

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5 TRANSCRIPT OF PROCEEDINGS
6 Hearing
7 April 27, 2006
8 Jefferson City, Missouri
9 Volume 5

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

16
17 RONALD D. PRIDGIN, Presiding,
18 REGULATORY LAW JUDGE.

19 JEFF DAVIS, Chairman,
CONNIE MURRAY,
20 ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
21 COMMISSIONERS.

22
23 REPORTED BY:
24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
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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

2 JUDGE PRIDGIN: Good morning. We're
3 back on the record. I understand that we are beginning
4 today -- and counsel please correct me if I'm mistaken --
5 that Mr. Caspary from Southwest Power Pool will be our
6 first witness.

7 MR. LINTON: That is correct.

8 JUDGE PRIDGIN: All right, Mr. Linton. If
9 there's nothing else from counsel, I'd like to go ahead
10 and proceed with that testimony.

11 Hearing nothing further, Mr. Caspary, if
12 you would please come forward and be sworn.

13 (Witness sworn.)

14 JUDGE PRIDGIN: Thank you very much, sir.
15 If you would please have a seat. And, Mr. Linton, if
16 you'd like to examine, you may inquire.

17 MR. LINTON: Thank you.

18 P. JAY CASPARY testified as follows:

19 DIRECT EXAMINATION BY MR. LINTON:

20 Q. Good morning, Mr. Caspary.

21 A. Good morning.

22 Q. Could you please state your name for the
23 record.

24 A. My name is P initial, Jay, J-a-y, Caspary,
25 C-a-s-p-a-r-y.

1 Q. And by whom are you employed and in what
2 capacity?

3 A. I am employed by Southwest Power Pool. I
4 am currently the director of engineering.

5 Q. Do you have before you what has been marked
6 for identification as Exhibit No. 31?

7 A. Yes, I do.

8 Q. And does that consist of 13 typewritten
9 pages in question and answer format?

10 A. Yes, it does.

11 Q. Do you have any changes to -- excuse me.
12 Did you prepare that for filing in this case?

13 A. Yes, I did.

14 Q. Do you have any changes to make to that
15 document?

16 A. I am aware of one correction that I need to
17 make on the affidavit that was attached to my testimony.
18 It references direct testimony, and that should be
19 corrected to say rebuttal testimony.

20 Q. Thank you. Do you have any other changes?

21 A. Not at this time.

22 Q. If I were to ask you the questions
23 contained in that document today, would your answers be
24 the same?

25 A. Yes.

1 Q. And to the best of your knowledge,
2 information and belief, are those answers true and
3 correct?

4 A. Yes.

5 MR. LINTON: I tender the witness for
6 cross-examination, and I offer the testimony for admission
7 in this case.

8 JUDGE PRIDGIN: I believe this has been
9 premarked as Exhibit No. 31; is that correct?

10 MR. LINTON: That is correct.

11 JUDGE PRIDGIN: All right. Any objections
12 to Exhibit No. 31 coming into evidence?

13 (No response.)

14 JUDGE PRIDGIN: All right. Hearing none,
15 Exhibit No. 31 is admitted.

16 (EXHIBIT NO. 31 WAS RECEIVED INTO
17 EVIDENCE.)

18 JUDGE PRIDGIN: And before we go on to
19 cross, let me -- I thought I saw Mr. Eftink from
20 StopAquila and I don't think I see him. Is he here? Has
21 he walked in yet?

22 MS. MOORE: I haven't seen him yet, but
23 he's expected to be here.

24 JUDGE PRIDGIN: I'm really a little leery
25 to continue without him and -- there you are, Mr. Eftink.

1 I'm sorry. I just looked up and noticed that you weren't
2 here.

3 MR. EFTINK: Thank you.

4 JUDGE PRIDGIN: To catch you up on all that
5 you've missed, Mr. Linton just laid the foundation for the
6 admission of Mr. Caspary's prefiled testimony, and I just
7 asked counsel if they had any objections. Do you have any
8 objections, or do you want to go back and review and see
9 if you have any objections to his prefiled testimony being
10 admitted?

11 MR. EFTINK: I have no objection.

12 JUDGE PRIDGIN: Very good. We'll show that
13 Mr. Eftink doesn't have any objections, and we'll show
14 Exhibit 31 admitted without objection.

15 (EXHIBIT NO. 31 WAS RECEIVED INTO
16 EVIDENCE.)

17 JUDGE PRIDGIN: Mr. Eftink, do you need a
18 moment, or can we proceed to cross?

19 MR. EFTINK: You can proceed.

20 JUDGE PRIDGIN: Thank you very much, sir.
21 I looked up and I thought I saw you and I did not. I
22 apologize.

23 For Southwest Power Pool witnesses, I show
24 the list of cross-examination begins with Aquila.
25 Mr. Swearengen, any questions?

1 MR. SWEARENGEN: Just a couple, your Honor.

2 JUDGE PRIDGIN: Yes, sir.

3 CROSS-EXAMINATION BY MR. SWEARENGEN:

4 Q. Mr. Caspary, I'm Jim Swearengen. I
5 represent Aquila in this proceeding. And I'm looking at
6 pages 11, 10 and 11 of your testimony where you talk about
7 345 KV source, 161 KV system. Could you expand on what
8 you mean by that? What's a 345 KV source?

9 A. 345 is the line to line voltage of the
10 extra high voltage transmission lines that make up the
11 backbone of the transmission grid in the midwest. These
12 are engineering designations of the nominal voltages of
13 these systems and how they operate. So there's
14 345,000 volts between the phases of each three-phase line
15 for a 345 KV line.

16 Q. What does a 345 KV transmission line look
17 like?

18 A. Typically in the midwest they are H-frame
19 structures that are very tall. They're on about a
20 150-foot right of way.

21 Q. When you say very tall, how tall are they?

22 A. 100, 120 feet tall.

23 Q. And what about a 161 KV line, could you
24 describe that, please?

25 A. It's a smaller voltage line, obviously, but

1 it's still on pretty tall power poles. Many of those are
2 on single poles rather than on H-frame, but it depends on
3 the circumstance whether it's lattice towers or concrete
4 or wood poles or guide V structures. There's various
5 configurations for the towers.

6 Q. And how much right of way does it generally
7 take for those types of facilities?

8 A. Typically 100 to 150 feet.

9 MR. SWEARENGEN: Thank you. That's all I
10 have.

11 JUDGE PRIDGIN: Mr. Swearengen, thank you.

12 Mr. Williams, any questions from Staff?

13 MR. WILLIAMS: Staff has no questions for
14 this witness at this time.

15 JUDGE PRIDGIN: All right. Thank you. I
16 don't believe I see counsel here for SIEUA or for City of
17 Peculiar.

18 And, Mr. Wheatley, any questions for OPC?

19 MR. WHEATLEY: No questions.

20 JUDGE PRIDGIN: All right. Thank you.

21 Mr. Eftink?

22 MR. EFTINK: Yes.

23 JUDGE PRIDGIN: When you're ready, sir.

24 CROSS-EXAMINATION BY MR. EFTINK:

25 Q. Good morning.

1 A. Good morning.

2 Q. If you will look at Exhibit 31, your
3 prefiled statement, I want to ask you a few questions
4 about that.

5 A. I have it in front of me.

6 Q. Okay. If you would turn to page 10.

7 A. Yes, sir.

8 Q. And I'm looking at line 11. In your
9 prefiled testimony, you state that the facilities which
10 are now known as South Harper were not identified as
11 expected projects when SPP initiated its expansion plan
12 process in 2003 and 2004; is that correct?

13 A. That's correct.

14 Q. And now SPP does plan expansion, correct?

15 A. Yes, we do.

16 Q. And SPP works with companies like Aquila
17 and others in making the plans for expansion?

18 A. Yes, we do.

19 Q. Both the South Harper peaking facility and
20 the substation were not identified in either 2003 and 2004
21 as expected projects, correct?

22 A. Yes, that's my testimony.

23 Q. In fact, the expansion plans of SPP in 2003
24 and 2004 did not identify a need for a new 345 kilovolt
25 source near Peculiar, Missouri, correct?

1 A. We did not identify a need for that
2 facility to address the reliability needs of the system.

3 MR. EFTINK: Thank you. I pass the
4 witness.

5 JUDGE PRIDGIN: Mr. Eftink, thank you.
6 Questions on behalf of Cass County?

7 CROSS-EXAMINATION BY MR. COMLEY:

8 Q. Mr. Caspary, my name is Mark Comley. I
9 represent Cass County in this proceeding.

10 If you turn with me to page 3 of your
11 exhibit, Exhibit 31, your direct testimony, it's on page 3
12 that you discuss the breakdown of SPP's membership. My
13 understanding is that you have members that include three
14 independent power producers; is that correct?

15 A. I believe we have more than that.

16 Q. Oh, you do? Okay. How many independent
17 power producers do you have?

18 A. I don't have the exact list in front of me,
19 but I'm sure there's more than half a dozen.

20 Q. Is one of those IPPs Calpine, Aries or
21 Calpine?

22 A. Calpine is one of the independent power
23 producers, yes.

24 Q. And as part of the role of the Southwest
25 Power Pool, aren't you also connected in some way with the

1 Aries plant in Cass County?

2 A. It is a facility that's interconnected to
3 the transmission system.

4 Q. All right. Do you know how long the
5 Southwest Power Pool has had a relationship with Calpine
6 and the Aries plant?

7 A. Calpine has been a member with Southwest
8 Power Pool for several years.

9 Q. And that has not changed given its pending
10 bankruptcy; is that correct?

11 A. I believe that is correct, yes.

12 Q. Now, how long has Aquila been a member of
13 the Southwest Power Pool?

14 A. For many years.

15 Q. For many years?

16 A. Yes.

17 Q. Can you remember when they became a member?

18 A. Well, Aquila before that was UtiliCorp,
19 before that was Missouri Public Service, and St. Joe
20 Power & Light and West Plains Kansas. I'm sure they were
21 members of SPP in the '60s, if not before.

22 Q. Has Southwest Power Pool always been a
23 transmission provider for the Missouri Public Service side
24 of Aquila?

25 A. Not always, no, we have not.

1 Q. Do you know when that relationship started?

2 A. I believe Aquila came under our tariff last
3 July.

4 Q. On July -- in July 2005?

5 A. Yes.

6 Q. Now, as I understand your testimony,
7 Southwest Power Pool serves as a reliability coordinator
8 for transmission facilities under its control; is that
9 right?

10 A. That's one of our functions, yes.

11 Q. And that coordination affects several
12 states --

13 A. Yes.

14 Q. -- is that correct?

15 Do you have an estimate that you can tell
16 me right now of the number of megawatts of generation
17 resources that may be involved in your transmission system
18 as a whole?

19 A. I believe there's roughly 55,000 megawatts
20 of generating capability that is interconnected to the
21 transmission system that we operate.

22 Q. Do you file reliability plans with the
23 federal regulators that have jurisdiction over your
24 operations?

25 A. We file reports to federal agencies that

1 outline our members, as well as SPP's planning criteria,
2 models and expectations for future projects.

3 Q. And do you have obligations to file them
4 periodically, quarterly, annually?

5 A. I'm thinking of FERC Form 714 that we file
6 every year.

7 Q. Every year?

8 A. Yes.

9 Q. Are there updates during the course of the
10 year that you provide FERC?

11 A. Not necessarily to FERC. I mean, we
12 continually update our expansion plan internal to
13 Southwest Power Pool and share that with our members and
14 all stakeholders.

15 Q. And what has been the Southwest Power
16 Pool's level of reliability?

17 A. Very high.

18 Q. On a percentage basis, do you have a
19 percentage you can give me?

20 A. I'm not aware of any firm load curtailment
21 within Southwest Power Pool since I've been there in 2001.

22 Q. In determining the reliability of your
23 system, isn't it true that your planners do take into
24 account that there could be some generation or
25 transmission facilities inoperable for maintenance or

1 other down time?

2 A. Yes, we do.

3 Q. And you have to make reserves within your
4 plan to account for that; is that correct?

5 A. That is correct.

6 Q. So I take it then you would -- you would
7 impute a down time period for purposes of members that are
8 anticipating outages for some time; would that be a
9 correct statement?

10 A. I don't know what you meant by impute down
11 time.

12 Q. Let me do it this way. If you get notice
13 that there is going to be a scheduled maintenance for a
14 power plant connected to your system, do you expect the
15 member to give you notice of that planned maintenance and
16 that the plant will be offline?

17 A. Yes, sir.

18 Q. And once you get that notice, at that point
19 you then adjust the, I'll say the reliability forecast for
20 the system as a whole?

21 A. Yes. We reflect that into our models in
22 our forecast.

23 Q. My understanding is that the South Harper
24 plant is not operating at this time. Is that your
25 understanding?

1 A. Yes, sir.

2 Q. And it would be fair to say that the
3 Southwest Power Pool reliability is not being affected by
4 the absence of South Harper online; is that correct?

5 A. I don't think I'd agree with that.

6 Q. So your reliability at this stage is
7 compromised because South Harper is not producing energy?

8 A. I didn't say our reliability was
9 compromised. I think it has a negative effect if it's not
10 available for the grid.

11 Q. And the negative effect comes out in what
12 form?

13 A. Higher probability of loss of load.

14 Q. How can you compute that probability? And
15 the loss of load would be where?

16 A. There are various models that engineers use
17 to compute the reliability of the grid. One of those is
18 an LOL, a loss of load expectation measure, which is a
19 calculation.

20 Q. As a response to that, wouldn't you decide
21 on some sort of mitigating factor to account for the loss
22 of that load?

23 A. Yes.

24 Q. In order to buttress the reliability of the
25 system as a whole?

1 A. Yes.

2 Q. Let's presume that the power supplied by
3 South Harper now or could be supplied by South Harper now
4 would be supplied by another Aquila facility of the same
5 size. Would the absence of South Harper affect the
6 Southwest Power Pool?

7 A. Yes.

8 Q. In what way would it affect it if the same
9 power is being produced by another Aquila facility?

10 A. The flows on the transmission system are
11 very dependent upon the injection points for the
12 generators. So we have sold service on our transmission
13 grid with assumptions about where the generation would be
14 sourced. If you change those source points, it changes
15 the flows on the system and it changes the reliability of
16 the system.

17 Q. But again, the system is flexible enough, I
18 presume, that because of the flow point issue, there would
19 be a mitigating factor or a mitigation feature that you
20 could introduce into the system to accommodate for that;
21 is that correct?

22 A. Yes. Yes.

23 Q. Let us presume this: Let's presume that
24 the Commission in this case denies the application filed
25 by Aquila and, in turn, Aquila is ordered to dismantle the

1 plant. Would SPP be able to prepare a mitigation plan to
2 account for the loss of the load and thereby sustain its
3 reliability?

4 A. I'm sure we'd do everything possible to
5 keep our high level of service.

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

7 JUDGE PRIDGIN: Mr. Comley, thank you.

8 Mr. Coffman?

9 MR. COFFMAN: No questions, your Honor.

10 JUDGE PRIDGIN: All right. Thank you. Let
11 me see if we have any questions from the Bench.

12 Mr. Chairman?

13 CHAIRMAN DAVIS: No questions.

14 JUDGE PRIDGIN: All right. Thank you.

15 COMMISSIONER APPLING: I apologize for
16 being late, but no questions. Thank you.

17 JUDGE PRIDGIN: Thank you.

18 COMMISSIONER CLAYTON: No questions.

19 JUDGE PRIDGIN: Thank you. No questions
20 from the Bench. Mr. Linton, any redirect?

21 MR. LINTON: I have no redirect.

22 JUDGE PRIDGIN: Thank you. Thank you very
23 much for your testimony. You may step down.

24 THE WITNESS: Thank you.

25 MR. LINTON: May I ask, may Mr. Caspary be

1 excused?

2 JUDGE PRIDGIN: He can be excused certainly
3 for the day. There may be another Commissioner that will
4 have questions later in the hearing. I'm just a little
5 reluctant to release any witnesses right now.

6 MR. LINTON: Can I advise him that he can
7 go back to Little Rock and upon request come back?

8 JUDGE PRIDGIN: Certainly.

9 MR. LINTON: Thank you very much.

10 JUDGE PRIDGIN: You're quite welcome.

11 If I recall correctly, the next scheduled
12 witness is Mr. Rogers from Aquila; is that correct?

13 MR. SWEARENGEN: That's correct, Judge.

14 JUDGE PRIDGIN: All right.

15 MR. SWEARENGEN: I call Mr. Rogers at this
16 time.

17 JUDGE PRIDGIN: Mr. Rogers, if you'd come
18 forward to be sworn, please. Raise your right hand to be
19 sworn, sir.

20 (Witness sworn.)

21 JUDGE PRIDGIN: Thank you very much, sir.
22 If you would please have a seat. Mr. Swearengen, when
23 you're ready, sir.

24 MR. SWEARENGEN: Thank you.

25 CHRIS ROGERS testified as follows:

1 DIRECT EXAMINATION BY MR. SWEARENGEN:

2 Q. Would you state your name for the record,
3 please.

4 A. Chris Rogers.

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

7 A. I am vice president of Sega, Incorporated.

8 Q. And what is Sega, Incorporated?

9 A. It's a consulting, engineering and
10 technical services firm.

11 Q. Did you cause to be prepared for purposes
12 of this proceeding certain direct and surrebuttal
13 testimony in question and answer form?

14 A. Yes, I did.

15 Q. And is it your understanding your direct
16 testimony has been marked as Exhibit No. 12 and your
17 surrebuttal testimony Exhibit No. 13?

18 A. Yes.

19 Q. Do you have a copy of that testimony with
20 you this morning?

21 A. Yes, I do.

22 Q. Are there any changes that you wish to make
23 with respect to your direct testimony, Exhibit 12?

24 A. I have a couple of minor changes. On
25 page 7, line 19, there's a typographical error. It reads

1 the third quarter of 2005. It's actually the third
2 quarter of 2004. Then on the bottom line, that is line
3 23, I use the term tax exempt financing. That should
4 really be Chapter 100 financing.

5 Q. Are there any other changes in your direct
6 testimony?

7 A. No.

8 Q. With respect to your surrebuttal testimony,
9 are there any changes you wish to make?

10 A. No, sir.

11 Q. So if I asked you the questions contained
12 in those testimonies as you have modified the responses
13 today, would those responses be true and correct to the
14 best of your knowledge, information and belief?

15 A. Yes, they would.

16 MR. SWEARENGEN: With that, your Honor, I
17 would offer into evidence the two exhibits and tender the
18 witness.

19 JUDGE PRIDGIN: Mr. Swearengen, thank you.
20 Any objections to Exhibits 12 or 13?

21 MR. COMLEY: Your Honor, Cass County has
22 objections to portions of Mr. Rogers' surrebuttal. Our
23 objections are to portions of page 10, lines 12 to the end
24 of the page, all of page 11, all of page 12 and 13, and
25 then on page 15, line 7 where the sentence begins indeed,

1 to line 10 on page 15, ending at the words power plant.
2 And the reasons for the objection are that Mr. Rogers very
3 candidly admits that he is not a lawyer and he's not a
4 land use planner.

5 In the course of discussions on those
6 pages, he attempts to make a great deal of rebuttal to one
7 of the land use planners that is testifying in this case.
8 It is expert testimony for which Mr. Rogers admittedly
9 lacks foundation and qualification to make, and on that
10 ground we would move that that testimony be stricken.

11 MR. COFFMAN: I would join in that
12 objection.

13 JUDGE PRIDGIN: Any other objections to
14 those exhibits?

15 MR. EFTINK: StopAquila joins in that
16 objection.

17 JUDGE PRIDGIN: Thank you. If there are no
18 other objections, Mr. Swearengen?

19 MR. SWEARENGEN: My response would simply
20 be, I think this is information he can rely on. It's
21 proper surrebuttal testimony and it should be admitted.

22 JUDGE PRIDGIN: I will overrule the
23 objections. Exhibits 12 and 13 are admitted.

24 (EXHIBIT NOS. 12 AND 13 WERE RECEIVED INTO
25 EVIDENCE.)

1 JUDGE PRIDGIN: Proceed to
2 cross-examination. Mr. Williams, any questions?
3 MR. WILLIAMS: No questions.
4 JUDGE PRIDGIN: Mr. Linton?
5 MR. LINTON: No questions.
6 JUDGE PRIDGIN: No questions for
7 Mr. Linton. Nobody here from the City of Peculiar, SIEUA.
8 Mr. Wheatley?
9 MR. WHEATLEY: No questions.
10 JUDGE PRIDGIN: Very good. Cass County,
11 Mr. Comley?
12 MR. COMLEY: Thank you, Judge.
13 CROSS-EXAMINATION BY MR. COMLEY:
14 Q. Mr. Rogers, my name is Mark Comley, and I
15 think you've already heard who I represent.
16 A. Yes, sir.
17 Q. And one of the things I was going to ask
18 you about you've already clarified, so we'll get by with
19 that. So I do have a few questions about your direct and,
20 indeed, I do have some questions about your surrebuttal.
21 It's my understanding that Aquila retained
22 Sega -- or is it Sega?
23 A. Sega.
24 Q. Excuse me, Madam Court Reporter. That may
25 not come out the way it should be on the record -- in

1 connection with site selection for a peaking facility; is
2 that correct?

3 A. Yes.

4 Q. Can you tell me when you were retained?

5 A. For this assignment, I don't have the exact
6 date, but it's sometime in January of 2004, I believe.

7 Q. Had Sega been retained by Aquila on other
8 projects?

9 A. Yes.

10 JUDGE PRIDGIN: I'm sorry to interrupt.
11 Mr. Rogers, is your microphone, because I'm having a hard
12 time --

13 THE WITNESS: I haven't touched it.

14 JUDGE PRIDGIN: If you can just kind of
15 speak into the microphone, I'd appreciate it. Mr. Comley,
16 I'm sorry for interrupting.

17 BY MR. COMLEY:

18 Q. I think we were talking about the
19 relationship Aquila had had with Sega previously to this
20 project. Can you tell me other projects that you have
21 worked on for Aquila?

22 A. We have performed various plant betterment
23 projects, that is, improvement projects at a number of
24 their locations. We did some earlier exploratory work for
25 them in 2003. There was about half of the business of my

1 firm is in controls retrofits, taking -- replacing all the
2 controls at central station plants, and we've done that
3 certainly for Aquila.

4 Q. And again, your duties do include peaking
5 facilities like the one that South Harper has?

6 A. Yes. Sega has over the last five or six
7 years designed and -- either designed and constructed in
8 an EPC fashion or been the owners and engineer for design
9 build -- or design bid build delivery systems, such as we
10 have here, on about 1200 megawatts of peaking in this
11 general area.

12 Q. So I'm assuming that since much of your
13 business is in retrofitting, you would have expected
14 Aquila to specially retain you in connection with the
15 project including the 315 megawatt peaking facility in
16 January 2004; is that correct?

17 A. I'm not sure what you mean by our
18 expectations. It was a competitively bid situation.

19 Q. It was a bid situation?

20 A. Yes.

21 Q. And you responded to that bid?

22 A. Yes.

23 Q. The engineering services you performed, I
24 think on page 3 you state that there were nine engineering
25 criteria used to examine and rank the sites in your

1 analysis. Let me ask you about criteria No. 9, and that
2 is impact to the summer 2005 completion schedule. Can you
3 tell me how that fits into an engineering criteria?
4 Wouldn't that be a criteria all of us have to share in any
5 profession?

6 A. Yes, but as a project manager, one of the
7 things that I'm tasked with, we look at certainly quality,
8 we look at cost, and we look at schedule. There's a joke
9 in my profession is that you need to pick two of those
10 because it's really tough to get them all three. But
11 schedule is always a criteria, and our clients demand that
12 we perform to schedules. It's the prudent way to do
13 business.

14 Q. And would you agree that the schedule in
15 this matter was a very critical component of your
16 analysis?

17 A. It certainly was.

18 Q. Let me look with you at criteria No. 7. I
19 think you discuss that on page 7 of your testimony. Just
20 happen to coincide, and that was permitability with
21 respect to regulatory, environmental and land use issues.
22 Now, in reading through the criteria, can you tell me
23 where land use issues fits in with this criteria?

24 A. Well, certainly land use, although I'm not
25 a land use planner, land use is always an intrinsic part

1 of any site selection, where we're looking at the best
2 place, evaluating the individual sites and trying to
3 select the best one for the client, making a
4 recommendation for the client.

5 Q. It's not included in the statement of your
6 criteria. Would it be fair to say that land use issues,
7 at least under your site analysis, were not a major
8 criterion within permitting?

9 A. There were nine criterion. We didn't
10 differentiate what was major and what was minor. It was
11 part of what was considered.

12 Q. As it turned out, wasn't land use issues
13 more important to No. 9; isn't that correct?

14 A. No. 9 being schedule?

15 Q. Yes.

16 A. It was a factor. I'm not -- I'm not sure
17 more important, but we were looking for readily available
18 sites upon which the project could be completed in the
19 scheduled time frame.

20 Q. And I'm remembering that while you were
21 looking, this started out in early January of 2004,
22 January, February of 2004. Did Aquila identify sites for
23 you at that time?

24 A. We started with a number of sites, three or
25 four, and I think quickly picked up another one. There

1 were about five sites, and Dave Kreimer, who worked at
2 Aquila at the time, had scouted some of those initially
3 and we were brought in to evaluate the results of his
4 initial scout.

5 Q. And I presume that as part of your duties,
6 you had the opportunity to go out and find sites on your
7 own; is that correct?

8 A. Yes, that's correct.

9 Q. Now, I understand that the investigation
10 soon expanded, and in a short time you had eight sites to
11 evaluate. Is that a fair reading of your testimony?

12 A. Yes.

13 Q. And the results of that analysis were that
14 the Camp Branch site was the most favored; is that
15 correct?

16 A. Yes, sir.

17 Q. And that remained your site analysis pick,
18 your favorite, until there was a denial of an SUP
19 application for Camp Branch at the Cass County planning
20 board; is that correct?

