property, correct?

24 A. Yes.

25 Q. And you also note or were informed that the

1 position of Aquila and the City was that the folks that  
2 lived closest to it didn't have a vote?

3 A. You're referring to the last sentence?

4 Q. I am.

5 A. I see that, yes.

6 Q. Okay. Now, it's a matter of record that  
7 the Circuit Court judge on I think it was January 5, 2005,  
8 announced his injunction, although it took a few days to  
9 write up the injunction.

10 My question to you as the project manager  
11 is, for the building -- not the ground work, but for the  
12 building, how much of that building, which is known as the  
13 South Harper peaking facility, was erected after Judge  
14 Dandurand said you are enjoined from building it?

15 A. What was the date?

16 Q. January 4, or January 5, 2005.

17 A. I believe Chris Rogers will cover that in  
18 more detail. I don't have any of those notes up here with  
19 me.

20 Q. But isn't it correct that nothing but dirt  
21 work had been done before January 1, 2005?

22 A. I'd have to -- I'd have to look at work  
23 product to find out that. Would probably be most likely  
24 that only dirt work was being performed at that time.

25 Q. All right. And would you argue with me if



1 I said that there's been testimony in this case before  
2 that 100 percent of the building of the peaking facility  
3 was done after Judge Dandurand said, don't do it?

4 A. The actual building?

5 Q. Yes. Not the ground.

6 A. After that time frame?

7 Q. That's right.

8 A. I would agree with that.

9 MR. EFTINK: Thank you.

10 JUDGE PRIDGIN: Mr. Eftink, if there's  
11 nothing further, Mr. Uhrig, any questions?

12 MR. UHRIG: Just a few questions.

13 JUDGE PRIDGIN: I'm sorry, Mr. Eftink.  
14 Were you finished?

15 MR. EFTINK: That exhibit I need to offer  
16 into evidence. It's Exhibit 73.

17 JUDGE PRIDGIN: So it's been offered. Any  
18 objections.

19 (No response.)

20 JUDGE PRIDGIN: Seeing none, 73 is  
21 admitted.

22 (EXHIBIT NO. 73 WAS RECEIVED INTO  
23 EVIDENCE.)

24 MR. EFTINK: Thank you very much.

25 JUDGE PRIDGIN: Thank you, sir. Mr. Uhrig,

1     sir?

2     CROSS-EXAMINATION BY MR. UHRIG:

3             Q.       Mr. Hedrick, I don't think we've ever met.  
4     My name is Matt Uhrig. I represent the nearby residents,  
5     Frank Dillon and some others who live right across from  
6     the plant.

7                     I imagine you probably have a pile of  
8     documents there in front of you. Do you still have a copy  
9     of your testimony --

10            A.       Yes.

11            Q.       -- that was discussed earlier?

12                    If you would, I'd like to refer you to  
13    page 6 and that paragraph that begins at line 6. On  
14    line 9, you state, some of the opposition to the South  
15    Harper peaking facility has come from residents who live  
16    over a mile away from the plant. And I was wondering, is  
17    there something special about that one mile marker, let's  
18    say, that people that live outside of that one mile area  
19    around the plant, is it expected that they're less  
20    affected than people that live within one mile of the  
21    plant?

22            A.       It's just trying to show the area.

23            Q.       Was it -- it was anticipated that people  
24    who live near the plant, say within one mile, would be  
25    affected in some way by the plant?

1           A.       Can you define affected, how they would be  
2   affected?

3           Q.       Noise is an issue with the plant?

4           A.       Block Andrews will go into more detail on  
5   noise and emissions later.

6           Q.       As the project manager, you knew that the  
7   turbines were going to create some level of noise; is that  
8   correct?

9           A.       That is correct.

10          Q.       And so people who live within one mile of  
11   the plant would be affected by that noise?

12          A.       That's not the intent of discussing one  
13   mile.

14          Q.       What is the intent of discussing one mile?

15          A.       To just show the general area, the  
16   surrounding area, one mile ring.

17          Q.       Well, let me ask you this: The plant is  
18   lighted, correct?

19          A.       I'm sorry. I didn't hear the word.

20          Q.       The plant is lighted at night?

21          A.       There are lights there, yes.

22          Q.       And it was anticipated that people would be  
23   affected by the lights, people who live, let's say, across  
24   the street?

25          A.       Chris Rogers will address the lights in

1 great detail in his testimony.

2 Q. When you made this testimony, when this  
3 testimony was created, you weren't speaking for yourself,  
4 you were speaking for Aquila, correct?