21 A. That's part of it.

22 Q. But the denial of that Camp Branch permit,
23 it did affect your analysis at that point, didn't it?

24 A. Well, certainly, but that's only part of
25 the equation, the story. The rest of what happened is

1 that in the meantime, because of all the publicity,
2 economic development folks from several Cass County
3 municipalities contacted Aquila. And so you have a denial
4 on one hand and then you have other folks saying, hey,
5 we're interested, come look at our sites, and so that
6 picture together is what we're looking at. Not just
7 strictly focusing on the denial.

8 Q. So at some point you were approached by
9 officials from the City of Peculiar; is that correct?

10 A. Excuse me. I was not. Aquila economic
11 development folks were approached.

12 Q. And I'm presuming you were in contact with
13 the economic development folks at the same time?

14 A. Which ones? I'm sorry. I'm not trying to
15 be difficult, but there are economic development folks on
16 Aquila's staff, and then each of the municipalities or
17 certain municipalities have their own.

18 Q. I didn't mean to confuse you. I was
19 referring to the Aquila economic development --

20 A. Yes.

21 Q. -- department. That would be Mr. Dawson,
22 as I recall?

23 A. Yes, sir.

24 Q. Let me talk a little bit about Mr. Terry
25 Hedrick. My understanding is that in connection with your

1 duties, you and Mr. Hedrick worked closely together in
2 connection with the site analysis; is that correct?

3 A. That's correct.

4 Q. And you were talking about the approaches
5 by the other communities. Isn't it true, Mr. Rogers, that
6 for instance when the City of Peculiar contacted Aquila,
7 you were a part of that process in examining available
8 sites that the City of Peculiar was suggesting; is that
9 correct?

10 A. I certainly was. The initial contact came
11 through Aquila and was passed to Terry, and he involved me
12 at that point.

13 Q. And I'm also assuming that at that time you
14 were brought in to meetings with Mr. Mike Fisher,
15 Mr. Hedrick, yourself and others of Aquila in talking
16 about the other sites that the City of Peculiar had
17 arranged; is that correct?

18 A. Yes.

19 Q. Now, at this point in your site process,
20 we're not dealing necessarily with sites that Aquila is
21 recommending, are we?

22 A. At that point, we're exploring the
23 possibility of sites recommended by the City.

24 Q. And at that point, your analysis of this is
25 kind of taking on a different cast. It's no longer you're

1 trying to find a site for Aquila. Someone is finding a
2 site for Aquila and trying to make it work; is that
3 correct?

4 A. Not completely. That's part of it. They
5 were bringing sites to us and we were engaged in
6 discussions about the particulars of any given site, but I
7 was also scouting around myself.

8 Q. You'd been hired in January of 2004 and
9 you'd been going through the site selection process for
10 about six months, and by mid summer of 2004, you were
11 confronted with a decision that the Camp Branch facility
12 had a fatal flaw, and you were receiving information from
13 other communities about available sites. But when was
14 your completion schedule deadline?

15 A. I'm sorry. For what?

16 Q. For the peaking facility you were retained
17 to find a site for.

18 A. I think as I stated in my testimony and
19 others have stated, we needed to have it on by the first
20 of June 2005.

21 Q. So you were within less than a year, then,
22 of having to have this plant constructed. Mr. Rogers, is
23 it fair to say that your site selection analysis in the
24 summer, mid summer of 2004 was almost totally driven by
25 the schedule impact criterion in your site analysis?

1 A. No.

2 Q. Keep in mind you only had -- you probably
3 had six months construction schedule and you had six
4 months to find a site and have it permitted, have it
5 analyzed for all the other parts of your -- of your
6 criteria. Is it still your testimony, then, that
7 scheduling impact was not the most critical factor?

8 MR. SWEARENGEN: Objection, asked and
9 answered.

10 MR. COMLEY: Your Honor, this is
11 cross-examination.

12 JUDGE PRIDGIN: It's sustained. Ask the
13 question again, because I had a hard time following the
14 question.

15 BY MR. COMLEY:

16 Q. You testified that you had about -- you had
17 six months -- excuse me -- we were less than a year away
18 from having a constructed peaking facility. You had a
19 deadline of June 1, 2005; is that correct?

20 A. Yes.

21 Q. And in the mid summer of 2004, Aquila did
22 not have a site to build that peaking facility on, and you
23 were in the process of trying to find one through the City
24 of Peculiar's help. Is it still your testimony that the
25 scheduling for this was not a major criteria for your site

1 analysis at this time?

2 MR. SWEARENGEN: Same objection. He's
3 answered that question.

4 JUDGE PRIDGIN: Overruled. I'll let him
5 answer, and then we need to move on.

6 THE WITNESS: As you put it, you used the
7 term major. It was one of the nine criteria, and it was
8 certainly an important one, but I didn't expect -- I
9 certainly would not recommend a particular site just
10 because it was available. It had to -- had to meet all
11 the other attributes we were seeking. It had to fit those
12 criteria.

13 BY MR. COMLEY:

14 Q. Isn't it true that at this stage your
15 analysis was not looking ahead, it was -- wouldn't it be
16 fair to say that the process was at the point where it was
17 result-oriented rather than forward-looking?

18 A. It was always result-oriented. I guess I
19 don't understand your question. That's what I deal with,
20 results.

21 Q. It's true, however, that at the beginning
22 you had sites that were given to you by Aquila and you had
23 the right to go look for them on your own; is that
24 correct?

25 A. Yes.

1 Q. And in mid summer of July, those choices
2 became much narrower because of the scheduling impact; is
3 that correct?

4 A. Yes.

5 Q. Is it fair to say that you were actually
6 trying to force sites to work within your analysis, rather
7 than trying to find sites that worked within it?

8 A. No, not at all. Exactly the opposite. I
9 was looking for other sites that perhaps we hadn't checked
10 out before.

11 Q. Let me direct your attention to your
12 schedules on your direct testimony, identified I think as
13 Chris Rogers 1 and 2. On CR -- Schedule CR-1, it appears
14 that there are eight sites that are summarized there. And
15 can you tell the Commission how many were considered
16 fatally flawed because of scheduling impacts?

17 A. The Greenwood would have been. That's
18 identified as No. 3. I guess if you're saying due solely
19 to schedule, at this point I have to restate that. Excuse
20 me. At this point in June of 2004 --

21 Q. And you're looking at the bottom of your
22 schedule?

23 A. Yes.

24 Q. So this schedule would have been prepared
25 as of June 2004. This reflects activity as of June 2004?

1 A. Yes. They weren't fatally flawed. We
2 didn't say, well, you know, the other seven are rejected
3 due to schedule. We cited schedule concerns.

4 Q. What I'm seeing in the column on the
5 right-hand side on your schedule is that starting with
6 North Lake in Cass County, going through Greenwood,
7 Section 33 Cass County, North 235th Street, Turner Road,
8 Ralph Green and Richards Gebaur, each of those were
9 considered fatally flawed under your analysis because of
10 scheduling impact. Is that a correct reading of your
11 schedule?

12 A. No, they are not.

13 Q. They are underscored in No. 9?

14 A. They were concerns, but in none of them do
15 you see typed there the words fatal flaw. The column
16 heading is -- is fatal flaw, and you see no fatal flaw
17 under No. 1, and you see concerns and relative evaluations
18 of each site in each one of those boxes under the far
19 right-hand column.

20 So this document, if you're reading this to
21 say that we ruled out seven sites because of schedule as
22 being fatally flawed, that's an incorrect reading of this
23 document.

24 Q. Then the title of the column that you
25 prepared on your schedule would be incorrect; is that what

1 you're saying?

2 A. You might read it that way, but when I did
3 not put down here that any one of these was directly
4 fatally flawed, there was no indication that it was
5 fatally flawed. These are just concerns and statements
6 about the relative rankings, sort of a summary, if you
7 will.

8 Q. Now, because of rankings, which site was
9 selected?

10 A. We recommended -- I don't select. I
11 recommend to my client -- what came to be known as Camp
12 Branch.

13 Q. And your client eventually followed your
14 recommendation on Camp Branch; is that correct?

15 A. Yes.

16 Q. Now, under your analysis, a zoning issue
17 can cause a scheduling impact; is that correct?

18 A. It would be one consideration for
19 scheduling impact, yes.

20 Q. Now, you attached Schedule CR-2 to your
21 testimony as well. Am I to presume that this schedule has
22 not been updated for purposes of this case; is that
23 correct?

24 A. That's correct.

25 Q. So can you tell me, based upon the schedule

1 that you've attached, what time frame is represented by
2 Schedule CR-2?

3 A. Well, CR-2 was developed during August and
4 September of 2004 and was sort of a living document. At
5 that point we were not -- because we were engaged in the
6 design of the power block and supporting permitting, we
7 were not publishing reports.

8 CR-1 had been part of a report that was
9 issued, I think, four times with other backup data. This
10 is just the summary piece, and at this point in time, in
11 August and September, certainly because of schedule
12 concerns that you identified, we were working off this
13 summary sheet, and it was revised as we learned more about
14 each one of the particular sites.

15 And at that time we were focusing on three
16 or four key sites that were the upper echelon, if you
17 will, on the chart. And so as more information would come
18 in about transmission or some particular facet of the
19 site, this became kind of a living document for that
20 two-month period.

21 Q. So we're talking about September of 2004?

22 A. August on into September.

23 Q. And it has not been updated since?

24 A. You know, there might have been some
25 punctuation or spelling, but in no substantial way that

1 I'm aware of.

2 Q. Mr. Rogers, have you submitted this as an
3 exhibit before the Commission in previous cases?

4 A. You know, I think I might have.

5 MR. COMLEY: May I approach the witness?

6 JUDGE PRIDGIN: You may.

7 BY MR. COMLEY:

8 Q. Mr. Rogers, I've handed you an unmarked
9 exhibit for the time being, but in fact we'd better mark
10 that. Let's go ahead and mark it.

11 (EXHIBIT NO. 74 WAS MARKED FOR
12 IDENTIFICATION BY THE REPORTER.)

13 BY MR. COMLEY:

14 Q. Mr. Rogers, I've asked the court reporter
15 to mark for identification purposes only as Exhibit 74
16 what's been titled as Aquila Networks Peaking Facility
17 Site Selection, Comprehensive Site Evaluation Summary
18 Table. Do you recognize that document?

19 A. Yes.

20 Q. Was that prepared by you?

21 A. I believe it must have been, yes.

22 Q. Do you know whether this was submitted as
23 an exhibit in the case that was styled EA-2005-0248
24 involving the South Harper facility?

25 A. I believe it could have been. I don't know

1 as I sit here.

2 Q. Let me represent to you that it was
3 identified as Exhibit 112 in that case.

4 A. Okay.

5 Q. Notice that there's a date on the front
6 page at the bottom of the page?

7 A. Yes.

8 Q. That date does not appear on your schedule
9 in this case; is that correct?

10 A. No, it does not.

11 Q. What I'm gathering from the date
12 that is on your schedule is that there is a print date of
13 February 10th, 2005 for this schedule; is that correct?

14 A. Yes.

15 Q. And there would be a print date of 2000 --
16 excuse me -- February 10, 2005 for the schedule that's in
17 your testimony today; is that correct?

18 A. No.

19 Q. There would be a different print date?

20 A. Certainly. It was printed on a different
21 date.

22 Q. And have you given this schedule to other
23 witnesses in this case?

24 A. It was provided, I think, in response to a
25 Data Request for -- if I could refer here -- Data Request

1 CCM-005, I think.

2 Q. That was a Staff Data Request?

3 A. You know, I really don't know that. But
4 it's -- it's a slightly different version of the same
5 document.

6 Q. Let's go to your analysis of South Harper
7 on Exhibit -- rather Schedule CR-2.

8 MR. COMLEY: And just another housekeeping
9 thing. I'll hand out some copies of what's just been
10 marked. Also, as part of housekeeping, your Honor, I
11 would move for the admission of Exhibit 74.

12 JUDGE PRIDGIN: Any objections?

13 (No response.)

14 JUDGE PRIDGIN: All right. Hearing none,
15 Exhibit No. 74 is admitted.

16 (EXHIBIT NO. 74 WAS RECEIVED INTO
17 EVIDENCE.)

18 JUDGE PRIDGIN: And, Mr. Comley, at your
19 convenience, if you could get copies of those for the
20 Bench.

21 MR. COMLEY: I think we do have some
22 extras.

23 JUDGE PRIDGIN: Thank you.

24 BY MR. COMLEY:

25 Q. Earlier in your testimony I think we talked

1 about how zoning issues can become scheduling impact. Do
2 you remember talking about that?

3 A. Yes.

4 Q. And on Schedule CR-2, the way I read it,
5 the Good Ranch Raymore site at Raymore, the schedule
6 impact was county zoning issue negated by location inside
7 City of Raymore, but there still was a schedule impact
8 caused by what, zoning; is that right?

9 A. No, it was not zoning. That particular
10 parcel of land was controlled by an out-of-town developer,
11 Chicago, I believe, and although we had looked at that
12 site very closely, it had been on there a number of times.
13 There was a local component. Mr. Good was still involved,
14 and had exerted some local control over the site. The
15 site was owned by an out-of-town developer who was moving
16 very slowly.

17 Q. That wasn't the same for the Camp Branch
18 facility, however?

19 A. I'm sorry. Camp Branch?

20 Q. That would be No. 3 on your schedule.

21 A. No.

22 Q. What it appears in your schedule is that
23 the schedule impact was due to zoning denial and expected
24 litigation from Cass County. So that would not be the top
25 of your recommendation; is that correct?

1 A. It was not at that time.

2 Q. This was following the denial of the Camp
3 Branch application for Cass County as I understand it,
4 correct?

5 A. That is true.

6 Q. We're dealing with material that was
7 available between October -- excuse me -- August and
8 September of 2004; is that correct?

9 A. This information as is summarized here was
10 August and September, correct. Actually, excuse me. If I
11 could clarify, some of that -- this was put together in
12 August, but some of it, some of the information became
13 available during the course of the summer as we would
14 learn more about these various sites. I mean, it's a
15 rather fluid process.

16 Q. Well, if we were to update your schedule
17 today and look at South Harper particularly, isn't it true
18 using your analysis that since there has been no zoning
19 and zoning denial, in fact, an injunction issued against
20 the company for completing the plant, that it would no
21 longer be a recommended site, using your analysis?

22 A. I can't really say that. I mean, you're
23 talking about 20/20 hindsight applied to a chart that was
24 a forward-looking document trying to anticipate what would
25 happen going forward. So --

1 Q. Let's take it back then. Let's assume that
2 you're still trying to find a site place for -- a site and
3 a place for a peaking facility for Aquila. You're not
4 concerned about the construction deadline at this point,
5 and you now know that South Harper is opposed because it
6 doesn't have the zoning permits and there's expected
7 litigation.

8 Using your own analysis, where would the
9 South Harper facility fall? Isn't it true that it would
10 be considered fatally flawed?

11 A. It would -- would affect its ranking, yes.
12 I don't know that I would say it's fatally flawed, but
13 once you're bogged down in expensive, lengthy litigation,
14 yeah.

15 Q. It would affect the schedule?

16 A. It would affect the schedule.

17 Q. Mr. Rogers, you have admitted that you're
18 not a land use planner; is that correct?

19 A. No, I'm not a land use planner.

20 Q. And your education and experience do not
21 qualify you as a land use planner; is that correct?

22 A. No.

23 Q. And you're not an attorney at law?

24 A. Certainly not.

25 Q. And I'm presuming you've had no independent

1 training about the legal interpretation of ordinances; is
2 that correct?

3 A. No.

4 Q. Or ordinances affecting land uses in
5 Missouri?

6 A. No.

7 Q. Am I to conclude correctly that since your
8 business is in Stillwell, Kansas, you probably do not live
9 in Cass County?

10 A. No, I do not live in Cass County.

11 Q. And I'm presuming you have no property in
12 the County either?

13 A. No, sir, I do not.

14 Q. And you've not tried to rezone property in
15 Cass County; is that correct?

16 A. No, sir.

17 Q. Or seek a variance of any kind in Cass
18 County?

19 A. No, sir.

20 Q. You have no direct knowledge of the history
21 of Cass County zoning; is that correct?

22 A. Only as it has occurred with respect to
23 this project.

24 Q. And you have no idea what nonconforming
25 uses may exist in Cass County? Do you know what

1 nonconforming uses are?

2 A. I know the meaning of the word
3 nonconforming and general use, but again, I'm not an
4 attorney or land use person, so if you're using a legal
5 term of art, I would have to disqualify myself.

6 Q. Would you happen to know under which
7 sections of the Revised Statutes of Missouri zoning is
8 regulated --

9 A. No.

10 Q. -- in municipalities or counties?

11 MR. SWEARENGEN: Objection, relevance.

12 JUDGE PRIDGIN: I'm going to sustain. I'm
13 not sure where we're going with this.

14 MR. COMLEY: Your Honor, this is testing
15 the qualification of Mr. Rogers' opinions.

16 JUDGE PRIDGIN: I understand. I think
17 we've established that he's not a land use planner, an
18 attorney, and doesn't really understand Cass County
19 zoning.

20 MR. COMLEY: I still think this is
21 effective cross-examination, and in cross-examination it
22 is a good question for him to know, what is the basis of
23 his knowledge. And if he lacks it, I think the Commission
24 should know it to evaluate his testimony.

25 MR. COFFMAN: Your Honor?

1 JUDGE PRIDGIN: Mr. Coffman.

2 MR. COFFMAN: If I might, it does seem
3 directly relevant to the portions of the testimony the
4 Commission did allow in over objection. I think counsel
5 should be permitted to explore the qualifications
6 underlying that testimony.

7 JUDGE PRIDGIN: I'll overrule. It does
8 seem awfully repetitive, but I'll overrule, Mr. Comley,
9 and you can go ahead, but if it gets to be too repetitive,
10 I'll sustain and ask that you move on.

11 THE WITNESS: Could I have a clearly stated
12 question? I've completely lost the question.

13 BY MR. COMLEY:

14 Q. I think I asked you whether you knew under
15 which sections of the Revised Statutes of Missouri zoning
16 is regulated?

17 A. No, I do not.

18 Q. Mr. Empson has testified that the site
19 where South Harper is built is zoned by Cass County as
20 agricultural. Do you have any reason to dispute that?

21 A. No.

22 Q. I understand that Mr. Empson also asked you
23 to examine several industrial areas identified by
24 Mr. Peshoff in his rebuttal; is that correct?

25 A. Yes.

1 Q. Is it also true that this is the first time
2 that you made any review of those sites in Mr. Peshoff's
3 testimony?

4 A. Not entirely true.

5 Q. There were several apparently that were
6 nearby sites that you'd evaluated; is that correct?

7 A. Yes.

8 Q. And one of them was the Calpine plant; is
9 that correct?

10 A. We did -- I did not, nor my firm, evaluate
11 the Aries plant site per se.

12 Q. I thought on page 19 you discussed doing
13 that, of your surrebuttal?

14 A. Excuse me. I was about to finish the
15 statement. Prior to being asked --

16 Q. Forgive me. I didn't mean to interrupt
17 you. I found a pause and I took it. Forgive me.

18 A. That's fine. Prior to the work on the
19 surrebuttal testimony, I had not considered Aries 2 or the
20 Aries site.

21 Q. With respect to Calpine, I think we've
22 already known that Calpine is in bankruptcy, and let me
23 ask you this: Are you aware that Aquila did make a
24 presentation to the Commission recently about perhaps
25 bidding on the Calpine/Aries plant when it comes up for

1 bid?

2 A. I have no knowledge of that, other than
3 what was in the paper.

4 Q. If perhaps Calpine would be -- the
5 Calpine/Aries plant would become one of Aquila's assets,
6 wouldn't that take out any competitive concerns you have
7 raised about that site?

8 A. That would be a completely different
9 circumstance from what we have today.

10 Q. All right. And you talked about
11 inefficient Aquila-owned substations at that site. So if
12 there was a change in ownership to Aquila under the
13 regulated company, that would change, too?

14 A. I'm sorry. Inefficient? To what are you
15 referring?

16 Q. You said that there were -- on page 19,
17 bottom of the page, you said the site had insufficient
18 Aquila-owned substations.

19 A. I'm sorry. You said inefficient.

20 Q. Oh, forgive me. I meant to say
21 insufficient.

22 A. I may not have heard you correctly, but if
23 you'd repeat your question, I'll get back in sync with
24 you.

25 Q. Well, let me see if I can get it framed

1 right for you. I think the bottom of your page on page 19
2 you said the site, according to you, had insufficient
3 Aquila-owned substations. Now, if there's a change of
4 ownership to Aquila, then there would be sufficient
5 Aquila-owned substations?

6 MR. SWEARENGEN: Objection, your Honor,
7 this calls for a lot of speculation on the part of this
8 witness about something that may or may not happen in the
9 future. And what we're concerned about is a present need
10 for facilities that are the subject of this case.

11 JUDGE PRIDGIN: Mr. Comley, could you ask
12 your question again, please?

13 MR. COMLEY: We were talking about your
14 statement on page 19 that you had evaluated the Aries site
15 at Calpine, and you said that there were insufficient
16 Aquila-owned substations there. Presuming that Aquila
17 eventually puts the Aries plant in its asset base, doesn't
18 that solve that problem in your testimony?

19 MR. SWEARENGEN: Objection, your Honor.
20 He's misstated the testimony of the witness. If you look
21 at page 19, line 20, that's not what the testimony says.

22 JUDGE PRIDGIN: I'll overrule and let him
23 answer.

24 THE WITNESS: At line 20, when I make
25 reference to an Aquila-owned substation area, I'm speaking

1 about the regulated utilities substation area.

2 BY MR. COMLEY:

3 Q. I am, too.

4 A. Okay. What you're suggesting is a
5 completely different set of circumstances. I haven't done
6 any evaluation of that. I didn't look at what you're
7 talking about.

8 Q. But would you have to admit that if it is
9 owned by Aquila, then there wouldn't be any insufficient
10 non-Aquila-owned substations?

11 A. Well, that would -- that would presuppose
12 that there's enough expansion room inside what Calpine now
13 owns, and I don't know that.

14 Q. Okay. So --

15 A. I can't make that judgment.

16 Q. In analyzing the site, you did not take
17 into account how large the footprint was for this site; is
18 that correct?

19 A. What I looked at was land or the area
20 adjacent to the Calpine site. We did not look at the
21 Calpine site because it's owned by Calpine.

22 Q. You looked at the Aries plant, didn't you?

23 A. We looked at adjacent to.

24 Q. Adjacent to the Aries plant?

25 A. Let me go back. Line 11 of page 19, I

1 characterize it as adjacent to the Aries combined cycle.

2 Q. But then I think you go on and talk about
3 how Calpine views a peaking plant as a competitive factor.
4 So my question to you is hypothetical, and that's what I
5 meant to relate to you.

6 A. If I could, what we took Mr. Peshoff's
7 indication of that site as to come alongside Calpine and
8 build a regulated plant adjacent to what is now a
9 nonregulated plant, the nonregulated folks have indicated,
10 Calpine in particular, that they would fight that. That's
11 the context in which we made this evaluation.

12 Q. But in changed circumstances, which might
13 include the ownership by Aquila, your answer would change
14 on Site 2 perhaps?

15 A. My answer would change based on an analysis
16 of the different circumstances at that time. Beyond that,
17 I can't speculate.

18 Q. Fair enough. On page 22, lines 5 and 6,
19 you state that some of the sites are so similar, some of
20 Mr. Peshoff's recommended sites are -- identified sites
21 are so similar to South Harper that Aquila would likely
22 suffer the same treatment from Cass County as has occurred
23 with the South Harper site. Is that a correct reading of
24 your testimony?

25 A. That's as it's printed, yes, sir.

1 Q. Mr. Rogers, the issue about whether South
2 Harper qualifies for a special use permit under Cass
3 County ordinances has never been given any treatment by
4 Cass County; is that your understanding?

5 A. I don't suppose it has, no.

6 Q. Is it your testimony also that Aquila is
7 suffering because a court ordered it to follow the law
8 based upon a petition by Cass County?

9 A. That's not what I was referring to when I
10 use the phrase suffer the same treatment.

11 MR. COMLEY: Thank you.

12 JUDGE PRIDGIN: Mr. Comley, thank you.
13 Mr. Eftink?

14 MR. EFTINK: Yes.

15 CROSS-EXAMINATION BY MR. EFTINK:

16 Q. Good morning, Mr. Rogers.

17 A. Good morning.

18 Q. Now, if you would look at your first
19 prefiled testimony, page 2, line 14, is it your testimony
20 that in early 2004 Camp Branch was recommended as the best
21 site?

22 A. Yes.

23 Q. If you would look at Exhibit 74, which I
24 think is still in front of you, or it's actually in front
25 of the court reporter.

1 A. I have a copy.

2 Q. You have it. You have an entry on that for
3 Camp Branch, I think it's the third entry?

4 A. Yes.

5 Q. And in the last column under your heading
6 of fatal flaw, isn't it correct that you say that, due to
7 zoning denial and expected litigation from Cass County and
8 opposed surrounding landowners, otherwise lowest cost site
9 option for plant?

10 A. That's what it says, yes.

11 Q. So it's your testimony that the Camp Branch
12 site was the lowest cost site option for this plant?

13 A. From a pure engineering design and
14 construction standpoint, that would be the case.

15 Q. Okay. And then what is the difference
16 between Camp Branch and South Harper? Why did Aquila
17 choose South Harper instead of the lowest cost option?

18 A. Well, you mischaracterize what I just said.
19 I didn't say it was the lowest cost option. I said for
20 engineering design and construction it was the lowest
21 cost.

22 Q. Okay. Let me ask you then --

23 A. Could I clarify, please?

24 Q. Go ahead.

25 A. We had estimated on here litigation of a

1 million plus schedule impact, but that's a complete
2 unknown in the equation at that time, and so to say that
3 it was the lowest overall cost is not really quantified
4 here. That's just an estimate of protracted litigation
5 problem and cost. That does not take into account the
6 notion that they -- had they stayed on that course at Camp
7 Branch, they might not have gotten the plant done in time.

8 Q. So from purely an engineering standpoint,
9 are you saying that Camp Branch was the lowest cost
10 option?

11 A. Just from hard metal and concrete and those
12 sorts of cost, but not in the greater picture necessarily.

13 Q. While we're looking at Exhibit 74, isn't it
14 correct that under the column entitled fatal flaw, the
15 only topic is scheduling?

16 A. No. Scheduling is headlined, but the
17 topics include cost, the topics include various different
18 permits and improvements. To say that schedule is the
19 only issue there is to mischaracterize that column.

20 Q. Well, when you talk about permits and
21 zoning, that all relates to schedule, doesn't it?

22 A. Not strictly scheduling. You can get into
23 a permit situation where you're required to do things more
24 expensive, emissions limitations, various different things
25 that were to be avoided. There's also mention there the

1 support of local political entities and the type of
2 financing.

3 Q. So you considered things like Chapter 100
4 financing?

5 A. That was considered to be a plus. It was
6 not quantified.

7 Q. And you know that now the Court of Appeals
8 has said that that financing is void?

9 A. I understand that there's litigation in
10 process on that.

11 Q. While you've got your prefiled testimony in
12 front of you, I'd like you to look at page 4, line 12.

13 A. Is that direct or surrebuttal, sir?

14 Q. Direct.

15 A. I'm sorry. Page 4?

16 Q. Page 4, line 12, and I believe you're
17 referring to the South Harper facility, and you say that a
18 buffer area is desirable. Is that your testimony?

19 A. Let me -- let me refresh here for a moment.
20 At line 12, I'm not referring to any particular site. I'm
21 speaking in general that on all the sites we looked at the
22 actuary, the requirement and the acreage required, the
23 area for development would vary due to site-specific
24 features, is basically what I'm indicating there. And
25 that if we could get more buffer area or screening

1 features, that that was certainly desirable.

2 Q. On page 5, line 17 of your direct, you say
3 that the cost to construct a gas line was \$1 million per
4 mile; is that correct?

5 A. That's the assumption we made, yes.

6 Q. Before you selected -- or before Aquila
7 selected the South Harper site, did you realize that a
8 pipeline had to be constructed over two miles?

9 A. No. And in fact, that didn't have to
10 happen.

11 Q. But it did happen?

12 A. It happened because Panhandle wanted to
13 serve the site, is the information I have. The units
14 could operate from the gas already available there from
15 Southern Star, as far as I'm concerned.

16 Q. Before selecting the site, you only used
17 estimates of cost of electric connections and gas
18 connections; is that a fair statement?

19 A. Those weren't the only things we used,
20 but --

21 Q. I'm not saying the only things.

22 A. Your question's kind of broad. I'm trying
23 to understand where you're going.

24 Q. Let me try to rephrase. On the chart which
25 is marked at Exhibit 74, you talk about differential costs

1 for electric and gas?

2 A. Yes, sir.

3 Q. And those are estimates of the difference
4 between going to different sites of gas and electric,
5 correct?

6 A. Yes, sir. One site might require longer
7 connections than another.

8 Q. And after South Harper was chosen, a gas
9 line of over two miles or approximately two miles was put
10 in, correct?

11 A. Once again, Panhandle Eastern, using their
12 money, not Aquila's, decided that they wanted to provide
13 competing service to Southern Star, and Panhandle built
14 that line. This evaluation, we were looking at what lines
15 Aquila would have to cause to be put in. It's a wholly
16 different situation than what Pandhandle decided to do to
17 get Aquila's business in South Harper.

18 Q. Now, you referred to criteria being how
19 long it would take to get the plant in operation.
20 Actually, I guess you said one of the criteria was whether
21 it could be in operation by June 2005. Is that a fair
22 statement?

23 A. That was our stated schedule.

24 Q. When you were doing this analysis, were you
25 aware of how long it normally takes to go from conception

1 to completion of a peaking facility in Missouri?

2 A. That's a pretty general statement. Each
3 one of the plants I've been associated with in my career,
4 some in Missouri and elsewhere, are unique. There's not a
5 time frame that you can say is an absolute, absolutely
6 what it would take. You have to look at specifics in each
7 plant.

8 Q. Well, if we agree that South Harper was
9 chosen by Aquila around September 2004, have you ever been
10 involved in putting in a power plant that was so -- in
11 such a short timetable where they didn't start building
12 the building until January and had it finished by June?

13 A. Certainly.

14 Q. And how often has that happened?

15 A. I don't know that I could quantify for you,
16 you know, a frequency or percentage, but it's very, very
17 often the case, particularly in the merchant plants that
18 they build in very short durations.

19 Q. But with most plants they comply with
20 zoning and all local requirements, don't they?

21 A. Sure.

22 Q. Sure. In fact, would it be correct to say
23 this is the first time you've ever been involved with a
24 client who tried to ignore local zoning in putting in a
25 power plant?

1 A. I wouldn't characterize what's occurred
2 here as ignoring.

3 Q. Well, you would agree that the judge
4 imposed an injunction telling Aquila not to build and
5 Aquila went ahead and built?

6 MR. SWEARENGEN: Well, your Honor, I'm
7 going to object. I mean, he's mischaracterizing what went
8 on. There was a stay of the injunction. Everybody knew
9 what was going to happen. The company posted a bond. The
10 company came to the Public Service Commission with an
11 application for authority to build this specific plant at
12 this site or alternatively for a statement that they had
13 the authority.

14 The Commission in April of that year, 2005,
15 issued an Order, 4-1, saying we had the authority to build
16 the plant, and we did. So I don't think it's fair to
17 characterize what happened as unlawful activity by this
18 company.

19 JUDGE PRIDGIN: I'll sustain. It's a
20 matter of record that Aquila had an injunction, built
21 anyway and lost the appeal.

22 MS. MARTIN: And, your Honor, for the
23 objection, which was more of an argument than an
24 objection, I think it needs to be noted that everybody
25 didn't know what was going on. It wasn't with the

1 acquiescence of the County, and the Order also ordered the
2 dismantling of the plant if the appeal is lost.

3 JUDGE PRIDGIN: So noted. Also a matter of
4 record. Thank you.

5 Mr. Eftink?

6 MR. EFTINK: Thank you.

7 MR. EFTINK:

8 Q. On page 9, line 10 of your direct, you say
9 that there was a lack of dense residential development
10 around the South Harper facility. I guess my question is,
11 how do you quantify that? Where do you draw the line at
12 what is dense residential and what is not dense?

13 A. We quantify it from a number standpoint.
14 It's a qualitative statement, as opposed to other sites
15 that were next to potentially nearby housing developments,
16 where they were less than half-acre lots and all the
17 houses, you know, densely packed into a subdivision. The
18 South Harper site is not like that.

19 Q. Well, I'm trying to find out if you have
20 some number or some formula in mind when you say that you
21 think this is not dense residential?

22 A. I believe I answered that it was
23 qualitative, not quantitative. That means I don't have a
24 number.

25 Q. Okay. There's no citation that you can

1 give to us for any kind of a code or statute or regulation
2 that draws the line? It's just someone's opinion --

3 A. Right.

4 Q. -- would that be a fair statement?

5 Now, when you were doing this work, were
6 you aware that in 2002 Aquila had asked Cass County for
7 permission to put these combustion turbines next to the
8 Aries plant?

9 MR. SWEARENGEN: Objection. I don't know
10 what the relevance of that is.

11 JUDGE PRIDGIN: Ask the question again,
12 please.

13 MR. EFTINK: When you were doing your work,
14 were you aware that in 2002 Aquila had asked permission
15 from Cass County to put the combustion turbines next to
16 the Aries plant?

17 JUDGE PRIDGIN: I note your objection.
18 Could you respond to the objection, please?

19 MR. EFTINK: Well, he initially was not
20 looking at the Aries plant as a site, and he testified
21 that Calpine had indicated that they would fight putting
22 these peaking facilities next to it, when we have evidence
23 in the form of a letter from Aquila that Aquila wanted to
24 put a peaking facility right next to Aries. And I'm
25 asking him if he was aware that Aquila proposed that and

1 the County agreed to that in 2002.

2 MR. SWEARENGEN: And once again, the
3 objection would be that when he says Aquila, is he talking
4 about Aquila the regulated utility, is he talking about
5 Aquila the merchant company? And so it's not relevant.

6 JUDGE PRIDGIN: I understand. I'll
7 overrule and let the witness answer if he knows, and
8 that's something that can be taken up on redirect. You
9 can answer the question or, Mr. Eftink, you may need to
10 ask it again.

11 THE WITNESS: If you would, please.

12 BY MR. EFTINK:

13 Q. I'll try to ask the question again. When
14 you were doing your work, were you aware that in 2002
15 Aquila had asked permission from Cass County to put
16 combustion turbines next to the Aries plant, and the
17 County had said that was okay?

18 A. I was aware that the nonregulated
19 subsidiary of Aquila had looked at developing that site in
20 conjunction with or adjacent to Calpine. I was not
21 knowledgeable on the time frame or what had gone on
22 specifically with the County at the time I was doing that
23 study in January of 2004.

24 Q. Now, I'd like you to look at your
25 surrebuttal testimony. And on page 5, line 12, you talk

1 about the BTUs of the South Harper peaking facility. Do
2 you know what Aquila represented to the State of Missouri
3 the BTUs were for that operation?

4 A. As I sit here today, I don't recall a
5 number.

6 Q. Okay. But you claim that the BTUs consumed
7 in operation are quite a bit less than what Mr. Stanley
8 says. I want to ask the source of your information.

9 A. The source of my information is the
10 guaranteed heat rate and guaranteed capacity of the units
11 as provided by the manufacturer in their contract with
12 Aquila, and also the general knowledge that on performance
13 testing it was verified that the units were more efficient
14 and, indeed, made slightly more capacity than those
15 guarantees, and if you calculate out those numbers, you
16 get a substantially reduced number than what Mr. Stanley
17 had here.

18 The other aspect, not to get sidetracked in
19 a bunch of technical jargon, Mr. Stanley doesn't qualify
20 whether he's using higher heating value, lower heating
21 value. He makes no statement to what the conditions are
22 under which he's made this calculation, and so I --

23 Q. Well, you would agree, wouldn't you, that
24 since Mr. Stanley doesn't work for Aquila, he wouldn't
25 have access to those actual reports, but if Aquila

1 represented to the Missouri Department of Natural
2 Resources a particular value for the BTUs, someone else
3 out of Aquila may just rely on what Aquila said?

4 A. I'm sorry. That was very compound. Let me
5 try and break it down and address it. No. 1, the
6 information I believe was provided in Data Requests in
7 this case, and information was provided in the prior
8 cases, I believe. So that information was available to
9 Mr. Stanley.

10 As far as the -- what was represented to
11 the State, you'd have to show me the specific documents.
12 If it's the emissions permit application, there are
13 certain conditions on these numbers.

14 And my point with all of this is that it's
15 inappropriate to just say, well, the plant uses this much
16 fuel. It's a highly variable situation. And given the
17 guarantee basis and the time that the plant is most likely
18 to run, which is what the guarantee basis refers to,
19 Mr. Stanley's number significantly overstates the fuel
20 requirements.

21 Q. But you would agree if Aquila represented
22 to the State of Missouri, Department of Natural Resources
23 that a little bit less than four and a half billion BTUs
24 was going to be consumed, that he or I would assume that
25 that's a correct number?

1 A. No, I couldn't agree to that. I would -- I
2 would guess that an attorney without technical training
3 might make that assumption. I would expect a professional
4 engineer in the state of Missouri giving testimony would
5 check his numbers and understand what he was saying.

6 Q. So you're saying that he shouldn't be able
7 to rely upon the information supplied by Aquila to the
8 Missouri Department of Natural Resources?

9 A. I'm --

10 MR. SWEARENGEN: Your Honor, I'm going to
11 object.

12 MR. EFTINK: I asked him the question and
13 he gave the answer, and I asked him the question again,
14 and I don't think I got an answer.

15 JUDGE PRIDGIN: I'll overrule. I think he
16 was about to try to explain.

17 THE WITNESS: I'm saying that as a
18 registered professional engineer in the State of Missouri,
19 he has an obligation before he makes such statements to
20 check the basis of the number, and apparently he did not.

21 BY MR. EFTINK:

22 Q. Well, let me --

23 A. He doesn't even quote a source for it.

24 JUDGE PRIDGIN: While Mr. Eftink is getting
25 some more documents, I'll just warn -- or advise, I should

1 say, we'll take a break sometime after this witness, if
2 not during, depending on how much longer we go.

3 MR. EFTINK: I believe this would be
4 No. 75.

5 JUDGE PRIDGIN: Thank you.

6 (EXHIBIT NO. 75 WAS MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 JUDGE PRIDGIN: Mr. Eftink, eventually the
9 Bench will need more copies.

10 MR. EFTINK: How many more do you think
11 you'll need?

12 JUDGE PRIDGIN: At least two. I think you
13 only handed me four.

14 MR. EFTINK: May I proceed?

15 JUDGE PRIDGIN: Yes, sir.

16 BY MR. EFTINK:

17 Q. Mr. Rogers, I handed you what's been marked
18 for identification as Exhibit 75. Does that appear to be
19 a document from the Missouri Department of Natural
20 Resources?

21 A. Yes.

22 Q. And if you would turn to the page that has
23 No. 11 at the bottom, there's a heading that says
24 installation project description. Second paragraph,
25 doesn't it say that the three gas turbines each have a

1 heat input of 1,455 MMBtu per hour?

2 A. Yes, it does. It also goes on to qualify
3 the circumstances under which that heat input occurs, and
4 that is exactly my point in my discussions with you this
5 morning.

6 Q. But it would be correct to say that the
7 figure supplied would be what, a high figure, a maximum
8 figure?

9 A. It sets the upper maximum bounds for what
10 the manufacturer says those turbines would take under
11 those conditions.

12 Q. And if you would help us out, that figure
13 multiplied times three is a little bit less than four and
14 a half billion BTUs?

15 A. I understand the calculation you're making,
16 yes.

17 Q. And you will acknowledge that that
18 information given to the State of Missouri Department of
19 Natural Resources had to come from Aquila?

20 A. Yes, it did. But I would also qualify that
21 that information is -- is for that particular operating
22 point and as required to be stated, Mr. Andrews could talk
23 more specifically about that.

24 Q. You know the BTUs that are used by the
25 compressor station that's next to the South Harper peaking

1 facility?

2 A. Well, I guess I don't understand your
3 question. Are you speaking of the amount of fuel they
4 consume to compress gas or the throughput of gas through
5 the station?

6 Q. Well, why don't we ask both of those
7 questions? Can you give me a figure or both or either one
8 of those?

9 A. I don't -- I don't know what they consume
10 as fuel. I haven't researched that completely. I do know
11 that in 2000, 2001, they increased the capacity of that
12 station by, I believe -- well, the units are different,
13 but it's 88,200 decatherms a day. What I don't have is
14 the base throughput of the station to which that is added,
15 but I'm given to understand that it is several times that
16 amount.

17 Q. Well, but if we compare the BTUs of the
18 South Harper peaking facility to the BTUs of the gas
19 compressor station, how do the two compare to one another?

20 A. Very well. I've got notes here to that.
21 Again, using the guaranteed basis, not the maximum worst
22 condition, but the guarantee basis and as provided in the
23 performance -- certified performance testing of the
24 unit -- excuse me -- of the units, we're at approximately
25 80 -- if all three units were to run under guaranteed

1 conditions for 24 hours a day, we're at 85,200 decatherms
2 a day.

3 The increase in capacity, just the
4 incremental increase alone in capacity of the compressor
5 station during 2000 through -- I believe it's 2001 to 2000
6 was 88,200 decatherms a day. So the incremental increase
7 at that station was more than the South Harper units would
8 use combined, and I'm given to understand that the base
9 capacity of the compressor station prior to that time is a
10 multiple of the 8,200.

11 So I can't really -- I can't really say how
12 much bigger it is, but there is more gas going through by
13 a factor, a multiplier of probably at least two, more gas
14 going through that compressor station than the South
15 Harper turbines use under their guaranteed rate.

16 Q. Well, that's obvious, isn't it, because the
17 compressor is sending gas out to others, not just
18 supplying gas to South Harper?

19 A. Yes, it is.

20 Q. Okay. But how do the two compare in terms
21 of break horsepower?

22 A. Other than what's in Mr. Stanley's
23 testimony, I've not looked at that.

24 Q. Okay. So you were attempting to refute
25 what Mr. Stanley said, but you didn't look at the break

1 horsepower of the two different facilities?

2 A. No. I don't find that compelling.

3 Q. So would you say that you have no reason to
4 dispute what Mr. Stanley says with the break horsepower
5 comparison of the South Harper peaking facility?

6 A. He's talking about just one aspect of the
7 differences between the two.

8 Q. So your answer is yes? Your answer is yes?

9 A. I'm sorry. Could you --

10 Q. Your answer is yes, you have no basis to
11 dispute what Mr. Stanley says about the comparison when
12 you talk about break horsepower?

13 A. No, I don't have any reason to dispute.

14 Q. Now, in your surrebuttal, on page 10, you
15 talk about homes that were allowed to be built around the
16 compressor station.

17 A. Excuse me. If I can catch up with you
18 here.

19 JUDGE PRIDGIN: And if I could interrupt,
20 Mr. Eftink, will you have quite a few more questions, or
21 do you know? I'm just trying to find a convenient time
22 for a break.

23 MR. EFTINK: Probably no more than five
24 minutes.

25 JUDGE PRIDGIN: Okay. Thank you. You may

1 proceed.

2 BY MR. EFTINK:

3 Q. Did you find page 10, line 25, where you
4 were talking about homes being allowed to be built near
5 the compressor?

6 A. Yes.

7 Q. Okay. Are you aware that the majority of
8 those homes are in areas zoned residential?

9 A. I'm not specifically aware of the zoning,
10 but that was indeed the point of what I was saying.

11 Q. And what was your point?

12 A. Was that the gas compressor station which
13 had been zoned industrial predated the homes, and that
14 Cass County had apparently allowed those homes to be built
15 next to an industrial site.

16 Q. First of all, were you aware that the gas
17 compressor station predated any zoning?

18 A. Yes. I even testify to that.

19 Q. So it's grandfathered in?

20 A. I make that statement.

21 Q. And you don't know that it's actually been
22 zoned by Cass County?

23 A. It has been represented to me that it was.
24 I had that impression.

25 Q. We'll have to ask Cass County about that.

1 All I know is it was built before zoning. And you are
2 aware that probably 90 percent of these homes out there
3 are in areas that are zoned residential?

4 A. They may be.

5 Q. And some of them in areas that are zoned
6 agricultural?

7 A. They may be.

8 Q. Now, can you tell me why you think the
9 County would try to stop people from building homes in
10 areas that are zoned residential or agricultural?

11 A. Well, the point I was making to a
12 particular point that Mr. Peshoff had made in his
13 testimony, much has been said and made about incompatible
14 or otherwise different land use in adjacent parcels, and
15 the point I'm making is that it was an industrial site
16 there first. And if you can only put adjacent to a
17 residence another residential or agricultural parcel, that
18 was inconsistent with what I believe the County has done
19 in that case, where there was first an industrial parcel,
20 and in relatively intense industrial use, and then allow
21 residences to be put next to that.

22 That's an example of, if it's incompatible
23 for us, it's incompatible for them. The houses are
24 incompatible with the compressor station that was built
25 there first.

1 Q. Are you aware of the process in Missouri
2 for eliminating nonconforming uses?

3 A. No.

4 Q. Okay. Now, you talk about this compressor
5 station like it's some major facility. Do you know the
6 pounds per hour of pollutants that come out of that
7 compressor station?

8 A. No, I don't -- I'm not an emissions expert,
9 and I don't deal in such matters.

10 Q. Well, you're giving opinions that this
11 compares to the South Harper power plant, and that's why
12 I'm asking you these questions. You never checked in to
13 see how many pounds per hour of pollutants come out of the
14 compressor station compared to pounds per hour of
15 pollutants that come out of the South Harper peaking
16 facility?

17 A. No, I did not.

18 MR. EFTINK: Your Honor, on Exhibits 75, if
19 Mr. Andrews is going to be testifying, I think it's
20 probably proper for me to wait and ask him about these
21 documents. I pass the witness.

22 JUDGE PRIDGIN: All right. Thank you.
23 Mr. Coffman, will you be brief or do you know?

24 MR. COFFMAN: I think five minutes should
25 do it.

1 JUDGE PRIDGIN: Okay. Kellene, do you need
2 a break?

3 THE REPORTER: I'm fine.

4 JUDGE PRIDGIN: Okay. Mr. Coffman?

5 MR. COFFMAN: I will try to be brief.

6 CROSS-EXAMINATION BY MR. COFFMAN:

7 Q. Good morning, Mr. Rogers.

8 A. Good morning.

9 Q. My name is John Coffman. I represent some
10 of the individuals that live very close to the power
11 plant. And obviously we've been over quite a bit the fact
12 that you're not qualified as a land use planner nor as a
13 lawyer, but you are the only witness Aquila's sponsoring
14 that does address land use planning.

15 A. That's not correct.

16 Q. Well, you are the only witness that
17 addresses the, I think, apparent -- your -- Aquila's
18 concerns about inconsistencies in Mr. Peshoff's testimony?

19 A. Again, I don't believe that's correct. I
20 believe that others have addressed that, Mr. White in
21 particular.

22 Q. Okay. Since you have been permitted to
23 testify as to land use principles, can I ask you if you
24 think that the land use principles that you discuss and
25 that Mr. Peshoff discusses are issues that should be

1 reviewed by some governmental entity? I mean, are these
2 land use concerns something that should be reviewed by
3 government?

4 A. Well, at some level, there are reviews by
5 multiple agencies, in this case Missouri Public Service
6 Commission chief among them.

7 Q. You think that this certificate case here
8 at the Public Service Commission should suffice for the
9 governmental review of my client's concerns?

10 MR. SWEARENGEN: Object, that calls for a
11 legal conclusion.

12 MR. COFFMAN: Your Honor, he has been
13 permitted over objection to testify about apparent
14 inconsistencies in land use planning at Cass County
15 regarding industrial, commercial, residential and
16 agricultural uses, and --

17 JUDGE PRIDGIN: I'll overrule and let him
18 answer if he knows or if he has an opinion.

19 BY MR. COFFMAN:

20 Q. Do you believe the public -- let me
21 rephrase. Do you believe the Public Service Commission is
22 in the best position to review the land use concerns and
23 potential inconsistencies in land use planning involving
24 industrial and residential uses?

25 MR. SWEARENGEN: Objection, that's not

1 relevant. I think the Court of Appeals has said this
2 matter can be -- that land use issues can be heard by this
3 Commission, and whether this witness thinks that's the
4 best resolution or not doesn't really matter.

5 MR. COFFMAN: Your Honor --

6 JUDGE PRIDGIN: I'll overrule. Again, I'll
7 let him answer if he knows or if he has an opinion. And
8 if he does not, he can say, I don't know.

9 THE WITNESS: I don't know.

10 BY MR. COFFMAN:

11 Q. Your statements about the inconsistencies
12 as you state with regard to Cass County's application of
13 land use, that major inconsistency, if I'm characterizing
14 it correctly -- you tell me if I'm not -- that the fact
15 that residential uses were allowed to be located in this
16 area without any, I guess, sort of objection by Cass
17 County is inconsistent with the fact that there is concern
18 now about a power plant being proposed in this area near
19 those residences?

20 A. You're going to have to be more specific
21 than that with the question, but I can't agree with your
22 characterization of what I've said. I can't answer your
23 question you stated.

24 Q. You have testified that you believe that
25 Cass County has been inconsistent in its application of

1 land use planning?

2 A. I cite instances where it was obvious to me
3 that there was an inconsistency.

4 Q. And that inconsistency is, just to be
5 specific?

6 A. Well, I cited a couple. One of them has to
7 do with permitting residences to be built directly across
8 South Harper Road from the gas compressor station. That's
9 on page 11 of my surrebuttal.

10 Q. And that gas compressor station was built
11 prior to there being zoning back in the 1950s, correct?

12 A. Correct.

13 Q. And that use has been grandfathered as a
14 nonconforming use, correct?

15 A. It may have. I don't know that exactly. I
16 do know that Cass County -- well, let me strike that. I
17 can't say I know. Cass County apparently has allowed
18 residences to be built since the compressor station and
19 since zoning came to be in Cass County.

20 Q. And what would Cass County do to not allow
21 residences to be built? A residence is an acceptable use
22 under the current zoning in that area, correct?

23 A. That may be. What I was speaking to was
24 the issue of compatibility that Mr. Peshoff makes so much
25 about, and he -- in fact, he makes a statement, as long as

1 you're probing on this --

2 Q. Could you just answer my question?

3 A. I'm trying to. Because the point I was
4 making, he talks about at page 4, line 31, zoning
5 regulations protect residential land uses from the
6 negative impacts of industrial and commercial land uses
7 and vice versa. He then -- page 5, line 3, zoning
8 ordinances generally include provisions that encourage
9 compatibility between uses and seek to minimize conflicts
10 between different types of land use.

11 So when there's a compressor station
12 already there, I don't care whether you call the land
13 zoned agricultural or residential, it's inconsistent with
14 the principles he espouses to allow residences to be built
15 so nearby.

16 Q. And that compressor station is a
17 nonconforming grandfathered use, correct?

18 A. I have already testified, I'm not familiar
19 with that term or --

20 Q. Well, is it your understanding residence
21 would be a conforming use?

22 A. I have already said, I'm not familiar with
23 that terminology and I'm not a land use attorney.

24 Q. It just seems inconsistent to you as an
25 engineer?

1 A. It is -- well, it's common sense that if
2 you have a -- what has been described by several people in
3 this case as an industrial application, which is a gas
4 compressor station, it produces gas in pipelines in excess
5 of 800 pounds, it has one facet of it that adds odorant to
6 the line, so there are release of mercaptans into the air,
7 so you have potential pollution, potential noise, all of
8 these things going on.

9 And indeed, the record before FERC is
10 replete with complaints about this. There have been
11 complaints in the County. There have been petitions
12 circulated to try and get it to move.