5 A. That is correct.

6 Q. And it appears from that statement that  
7 Aquila anticipated that there would be some degree of  
8 opposition to the plant?

9 A. That's reasonable.

10 Q. Prior to building the South Harper plant,  
11 did you look for locations where residences would not be  
12 nearby or affected?

13 A. That's one of the factors we look at, yes.

14 Q. Prior to constructing the South Harper  
15 plant, you looked for locations where there wouldn't be  
16 residents nearby who would be affected?

17 A. Chris Rogers, once again, will go into  
18 great detail of how those sites were looked at and the  
19 residents around them.

20 Q. And I'm asking you as the project manager  
21 right now, yes or no, prior to construction of the South  
22 Harper plant, you looked at locations where nearby  
23 residents would not be affected?

24 A. I can't say not be affected. I can say we  
25 evaluated sites and evaluated the residents in that area.

1           Q.       The question I'm asking you, though, is,  
2   yes or no, did you look at locations where nearby  
3   residences would not be affected?

4           A.       And you'd have to define where they would  
5   not be affected.

6           Q.       Well, I'm basing the question on this last  
7   sentence. During site selection review, potentially  
8   suitable sites that contained no residents within a mile  
9   radius were not identified.

10          A.       You're looking on what line?

11          Q.       Page 6.

12          A.       Yes.

13          Q.       Beginning on line 10.

14          A.       That is correct. That's a correct  
15   statement. We did not identify any sites where there were  
16   no residents within one mile.

17          Q.       So then we go back to my previous question.  
18   You did look for locations where nearby residences would  
19   not be affected?

20          A.       We looked at what it says right there,  
21   within a one-mile radius.

22          Q.       And again, that brings me back to the one-  
23   mile issue. Is there something within your internal  
24   guidelines when you're looking at building a power plant  
25   where you look for an area where you wouldn't have

1 residences, private residences within a one-mile area?

2 A. No, there's nothing to that effect.

3 Q. Was this something that you -- was this  
4 something that you -- well, withdraw the question.

5 MR. UHRIG: I have no further questions.

6 Thank you, Judge.

7 JUDGE PRIDGIN: Mr. Uhrig, thank you very  
8 much. Let me see if we have any questions from the Bench.

9 Commissioner Appling, any questions for the witness?

10 COMMISSIONER APPLING: No questions.

11 JUDGE PRIDGIN: All right. And I don't  
12 have any questions of Mr. Hedrick.

13 Mr. Swearengen, any redirect?

14 MR. SWEARENGEN: I have no redirect. Thank  
15 you.

16 JUDGE PRIDGIN: All right. Very good.  
17 Thank you. This witness may step down now. Mr. Hedrick,  
18 thank you very much for your time, sir.

19 (Witness excused.)

20 MR. SWEARENGEN: Could I inquire about the  
21 three Aquila witnesses who have testified, may they be  
22 excused from this proceeding?

23 JUDGE PRIDGIN: I would hesitate to do that  
24 because we have some Commissioners who are absent and they  
25 may have questions later in the proceeding. And I hate to

1 leave them hanging on, but I fear that if I excuse them  
2 and then later, a few days later they decide they have  
3 questions, I'd rather not try to explain why I excused  
4 them. So I apologize, but I fear that, no, I can't excuse  
5 them. I did that on purpose. I was thinking when I asked  
6 them to step down about excusing them, and I don't think  
7 that I should.

8 Just looking at kind of a rough outline of  
9 witnesses and, again, because I did warn the parties we  
10 would more than likely go past five, I would like to keep  
11 going and, Mr. Swearengen, is the next witness that you  
12 had planned to call, would that be Mr. Huslig?

13 MR. SWEARENGEN: Actually, we were hoping  
14 to be able to call Mr. Rogers, but I talked to Mr. Comley  
15 and he's not in a position to cross-examine him yet, so we  
16 will defer Mr. Rogers until tomorrow.

17 JUDGE PRIDGIN: Okay.

18 MR. SWEARENGEN: Could we take a couple of  
19 minutes and just let me check and see who's available?

20 JUDGE PRIDGIN: Certainly.

21 MR. SWEARENGEN: Thank you.

22 JUDGE PRIDGIN: We will just take a quick  
23 recess for about ten minutes, and you can come back and  
24 let me know what witnesses are available.