13 So my point is simply this: Why would you
14 allow -- if you are so concerned about compatible land
15 uses, why would you allow residences to be built directly
16 across the street from such a facility? It is not common
17 sense. I'm not talking about land use law. It defies
18 common sense.

19 Q. And by what action would Cass County not
20 allow a residence to be built?

21 A. I would suppose by not zoning the land
22 around it as residential.

23 Q. So you're saying that the original zoning
24 designation in this area is unreasonable, in your opinion?

25 A. Perhaps that's the bottom line. I can't

1 delve into the law there.

2 Q. Well, since you're testifying as to your
3 common sense, your general understanding of these issues,
4 do you believe that my client's interest in their property
5 should be compromised in any way by Aquila's scheduling
6 concerns? Should they have less rights to have their
7 property rights reviewed by Cass County or any other
8 governmental entity based on whether Aquila was in a tight
9 schedule regarding what it wanted to build? Not the use,
10 just the schedule.

11 A. That's a very complex question. I'm not
12 sure I can wrap my arms around the whole thing.

13 Q. Would it help if I broke it down?

14 A. Please.

15 Q. Would you concede that my clients have a
16 property interest in their homes?

17 A. I would assume they have an interest. If
18 you're using property interest as a legal term of art, I
19 don't understand that.

20 Q. As a non-lawyer, would you in a common
21 sense way expect that they would have some legal rights to
22 protect their investment and their home?

23 A. Certainly.

24 Q. And would you expect that those interests
25 would be protected by zoning, and that there would be some

1 expectation that the local municipality would have some
2 regulation over those uses?

3 MR. SWEARENGEN: Your Honor, I'm going to
4 object. I think he's getting into an area here what the
5 law may or may not be, and this witness isn't qualified to
6 respond to those things, and I just think this doesn't
7 produce any --

8 JUDGE PRIDGIN: Sustained. You can make
9 legal argument about -- in a brief or whatever. He's
10 already said he's not a lawyer. He can't -- he's already
11 said several times he's not a lawyer. I understand your
12 client's position. He doesn't know.

13 MR. COFFMAN: I understand that, your
14 Honor. I would think that that would be appropriate,
15 except in the instance where Aquila puts its testimony
16 forward and is permitted to do so and opens the area up.

17 JUDGE PRIDGIN: But I'm -- you're beginning
18 to ask him what I see to be completely legal questions. I
19 mean, he's -- and he's already said several times that
20 he's not a lawyer, doesn't understand what you mean, like
21 property interest. I -- even I know that you're going
22 into a legal area, and he's not really qualified to talk
23 about, you know, property interests and constitutional
24 rights, et cetera. I don't think he knows.

25 MR. COFFMAN: Well, hopefully that will go

1 to the weight of this testimony.

2 BY MR. COFFMAN:

3 Q. Let me ask you another question,
4 Mr. Rogers. The turbines that we are discussing here, the
5 turbines that have been placed at the South Harper
6 location, you understand the history that those turbines
7 have had to some degree?

8 A. I have an understanding of that history.

9 Q. Do you know that those very turbines were
10 originally planned to be located in the Calpine facility?

11 A. No, that's not correct, in fact.

12 Q. What's your understanding?

13 A. In prior discussions some time ago with
14 two different former employees of the Aquila merchant
15 subsidiary, Mr. Costanza and Mr. Kreimer, I was
16 informed -- and I'm sorry I can't give you a date. But as
17 is typical with merchant operations, they would procure
18 turbines for use at any one of different sites. I know at
19 one time, because they talked with my firm about engaging
20 us potentially for engineering, they were looking at a
21 site in Ohio.

22 So I can't say that they were procured for
23 the Calpine site. I don't believe that's correct.

24 Q. Is it your understanding they were just --
25 they were purchased with no particular site in mind?

1 A. They were purchased in anticipation of
2 being installed at one or more of several sites by the
3 nonregulated affiliate.

4 MR. COFFMAN: Okay. I have no further
5 questions. Thank you.

6 JUDGE PRIDGIN: Mr. Coffman, thank you.
7 Any redirect?

8 MR. SWEARENGEN: I have just one.

9 JUDGE PRIDGIN: Yes, sir.

10 REDIRECT EXAMINATION BY MR. SWEARENGEN:

11 Q. Mr. Rogers, I think it was Mr. Comley asked
12 you this morning about how some of these potential sites
13 that you considered came to your attention, and I think
14 you indicated that some of the sites were brought to your
15 attention through your own work or work of your colleagues
16 with your company, others were brought to your attention
17 through Aquila, and some were brought to your attention
18 through the City of Peculiar; is that correct?

19 A. Yes.

20 Q. From your standpoint and given the
21 responsibilities that you have been given by Aquila in
22 connection with this plant, does it make any difference
23 how you learned of potential sites that might be suitable
24 for this facility?

25 A. Not terribly, other than that if you have a

1 political entity coming to you that wants to champion a
2 project or suggest sites, you're already starting off on a
3 more agreeable basis than trying to look for sites that
4 folks don't want to sell or might oppose it. So there is
5 that distinction, I suppose.

6 MR. SWEARENGEN: Thank you. That's all I
7 have.

8 JUDGE PRIDGIN: Mr. Swearengen, thank you.
9 If there's nothing further from counsel, this looks to be
10 a good time to take a break. I see 10:25 at the clock at
11 the back of the room. Let's take a break for
12 approximately 15 minutes. And the Commission is in
13 agenda. I will run upstairs and see how agenda is
14 progressing. The break may go longer, but let's break at
15 least for 15 minutes. We are off the record.

16 (A BREAK WAS TAKEN.)

17 JUDGE PRIDGIN: We're back on the record.
18 Let me clarify a couple of things. Do I understand that
19 the next witness will be Block Andrews for Aquila?

20 MR. SWEARENGEN: That's correct.

21 JUDGE PRIDGIN: And Carl Huslig, would he
22 follow? Was that the plan anyway?

23 MR. SWEARENGEN: Yes.

24 JUDGE PRIDGIN: All right. And then after
25 that -- and again, I think I warned counsel yesterday that

1 we might go past five, so I'm just trying to make sure I'm
2 clear and counsel's clear about the order of witnesses.
3 Either Mr. Swearengen or Mr. Youngs, who would you intend
4 to call if we have more witnesses today?

5 MR. SWEARENGEN: Well, after we get past
6 Mr. Huslig, I think we're out of witnesses for today.

7 JUDGE PRIDGIN: All right. I understand.
8 And so if that's the case, would Staff be prepared to call
9 witnesses later today, or are folks ready to cross-examine
10 Staff witnesses? I'm seeing some nods. Very good. I
11 just want to make sure we've got witnesses we can take up.
12 And I think some of the Commissioners will be rejoining me
13 here in just a moment.

14 All right. Mr. Youngs, I understand you're
15 going to examine Mr. Andrews?

16 MR. YOUNGS: That's correct, Judge. We
17 call Block Andrews.

18 JUDGE PRIDGIN: Whenever you're ready, sir,
19 if you'll raise your right hand to be sworn.

20 (Witness sworn.)

21 JUDGE PRIDGIN: If you would please have a
22 seat, and do your best to speak clearly into the
23 microphone so folks can hear you over the Internet.

24 Mr. Youngs, when you're ready, sir.

25 MR. YOUNGS: Thank you, Judge.

1 BLOCK ANDREWS testified as follows:

2 DIRECT EXAMINATION BY MR. YOUNGS:

3 Q. Mr. Andrews, would you just state your name
4 for the record.

5 A. Block McDonald Andrews.

6 Q. And would you tell us how you're employed?

7 A. I am director of environmental services
8 with Aquila.

9 Q. Are you the same Block Andrews who filed
10 direct testimony in this matter that's been marked as
11 Exhibit No. 7?

12 A. Yes, I am.

13 Q. And are you also the same Block Andrews who
14 filed surrebuttal testimony that's been marked in this
15 matter as Exhibit No. 8?

16 A. Yes, I am.

17 Q. Do you have copies of your testimony in
18 front of you today?

19 A. I do.

20 Q. Do you have any changes, as we sit here, to
21 either?

22 A. I do not.

23 Q. If I asked you the questions and you gave
24 the answers -- if I asked you questions and you gave
25 answers today, would they be consistent with the questions

1 and answers that you were giving in Exhibit 7 and 8?

2 A. Yes, they would be.

3 Q. And to your knowledge, are the answers
4 given by you in those exhibits true and correct to the
5 best of your knowledge and belief?

6 A. They are.

7 MR. YOUNGS: Your Honor, at this time I
8 would tender Mr. Andrews for cross-examination. I would
9 also offer Exhibits No. 7 and 8.

10 JUDGE PRIDGIN: Any objections to Exhibit 7
11 or 8?

12 MS. MOORE: Yes, Cass County has an
13 objection.

14 JUDGE PRIDGIN: Ms. Moore?

15 MS. MOORE: I'm sorry. Which exhibit is 7?

16 JUDGE PRIDGIN: 7 will be the direct

17 MS. MOORE: As a preliminary matter, Cass
18 County desires to object to the Schedule BMA-1, 2 and
19 BMA-3 that is attached to Mr. Andrews' direct testimony,
20 in that the schedule constitute hearsay evidence for which
21 a foundation has not been laid. The individuals who
22 conducted the study addressed in these schedules are not
23 available for cross-examination. These documents need to
24 be stricken from the record, excluded and not considered.

25 To the extent Mr. Andrews' direct and

8 The County further objects at page 6 of
9 Mr. Andrews' direct testimony to lines 20 and 21, and
10 objects to Mr. Andrews' surrebuttal testimony at page 4,
11 lines 18 and 19, to the words and internationally
12 recognized toxicologists, and objects at page 5, line 14
13 to the words, quote, by toxicologists Dr. Duoll and
14 Dr. Rozman, end quote.

17 MR. EFTINK: Yes. For StopAquila.org, if
18 you could give me about 15 seconds here.

20 MR. EFTINK: I just wanted to check.
21 Instead of repeating the same thing, I would say I join in
22 word for word with the objection made by Ms. Moore on
23 behalf of Cass County, and I'm just double checking to
24 make sure there's not additional.

1 the Schedules 1 and 2, and then on page 5, beginning at
2 line 9 and going through line 15 of the surrebuttal, we
3 object because that refers to hearsay.

4 And as Ms. Moore said, the schedules are
5 hearsay. In fact, we believe they are double hearsay. We
6 don't have the ability to cross-examine these people who
7 are quoted in these letters and ask them questions about
8 what kinds of tests were done, how the equipment was
9 calibrated and so on and so on. So that's the basis of
10 our objection.

11 JUDGE PRIDGIN: Any further objection?
12 Mr. Youngs and Mr. Swaengen, any reply? Mr. Youngs?

13 MR. YOUNGS: With regard to exhibits -- I
14 tried to keep up, so I apologize if I missed something.
15 But with regard to Schedules BMA-2 and BMA-3, I think if
16 the Judge has those in front of it, they are exact
17 duplicates of Exhibits 108 and 109, which were offered and
18 received in the 0248 case. It was my understanding that
19 there was a stipulation that exhibits in that case that
20 were admitted could be used in this proceeding as well.

21 But in any event, Mr. -- Mr. Andrews has
22 testified about the content of these exhibits, how they
23 were prepared, and his involvement in preparing the
24 exhibits, and I think that he does so again in this case.
25 So I don't think that those objections should be

1 sustained.

2 With regard to the other -- with regard to
3 the other objections that are made with regard to hearsay,
4 first of all, we've endured quite a bit of hearsay
5 testimony in the case thus far, one of which was Exhibit
6 No. 73, which I anticipate that Mr. Eftink will talk to
7 Mr. Andrews about today. It's the e-mail from John Stower
8 to Block Andrews, obviously technically hearsay.

9 The bottom line is that Mr. Andrews is here
10 to give expert testimony with regard to the health
11 impacts, or more accurately stated, the lack of health
12 impact of the South Harper facility on the community. And
13 as an expert, as a matter of law, he's entitled to factor
14 into that opinion hearsay that he's received from other
15 sources. And I think that he should be able to do that in
16 this instance as well. So we believe the objection should
17 be overruled.

18 JUDGE PRIDGIN: All right, Mr. Youngs.
19 Thank you. I will overrule the objections. Exhibit
20 Nos. 7 and 8 are admitted into evidence.

21 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
22 EVIDENCE.)

23 JUDGE PRIDGIN: And we shall proceed to
24 cross-examination. Any questions from Staff?

25 MS. SHEMWELL: Thank you.

1 JUDGE PRIDGIN: Ms. Shemwell.

2 CROSS-EXAMINATION BY MS. SHEMWELL:

3 Q. Good morning, Mr. Andrews.

4 A. Good morning.

5 Q. My name is Lera Shemwell. I represent the
6 Staff of the Public Service Commission in this case.

7 Mr. Andrews, I wanted to ask you a question
8 about something that arose at one of the public hearings,
9 if I may. A Mr. Charles, who's also known as Chuck,
10 Cress, C-r-e-s-s -- I won't give his full address here,
11 but his address is Peculiar, and Mr. Cress testified at
12 the public hearing that when he got up in the morning,
13 there was chlorine in his drinking water and that he could
14 smell it and he had to run his water for a length of time
15 to remove the chlorine. Are you aware of his testimony?

16 A. Yes, I am.

17 Q. Have you done any study of whether or
18 not -- well, let me ask this: Is there any chlorine
19 stored at the south Peculiar site?

20 A. No chlorine at the South Harper site.

21 Q. Any bleach or related types of chemicals?

22 A. Not that I'm aware of.

23 Q. Do you treat water at the South Harper
24 site?

25 A. No, we do not.

1 Q. But you use water in generation; is that
2 correct?

3 A. That's correct. There's an evaporative
4 cooler that uses water from I think it's Water District
5 No. 7.

6 Q. Does Water District No. 7 serve Peculiar?

7 A. I don't know.

8 Q. And then what happens to the water after
9 it's been used for evaporative cooling?

10 A. Currently, it -- whatever blow down is from
11 that process goes into a tank, and that is either -- would
12 either be shipped off or we contacted Missouri DNR and
13 they said that the water was within regulations, enough so
14 that we could use it to do any suppression of dirt,
15 especially during construction.

16 Q. What does blow-off mean?

17 A. Blow down?

18 Q. Blow down. Sorry.

19 A. It's just a byproduct of the water in the
20 process. So it's a waste.

21 Q. Waste water?

22 A. Well, it's -- we get water that's from the
23 city. We use it in our processing. It remains within
24 pipes. It isn't in contact with anything except pipes.
25 It's concentrated I believe up to two times, and then part

1 of that water is blown down, and so all it is is city
2 water that has been concentrated twice.

3 So, for example, if there was one part per
4 billion of a constituent, after it goes through our
5 process, there could be up to two parts per billion of
6 that constituent, but we do not per se add anything to the
7 water.

8 Q. What does the word constituent mean?

9 A. Constituent would be a pollutant.

10 Q. Such as?

11 A. Fluoride.

12 Q. Are you telling me that you then use this
13 water for the lawn or the grounds around?

14 A. We have obtained a construction permit for
15 an irrigation system, and that is our -- if the facility
16 stays, that's our long-term goal is to use that water to
17 essentially water our vegetation around the plant.
18 There's significant vegetation around the plant.

19 Q. How are you disposing of the water now?

20 A. Well, we don't have any water now.

21 Q. And when you start using the irrigation
22 system, will that add any chlorine to the groundwater?

23 A. No, it will not. Actually, the DNR looked
24 at the constituents and approved the construction permit,
25 and when and if we build the system, then we would apply

1 for the operating permit.

2 Q. When the water has gone through the system,
3 is it still potable?

4 A. I don't know.

5 MS. SHEMWELL: That's all I have. Thank
6 you.

7 JUDGE PRIDGIN: Ms. Shemwell, thank you.
8 In the interest of time, because Southwest Power Pool,
9 City of Peculiar, SIEUA and OPC have any questions, I plan
10 on bypassing you, not to be rude, but just simply because
11 you haven't had any questions, and obviously if you have
12 any questions, you're free to cross-examine the witnesses.
13 So that's why I'm bypassing you, and if you have any
14 questions, please let me know. Thank you.

15 MR. WHEATLEY: Thank you.

16 JUDGE PRIDGIN: Thank you. We can proceed
17 on to Cass County. Any questions?

18 MS. MOORE: Yes.

19 JUDGE PRIDGIN: Ms. Moore?

20 CROSS-EXAMINATION BY MS. MOORE:

21 Q. Good afternoon, Mr. Andrews. My name is
22 Debbie Moore. I think we've seen each other before.

23 A. Yes.

24 Q. And I'm county counselor for Cass County.
25 In your testimony, you indicated that you are -- you were

1 responsible for obtaining construction, operating and
2 environmental permits relating to South Harper; is that
3 correct?

4 A. Yes, that's correct.

5 Q. The required construction and operating
6 permits you were referring to include permits that come
7 from state agencies, federal agencies or federal
8 authorities and local government authorities; is that
9 correct?

10 A. Yes.

11 Q. And the local governing authority for the
12 South Harper plant would be Cass County; is that correct?

13 A. There are no environmental permits
14 associated specifically with Cass County.

15 Q. There are not. There are construction
16 permits associated with Cass County, correct?

17 A. That is correct, and that's not under my
18 purview. Maybe I'll make myself a little more clear here.
19 Any environmental permits associated with the site were
20 under my purview. Any building permits or engineering
21 related-type permits were obtained by Sega or others
22 within Aquila.

23 Q. So that would have been my next question.
24 Who were those obtained by, Sega?

25 A. Right.

1 Q. All right. Thank you. You indicated in
2 your testimony that Aquila retained Burns & McDonnell, I
3 believe, to conduct numerous environmental studies for
4 Aquila; is that correct?

5 A. We have had Burns & McDonnell, ATCO,
6 Air Hygiene, ESC and Stacks are the various
7 environmental-related consultants that we've hired.

8 Q. In regard to the Camp Branch facility, what
9 entities did you retain to do environmental studies for
10 Camp Branch?

11 A. Burns & McDonnell was one. I was trying to
12 reme-- I can't remember if we had others, but I know
13 Burns & McDonnell was at least one of those.

14 Q. When were these entities retained by Aquila
15 to conduct environmental studies relating to the
16 construction of the new power plant in Cass County?

17 A. I couldn't tell you the exact date.
18 Essentially, probably it was a couple of months before our
19 application before the board of zoning for Camp Branch,
20 and essentially they were retained through contract
21 through our South Harper project.

22 Q. When you speak of the planning meetings or
23 the local public hearing before the planning board, you're
24 talking specifically about the Camp Branch site; is that
25 correct?

1 A. Correct. That's correct.

2 Q. And the environmental reports that were
3 prepared by Aquila for the public hearing in regard to the
4 Camp Branch site were ultimately placed in a notebook,
5 were they not, for presentation at the public hearing?

6 A. Specify what public hearing? We've had so
7 many, I'm not sure.

8 Q. I think you were referring to the public
9 hearing that was held before the Cass County planning
10 board.

11 A. Oh, the planning board. Right. That's
12 correct.

13 Q. All right. And would that have been for a
14 special use permit application?

15 A. I don't recall the details of what the
16 specifics were, but I know there were some environmental
17 documentation in regards to that.

18 Q. And are you aware that those would have
19 been put together in a notebook that was presented at that
20 public hearing?

21 A. I think that whatever a special permit use
22 application would require, and if there were environmental
23 components with that, it would have gone into that, I
24 assume.

25 Q. When you speak of this being done in

1 connection with the South Harper project, have different
2 environmental studies been done in connection with the
3 Camp Branch site, as opposed to the South Harper site?

4 A. Yes. There -- several environmental issues
5 that are site specific, for example, threatened/endangered
6 species, wetland, that's going to be specific to a site.
7 So Camp Branch would obviously have to be looked at
8 differently than South Harper's.

9 Q. And is it true, then, that different
10 environmental studies were prepared for those two
11 different sites?

12 A. The subject of the environmental study, in
13 other words, the wetlands study was done separately for
14 each site, and each one had its own results, but the type
15 of study that was performed were the same.

16 Q. So essentially any environmental studies
17 for the South Harper site, I think you're testifying they
18 may have been the same environmental studies that were for
19 the Camp Branch site; is that correct?

20 A. Yes, that's what I'm testifying to.

21 Q. Do you know when those were conducted?

22 A. For Camp Branch? It was -- I believe it
23 was prior to the board of zoning, but I can't recall
24 exactly the time frame. I'm sorry. But it'll give you a
25 general time frame.

1 Q. And these environmental studies, would you
2 agree with me, then, that these studies were not site
3 specific; is that correct?

4 A. No, they were site specific. If you're
5 doing an air permit, part of the air permit is doing air
6 dispersion model to determine the health impacts of a
7 plant that's unique to the site. Again, the wetlands,
8 threatened/endangered species and other studies, again,
9 would be specific to that site.

10 Q. So which of the studies were not site
11 specific?

12 A. I can't recall any that weren't site
13 specific.

14 Q. Well, which of the studies would have been
15 done for Camp Branch that were used for the South Harper
16 site as well, other than the wetlands study that you're
17 referring to?

18 A. There are two permits that we have to
19 obtain on the air side. There's an air construction
20 permit and also an acid rain permit, and the air
21 construction permit, components of that were used. In
22 other words, we had the same amount of turbines, so it
23 wasn't a total rework to redo the air permit because
24 components of that were already done at one site. They
25 just needed to be moved and reperformed at another site.

1 So in other words, one of the things that
2 we look at is best available control technology, and so
3 under that purview, you're looking at a technology for
4 turbines. Well, because you moved it from one site to
5 another, it probably didn't change but, I mean, it needed
6 to be looked at again and refreshed, but there probably
7 weren't significant changes with that because technology
8 had not changed or evolved in the three months between
9 that permit and the next one.

10 Q. Mr. Hedrick testified yesterday that a
11 specific site for the South Harper plant was not
12 identified until at the earliest mid August of 2004.
13 When, Mr. Andrews, do you contend that environmental
14 experts were retained to conduct a full-fledged new site-
15 specific environmental report on the South Harper site?

16 A. As I mentioned earlier in my testimony,
17 Burns & McDonnell probably had a continuous employment
18 with us because we were looking for a site, and we knew we
19 would need permitting associated with that. So there
20 really wasn't a time where we said to Burns & McDonnell,
21 stop, your contract's over and, you know, we've got to
22 redo and give you a new contract.

23 I mean, there were modifications associated
24 with the contract, in the sense that they had to do
25 additional work, but they were on board continuously

1 during that time frame. So actually when we were going to
2 look at various sites, I went to some of those sites, as
3 well as Burns & McDonnell, when we were looking around.

4 Q. In your testimony, you refer to the fact
5 that Burns & McDonnell environmental studies and permits
6 can be found in a special use permit application for the
7 South Harper site, which is dated January 20th, 2006; is
8 that correct?

9 A. That's correct.

10 Q. When was this special use application
11 that's dated January 20, 2006 prepared?

12 A. It started several months before January.
13 I don't know if I recall what the exact date was, but it
14 was a pretty robust document.

15 Q. And how much of that document also existed
16 in the Camp Branch document in terms of your contribution?

17 A. I don't recall, but I would say that the
18 information that was required for a special use permit
19 application at the time would have been in the Camp
20 Branch. I don't know if those rules or regulations
21 changed at all, or requirements, but I would say that if
22 they didn't change, then, yes, they should have had this
23 same type of material.

24 Q. All right. Thank you. On page 2 of your
25 surrebuttal testimony, Mr. Andrews, you reference public

1 meetings that were held in the fall of 2004 to discuss
2 local citizen concerns relating to Aquila's construction
3 plans; is that correct?

4 A. Yes, it is.

5 Q. Who sponsored these public meetings?

6 A. I don't know. I was asked to show up. I
7 would assume --

8 Q. So did you attend?

9 A. Terry Hedrick with Aquila asked me to
10 attend, so I would say that Aquila probably set up some of
11 those meetings.

12 Q. How many meetings were there?

13 A. I know of at least two meetings that I
14 attended.

15 Q. Where were those meetings held?

16 A. One was our Greenwood facility, and I can't
17 recall where the other one was. Maybe it was Peculiar
18 Lion's Club. I don't remember.

19 Q. What time of day were these meetings held?

20 A. It was early evening.

21 Q. Where were the public notices that these
22 meetings were going to be held, do you know?

23 A. I don't know.

24 Q. Do you know who would have put out those
25 public notices in reference to these meetings being held?

1 A. I don't know.

2 Q. Did you attend both meetings?

3 A. I attended two meetings. There may have
4 been other meetings, but I know I was at at least two.

5 Q. How many public or citizens attended these
6 public meetings?

7 A. The Greenwood one seemed to me there were
8 probably roughly 30 people. I don't recall at the other
9 meeting how many people were there, but --

10 Q. Well, in the fall of 2004, that's quite a
11 span of time, is it not? Exactly what dates were these
12 meetings or what month?

13 A. August/September time frame, somewhere in
14 there.

15 Q. Would these meetings have been held in
16 connection with the Camp Branch site?

17 A. No.

18 Q. What site were these public meetings held
19 for in terms of Aquila's construction plans?

20 A. There were meetings for Camp Branch, but
21 they were earlier. The -- I don't recall when exactly
22 those were, but those were prior to -- they -- early
23 summer, I would say, because they were prior to obtaining
24 the air permit, which I know that public meeting was held
25 roughly at the end of July. And I know the Camp Branch

1 meetings were prior to that.

2 The South Harper meetings would have been
3 after that, and like I said, roughly late August/September
4 time frame.

5 Q. Okay. In accordance with the time frame
6 that Terry Hedrick was testifying to yesterday, the fall
7 2004, around this time frame you're talking about,
8 August/September, would have been the time when Aquila and
9 the City of Peculiar were discussing the South Harper
10 site; is that correct?

11 A. That's my understanding.

12 Q. And would not that have been the same time
13 that the City of Peculiar and Aquila were discussing
14 annexing the South Harper site into the City of Peculiar?

15 A. I believe that's correct.

16 Q. Are you aware of whether any Cass County
17 officials were at any of these public hearings?

18 A. One thing I'd characterize them as a -- not
19 a formal public meeting in the sense of commissioners or
20 something like that there. It was an open house meeting,
21 that would more characterize it. I don't -- I didn't know
22 anybody from the City. I'd not really met anyone. So I
23 don't know at that time if I could have identified who was
24 from the City or not.

25 Q. So there may have been City of Peculiar

1 officials present at these meetings, correct?

2 A. Yes. There were certainly residents as
3 well, and I know that because based on the fact that I
4 offered to perform a noise study at anybody's residence,
5 and some people took me up on that. And I handed out
6 several business cards, so I know that several of the
7 people at least were residents. And I believe there was a
8 sign-in sheet for that, but maybe there wasn't, but
9 typically there would be.

10 Q. So in your capacity, in your job, you
11 attend more than open house meetings, correct, like a
12 meeting like a public body, a forum?

13 A. Yes, that's true.

14 Q. And you're testifying today that the open
15 house meeting that you attended in regard to the South
16 Harper site was just an open house, correct?

17 A. Correct.

18 Q. Was there any formal testimony obtained by
19 any citizens that attended these public hearings?

20 A. I'm not aware of it. I mean, the intent of
21 that is to garner local concerns, and if there are
22 mitigation measures that we can take in considering the
23 design, we would take those into account.

24 Q. Were land use issues concerned or addressed
25 at this public meeting or these public meetings you talk

1 about?

2 A. If they were -- well, you may want to
3 define land use issues specifically. If it were
4 environmental issues, it would have been something that I
5 would have addressed. If it's outside that purview, I
6 wouldn't be able to answer that.

7 Q. Well, you were in attendance at these
8 meetings, correct?

9 A. That's correct. It was an area that was
10 probably three or four times as large as this room and
11 there were several people there, so I didn't hear all the
12 discussions. I was manning the station that dealt with
13 environmental. So if someone had a question regards to
14 that issue, they could come to me and talk to me, and so I
15 would discuss that issue with them and take down their
16 concerns.

17 Q. Well, would you agree with me that Cass
18 County land issues would not have been a matter that was
19 addressed at these local meetings that were held by
20 Aquila?

21 A. I couldn't say either way.

22 Q. There was not formal testimony?

23 A. No formal testimony in the open houses, no.

24 Q. All right. Thank you. Have you ever
25 attended any formal meetings in regard to land use issues

1 for the South Harper site?

2 A. I've attended -- I guess the -- Judge
3 Dandurand, I've been to the courts, the Cass County court.
4 That's probably the -- land issues were obviously
5 discussed there, yes, I guess.

6 Q. Okay. That was a different forum than a
7 local public hearing in regard to pre-construction issues
8 as they relate to a construction such as a power plant; is
9 that correct?

10 A. Well, it was in a court versus a hearing
11 room.

12 Q. In that court proceeding, however, that was
13 not a place where local citizens came and addressed land
14 use concerns, was it?

15 A. No, I don't believe so.

16 Q. All right. Thank you. You indicate an
17 awareness of Cass County noise ordinance in your
18 testimony; is that correct?

19 A. Yes, it is.

20 Q. Would you agree with me, Mr. Andrews, that
21 when the South Harper plant is operating, a considerable
22 increase in noise levels occurs in the vicinity of the
23 plant?

24 A. Define vicinity.

25 Q. Well, perhaps you could define that for me.

1 What are -- what are the noise level issues relating to
2 the South Harper plant?

3 A. The noise studies that I have reviewed
4 include -- are from both Burns & McDonnell and ATCO, and
5 often the background noise was louder than the plant
6 noise. And in many cases ATCO essentially went out at
7 several residences, placed noise meters for a period of, I
8 believe, three days, and during part of that three-day
9 period the plant did run and there was a significant
10 portion where the plant did not.

11 ATCO's noise consultants marked special
12 events that were happening so that they could document
13 that, and actually when the plant -- there were several
14 instances where the noise when the plant wasn't running
15 was significantly higher than the plant running. So
16 that's how I would characterize it is that there's other
17 local noise sources which -- I'm not sure how you regulate
18 some of those, but noise sources outside of South Harper
19 appear to be violating the Cass County residential noise
20 levels when the plant was not running.

21 Q. It is true, however, that when South Harper
22 runs, additional noise occurs at the South Harper site; is
23 that correct?

24 A. At some locations.

25 Q. Would you agree that increasing noise

1 levels at a real property site is a legitimate land use
2 concern?

3 MR. YOUNGS: I'm going to object to the
4 form of the question. Calls for an opinion without any
5 foundation. Mr. Andrews is here to testify about the
6 noise issues and opinions with regard to that. Having
7 that parlayed into some opinion about land use issues I
8 think is inappropriate. I object to it.

9 JUDGE PRIDGIN: Ms. Moore?

10 MS. MOORE: Well, Mr. Andrews has testified
11 specifically about noise levels, and we're discussing the
12 South Harper site, and I'm asking him whether a power
13 plant increases the noise levels in the vicinity of a
14 power plant.

15 MR. YOUNGS: The question was whether or
16 not he thought that was a legitimate land use issue for
17 people who live near the land and --

18 JUDGE PRIDGIN: And I will overrule. I'll
19 let him answer to the extent that he knows. Again, if a
20 witness doesn't know the answer to a question, the proper
21 answer is, I don't know.

22 THE WITNESS: I don't know.

23 BY MS. MOORE:

24 Q. Okay. Thank you. Aquila, in fact,
25 contends that the South Harper facility is in compliance

1 with Cass County's noise regulations; is that correct?

2 A. We believe it to be.

3 Q. And you would agree with me, then, that
4 Aquila's obligated to comply with the County's noise
5 ordinance?

6 A. Yes, we are.

7 Q. And as you've previously acknowledged,
8 Aquila understood that it was obligated to comply with
9 other operating and permitting and health issues -- health
10 permitting concerns as it relates to South Harper; is that
11 correct?

12 A. We would need to obtain the necessary
13 environmental permits and approvals.

14 Q. Can you appreciate, Mr. Andrews, then, that
15 compliance with permits that are provided by local
16 government such as the County -- strike that.

17 On page 7 of your direct testimony,
18 Mr. Andrews, you discuss the fact that since South Harper
19 was constructed, Aquila has paved some sections of road
20 near the plant, in fact approximately two miles of road;
21 is that correct?

22 A. Yes, that is correct.

23 Q. And in line 6 and 7, you state that this
24 road paving was done to address the plant's environmental
25 concerns; is this correct?

1 A. Certainly partially was the reason for
2 that.

3 Q. So -- and Aquila was required, were they
4 not, to pave these roads to address particulate matters on
5 gravel roads that would be disturbed by traffic; is that
6 correct?

7 A. I don't believe we had any requirement to
8 do this. This was something that Aquila volunteered to do
9 and pay for.

10 Q. So you would agree, though -- you would
11 agree with me, Mr. Andrews, that Aquila's decision to pave
12 roads in the area was in part driven by your obligation to
13 comply with environmental standards?

14 A. No. It wasn't anything to have to do with
15 to comply with standards. We have an air permit issued to
16 us by Missouri DNR and commented on by EPA, which already
17 said that we were well within the parameters that they had
18 established. So it was not something we did. There was a
19 bene-- we believe there was a health benefit by paving the
20 road, but it was nothing that we were required to do to
21 comply with anything. Totally voluntary.

22 Q. Okay. In your direct testimony on page 8,
23 lines 2 and 3, and also in your surrebuttal testimony on
24 pages 1 and 2, you discuss the existing industrial
25 facility compressor station, I believe, that's adjacent to

1 the plant; is that correct?

2 A. Yes. I don't know if I -- page 8 of my
3 direct testimony?

4 Q. Yes. Line 2 and 3.

5 A. Oh, okay. Yes.

6 Q. You are aware that this existing facility
7 was constructed on its location prior to Cass County
8 zoning taking effect; is that correct?

9 A. Yes, that's my understanding.

10 Q. I'm looking now at your surrebuttal
11 testimony, page 2, line 16 and 17, where you discuss
12 engine sizes at the compressor station in comparison to
13 engine sizes and emissions at South Harper.

14 A. Yes, I see that.

15 Q. And lines 19 to 20, you indicate that
16 Aquila is unaware of any Cass County zoning criteria that
17 base land use on a number of horsepower at a particular
18 location; isn't that true?

19 A. Yes, that's what my testimony says.

20 Q. You are aware, though, Mr. Andrews, that
21 Cass County has specific zoning classifications?

22 A. Yes.

23 Q. And are you aware that those
24 classifications are distinguished by a property's
25 permitted use?

1 A. You're probably getting out of my area of
2 expertise at this point. I don't know the answer to that.

3 Q. Would you agree that a permitted use
4 generally in an entity's land use scheme would be a
5 permitted use that is for industrial purposes?

6 MR. YOUNGS: Excuse me. Based on the
7 witness's prior answer, I need to object. I think he's
8 indicated that that's an area that's outside his expertise
9 and certainly outside his testimony.

10 JUDGE PRIDGIN: It sounds like it's been
11 asked and answered. Sustained.

12 BY MS. MOORE:

13 Q. Is a power plant industrial use,
14 Mr. Andrews?

15 A. I would believe it would fall under some
16 type of industrial use.

17 Q. Okay. So the concept of horsepower, the
18 concept that horsepower could well be considered by the
19 County should an application for rezoning be filed to
20 change the site from agricultural to industrial to allow
21 for construction of a power plant?

22 A. Could you restate that question or maybe
23 break it up in two or three?

24 Q. Well, the concept of horsepower in general
25 could be considered by the County if an application for

1 rezoning were filed to change a site from agricultural to
2 an industrial site horsepower?

3 MR. YOUNGS: I'm sorry. Once again I'm
4 going to object. I think that's outside this witness's
5 parameter, as he's testified and has admitted --

6 MS. MOORE: He discusses horsepower in his
7 testimony.

8 JUDGE PRIDGIN: He does discuss horsepower.
9 I'll overrule, again, and I'll let him answer if he knows
10 the answer.

11 THE WITNESS: You -- I guess in answering
12 your question, you could have agricultural uses that add a
13 significant amount of horsepower to a site. So I -- I
14 could see agricultural uses with an increase in
15 horsepower.

16 BY MS. MOORE:

17 Q. Well, would you agree with me that the
18 South Harper power plant is located on a site that is
19 zoned agricultural in Cass County and not industrial?

20 A. I don't know.

21 Q. Okay. Would you agree with me,
22 Mr. Andrews, that the site selection process is tied to
23 your job in ensuring environmental compliance?

24 A. Environmental issues are a part of site
25 selection criteria, yes.

1 Q. So what I mean by that, Mr. Andrews, is the
2 more appropriate a site is with respect to its having been
3 zoned for an industrial use consistent with a power plant,
4 the more likely it is that environmental approvals can be
5 readily secured by you in your job?

6 A. I would disagree with that. The -- there
7 are many areas in this country where you could be in a
8 rural area, but the current air quality does not attain
9 with health quality standards. So I don't know if you can
10 say that as a general statement.

11 Q. Mr. Andrews, you don't believe that the
12 selection of a plant's -- a power plant's site in an area
13 that would be zoned industrial influences your ability as
14 Aquila's director of environmental services to readily
15 secure necessary environmental permits?

16 A. I've permitted 100, 200 facilities over the
17 course of my career, and I've done it in industrial areas,
18 I've done it in rural areas, I've done it in suburban
19 areas, all different types of land uses.

20 Q. Well, if the use is in an area that is more
21 by definition an industrial use area, would that likely
22 mean that you would have less complaints by property
23 owners that might be negatively impacted by the
24 environmental issues that affect a power plant's siting?

25 A. I don't -- as in my previous job where I

1 did the permitting, I was a consultant, so I wasn't
2 necessarily -- I didn't know what complaints were
3 occurring or probably would have occurred to the company
4 that I was working for, but I don't specifically remember
5 them sharing that information with me.

6 An industrial site in some instances can be
7 much harder to permit simply because if the air -- if you
8 have a facility that's relatively dirty, the air quality
9 may not be very healthy to begin with, and there may not
10 be sufficient margin to put another pollution source in.

11 Q. Well, if I tell you that Terry Hedrick
12 testified that the ideal plant would be located at a site
13 with no residents within one mile, would you have any
14 reason to disagree with that?

15 MR. YOUNGS: I'm going to object to asking
16 the witness to comment on the testimony of another
17 witness. I think that's argumentative and improper.

18 JUDGE PRIDGIN: Ms. Moore?

19 MS. MOORE: I think it's testimony that we
20 discussed yesterday, and I can ask him directly.

21 JUDGE PRIDGIN: Why don't you do that?
22 I'll sustain the objection. You can ask that.

23 BY MS. MOORE:

24 Q. What would the ideal plant site be in your
25 estimation in regard to where residences are in connection

1 with that plant?

2 A. I'm coming from a little bit different
3 perspective than Terry because Terry, from an engineering
4 perspective, is looking at various aspects. My particular
5 focus would have to be environmental, and again, I don't
6 know if I have a specific ideal location. As I said
7 earlier, the various facilities that I've looked at have
8 been permitted in various land uses.

9 Q. What about residents within one mile?

10 A. Sure, yes. That's occurred.

11 Q. Would that be an ideal location?

12 A. Again, from an environmental perspective,
13 if the impact's, as in the case we have here,
14 insignificant, I don't think it, you know, would be of
15 particular relevance.

16 MS. MOORE: Your Honor, may I approach?
17 Actually not the witness but my co-counsel.

18 JUDGE PRIDGIN: Certainly.

19 MS. MOORE: Nothing further.

20 JUDGE PRIDGIN: Ms. Moore, thank you very
21 much. Mr. Eftink?

22 CROSS-EXAMINATION BY MR. EFTINK:

23 Q. Mr. Andrews, as director of environmental
24 services for Aquila, you're familiar with the horsepower
25 of this peaking facility, aren't you?

1 A. Through Mr. Stanley's testimony. I haven't
2 specifically calculated. That's not something that's a
3 requirement of any environmental permit.

4 Q. So other than what Mr. Stanley says, you're
5 not familiar with the horsepower of the plant that you're
6 responsible for?

7 A. The units that I am specifically concerned
8 about is the emissions from the plant.

9 Q. And you have no reason to disagree with
10 Mr. Stanley's statement as an engineer that the horsepower
11 for the three combustion turbines is over 420,000
12 horsepower?

13 A. That seems like a reasonable calculation.

14 Q. You're familiar with such things as the
15 amounts of pounds or tons of pollutants that comes out of
16 a turbine through the stacks?

17 A. Yes.

18 Q. And are you familiar with the BTUs of the
19 operation?

20 A. As you stated earlier, it is in our air
21 permits, yes.

22 Q. And that's a maximum figure in the air
23 permit, which indicates that the total BP-- I'm sorry. I
24 said that wrong. The total BTUs if all three are
25 operating could be as much as a little bit less than

1 1.5 million BTUs. It's in Exhibit 75, and the page I'm
2 looking at has the number 11 at the bottom.

3 JUDGE PRIDGIN: I don't know if this
4 witness has that exhibit.

5 THE WITNESS: I do. I'm sorry.
6 Mr. Eftink, what page was that on?

7 BY MR. EFTINK:

8 Q. At the bottom of the page it says 11.

9 A. The BTU that I see on that page is
10 1,455 million BTUs per hour.

11 Q. Per unit?

12 A. Correct.

13 Q. Per combustion turbine. So if you multiply
14 that times three, you come up with a little bit less than
15 1.5 billion BTUs per hour?

16 A. I didn't do that calculation, nor did I
17 really look at that. I don't have a calculator in front
18 of me. That doesn't look like it's the right number, 3
19 times 14 -- looks like it's around 5,000 roughly, 4,500.

20 Q. That's million BTU. It says MMBtu?

21 A. That's correct, a thousand thousand. So
22 it's a million.

23 Q. I may have misspoken a minute ago, but if
24 you multiply that times three and convert it to billions,
25 then you've got a little bit less than 54.5 billion BTUs?

1 A. Not as I calculate this. Wait a minute.

2 Oh, that's probably about right.

3 Q. Thank you. And I said something silly when
4 I was asking questions of the other witness, because when
5 I was asking him about BTUs, British thermal units, that's
6 just a measurement of the flow of gas; isn't that correct?

7 A. It's a unit of heat content.

8 Q. But when you talk about British thermal
9 units, you're measuring the gas, aren't you?

10 A. That's correct.

11 Q. So a gas compressor's going to have more
12 BTUs than anything else because it's doing nothing but
13 sending gas along to other customers. That's correct,
14 isn't it?

15 A. I believe that's correct, yes.

16 Q. So since the gas compressor is supplying
17 gas to others other than South Harper, it's not surprising
18 that its BTU rating is a little bit higher because you're
19 just measuring the flow of gas in terms of British thermal
20 units?

21 A. More gas is going to pass through a
22 compressor station than our power plants.

23 Q. Right. You still have Exhibit 75 in your
24 hands?

25 A. Yes, I do.

1 Q. Exhibit 75 is the permit issued by the
2 Missouri Department of Natural Resources addressed to you
3 as director of environmental services of Aquila?

4 A. Yes. That's correct.

5 Q. And do you recognize this as a true copy of
6 that permit that you received?

7 A. Yes, I do.

8 MR. EFTINK: Move for introduction into
9 evidence of Exhibit 75.

10 JUDGE PRIDGIN: Any objections?

11 (No response.)

12 JUDGE PRIDGIN: Exhibit 75 is admitted into
13 evidence without objection.

14 (EXHIBIT NO. 75 WAS RECEIVED INTO
15 EVIDENCE.)

16 BY MR. EFTINK:

17 Q. The permit was based on models because the
18 plant was not yet in operation, correct?

19 A. The construction permit was based on
20 models, that's correct.

21 Q. Okay. But the permit for operation of the
22 power plant, of course, had to be submitted before you
23 began construction, and the --

24 A. No.

25 Q. -- information is based on models, not on

1 actual?

2 A. Specifically on an air permit, you actually
3 obtain a construction permit prior to obtaining an
4 operating permit. Essentially the logic behind that is
5 you -- and this is certainly applicable in our case where
6 initially we thought we would need some additional piece
7 of equipment such as a gas heater and emergency diesel
8 fire pump that were included in the construction permit
9 but actually were never needed, so they haven't been
10 constructed.

11 So in your operating permit you would have
12 more of an as-built scenario versus what you expect to
13 have there. And that goes to anything in regards to
14 permitting. Your estimates or your BTUs are again based
15 on what the expectation is, and then once the facility has
16 become operational, you do stack testing or continuous
17 emissions monitoring or some other parameters.

18 Q. Exhibit 75 has got the potential emissions
19 from the South Harper peaking facility, correct?

20 A. Yes, the potential emissions are defined as
21 unlimited operation of the turbines.

22 Q. All right. If you'll look at page 13 of
23 the permit, Exhibit 75, it states that potential emissions
24 of NOX and CO are above major thresholds and potential
25 emissions of PM-10 are above significant levels; isn't

1 that what it says?

2 A. Yes.

3 Q. And in the chart above that -- and again
4 we're talking about potential emissions, potential
5 emissions. For NOX, the potential is a little over
6 1,000 tons a year, correct?

7 A. The potential emissions are -- the
8 condition, permit conditions are 247.

9 Q. My question was about the potential
10 emissions of the --

11 A. Yes.

12 Q. -- applicant.

13 It says NOX, which is nitrous oxide?

14 A. Nitrogen oxide.

15 Q. Nitrogen oxide. 1,075 tons a year,
16 correct?

17 A. Again, if we ran all the turbines 8,760
18 hours per year.

19 Q. And for particulate matter 10, PM-10, the
20 potential emissions is 154 tons per year, correct?

21 A. That's right.

22 Q. And the carbon monoxide potential is
23 1,090 tons a year, correct?

24 A. Yes.

25 Q. And you're aware that Aquila has been

1 discussing the possibility of expanding by putting more
2 combustion turbines in at South Harper?

3 A. Yes.

4 Q. Perhaps another three?

5 A. Yes.

6 Q. Now, the operation is limited in the number
7 of hours, correct?

8 A. Yes.

9 Q. I want to ask you questions about noise,
10 and I've got your answers to a Data Request which I'd like
11 to mark as an exhibit and hand to you.

12 (EXHIBIT NO. 76 WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)
14 BY MR. EFTINK:

15 Q. In your prefiled testimony you say that the
16 noise study done after the plant was operational shows the
17 facility was below Cass County noise ordinance levels. Is
18 that your testimony?

19 A. We believe that it is, yes.

20 Q. You believe that it is?

21 A. Yes.

22 Q. Are you saying it is actually below Cass
23 County noise ordinance levels?

24 A. Yes, it is below.

25 Q. And you've got Exhibit 76 in your hand,

1 correct?

2 A. Yes, I do.

3 Q. And it's your answer to a Data Request
4 propounded by StopAquila.org to Aquila No. 17?

5 A. Yes, that's correct.

6 Q. Now, you didn't attach this report to your
7 sworn testimony, did you?

8 A. No, I did not.

9 Q. All right. But this is the noise
10 measurement study that was done after the plant was
11 operational; isn't that correct?

12 A. Yes, it is.

13 Q. And is this the report that you were
14 referring to when you said that the report showed that the
15 operation is below Cass County noise ordinance levels?

16 A. Primarily it was based on Burns & McDonnell
17 studies, but I did have a chance to look at this as well
18 and it didn't change my conclusion.

19 Q. The Burns & McDonnell studies were done
20 prior to the plant being built?

21 A. That's incorrect. They did one study prior
22 to operation to model what the expected noise levels were,
23 and again, as my testimony stated, as a result of that
24 study, we spent at least 2 million extra dollars on noise
25 attenuation at that time.

1 We also performed, I believe, three noise
2 tests after the plant became operational. This is -- this
3 study that you referred to me is by ATCO, who also did a
4 noise study after the plant was operational.

5 Q. The ATCO study which is marked as
6 Exhibit 76 was done after the Burns & McDonnell studies,
7 correct?

8 A. Yes, it was.

9 Q. Now, the county ordinance says that the
10 maximum sound level is 60 decibels during the day and
11 55 decibels at nighttime, correct?

12 A. On an LEQ basis.

13 Q. Now, if you'll look at Exhibit 76, there's
14 a chart on page 5 that shows the points where receptors
15 were placed in the residences or near the residences of
16 certain people?

17 A. Yes, I see that.

18 Q. And it's got six different residences
19 listed, correct?

20 A. Well, there's seven receptor points that
21 they took measurements.

22 Q. Well, the chart shows six residences,
23 correct?

24 A. One may be an unoccupied lot.

25 Q. And the chart shows that there's six

1 receptors, doesn't it, on page 7?

2 A. Yes.

3 Q. Okay. Now, let's take a moment to identify
4 some of these residences. If you look at the page that
5 says page 5 on the bottom, this is again Exhibit 76?

6 A. Yes.

7 Q. R1 is the home of Frank Dillon?

8 A. That's correct.

9 Q. And R5 is the home of Harold Stanley?

10 A. Yes.

11 Q. The page which says page 7 at the bottom,
12 it shows the highest readings on certain days at each of
13 these six points, correct?

14 A. Yes.

15 Q. Now, there was only one combustion turbine
16 running during this test, correct?

17 A. One -- my understanding was they took noise
18 readings for two and a half or three days, and during a
19 portion of that period one of the turbines was running.

20 Q. And at no time when they were doing their
21 measurements did they have more than one turbine running?

22 A. That's right.

23 Q. So with one turbine running, the results on
24 page 7 show that at Mr. Dillon's house, the decibel level
25 was 64 during the daytime?

1 A. Yes.

2 Q. And 56 at night, correct?

3 A. Yes.

4 Q. So both during the day and the night, with
5 just one turbine running, the noise level was exceeded at
6 Mr. Dillon's house?

7 A. If you look at the time period next to the
8 highest sound level, there's a time there. The 64
9 decibels is associated with 10 a.m. on August 26th. If
10 you go back to page 2 of Exhibit 26, it's noted that Unit
11 1 operated from 12:26 p.m. to 15 -- well, 3:55 in the
12 afternoon, so the turbine was not running when that sound
13 measurement was made.

14 For the nighttime noise level, the 56,
15 that's 11 o'clock at night on August 26th. Again, our
16 turbines or turbine was not running at that time.

17 Q. Now, you don't know personally from your
18 own personal knowledge that the turbines were not running?

19 A. I'm going with the data listed in this
20 report.

21 Q. Right. And how would they know, because
22 they're not out there the entire 24-hour period for two
23 days making sure that the turbine is not running, are
24 they?

25 A. I don't know if they were out in the field

1 for the whole period of time, but noise measurements were
2 made during that time.

3 Q. And the way they do noise measurements,
4 they put a monitor close to somebody's house, like Frank
5 Dillon's, and then they leave; isn't that correct?

6 A. For a period of time, they'll leave, but
7 they'll probably come back on an interval basis to check
8 the readings and make sure the meter's running and note
9 anything unusual that's happening. They could also get
10 that information from operational logs of when those units
11 were running.

12 Q. Now, since we mentioned it, R5 is Harold
13 Stanley's house. Let's look on page 7 for the readings at
14 R5. It showed a daytime reading of 64 decibels and a
15 nighttime reading of 59 decibels?

16 A. Yes, I see.

17 Q. And those are both above the Cass County
18 ordinance level?

19 A. That is, but again, it does not look like
20 the units were running when those high noise measurements
21 were recorded.

22 Q. And again, you don't know that from your
23 own personal information, do you?

24 A. Not from my personal information.

25 Q. Now, if you look at page 5, Mr. Stanley's

1 house, according to this report, is 3,695 feet away?

2 A. That's what the report says.

3 Q. If you'll refer to the chart on page 7,
4 you've got six residences and two high points, so you've
5 got 12 high point readings in this chart, and for how many
6 of those do you have the reading being at or above the
7 noise ordinance level for one turbine?

8 A. Are you asking me to look at what the
9 highest recorded level was at each measurement point,
10 daytime and nighttime, and compare that to the Cass County
11 noise standards?