25 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

1 JUDGE PRIDGIN: We're back on the record.  
2 I just wanted to announce, I've spoken with the Chairman.  
3 In light of there seeming to be a natural break here with  
4 counsel not prepared to cross-examine any more of the  
5 Aquila witnesses that are here and looking at the time,  
6 this does seem to be a natural time to recess for the day.  
7 I would like the parties to know that we may very well  
8 have some evenings throughout the rest of the hearing  
9 where we do go past five o'clock.

10 And so instead of preparing for perhaps two  
11 to three witnesses a day, you might need to be prepared  
12 for more, because we do want to try to get through these  
13 hearings and give parties as much time as they can to get  
14 through their evidence and their cross-examination.

15 And to make sure that I'm clear on a  
16 potential -- or I guess kind of a tentative list of  
17 witnesses, and I've just kind of written them down and  
18 they're stuck up here in one of the many documents that I  
19 have that I can't find.

20 Do we -- don't we have a witness -- is it  
21 Mr. Caspary that is only available tomorrow?

22 MR. LINTON: Yes, he is available tomorrow,  
23 and he will be in the morning early. We were hoping that  
24 he could get on and off early in the morning.

25 JUDGE PRIDGIN: Okay. So he would be



1     either the first witness or a witness that would be pretty  
2     early tomorrow; is that correct?

3                   MR. LINTON:   That would be preferable.

4                   JUDGE PRIDGIN:  Do I hear any objections  
5     from any parties?

6                   MR. SWEARENGEN:  I would think it would be  
7     fine to start with him, and then we'd like to go back to  
8     Mr. Rogers and get him on tomorrow.

9                   JUDGE PRIDGIN:  Okay.

10                  MR. SWEARENGEN:  And then we'd probably  
11     have two other witnesses available, too.

12                  JUDGE PRIDGIN:  So if I'm hearing counsel,  
13     we would probably begin with Mr. -- am I saying his name  
14     correctly -- Mr. Caspary?  He's an SPP witness?

15                  MR. LINTON:  Yes.

16                  JUDGE PRIDGIN:  And then Mr. Rogers would  
17     be the next witness for tomorrow?

18                  MR. SWEARENGEN:  Yes.

19                  JUDGE PRIDGIN:  Okay.  And then?

20                  MR. SWEARENGEN:  Then we'd have either Carl  
21     Huslig or Block Andrews.  Probably Andrews first and then  
22     Huslig.

23                  JUDGE PRIDGIN:  Okay.  And in the event  
24     that we get past those, and I'm not saying we necessarily  
25     will, just to kind of give counsel fair warning, depending

1 on how many witnesses we get through, any other Aquila  
2 witnesses?

3 MR. SWEARENGEN: We would be down to Beth  
4 Armstrong at that point in time, and I've asked counsel to  
5 let me know tomorrow if they will have any  
6 cross-examination questions for her. It may be that there  
7 would not be any from the parties. Obviously the  
8 Commission might have some.

9 JUDGE PRIDGIN: Sure. And Mr. White?

10 MR. SWEARENGEN: He's available on Friday  
11 morning.

12 JUDGE PRIDGIN: Is he -- he wouldn't be  
13 available until Friday?

14 MR. SWEARENGEN: Correct.

15 JUDGE PRIDGIN: Okay. So roughly, Caspary,  
16 Rogers and then perhaps Andrews, and then Huslig; is that  
17 what we're looking at for tomorrow?

18 MR. SWEARENGEN: Yes.

19 JUDGE PRIDGIN: Any questions or objections  
20 to that order?

21 (No response.)

22 JUDGE PRIDGIN: All right. Anything  
23 further from counsel before we recess for the day?

24 MR. SWEARENGEN: With respect to those  
25 witnesses who have testified but have not been excused,

1     could you-all notify us if someone would like to inquire  
2     so we can get them back here?

3                   JUDGE PRIDGIN:  Absolutely.  I mean, I will  
4     as soon as I can communicate with the other Commissioners  
5     to see if they would have any questions for them, that  
6     will give you and obviously want to give them as much  
7     notice as possible to know whether or not they're excused  
8     or when they need to plan to come back.

9                   MR. SWEARENGEN:  That would be fine.  Thank  
10    you.

11                  JUDGE PRIDGIN:  And please remind me.

12                  Anything else from counsel before we  
13    adjourn for the day?

14                  (No response.)

15                  JUDGE PRIDGIN:  All right.  Hearing nothing  
16    further, we're off the record in case No. EA-2006-0309.  
17    We will plan to resume at 8:30 in the morning.

18                  Whereupon, the hearing was continued to  
19    April 27, 2006.

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