12 Q. Yes.

13 A. Okay. It appears that there are at
14 residence 1 and 5, the highest sound levels do exceed the
15 Cass County noise levels, when the turbine was not
16 apparently operating. At nighttime, it appears there's
17 one, two, three that potentially exceed the Cass County
18 noise levels, and again, none of those time periods
19 correlate with their time that they said the turbine
20 operated.

21 Q. And again, you don't know when the turbine
22 was operating, you only know what somebody's reported,
23 correct?

24 A. Correct.

25 Q. But if you just look at the high noise

1 level for these six points or 12 points, isn't it correct
2 that six out of the 12 are at or over the noise limits?

3 A. Yes, that's true.

4 Q. Now, they also did readings on sites to
5 test how loud the turbines and the operation were, and
6 that's shown on page 10 of Exhibit 76?

7 A. Yes, beginning on page 10.

8 Q. And again, these measurements were just
9 with one of the units operating, correct?

10 A. That's -- yes.

11 Q. And what's the highest decibel reading
12 onsite?

13 A. 112 DBA.

14 Q. Okay. So how loud does it get onsite if
15 you have three turbines operating?

16 A. Probably not much difference, a couple of
17 decibels, three, four, five decibels, somewhere in that
18 range maybe.

19 Q. Well, if you had a reading onsite of
20 112 decibels, can you give us just a wild guess as to how
21 high a reading you'll have at Mr. Dillon's house?

22 MR. YOUNGS: I'm going to object to any
23 request that the witness engage in wild guesswork.

24 MR. EFTINK: Well, maybe I should strike
25 the word wild. Just give us a guess.

592

3 JUDGE PRIDGIN: I'll sustain the first
4 question. I don't want him to get into conjecture.
5 Obviously, he appears to be an expert on measuring sound,
6 and I will let him answer to the extent that he knows or
7 if you -- if you have some sort of hypothetical that you
8 want to pose to him.

9 MR. EFTINK: Let me rephrase.

10 BY MR. EFTINK:

11 Q. If you have a decibel reading of 112 DBA
12 onsite, and according to the chart on page 5 the house of
13 Frank Dillon or at least the receptor next to his house
14 was 1,190 feet away, wouldn't you expect that the noise at
15 Mr. Dillon's house would exceed the Cass County ordinance
16 level?

17 A. No. The sounds of the turbines during
18 operation would be pretty consistent. So the noise
19 measurements made at his house by ATCO and Burns &
20 McDonnell show that we believe it's well below the County
21 levels.

22 Q. Now, on page 10, onsite all of the decibel
23 readings were in the 90s or over that, correct?

24 A. Yes.

25 MR. EFTINK: I move for introduction into

1 evidence of Exhibit 76.

2 JUDGE PRIDGIN: Any objections?

3 (No response.)

4 JUDGE PRIDGIN: Hearing none, Exhibit 76 is
5 admitted into evidence.

6 (EXHIBIT NO. 76 WAS RECEIVED INTO
7 EVIDENCE.)

8 BY MR. EFTINK:

9 Q. Has Aquila exceeded emissions levels at any
10 time during the operation of the South Harper peaking
11 facility?

12 A. We are required to report any excursions of
13 emissions limits. We did that in December when we ran,
14 and that excursion was explained in a letter to Missouri
15 DNR that we didn't have any cold weather operating
16 experience and had unexpected slightly higher emissions
17 that were correctable, and that this situation would not
18 happen again.

19 Q. How many times did you have excess
20 emissions during the first five months of operation?

21 A. I don't know the number. I know in that
22 particular report, there were two, but whether one of them
23 was truly an excess emission is kind of a technical
24 detail. Our permit says 15 parts per million, and we
25 record the continuous emissions reports to the 10th of a

1 decimal, so 15.1.

2 The permit doesn't have a decimal place,
3 and I know this is kind of a technical thing, but is 15.1
4 equal to 15 without the decimal point? I don't know.
5 That's why we reported it to Missouri DNR, was just to be
6 safe, because we don't know how they make that
7 determination.

8 Q. So if it's 15.2, you would think it would
9 be under 15?

10 A. Our permit is 15. It's not 15.0. It's not
11 15.00. It's 15. Well, how does an agency do that? Is
12 15.2 equal to 15 in their eyes? I don't know. That's why
13 we erred on the safe side to report that and let them make
14 that determination. But there were also the excursion
15 that I explained. That was the first time we'd operated
16 in cold weather and the combustion dynamics were slightly
17 different.

18 MR. EFTINK: Let's have that marked as 77.

19 (EXHIBIT NO. 77 WAS MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)

21 BY MR. EFTINK:

22 Q. Is Exhibit 77 the excess emissions report,
23 the first one that you referred to?

24 A. I only referred to the one in December.
25 Yes, every quarter we have to report these. This is

1 October's.

2 Q. So there might only be four in a year's
3 time?

4 A. Looks like this is saying there was one,
5 and if there -- so three.

6 Q. Is your signature on the last page of
7 Exhibit 77?

8 A. Yes, it is.

9 Q. So you certified to the State that there
10 were excess emissions, correct?

11 A. That's correct.

12 MR. EFTINK: Move for introduction into
13 evidence of Exhibit 77.

14 JUDGE PRIDGIN: Any objections?

15 (No response.)

16 JUDGE PRIDGIN: Hearing none, 77 is
17 admitted.

18 (EXHIBIT NO. 77 WAS RECEIVED INTO
19 EVIDENCE.)

20 BY MR. EFTINK:

21 Q. And you said that you reported quarterly,
22 so you're not sending in reports every month, then, are
23 you?

24 A. I don't recall all the permit conditions,
25 but there are several reports that we submit quarterly.

1 MR. EFTINK: Let's have this marked as 78.

2 (EXHIBIT NO. 78 WAS MARKED FOR

3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. EFTINK:

5 Q. Is Exhibit 78 the next quarterly report
6 showing that there were excess emissions?

7 A. Yes. And we're -- we're required every
8 quarter to submit this, whether we have excess emissions
9 or not.

10 Q. But both 77 and 78 show excess emissions?

11 A. Well, it's up for consideration. It
12 doesn't mean we have a violation. It just means that --

13 Q. Well, I'm not asking if you have a
14 violation. I'm asking you if there are excess emissions
15 reported for both of those quarters?

16 A. Yes.

17 Q. Now, for the first and second quarter of
18 2005, were the turbines in operation?

19 A. The second quarter, are -- the first unit
20 went online sometime in late June, early July. I can't
21 remember the exact time frame.

22 Q. So it may have been a few days?

23 A. If it was, it was just a few days.

24 Q. If you have Exhibit 78 in front of you, is
25 your signature on the last page of Exhibit 78?

1 A. Yes, it is.

2 Q. And can you identify this, like 77, as a
3 report that was sent to the Missouri Department of Natural
4 Resources?

5 A. Yes, I did.

6 MR. EFTINK: Move for introduction into
7 evidence of Exhibit 78.

8 JUDGE PRIDGIN: Any objections?

9 (No response.)

10 JUDGE PRIDGIN: Hearing none, 78 is
11 admitted.

12 (EXHIBIT NO. 78 WAS RECEIVED INTO
13 EVIDENCE.)

14 BY MR. EFTINK:

15 Q. And then after the year's over, you make a
16 report to the State that reports the weight of the
17 emissions?

18 A. The weight of the emissions?

19 Q. Yes, in pounds or tons.

20 A. Every year we're required to do an annual
21 emissions inventory that does report what our tonnages
22 are.

23 MR. EFTINK: Let's have this marked as 79.

24 (EXHIBIT NO. 79 WAS MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 BY MR. EFTINK:

2 Q. As director of environmental issues for
3 Aquila, you're familiar, of course, with Exhibit 79,
4 aren't you?

5 A. Yes, I am.

6 Q. Okay. And if you look at this exhibit,
7 isn't it actually a report on each of the three turbines,
8 and then a summary for all three?

9 A. That's correct.

10 Q. If you look at 79, doesn't it show for the
11 first turbine it operated for 265.2 hours?

12 A. Could you refer what page that's on?

13 Q. I'll try. In the exhibit, it's the third
14 page.

15 A. Okay. Yes.

16 Q. So No. 1 operated 265.2 hours?

17 A. Yes.

18 Q. The next report a couple pages over shows
19 that Unit 2 operated 300 hours?

20 A. Yes.

21 Q. Couple pages over, the report shows Unit 3
22 operated 291.2 hours?

23 A. Yes.

24 Q. And if you trust my calculations, that adds
25 up to a total of 856.4 hours. You don't have any reason

1 to doubt me, do you?

2 A. Looks about right.

3 Q. I take that as a yes. Now, the last --

4 next to the last page has got a total emitted for

5 particulate matter 10 or PM-10, SOX, NOX, VOC and CO.

6 A. Yes, I see that.

7 Q. Now, there's different categories of --

8 there's a category where they talk about the emissions

9 that are used to record the amount of money that has to be

10 paid, some kind of environmental fee?

11 A. Right.

12 Q. But then before they get to that

13 calculation, they show the actual emissions of each of

14 those different named pollutants, correct?

15 A. Yes. Uh-huh.

16 Q. Now, I note it doesn't record or it doesn't

17 appear to record PM-2.5?

18 A. That's correct.

19 Q. Okay. So does Aquila measure the emissions

20 of PM-2.5?

21 A. It's not a condition of our permit.

22 Q. So you could measure PM-2.5, but you don't

23 measure the amount of that that comes out of the stacks;

24 is that a fair statement?

25 A. Yes, there's stack testing for PM-2.5.

1 Q. Oh, there is? I'm just trying to make sure
2 I understand because it's not --

3 A. Well, there's no permit for it. Your
4 particular question was, as I understand, is it
5 technically feasible to do that? And my response is yes.

6 Q. Well, my question now is, in fact, does
7 Aquila measure the PM-2.5 that comes out of the South
8 Harper facility?

9 A. No.

10 Q. Okay. So it's a fair statement, then, that
11 the amount of tons that is shown on this annual report
12 doesn't include all of the pollutants, it just includes
13 those pollutants that Missouri Department of Natural
14 Resources requires that Aquila measure and report?

15 A. No, that isn't necessarily the case. We
16 could have -- we could have no emissions of PM-2.5 and
17 that well could be an accurate statement. Just because
18 it's zero doesn't mean that we haven't considered that as
19 part of our annual emissions inventory.

20 Q. Well, but it's true generally speaking that
21 PM-2.5 is produced by electric generating units that use
22 natural gas?

23 A. It is, but typically the production of
24 PM-2.5 is not direct in the stack. Rather, it's a
25 chemical transformation of sulfur dioxide to sulfates and

1 nitrogen oxide to nitrate. So a chemical reaction in the
2 atmosphere has to occur before PM-2.5 is -- the majority
3 of PM-2.5 from electric utilities is produced.

4 Q. So if you measure the emissions of PM-2.5,
5 you have to measure it outside of the stacks?

6 A. Yeah, which attributing that to any one
7 source would be impossible.

8 Q. Now, the totals of these measured
9 pollutants is 72.9 tons, correct?

10 A. That looks about right.

11 Q. Okay. And then to determine the amount of
12 pounds per hour of operation, you would take that figure,
13 convert it to pounds, and then divide it by the number of
14 hours of operation, correct?

15 A. Yeah. That would be an average pounds per
16 hour.

17 Q. Yes, an average. And then if you wanted to
18 determine the amount that on average is emitted if three
19 turbines are operating, you would take that figure and
20 multiply it times three?

21 A. This includes, at least the sheet that I'm
22 being referred to, is the total plant emissions.

23 Q. Right.

24 A. So it's from all the turbines, from all the
25 operations.

1 Q. I guess there's two different ways to do
2 it. One way would be to take all of the hours, and then
3 you'd have to divide that by -- or multiply that times
4 three --

5 A. Right. Uh-huh. Well --

6 Q. -- to come up with a figure for when all
7 three turbines are operating?

8 A. No. I mean, if you wanted to know the
9 pounds per hour from each individual turbine, the total
10 hours per year are reported on this emissions, as well as
11 the total emission. So you -- no multiplication would be
12 involved. You would just essentially divide the actual
13 emissions by the hours it operated in the year to get
14 pounds per hour on average.

15 Q. By my simple mathematical calculations, if
16 you take the emissions that are measured, divided by
17 hours, when three combustion turbines are running, you
18 come up with an average of 505 pounds of these pollutants
19 being emitted, correct?

20 A. I don't know. I haven't done the
21 calculation.

22 MR. EFTINK: Okay. Move for introduction
23 into evidence of Exhibit 79.

24 JUDGE PRIDGIN: Any objections?

25 (No response.)

1 JUDGE PRIDGIN: Hearing none, Exhibit 79 is
2 admitted.

3 (EXHIBIT NO. 79 WAS RECEIVED INTO
4 EVIDENCE.)

5 BY MR. EFTINK:

6 Q. In your prefiled statement, page 6,
7 line 11, you talk about Mr. Stanley, the engineer.

8 A. Surrebuttal or direct testimony?

9 Q. I believe it's direct.

10 A. Page 6, line 11. Okay.

11 Q. You talk about comparison of diesel pickup
12 trucks to the South Harper peaking facility.

13 A. No. Mr. Stanley makes that comparison.

14 Q. Okay. You say that the plant has
15 400,000 horsepower; is that correct?

16 A. That's about right.

17 Q. And that would equate to horsepower of
18 about 1,000 diesel pickup trucks, correct?

19 A. That's about right.

20 Q. If you're just looking at comparing
21 horsepower, the plant when three turbines are operating is
22 equal to about 1,000 pickup trucks, correct?

23 A. That's correct.

24 Q. Now, do you know how much in pounds of
25 pollutants per hour is produced by a diesel pickup truck?

1 A. After Mr. Stanley's testimony, I did kind
2 of a back of an envelope calculation. I don't have that
3 with me, but I'm familiar with that.

4 Q. Well, would it be roughly correct to say
5 that about a half a pound of pollutants an hour comes out
6 of one pickup truck?

7 A. I would tend to probably disagree. I know
8 in his calculations I disagreed with the emissions that he
9 came up with. My number was over an order of magnitude
10 lower than what he had projected.

11 Q. Lower for the pickup truck?

12 A. No.

13 Q. For the pickup truck, since you're --

14 A. Pickup truck was -- well, if it was an
15 order of magnitude, it's over ten times of what he used.

16 Q. So he was using a half a pound per hour, so
17 you're saying about five pounds an hour of emissions from
18 a pickup truck?

19 A. Using the EPA standards for trucks prior to
20 2004, 2005. I'm not sure what time frame that was.

21 Q. So if the reports show that if three
22 turbines are running full load you average 505 pounds of
23 pollutants coming out of the three turbines, you compare
24 that to -- what are you saying -- five pounds from a
25 pickup truck?

1 A. Right. Somewhere in that neighborhood.

2 Q. So you're saying it's not 1,000 pickup
3 trucks, but it's a lower number of pickup trucks?

4 A. Yes.

5 Q. On page 7, line 10 of your direct
6 testimony, you talked about comparison of dirt roads to
7 the power plant?

8 A. Yes. I calculate the emissions from an
9 unpaved road.

10 Q. You compare particulate matter from South
11 Harper to the, I guess, particulate matter of dirt roads;
12 is that fair?

13 A. Yes, that's correct.

14 Q. However, you say that the particulate
15 matter is 18 pounds per hour from South Harper?

16 A. That's right. Based on our stack tested
17 results, the turbines averaged about 6 pounds per hour per
18 turbine, so based on those stack testing results, 6 times
19 3 would be 18.

20 Q. So let's make it clear. We're talking
21 about 505 pounds of pollutants from the power plant per
22 hour when three are running. You were just talking about
23 one component of those pollutants, not all of them?

24 A. Right. I was responding specifically to
25 Mr. Stanley's inquisitive nature in regards to particulate

1 matter and whether unpaved roads were representative.

2 Q. Okay. If you're talking about 18 pounds of
3 particulate matter and there's about 500 pounds of total
4 pollutants that comes out of the plant, that's just a very
5 small percentage of the total pollution coming out; isn't
6 that correct?

7 A. Yes.

8 Q. Something like 4 percent of the total
9 pollution?

10 A. About right.

11 Q. So when you were comparing the dirt road
12 analogy to the emissions from the power plant, you were
13 just comparing 4 percent of the pollution that comes out
14 of the power plant to 100 percent of the pollution from
15 the dirt road?

16 A. No. I was comparing the particulate from
17 the power plant to the particulate from the dirt roads.

18 Q. Okay. But there's not much in the way of
19 nitrous oxide and SOX and VOC coming out of the dirt road,
20 are there?

21 A. No.

22 Q. So it's really not a fair analogy, is it?

23 A. I was responding to Mr. Stanley's specific
24 comment on whether unpaved roads and the calculations that
25 we used were adequate, at least in surrebuttal. Actually,

1 we're in direct testimony here, but this is a comparison
2 of just particulate. I'm not trying to represent that
3 it's a comparison to other pollutants.

4 Q. But you're the one that brought up the
5 analogy, not Mr. Stanley; isn't that correct?

6 A. Yes, that's correct.

7 Q. You testified that the temperature of the
8 gases coming out of the stacks is over 900 degrees
9 Fahrenheit?

10 A. Yes. That's correct.

11 Q. Okay. Now, these doctors in this letter
12 that you attach talk about some guy standing inside of the
13 stacks and how he could happily live there if he was only
14 there 40 hours a week, but that's the kind of thing you
15 can't prove or disprove, correct, because you're not going
16 to be able to have somebody stand inside that 900-degree
17 temperature to see how it affects them?

18 A. I believe his testimony was in regards to
19 the level of the pollutants within the stack were
20 sufficient that the environment was such that a worker's
21 exposure over a 40-year life would have no adverse health
22 impacts because of the pollutants in the stack.

23 Q. Now, some of the pollutants actually react
24 and become worse as they get out of the stacks and into
25 the atmosphere, correct, such as the particulate matter

1 2.5 that you mentioned earlier and ozone?

2 A. I can't say necessarily that they get any
3 worse. They're -- there's a chemical transformation. I
4 mean, they originally were SO₂ and nitrogen oxide, which
5 is a regulated pollutant. Some of that could convert to
6 PM-2.5, which is also now a regulated pollutant. So I
7 wouldn't necessarily say it gets any worse.

8 Q. But you're familiar with the studies that
9 have been commissioned by the EPA to study the effects of
10 PM-2.5, particularly on small children, people with asthma
11 and older people who have less than optimal respiratory
12 abilities, correct?

13 A. Well, I mean, it's a health study based on
14 the whole population.

15 Q. Well, but they say that young people,
16 people with asthma or older people are more susceptible to
17 these things, right?

18 A. Yes.

19 Q. Okay. And of course, they're talking about
20 particulate matter 2.5, which you guys don't even test
21 for, and they're talking about ozone, which is created
22 after the pollutants come out of the smoke stack?

23 A. That's correct. It's the responsibility of
24 Missouri and EPA to protect human health and welfare, and
25 they do that in various ways. But something that's that

1 global in nature with chemical transformations, if there
2 is an issue with an individual site, permit conditions are
3 attached to ensure that health is not compromised.

4 Q. So if the Department of Natural Resources
5 doesn't do its job, you guys would put a power plant next
6 to anybody?

7 MR. YOUNGS: Objection, argumentative.

8 JUDGE PRIDGIN: I'll sustain.

9 BY MR. EFTINK:

10 Q. Now, in your filed testimony you say that
11 the local residents would not be impacted by a thermal
12 exhaust plume but the residents would be affected by
13 pollutants that come out or that are generated by this
14 activity, correct?

15 A. That -- let me read this testimony. Yeah.
16 I mean there's -- that's correct.

17 Q. I'd like you to look at Exhibit 73.

18 MR. EFTINK: May I approach?

19 JUDGE PRIDGIN: You may.

20 BY MR. EFTINK:

21 Q. Let me just show you my copy. Is
22 Exhibit 73 an e-mail from John Stower to you?

23 A. Yes, it is.

24 Q. Okay. Now, if you look at the second page
25 of this e-mail, which is dated October 12, 2004 --

1 A. Yes.

2 Q. -- are you aware that that was after
3 perhaps the first time that the people around there got
4 together and protested?

5 A. I don't know the timing of that protest.

6 Q. Now, in the part on the second page that I
7 highlighted, in this e-mail to you does it say the
8 appearance of being sneaky was explained as the need for
9 effectuating land option purchases prior to announcing any
10 proposed plants? Did I read that correctly?

11 A. That's what it says.

12 Q. And does it then say, the appearance of a
13 done deal was hard to dissuade, and the Peculiar mayor
14 pretty much emphasized that point anyway. Did I read that
15 correctly?

16 A. Yes.

17 Q. Then it says, the folks in that area do not
18 have a vote on this, they do not reside within the
19 Peculiar town limits, and once they realized this, I think
20 it was even more frustrating for them. Did I read that
21 correctly?

22 A. Yes.

23 Q. Now --

24 JUDGE PRIDGIN: Before you resume,
25 Mr. Eftink, do you know how much longer your line of

1 questioning will go? I'm just trying to find a natural
2 break for lunch.

3 MR. EFTINK: Well, can we break right now?
4 Because it may go on for a while, but it would be better
5 if I take a few minutes to see where I am.

6 JUDGE PRIDGIN: That's fine. I don't want
7 to interrupt your train of thought. If you wanted to
8 continue questioning on that exhibit and then break,
9 that's fine. I hate to break in the middle of a witness,
10 but we may need to do that.

11 MR. EFTINK: I need to find an exhibit,
12 so -- see if it's here. I'm going to hand a copy of this
13 next proposed exhibit to counsel for Aquila because they
14 put HC on it, and I don't know if there's anything HC, but
15 I'll hand it to them. I don't know if they want some time
16 to look at it.

17 JUDGE PRIDGIN: I'll let them respond to
18 that. This would be No. 80, if I'm not mistaken.

19 (EXHIBIT NO. 80 WAS MARKED FOR
20 IDENTIFICATION BY THE REPORTER.)

21 MS. SHEMWELL: Judge, why don't we just go
22 ahead, if it's all right with you, and break?

23 JUDGE PRIDGIN: That's fine. This looks to
24 be as good a time as any to break for lunch. We can come
25 back on the record and see if we need to go in-camera for

1 proposed Exhibit No. 80. I show the clock on the back
2 wall to be 12:25. Let's try to resume at 1:45, please.

3 We're off the record.

4 (A BREAK WAS TAKEN.)

5 JUDGE PRIDGIN: We're back on the record.
6 When we adjourned for lunch, I understand that Mr. Eftink
7 had labeled a proposed Exhibit 80, if I'm not mistaken,
8 and Aquila was looking at that to see if it were highly
9 confidential. Do I recall correctly?

10 MR. SWEARENGEN: You do. I think we've
11 reached an accommodation to eliminate the part of that
12 document that is HC, and the rest of it can go into the
13 public record.

14 JUDGE PRIDGIN: So we will not go in-camera
15 and we'll show this as public, if that's all right. Is
16 that my understanding?

17 MR. SWEARENGEN: That's correct.

18 MR. COMLEY: Judge Pridgin, before we
19 return to examination, I want to say that during the
20 recess I did get a chance to visit with several parties,
21 not all the parties, but I advised them that during Cass
22 County's evidentiary presentation, it's our intention to
23 submit the 1997 comprehensive plan of Cass County and the
24 2003 updates to that plan, under certificate.

25 And it is a very lengthy document, as I

1 mentioned, and it is our intention strictly to have one
2 exhibit and have the notebooks in which those two pieces
3 of evidence are located generally available for the
4 parties. And based upon my canvass, I understand that
5 none of the parties would like to have a copy, and I am
6 grateful to them.

7 And the other issue would be whether the
8 Commissioners themselves would want a copy, and we'd be
9 very happy to prepare one, and if there was a way to let
10 us know, we'll get that done.

11 JUDGE PRIDGIN: Mr. Comley, thank you. We
12 will certainly scan whatever documents that are submitted
13 into evidence into EFIS so they'll be available
14 electronically. And we'll certainly try to give you as
15 much notice as we can as far as how many paper copies the
16 Bench may want.

17 MR. COMLEY: Of course, we can always
18 fulfill that request afterwards, if necessary.

19 JUDGE PRIDGIN: Yes, sir, absolutely.
20 Thank you for bringing that up.

21 Yes. I'm sorry.

22 MR. YOUNGS: I didn't mean to interrupt
23 you. Similarly with regard to Aquila, as your Honor
24 knows, there is an issue as to which comprehensive plan
25 and which zoning ordinance to use. Aquila, similar to the

1 County, has a copy of the 2005 comprehensive plan, as well
2 as a copy of the 2005 zoning order.

3 Similarly, we would propose that those also
4 not be distributed as copies to the parties, and I think
5 everybody's in agreement with that. And we appreciate the
6 same understanding from the Bench as to what, if any,
7 copies the Commission wants.

8 JUDGE PRIDGIN: Certainly. Again, that
9 will be available electronically to the Commission and to
10 any party, and to the public, of course, and if we need
11 extra paper copies, we'll certainly give you as much
12 notice as possible. And again, that can be done after the
13 fact as well. All right. Thank you.

14 Anything else from counsel before -- I'm
15 sorry. Mr. Williams?

16 MR. WILLIAMS: I was just looking at the
17 copy of Exhibit 80 that I received, and I see two pages on
18 here that show a summary with a bunch of numbers, and I
19 was wondering if those two pages are the pages that are
20 not going to be included as part of the exhibit?

21 MR. EFTINK: That's correct. Before we get
22 into this, I'd like to say that Mr. Swearngen -- or
23 Mr. Youngs, actually, asked me if we could remove the last
24 two pages. I said I don't have any intention of asking
25 this witness about the last two pages. Since Aquila said

1 they might have some objections to that on the grounds of
2 confidentiality being discussed in open session, I said I
3 would propose that we remove the last two pages from
4 Exhibit 80.

5 And, Mr. Wood, do you have Exhibit 80 in
6 front of you? If you would just take off the last two
7 pages.

8 JUDGE PRIDGIN: You mean Mr. Andrews?

9 MR. EFTINK: Yes, Mr. Andrews.

10 JUDGE PRIDGIN: So I understand these two
11 pages, this page (indicating)?

12 MR. EFTINK: Yeah. What happened was Staff
13 was kind enough to copy this before we had the discussion.

14 JUDGE PRIDGIN: So this will not be
15 introduced into evidence; is that correct?

16 MR. EFTINK: The last two pages are not
17 going to be introduced in evidence.

18 JUDGE PRIDGIN: Okay. Thank you.

19 MR. EFTINK: Mr. Andrews, did you remove
20 the last two pages?

21 THE WITNESS: I did, yes.

22 JUDGE PRIDGIN: And, Mr. Eftink, I'm sorry.
23 Anything else from counsel before we resume cross?

24 (No response.)

25 JUDGE PRIDGIN: Hearing nothing,

1 Mr. Eftink, you may resume.

2 Mr. Andrews, I'll remind you you're still
3 under oath.

4 BY MR. EFTINK:

5 Q. Mr. Andrews, you have in front of you the
6 document which has been marked as Exhibit 80, correct?

7 A. Yes.

8 Q. If you would turn to the next to the last
9 page of this series of e-mails, we have e-mail from Gary
10 Clemens to Warren Wood, and you received a copy of this
11 because it was forwarded on to you later on, correct?

12 A. That is correct.

13 Q. And I'm looking at the e-mail dated
14 March 24, 2005. Does the e-mail inform you that under
15 some atmospheric conditions, the emissions will impact
16 areas within two miles of the plant?

17 A. Yes, it says mainly, and it goes on to say
18 mainly the gas heater and diesel fire pump, not the
19 combustion turbine.

20 Q. Okay. We've discussed the tons of
21 pollutants that come out of combustion turbines already.
22 Who is Gary Clemens?

23 A. Gary works in our regulatory group. He
24 actually forwarded that question to me, and that response
25 is from me.

1 Q. So based on what you told him, he reported
2 that under some conditions the emissions also impact areas
3 within two miles of the plant?

4 A. Yes, again from the gas heater and diesel
5 fire pump, which actually were not constructed.

6 Q. This is in March 2005?

7 A. That's right. We already had our air
8 permit, and the dispersion modeling had already been
9 performed, and that information was based on the air
10 dispersion modeling that Missouri DNR and EPA used.

11 MR. EFTINK: Move for introduction of
12 Exhibit 80.

13 JUDGE PRIDGIN: Any objections?

14 (No response.)

15 JUDGE PRIDGIN: Hearing none, Exhibit 80 is
16 admitted.

17 (EXHIBIT NO. 80 WAS RECEIVED INTO
18 EVIDENCE.)

19 BY MR. EFTINK:

20 Q. If you would look at your surrebuttal
21 testimony, Mr. Andrews.

22 A. Yes.

23 Q. I want to ask you a few questions about
24 that. On page 3, at line 8, you state that the NOX levels
25 for South Harper are five times lower than the NOX levels

1 for the compressor, correct?

2 A. Yes.

3 Q. And I think I asked you already what the
4 amount of pounds of pollutants that comes out of the
5 compressors, and you said you didn't check into that?

6 A. I don't recall that you asked me that
7 question.

8 Q. Okay. Let me ask you then to make sure.
9 Can you tell us the amount of pounds that comes out of
10 that compressor station of pollutants?

11 A. According to their permit -- and it'll take
12 me a minute to dig that out. I'm not sure if their permit
13 has been introduced as part of an exhibit or not. But if
14 it hasn't, I do have it here, and their permit to
15 construct from Missouri DNR on page -- I'm looking on
16 page 9. It's got the tons per year of various pollutants,
17 potential to emit of NOX is 133, VOCs 23.6, CO 74.1 and
18 HAPs, which stands for hazardous air pollutants, is 6.

19 Q. Do you know what they report as actually
20 being emitted from the compressor station?

21 A. I do not have that information.

22 Q. Now, you know that Mr. Stanley in his
23 testimony stated that he checked and he gave a figure for
24 the actual emissions from the compressor station, correct?

25 A. Well, he gave a number. I can't remember

1 if it was the permitted number or the actual number.

2 Q. And in your rebuttal, you did not check out
3 to determine what the actual emissions are from the
4 compressor station?

5 A. I checked the permitted levels.

6 Q. And as with South Harper, the permitted
7 levels could be above what the actual levels are?

8 A. It's possible.

9 Q. And you'll agree with me that the important
10 figure is the amount of pollutions that comes out of the
11 compressor station or out of South Harper in an hour's
12 time of operation?

13 A. The important parameter is that the air
14 that you breathe is healthy.

15 Q. Right. And to try to determine if we are
16 breathing healthy air, the amount of pounds of pollutants
17 in an hour's time that comes out of the operation is
18 important?

19 A. It is part of the equation, but it's not
20 the total answer.

21 Q. Now, when you said that the NOX levels for
22 South Harper are five times lower than that for the
23 compressor, how can you say that if you didn't check to
24 determine how many pounds of pollutants are being actually
25 produced by the compressor?

1 A. In my testimony what I did was I compared
2 the modeled levels that Missouri DNR included as part of
3 their permit to construct from the Williams Pipeline
4 compressor station to what was in our permit, and that's
5 what that comparison is based on.

6 Q. Is that amount of pounds that's actually
7 coming out of that?

8 A. No. It's a ground level concentration,
9 which is the air that you breathe.

10 Q. So that is in terms of a dilution?

11 A. Correct.

12 Q. Okay. And not the amount of pounds?

13 A. That's correct.

14 Q. So if we're looking at dilution, doesn't it
15 make a difference whether we're talking about 100 cubic
16 units of air as opposed to 1 cubic unit of air?

17 A. When you're making this measurement, it's
18 unit micrograms per cubic meter. So the comparative basis
19 between the South Harper emissions model, as well as the
20 compressor station, it's the same volume of air, if I'm
21 answering your question.

22 Q. But when South Harper's operating, the
23 volume of gases that comes out is much greater than the
24 volume of gases that comes out of the compressor?

25 A. Yes, that's correct.

1 Q. It may be 1,000 times more in gas that
2 comes out of the South Harper facility than out of the
3 compressor?

4 A. I don't know if that order of magnitude is
5 correct, but certainly there would be more exhaust air
6 coming out, yeah.

7 Q. But in your testimony, what you were
8 talking about was if you take one cubic measure of air
9 that comes out of South Harper and one cubic unit of air
10 that comes out of the compressor, just comparing those
11 side by side, you're saying that there's more dilution of
12 the pollutants in what comes out of South Harper?

13 A. Yes. What I'm saying is if you're standing
14 at a person's residence near the plant, the health impacts
15 are less from South Harper than they are from the
16 compressor station.

17 Q. But by your same reasoning, you would say
18 that there's more pollution coming out of a lawn mower
19 than comes out of the South Harper facility when all three
20 turbines are operating?

21 A. No. The air that you breathe, the pounds
22 per hour of emissions are just part of the equation. How
23 it disperses is a significant other part of the equation.

24 Q. So really to determine how the compressor
25 station compares to South Harper, we would also need to

1 know the number of pounds of pollutants that comes out of
2 each?

3 A. And I didn't try to make that
4 determination. I relied on Missouri Department of Natural
5 Resources and the information that they provided.

6 Q. And if somebody relies upon the information
7 on file in the way of a permit with the Missouri
8 Department of Natural Resources, that would be reasonable
9 to start with that, correct?

10 A. I believe so.

11 Q. But as far as the actual pounds or tons of
12 pollutants that comes out of the compressor, you simply
13 don't know?

14 A. I know the permitted amount. I don't know
15 their actuals.

16 Q. So in your surrebuttal on page 4, line 5,
17 where you say that since the 1950s the neighborhood has
18 had a source that emits emissions that are comparable to
19 South Harper, you can't tell us how many pounds of
20 pollutants have been coming out of that compressor
21 station?

22 A. Again, the important metric is the air
23 that's being -- that people breathe, and that's what my
24 comparison is based on, which includes the permitted
25 pounds per hour level of both sites.

1 Q. But that's just the permitted, that's not
2 the actual?

3 A. That's correct.

4 Q. And you can't tell us the actual pounds of
5 pollutants that comes out of that compressor?

6 MR. YOUNGS: Objection, asked and answered.

7 JUDGE PRIDGIN: Sustained.

8 BY MR. EFTINK:

9 Q. So how can you tell us that the two are
10 comparable when you don't know the amount of pounds that
11 comes out of the compressor in the way of pollution?

12 A. The compressor has the potential to remain
13 within its permit limits as given in the permit and still
14 be within the health-based standards that Missouri DNR and
15 EPA set for them. So that's the basis that this was done
16 on.

17 MR. EFTINK: I pass the witness.

18 JUDGE PRIDGIN: Mr. Eftink, thank you.

19 Mr. Coffman?

20 MR. COFFMAN: No questions.

21 JUDGE PRIDGIN: Thank you. See if we have
22 any questions from the Bench. Chairman Davis?

23 QUESTIONS BY CHAIRMAN DAVIS:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. When South Harper was operating, was it in
2 compliance with all EPA and DNR standards?

3 A. We have -- yes, it was.

4 Q. And to the best of your knowledge, if that
5 plant were to operate again, would it be in compliance
6 with all EPA and DNR standards?

7 A. Yes.

8 CHAIRMAN DAVIS: No further questions,
9 Judge.

10 JUDGE PRIDGIN: Mr. Chairman, thank you.
11 Commissioner Murray?

12 COMMISSIONER MURRAY: No questions, thank
13 you.

14 JUDGE PRIDGIN: Thank you. Any recross
15 based on Commissioner questions, Mr. Eftink?

16 MR. EFTINK: May I just ask a question from
17 here?

18 JUDGE PRIDGIN: Certainly.

19 RE-CROSS-EXAMINATION BY MR. EFTINK:

20 Q. Just following up on Commissioner Davis's
21 question as to whether Aquila has been in compliance with
22 all EPA and DNR standards, there were some excess
23 emissions reports relating to South Harper's emissions,
24 correct?

25 A. Yes, that's correct.

1 MR. EFTINK: Thank you.

2 JUDGE PRIDGIN: Thank you. Any further
3 recross?

4 (No response.)

5 JUDGE PRIDGIN: Redirect, Mr. Youngs?

6 MR. YOUNGS: Just briefly.

7 JUDGE PRIDGIN: Yes, sir.

8 REDIRECT EXAMINATION BY MR. YOUNGS:

9 Q. With regard to those excess emissions, were
10 those incidents that you reported to MDNR?

11 A. They were. And actually the rules and
12 regulations of EPA, as well as Missouri DNR, do have some
13 excursions that are allowed to still be considered in
14 compliance.

15 Q. And as a part of those, I think
16 Mr. Eftink -- some of the exhibits are in the record --
17 you proposed in those occasions recommendations or
18 indications of how you would keep that from happening
19 again, correct?

20 A. That's correct.

21 Q. And since those reports were filed with
22 MDNR, have you heard from MDNR regarding any notice of
23 violation or anything like that?

24 A. No, we have not.

25 Q. With regard to some questions that

1 Ms. Moore asked you regarding the open houses versus the
2 other public meetings, are you aware of any public
3 meetings that were held with regard to Aquila's MDNR
4 permit process?

5 A. Yes. Missouri DNR is -- part of their
6 permitting process does require a public meeting, and from
7 that public meeting comments are taken, and Missouri DNR
8 considers those comments and responds. And if needed,
9 they adjust the permit accordingly.

10 Q. Were you available for that meeting?

11 A. Yes, I was there.

12 Q. And available to answer any environmental
13 issues and related questions that might have come up?

14 A. Yes, I was.

15 Q. In addition, you're aware of public
16 hearings that were conducted in the 0248 case?

17 A. Yes.

18 Q. And public hearings that have been convened
19 and attended by Cass County residents and other interested
20 people in this case; is that correct?

21 A. That's correct.

22 Q. With regard to the noise report, the --
23 excuse me for a minute. Exhibit 76, which is the ATCO
24 study?

25 A. Yes.

1 Q. Mr. Eftink asked you some questions
2 regarding the decibel levels that were recorded within the
3 site. Do you recall that?

4 A. Yes.

5 Q. And I think those are contained on page 10
6 of that exhibit; is that correct?

7 A. That's correct.

8 Q. And with regard to the 112 decibels level
9 that was the No. 1 ranked measurement that Mr. Eftink
10 talked to you about, where does Table 3.4 indicate that
11 you would have to be located in order to experience
12 decibel levels that high?

13 A. Under the starting motor enclosure.

14 Q. With regard to the other decibel level that
15 I think Mr. Eftink referenced, which was the 90 decibel
16 level range, No. 14, where would you have to be located on
17 the site in order to experience decibel levels that high?

18 A. Under the hood of the turbine enclosure
19 intake between two vents.

20 Q. Thank you. Mr. Eftink talked to you an
21 awful lot about pounds per hour of pollutants, and I think
22 towards the end of your examination you mentioned that
23 that is not the total answer in determining the health
24 impact of the facility. Do you recall that testimony?

25 A. Yes, I do.

1 Q. What other elements of the equation does
2 one have to consider when determining the total answer of
3 what the health impact of the South Harper facility is?

4 A. Well, you have to consider not only the
5 dispersion of the localized sources, but you also have to
6 consider pollution that's transported in from other areas.
7 On a daily basis, I'm sure there's tons of pollutants that
8 go through the South Harper area, but it's not a practical
9 measure to measure tons of pollutants of the atmosphere.
10 So what the metric is to measure that is usually parts per
11 milligram or micrograms, and that's -- that is the --
12 that's the concentration in the air that you breathe.

13 Q. And based on your experience and the
14 studies that have been done both by you, directed by you,
15 what is your opinion in terms of the health impact of the
16 South Harper facility on the neighboring residents?

17 A. The health impacts are insignificant.

18 Q. With regard to Exhibit No. 80, which was
19 the series of e-mails that Mr. Eftink talked to you
20 about --

21 A. Yes.

22 Q. -- and I just wanted to make sure I
23 understood your answer. With regard to the emission
24 impacts within two miles of the plant, those were from
25 your evaluation from the gas heater and the diesel fire

1 pump; is that correct?

2 A. That's correct.

3 Q. And those units were ultimately not
4 constructed as part of the South Harper facility; is that
5 correct?

6 A. Yes, that's correct.

7 MR. YOUNGS: Thank you. Those are all the
8 questions I have of this witness. Thank you, Judge.

9 JUDGE PRIDGIN: Mr. Youngs, thank you.
10 Anything else?

11 (No response.)

12 JUDGE PRIDGIN: Seeing nothing further,
13 Mr. Andrews, thank you very much. You may step down.

14 And just to make sure that I'm up to speed
15 with the witnesses that would be on next, do I understand
16 that Mr. Huslig -- am I pronouncing that correctly -- will
17 testify next for Aquila, and then we would temporarily be
18 out of Aquila witnesses at least for the rest of the day.
19 Am I understanding correctly?

20 MR. SWEARENGEN: Yes, sir.

21 JUDGE PRIDGIN: And then we would proceed
22 on to Staff witnesses, and then perhaps after Mr. Huslig,
23 then we could go on to Mr. Bender, and then if time
24 permitted, Ms. Mantle?

25 MS. SHEMWELL: That's correct.

1 JUDGE PRIDGIN: All right. Just to be sure
2 everybody is kind of following along with how I intend to
3 call witnesses.

4 Anything further before we go on to
5 Mr. Huslig?

6 (No response.)

7 JUDGE PRIDGIN: If you would, sir, please
8 come forward to be sworn.

9 (Witness sworn.)

10 JUDGE PRIDGIN: If you would please have a
11 seat, and Mr. Youngs or Mr. Swearengen?

12 MR. SWEARENGEN: Thank you, your Honor.

13 CARL A. HUSLIG testified as follows:

14 DIRECT EXAMINATION BY MR. SWEARENGEN:

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

17 A. Carl A. Huslig.

18 Q. By whom are you employed?

19 A. Aquila, Incorporated.

20 Q. And what is your position with Aquila?

21 A. Vice president electrical transmission.

22 Q. Did you cause to be prepared for purposes
23 of this proceeding certain direct testimony in question
24 and answer form?

25 A. Yes, I did.

1 Q. And do you have a copy of that testimony
2 with you on the witness stand this afternoon?

3 A. Yes, I do.

4 Q. And you understand it's been marked for
5 purposes of identification as Exhibit 6? Is that your
6 understanding?

7 A. Yes.

8 Q. Are there any changes or corrections that
9 you wish to make to that testimony at this time?

10 A. No, there's not.

11 Q. So if I asked you the questions contained
12 in that testimony, would your answers today under oath be
13 the same as contained in Exhibit 6?

14 A. Yes, they would be.

15 Q. And would those answers be true and correct
16 to the best of your knowledge, information and belief?

17 A. Yes, they would be.

18 MR. SWEARENGEN: With that, your Honor, I'd
19 offer into evidence Exhibit 6 and tender the witness for
20 cross-examination.

21 JUDGE PRIDGIN: Mr. Swearengen, thank you.
22 Any objections to Exhibit No. 6?

23 (No response.)

24 JUDGE PRIDGIN: Hearing none, Exhibit
25 No. 6 is admitted into evidence.

1 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

2 JUDGE PRIDGIN: Proceed to
3 cross-examination, and I have misplaced my list. I should
4 have this memorized by now, as much as we've been through
5 it. I think we had been going to Staff, see if we have
6 any questions.

7 MS. SHEMWELL: No questions, thank you.

8 JUDGE PRIDGIN: All right. Thank you. And
9 then I've been bypassing others unless they say otherwise
10 and going on to Cass County, if I recall. Mr. Comley?

11 MR. COMLEY: Thank you.

12 CROSS-EXAMINATION BY MR. COMLEY:

13 Q. Mr. Huslig, I have a few questions on
14 behalf of Cass County. Turn with me, if you will, to
15 page 2 of your direct testimony. On page 2 you talk about
16 that the transmission planning department modeled a
17 315-megawatt generation facility at each proposed location
18 and determine the necessary transmission upgrades to
19 interconnect the corresponding facility.

20 Tell me, what would go into the model for
21 that facility?

22 A. We would just put a generating plant, a
23 315 megawatts at a particular site, connected to the
24 closest transmission line. Then the model would determine
25 what overloads are as a result of that system and then

1 come up with a transmission plan to provide the necessary
2 upgrades to allow that generation plant to be input into
3 the transmission network.

4 Q. What I'm visualizing is some sort of model
5 to scale, or is this an abstract model that you put into a
6 computer base of some sort?

7 A. It's just a computer-based model that has
8 loads, lines, impedances, capacitors, reactors, electrical
9 infrastructure on the transmission system.

10 Q. And then the inputs that you would put in
11 there would be the actual transmission grids or the actual
12 transmission facilities that would be accompanying the
13 site?

14 A. The base model is based off of existing
15 transmission infrastructure that is in service today.

16 Q. Okay. You also said before this that
17 Aquila's generation services department requested that the
18 Aquila transmission system planning department perform
19 interconnect studies on several proposed sites. Now, can
20 you tell me, when did you get that request? Can you
21 recall when that came in?

22 A. I think it was the first half of '04 when
23 they first started looking at their sites.

24 Q. Would it have been at the beginning of '04
25 or would it have been sometime after?

1 A. I want to say around in the quarter, the
2 March/April time frame.

3 Q. And which sites were you actually
4 evaluating? Which sites did they ask you to look at?

5 A. If you look farther down in my testimony,
6 on answer -- on line 22, the answer, the five original
7 sites are listed there, Camp Branch, Richards Gebaur,
8 Ralph Green Plant, Turner Road, Aries and Section 33.

9 Q. I see it now. Can you tell me what
10 Section 33 refers to?

11 A. I --

12 Q. Would you know if that would mean in
13 comparison to Mr. Rogers' schedule this morning, by the
14 way?

15 A. That was a site that was selected, and
16 where exactly it is, I don't know, but what we did is
17 attached it to the closest transmission infrastructure.

18 Q. Let's talk about the study of Aries for a
19 minute. This would be the Aries plant that's owned by the
20 Calpine independent power producer; is that correct?

21 A. Actually, this particular Aries site was
22 the adjacent property that Chris Rogers referenced in his
23 testimony this morning.

24 Q. All right. So it's adjacent to Calpine.
25 That would have been -- do you recollect how big a place

1 that is? But you know that it's an extra space near the
2 Aries plant, it's right next door to it?

3 A. To my recollection, that's correct.

4 Q. All right.

5 A. From a transmission modeling perspective,
6 we put it right there at the Aries plant, inject
7 350 megawatts into the model.

8 Q. Okay. Now, on page 3 of your testimony,
9 you said that from an electric perspective, the Camp
10 Branch site north of Harrisonville and Aries were
11 preferred. Now, let me ask you this: What were the
12 factors that you considered in concluding that Aries and
13 Camp Branch were preferred sites from a transmission
14 perspective?

15 A. Again, injecting 350 megawatts into the
16 models resulted in overload. So in order to fix those
17 overloads, we came up with solutions. We went to our
18 engineering department, got cost estimates for those
19 proposed solutions, and totalized those up. So it's
20 purely from an economic solution transmission-wise, what
21 would be the most cost efficient when you look at, you
22 know, whether you had to build 30 miles of new line or
23 five miles or just reconductor. Some sites you didn't
24 have any additional infrastructure.

25 Q. By recommending the sites to you in

1 connection with the preparation of your model, does the
2 company presume that these sites would have most of the
3 needed infrastructure to be a site to consider, such as a
4 fuel source?

5 A. That would be outside of my purview. They
6 bring the sites to us and we study them from a
7 transmission-only perspective.

8 Q. You wouldn't have the benefit of any, I'll
9 say, foundation for your study, it's just they request the
10 study and you perform the study?

11 A. Yes. They give us a site, we figure out
12 the closest -- we inject that generation into the model
13 and let the model solve, and if it solves without any
14 overloads, it's a site that would require zero additional
15 infrastructure. If it requires many lines, we would come
16 up with the upgrades necessary to get that 350 megawatts
17 delivered to the network.

18 Q. Now, other witnesses in this proceeding
19 have talked about a proposed expansion project by the, I
20 think, the Aquila merchant partner back in 2002. Were you
21 aware of that?

22 A. Yes. They were connecting to my
23 transmission -- or Aquila's transmission system, and we
24 treat -- we have to treat, due to FERC rules, all
25 generators, whether it's in-house generation, self-builds,

1 IPPs or any type of marketers, the same way. So the
2 merchant side of the business came and made a request of
3 us to study 350 megawatts at Aries.

4 Q. Let me show you something. I'll have
5 something marked.

6 MR. COMLEY: May I approach the witness?

7 JUDGE PRIDGIN: You may.

8 (EXHIBIT NO. 81 WAS MARKED FOR
9 IDENTIFICATION BY THE REPORTER.)

10 BY MR. COMLEY:

11 Q. Mr. Huslig, I've asked the court reporter
12 to mark as Exhibit 81 a two-page exhibit. It's a
13 facsimile cover sheet with the Blackwell Sanders firm
14 letterhead and a letter addressed to Darrell Wilson dated
15 February 26, 2002. Would you mind taking a look at that
16 letter for a moment and see if you can identify the
17 subject matter?

18 A. Having now read it, can you repeat your
19 question?

20 Q. Do you recognize this as the power plant
21 expansion project that was in 2002 that you were referring
22 to in your testimony? Maybe I misunderstood, but --

23 A. It is the same -- I mean, it would be for
24 the same Aries 2 generating facility connecting to the
25 transmission system, so yes.

1 Q. It is. Okay. So there was a plan in 2002
2 to expand that Aries plant, and presumably along the side
3 where the -- you were talking about earlier, that piece of
4 property next door to the plant?

5 A. I would not say there was a plan. That was
6 an option that was reviewed, and we performed a
7 transmission study just like we would for any other site
8 for any generator coming to -- with the purpose of
9 interconnecting to our transmission system.

10 MR. SWEARENGEN: Your Honor, I would just
11 like to note for the record, so there's no confusion, that
12 we talk about Aquila and there's Aquila the regulated
13 utility, which is subject to your jurisdiction, and then
14 there is its unregulated merchant subsidiary. I think
15 this letter and the discussion about this plant refer to
16 the unregulated side of the business.

17 MR. COMLEY: That is correct. This exhibit
18 talks about the unregulated side of Aquila asking for this
19 expansion.

20 JUDGE PRIDGIN: All right. Thank you,
21 Counsel.

22 MR. COMLEY: And because it's been
23 recognized by the witness, I would move for the admission
24 of Exhibit 81.

25 JUDGE PRIDGIN: Any objections?

1 (No response.)

2 JUDGE PRIDGIN: Hearing none, Exhibit 81 is
3 admitted.

4 (EXHIBIT NO. 81 WAS RECEIVED INTO
5 EVIDENCE.)

6 BY MR. COMLEY:

7 Q. On page 4, you talk about the transmission
8 upgrades that were needed for the South Harper facility,
9 and what I was going to ask you is, do you know if any of
10 the upgrades that were necessary for South Harper, would
11 those have been necessary if Aries had ever been selected
12 as a preferred site under your transmission model?

13 A. Aries had their own transmission upgrades
14 that were necessary specific to that site.

15 Q. So there would be other transmission
16 upgrades besides the ones that would have been at South
17 Harper; is that what you're saying?

18 A. No. I'm saying Aries -- the Aries proposal
19 would have had its own set of transmission upgrades
20 necessary to inject it into the system versus South Harper
21 had their own set. I mean, there's two separate locations
22 on the transmission system.

23 Q. That's right. The upgrades that you talked
24 about -- let's see. The question is, would any of these
25 transmission upgrades have been required even if the South

1 Harper peaking facility had not been constructed?

2 Let me ask you this: Would the same
3 transmission upgrades have been needed for Aries for it to
4 be a preferred site under your load?

5 A. It was connecting to a different part of
6 our transmission system, so it had its own set of
7 transmission requirements, and these would not have been
8 part of that, no.

9 Q. They would not have been part of it. I'm
10 gathering from that that the ones at Aries would have been
11 all right; is that correct? There wouldn't have been any
12 more transmission facilities needed?

13 A. No. There was transmission upgrades
14 necessary for Aries, too.

15 Q. For Aries as well. Would they be
16 comparable upgrades or can you recall whether there would
17 be more expensive upgrades involved?

18 A. I would say comparable.

19 Q. Comparable. On page -- the top of page 4,
20 we're staying in that area, the question is, what site was
21 finally chosen by the generation services group, your
22 group, and that was the South Harper site. And then the
23 question is, why was South Harper chosen over the Raymore
24 site? And the answer is, South Harper had better overall
25 economic reasons than did Raymore.

1 Is that a fair reading of your testimony at
2 those pages?

3 A. I would like to correct you. I'm not in
4 the generation services group. I'm in transmission
5 services.

6 Q. Yes, but I'm looking at your testimony on
7 page 3, and it says, what site was finally chosen by the
8 generation services group? Is it correct that generation
9 services picked the South Harper site?

10 A. Yes.

11 Q. Okay. And in your testimony you said that
12 the explanation for you was that South Harper had better
13 overall economic reasons.

14 Now, was that explained to you or did you
15 have contact with economic development people that
16 directly you understood that there were economic decisions
17 that led to that decision?

18 A. No. As I stated earlier, transmission was
19 a part of the complete puzzle. We provided the
20 transmission information necessary to interconnect the
21 system that went into their model, and they determined the
22 site based on all the determinations that Terry Hedrick
23 and Chris Rogers talked about.

24 Q. All right. Well, what I'm thinking is, you
25 probably were not a part of the process to determine the

1 economic reasons for that choice; is that correct?

2 A. That is correct. I provided transmission
3 information only.

4 MR. COMLEY: Let me look at my notes real
5 quick. I have no other questions.

6 JUDGE PRIDGIN: Mr. Comley, thank you.
7 Mr. Eftink?

8 MR. EFTINK: Yes.

9 CROSS-EXAMINATION BY MR. EFTINK:

10 Q. Good afternoon. Mr. Huslig, on page 3,
11 starting at line 1 of your prefiled testimony, from an
12 electric transmission perspective, the Camp Branch site
13 and the Aries site were preferred, and Camp Branch was
14 chosen; is that correct?

15 A. Yes, that is.

16 Q. And when you looked at your transmission
17 planning, you looked at the entire area, correct?

18 A. We look at our internal system, as well as
19 our impact on our neighboring systems as well, yes.

20 Q. And then in a second round of review that
21 included South Harper, Raymore, Greenwood, Belton,
22 Harrisonville, from that group Raymore was the preferred
23 site, not South Harper. Do you see that on page 3,
24 line 11, correct?

25 A. Yes. Again repeating from a transmission

1 perspective, Raymore would have required less new
2 transmission infrastructure than South Harper.

3 MR. EFTINK: Okay. That's all I have for
4 this witness.

5 JUDGE PRIDGIN: Mr. Eftink, thank you.
6 Mr. Coffman?

7 MR. COFFMAN: No questions.

8 JUDGE PRIDGIN: Thank you. Let me see if
9 we have any questions from the Bench. Chairman Davis?

10 CHAIRMAN DAVIS: No questions for this
11 witness, Judge.

12 JUDGE PRIDGIN: Thank you, Mr. Chairman.
13 Commissioner Murray?

14 COMMISSIONER MURRAY: No questions.

15 JUDGE PRIDGIN: Commissioner Clayton?

16 COMMISSIONER CLAYTON: No.

17 JUDGE PRIDGIN: Any redirect?

18 MR. SWEARENGEN: Just a couple, your Honor.

19 JUDGE PRIDGIN: Yes, sir.

20 REDIRECT EXAMINATION BY MR. SWEARENGEN:

21 Q. Would you turn to page 2 of your testimony,
22 please?

23 A. You said page 2?

24 Q. Page 2. And at line 19 in your answer, you
25 list the sites that you studied, Camp Branch, Richards

1 Gebaur, Ralph Green Plant, Turner Road, Aries and
2 Section 33?

3 A. Yes.

4 Q. And when you say Aries, is that the same
5 Aries location that Chris Rogers testified about this
6 morning?

7 A. Yes, it is.

8 Q. And then Mr. Comley asked you about a
9 letter which has been marked as Exhibit 81, a letter
10 written back in 2002 involving the merchant side or the
11 unregulated side of Aquila's business and the Aries/
12 Calpine plant. Do you recall that?

13 A. Yes, I do.

14 Q. And you have that letter in front of you?

15 A. Yes.

16 Q. Is it your understanding that the project
17 that's identified in Exhibit 81 is something different and
18 distinct from what you're talking about in your direct
19 testimony?

20 A. To the best of my knowledge, yes, it is.

21 MR. SWEARENGEN: Thank you. That's all I
22 have.

23 JUDGE PRIDGIN: Mr. Swearengen, thank you.
24 If there's nothing further from the Bench, Counsel? Thank
25 you very much, Mr. Huslig.

1 Do I understand that at least for now we
2 are out of Aquila witnesses? We'll go on to Staff.

3 MS. SHEMWELL: Thank you. Staff calls
4 Mr. Leon Bender.

5 JUDGE PRIDGIN: All right. Mr. Bender, if
6 you'd please come forward to be sworn, sir.

7 (Witness sworn.)

8 JUDGE PRIDGIN: Thank you very much, sir.
9 If you would please have a seat. And Ms. Shemwell or
10 Mr. Williams?

11 MS. SHEMWELL: Thank you, Judge.

12 LEON BENDER testified as follows:

13 DIRECT EXAMINATION BY MS. SHEMWELL:

14 Q. Mr. Bender, would you spell your last name
15 for the court reporter, please.

16 A. B-e-n-d-e-r.

17 Q. Mr. Bender, where do you work?

18 A. I work in the energy department of the
19 Missouri Public Service Commission.

20 Q. What do you do for the Commission?

21 A. I'm a regulatory engineer.

22 Q. How long have you been with the Commission?

23 A. Approximately ten years.

24 Q. Mr. Bender, did you prepare testimony for
25 this case?

1 A. Yes.

2 Q. Did you prepare rebuttal testimony that's
3 been marked as Exhibit No. 15?

4 A. Yes.

5 Q. And surrebuttal that's been marked as
6 Exhibit 16?

7 A. Yes.

8 Q. Do you have those with you?

9 A. Yes, I do.

10 Q. Mr. Bender, do you have any corrections to
11 your testimony?

12 A. Yes, I do.

13 Q. To your rebuttal testimony?

14 A. To my surrebuttal.

15 Q. Thank you.

16 A. On page 2, line 15, strike the words the
17 nearest residence, which is approximately a half a mile
18 away, and add the word, many residences. That makes the
19 sentence reading, the distance is much closer than many
20 residences and much closer than three-quarters of a mile.

21 On page 2, line 18, there's a typo. It
22 says me4T. Strike that word, that should be meets. On
23 page 3, line 10, strike the words residential noise
24 assessment study, and add the noise compliance study. On
25 line 11, strike the words as measured in various spots

1 near many residences.

2 Q. Did you have a correction on line 12, page
3 2, they were taken?

4 A. They were taking, yes.

5 Q. Taken instead of taking, is that your
6 correction?

7 A. Yes, it is.

8 Q. Mr. Bender, if I were to ask you these same
9 questions, would your answers be the same?

10 A. Yes, they would.

11 Q. Is your testimony complete, true and
12 correct to the best of your knowledge, information and
13 belief?

14 A. Yes, it is.

15 MS. SHEMWELL: That's all I have. I would
16 move for the admission of Exhibits 15 and 16.

17 JUDGE PRIDGIN: Thank you. Any objections?

18 (No response.)

19 JUDGE PRIDGIN: Hearing none, Exhibits 15
20 and 16 are admitted into evidence.

21 (EXHIBIT NOS. 15 AND 16 WERE RECEIVED INTO
22 EVIDENCE.)

23 JUDGE PRIDGIN: Anything further,
24 Ms. Shemwell?

25 MS. SHEMWELL: No, thank you.

1 JUDGE PRIDGIN: We'll move on to
2 cross-examination. Looks like first on deck is Aquila.
3 CROSS-EXAMINATION BY MR. SWEARENGEN.

4 Q. Mr. Bender, I'm looking at page 7 of your
5 direct -- or excuse me -- your rebuttal testimony. Do you
6 have that in front of you?

7 A. Rebuttal testimony?

8 Q. Yes, sir.

9 A. Yes.

10 Q. Down there on lines 16 and 17, you indicate
11 that the South Harper station has not operated since
12 December 6, 2005; is that correct?

13 A. Yes, according to documents I've reviewed.

14 Q. And that's still your testimony?

15 A. Yes, it is.

16 Q. To your knowledge, has that plant ever
17 operated?

18 A. Has it ever operated?

19 Q. Yes.

20 A. Yes, it has.

21 Q. And when would that have been?

22 A. In June, July and August, and I think there
23 were other months, but I'm not quite sure of those.

24 Q. Of 2005?

25 A. Of 2005, yes.

1 Q. If you would turn back to page 5 of your
2 testimony, please. On line 10, you mention something
3 called a staff in-service criteria. Do you see that?

4 A. Yes, I do.

5 Q. And can you just generally describe what
6 that is? You say in-service criteria established for
7 these units. Can you just tell me what that is?

8 A. In-service criteria is established for
9 means of determining whether the -- a plant will meet
10 operational standards and criteria, as we call it, when
11 it's newly built, before it can be admitted into rates.

12 Q. Were the criteria that you're talking about
13 established especially for these facilities, for this
14 plant, or were they something that you-all had utilized,
15 the staff had utilized in past cases involving this type
16 of plant?

17 A. No. We've used these in other cases also.

18 Q. And can I assume from your testimony that
19 the plant at the South Harper facility satisfied the
20 staff's in-service criteria?

21 A. Yes, it did.

22 Q. And so from an engineering standpoint, it
23 would be your testimony that the South Harper facility was
24 fully operational?

25 A. Yes, it was.

1 Q. And it has been used for service, correct?

2 A. Yes, it has.

3 MR. SWEARENGEN: Thank you. That's all I
4 have.

5 JUDGE PRIDGIN: Mr. Swearengen, thank you.
6 Mr. Eftink?

7 MR. EFTINK: Your Honor, could I just have
8 a couple minutes?

9 JUDGE PRIDGIN: Certainly. Or if you need
10 a few minutes, I can go on and see if Cass County has any
11 questions.

12 MR. EFTINK: Yes.

13 JUDGE PRIDGIN: That's fine. Mr. Com--
14 anybody from Cass County?

15 MR. COMLEY: I think just one.

16 CROSS-EXAMINATION BY MR. COMLEY:

17 Q. Mr. Bender, in connection with the
18 in-service criteria that's identified on page 5 of your
19 rebuttal testimony, is it clear, sir, that with respect to
20 the in-service criteria, it is contingent upon Aquila
21 acquiring certification from this Commission; is that
22 correct?

23 MS. SHEMWELL: I'd object to the extent
24 this calls for any sort of legal conclusion. We will
25 stipulate that Mr. Bender is not an attorney.

1 JUDGE PRIDGIN: Ask your question again,
2 Mr. Comley. I'm not sure where you're going with it.

3 MR. COMLEY: I was going to ask Mr. Bender
4 if the in-service criteria that he has utilized still is
5 contingent upon proper certification of South Harper in
6 this proceeding.

7 JUDGE PRIDGIN: I'll overrule and let him
8 answer if he knows the answer to that question. I don't
9 know that it's calling for a legal conclusion.

10 THE WITNESS: The in-service criteria is an
11 operational engineering type of review to see that the
12 plant has met all the engineering operational type of
13 functions. Not necessarily a legal review.

14 BY MR. COMLEY:

15 Q. So provided it does acquire certification,
16 those in-service criteria may play into a future rate case
17 in which the company tries to get the plant into rate
18 base?

19 MS. SHEMWELL: Wait a minute. I think
20 Mr. Bender said that it's just engineering criteria. He
21 didn't say anything about certificate; is that correct?

22 THE WITNESS: That's correct.

23 MS. SHEMWELL: I don't want your testimony
24 mischaracterized.

25 BY MR. COMLEY:

1 Q. Do you understand the question?

2 A. Repeat the question, please.

3 Q. Then I take it that the in-service criteria
4 that you have talked about, provided there is a
5 certificate issued for the plant, those criteria would be
6 useful at some later rate case at which the plant is
7 offered into the rate base?

8 A. The criteria would be useful, yes.

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

10 JUDGE PRIDGIN: Mr. Comley, thank you.
11 Mr. Eftink?

12 MR. EFTINK: Yes.

13 CROSS-EXAMINATION BY MR. EFTINK:

14 Q. Now, Mr. Bender, you said you were onsite
15 or visited the site several times. Were you aware of the
16 ATCO noise study, which is marked as Exhibit 76?

17 A. No, I was not.

18 Q. You weren't. Did Aquila give you a copy of
19 this ATCO noise study?

20 A. No, they did not.

21 Q. But you were present in the courtroom today
22 when we talked about what this ATCO noise study showed?

23 A. I was listening.

24 Q. Okay. And you don't have any reason to
25 doubt that they measured the noise at Mr. Stanley's house,

1 which is about three-quarters of a mile away, at over the
2 Cass County noise ordinance levels with one turbine
3 running?

4 MS. SHEMWELL: Judge, I'm not sure what
5 Mr. Bender would doubt or not doubt is material or
6 relevant to the discussion here. If he knows, he knows,
7 but whether or not he doubts I don't think is really
8 relevant.

9 MR. EFTINK: Well, I think it is, your
10 Honor, because he is being offered as a witness who is
11 saying they are in compliance with the noise ordinance or
12 that there's not a noise problem, when we have a study
13 that shows that this was a problem that Aquila didn't make
14 him aware of.

15 MS. SHEMWELL: Certainly he can testify as
16 to what he knows, but what he doubts, when he hasn't seen
17 the exhibit, I think it would be hard for him to say.

18 JUDGE PRIDGIN: Yeah, I don't want him to
19 speculate. It sounds like you're asking him to speculate.
20 He can certainly testify to what he know. So I'll sustain
21 the objection.

22 BY MR. EFTINK:

23 Q. Did you ask Aquila for any noise studies
24 that were done on the South Harper plant?

25 A. Yes, I did.

1 Q. And they didn't give you the ATCO noise
2 study?

3 A. It was done af-- as far as I know from
4 listening to the previous testimony given here today, that
5 was done after they had already proven our in-service
6 criteria had been met, so no, we did not ask for any
7 additional noise studies.

8 Q. Is it correct to say that your visits were
9 prior to the time that the plant became operational?

10 A. Some of my visits were, yes.

11 Q. Most of your visits would have been before
12 the time the plant became operational?

13 A. No. I visited quite a few times after the
14 plant was operational.

15 Q. Now, you're not an expert on sound
16 engineering and recording, are you?

17 A. No, I'm not.

18 MR. EFTINK: That's all I have of this
19 witness.

20 JUDGE PRIDGIN: Mr. Eftink, thank you.
21 Mr. Coffman?

22 MR. COFFMAN: Thank you.

23 CROSS-EXAMINATION BY MR. COFFMAN:

24 Q. Good afternoon, Mr. Bender.

25 A. Good afternoon.

1 Q. I understand your testimony to be that you
2 have been out to this location several times?

3 A. Yes.

4 Q. Am I also understanding your testimony
5 correctly that you estimate the distance to the nearest
6 residence to be half a mile away?

7 A. No. I believe I changed that --

8 Q. Okay.

9 A. -- in my testimony just now.

10 Q. I'm sorry if I didn't catch that
11 correction. What is the correction?

12 A. In my surrebuttal testimony.

13 Q. Yes. Page 2, line 15 is where I --

14 A. I deleted that line and said many
15 residences. No, there is a residence which is closer and
16 it's right across from the compressor station.

17 Q. You know that to be Frank Dillon's
18 residence?

19 A. Yes, I do.

20 Q. And did you do any testing yourself or
21 examination from that property, Mr. Dillon's residence
22 across the street?

23 A. No, Staff did no testing itself.

24 Q. Okay. So all of the information you are
25 relaying in your testimony is secondhand through

1 information that Aquila's provided you, correct?

2 A. Provided me through DRs and information we
3 get through the rate case, yes.

4 MR. COFFMAN: I think that's it. That
5 clears it up. Thank you.

6 JUDGE PRIDGIN: Mr. Coffman, thank you.
7 See if we have any questions from the Bench. Commissioner
8 Murray?

9 COMMISSIONER MURRAY: No questions.

10 JUDGE PRIDGIN: All right. Thank you.

11 COMMISSIONER CLAYTON: I have no questions.

12 JUDGE PRIDGIN: All right. Thank you.

13 Any redirect?

14 MS. SHEMWELL: No redirect. Thank you,
15 your Honor. I would note Mr. Bender did testify in the --
16 which case was it, Nathan? Aquila's last rate case
17 concerning in-service criteria, if the Commission had any
18 interest in taking note of that. That's all I have.
19 Thank you very much.

20 JUDGE PRIDGIN: Thank you, Mr. Bender.
21 Thank you very much. You may step down.

22 Do I understand correctly that the next
23 witness will be Ms. Mantle?

24 MS. SHEMWELL: That's correct. Staff calls
25 Mrs. Lena Mantle to the stand.

1 JUDGE PRIDGIN: Ms. Mantle, if you'd come
2 forward and be sworn, please. After Ms. Mantle may be a
3 convenient time to take a break.

4 (Witness sworn.)

5 JUDGE PRIDGIN: Thank you very much. If
6 you would please have a seat. Ms. Shemwell, when you're
7 ready.

8 MS. SHEMWELL: Thank you.

9 LENA MANTLE testified as follows:

10 DIRECT EXAMINATION BY MS. SHEMWELL:

11 Q. Ms. Mantle, did you prepare testimony for
12 this case?

13 A. Yes, I did.

14 Q. Did you prepare rebuttal testimony?

15 A. Yes, I did.

16 Q. It has been marked as Exhibit 17, correct?

17 A. That is correct.

18 Q. It is currently marked as highly
19 confidential and nonproprietary. Have you since
20 discovered that it may be all considered to be not
21 confidential?

22 A. Yes. After discussions yesterday with the
23 company, we decided that it could be marked, all of it,
24 nonconfidential.

25 MS. SHEMWELL: So, your Honor, we would

1 suggest that the HC designation be removed from
2 Ms. Mantle's Exhibit 17 and the entire testimony may be
3 considered public. We will make that change in EFIS.

4 JUDGE PRIDGIN: Thank you, Ms. Shemwell.
5 Any objections?

6 MR. SWEARENGEN: That's agreeable to the
7 company. Thank you.

8 JUDGE PRIDGIN: Hearing none, we will show
9 Exhibit No. 17 for identification purposes is now a public
10 document.

11 BY MS. SHEMWELL:

12 Q. And you also prepared surrebuttal that's
13 been marked as Exhibit 18; is that correct?

14 A. That is correct.

15 Q. Ms. Mantle, if I were to ask you the same
16 questions today that appear in your testimony, would your
17 answers be substantially the same?

18 A. Yes, they would.

19 Q. Do you have any corrections to your
20 testimony?

21 A. No, I do not.

22 Q. Is your testimony complete, true and
23 correct to the best of your information, knowledge and
24 belief?

25 A. Yes, it is.

1 MS. SHEMWELL: Thank you, Judge. I tender
2 the witness for cross. I would like to offer 17 and 18.

3 JUDGE PRIDGIN: Thank you. I'll show 17
4 and 18 have been offered. Any objections?

5 (No response.)

6 JUDGE PRIDGIN: Hearing none, Exhibits 17
7 and 18 are admitted into evidence.

8 (EXHIBIT NOS. 17 AND 18 WERE RECEIVED INTO
9 EVIDENCE.)

10 JUDGE PRIDGIN: Proceed to
11 cross-examination. Mr. Swearengen?

12 MR. SWEARENGEN: Just a couple.

13 CROSS-EXAMINATION BY MR. SWEARENGEN:

14 Q. Ms. Mantle, I'm looking at page 7 of your
15 rebuttal testimony. Do you have that in front of you?

16 A. Yes, I do.

17 Q. There beginning on lines 4, 5 and 6, you
18 talk about the fact that the ratio of MPS's residential
19 class annual energy usage to its industrial class usage is
20 very high. When you say MPS, are you talking about the
21 Missouri Public Service operating division of Aquila?

22 A. Yes, only that division.

23 Q. And not the old St. Joseph Light & Power
24 properties, which are sometimes called the L&P division;
25 is that right?

1 A. That is right. I calculated that
2 separately.

3 Q. And you indicate that the Aquila - MPS
4 ratio is 3.05?

5 A. Yes.

6 Q. Is that sometimes referred to as a load
7 factor?

8 A. No. Load factor would be taking the entire
9 company.

10 Q. Okay. How does Aquila - MPS -- do you have
11 a load factor for just Aquila - MPS?

12 A. I calculated that, but I do not have that
13 number with me.

14 Q. Does the ratio you show there on page 7 of
15 your testimony dictate the type of generating capacity
16 that a company should either build or acquire?

17 A. No, it does not.

18 Q. Is it your testimony that a utility should
19 build capacity or acquire capacity to meet the loads that
20 it has?

21 A. Yes.

22 MR. SWEARENGEN: That's all I have. Thank
23 you.

24 JUDGE PRIDGIN: Mr. Swearengen, thank you.
25 Let me move on to the next counsel. Ms. Mantle, if I

1 could ask you to try to speak up a little more clearly to
2 the microphone, get a little closer to it, I'd appreciate
3 it.

4 Mr. Eftink?

5 MR. EFTINK: Yes. First, your Honor --

6 JUDGE PRIDGIN: Is your microphone on,
7 Mr. Eftink?

8 MR. EFTINK: The copy of the rebuttal
9 testimony of Lena Mantle that I have has got some lines
10 redacted. Apparently it was copied that way at a time
11 when it was confidential. I don't have a nonconfidential
12 version.

13 Thank you. If I could have a few minutes
14 to review page 6.

15 JUDGE PRIDGIN: Certainly. Let me go ahead
16 also and move on and see if Cass County knows if it has
17 any cross-examination.

18 MS. MARTIN: Yes.

19 JUDGE PRIDGIN: Whenever you're ready,
20 Ms. Martin.

21 MS. MARTIN: I appreciate your letting me
22 come to the podium. It's awkward being over in the
23 corner.

24 CROSS-EXAMINATION BY MS. MARTIN:

25 Q. Ms. Mantle, as you know, my name is Cindy

1 Reams Martin. I represent Cass County. I have just a few
2 questions for you today with respect to your direct -- or
3 excuse me -- your rebuttal and surrebuttal testimony.
4 Okay?

5 You say in your rebuttal testimony on
6 page 2 at line 18 that you provided testimony in a recent
7 rate case for Aquila; is that correct?

8 A. That is correct, I did.

9 Q. And in that testimony, you provided your
10 opinion that Aquila's optimal resource plan would have
11 been to build not three combustion turbines but, in fact,
12 five; is that correct?

13 A. I actually provided the Staff's opinion,
14 Staff's position that five combustion turbines would have
15 been the best plan for Aquila.

16 Q. That was the opinion of Staff because of
17 your participation in the resource planning process with
18 Aquila; is that correct?

19 A. Because of Staff's participation and
20 listening to and the resource planning process over the
21 years.

22 Q. And, of course, when I say you, I'm
23 referring to you in your capacity as a member of the Staff
24 of the PSC. Is there some different reason why my
25 characterization of you as a member of Staff is not

1 agreeable to you, or am I missing something with respect
2 to that relationship and the resource planning process?

3 A. When I say Staff, I'm also including other
4 members of the Staff as formulating that opinion.

5 Q. And so you're clarifying for me that with
6 respect to certain opinions you may have provided either
7 in this case or in testimony in the rate case, it could
8 very well be that that is a compilation of information
9 from you, as well as others on the PSC Staff; is that
10 correct?

11 A. That is correct.

12 Q. And that's not a problem, and I appreciate
13 that clarification.

14 Back to my point, the optimal resource plan
15 that Staff had determined Aquila should engage would have
16 been a five-CT plan, not the three-CT plan such as
17 constructed at the South Harper plant; is that correct?

18 A. That is correct.

19 Q. And I believe you've been present during
20 the testimony, including the testimony yesterday; is that
21 correct?

22 A. For most of it, yes.

23 Q. Were you present during the testimony of
24 Mr. Boehm?

25 A. Yes.

1 Q. And you know Mr. Boehm; is that correct?

2 A. Yes, I do know Mr. Boehm.

3 Q. Mr. Boehm would be one of the Aquila
4 representatives who participates in resource planning; is
5 that correct?

6 A. Yes, that is correct.

7 Q. And you then heard Mr. Boehm's testimony
8 that the three-CT plan that was settled upon by Aquila was
9 the preferred plan but not the least cost option; is that
10 correct?

11 A. It is a portion of their preferred plan.

12 Q. And so that view by Mr. Boehm as expressed
13 in his testimony would actually be consistent with the
14 testimony Staff provided through you in the rate case with
15 respect to the optimal plan being a five-CT plan; is that
16 correct?

17 A. That was a long question. Can you --

18 Q. Sure was.

19 A. Can you restate it?

20 Q. I'll be happy to. Your opinion in the rate
21 case with respect to a five-CT versus a three-CT plant
22 being optimal is consistent with Mr. Boehm's testimony
23 that a five-CT plant would have been the least cost
24 option?

25 A. Our understanding is that they believe that

1 the five-CT plant was the least cost plan, and the
2 three-CT is their preferred plan. The Staff's position is
3 the five-CT plant should have been the preferred plan, as
4 well as the least cost plan.

5 Q. Now, I understand from your direct
6 testimony that you are not providing any testimony
7 whatsoever with respect to where a three-CT plant should
8 have been constructed; is that correct?

9 A. That is correct.

10 Q. However, would it be fair to say that in
11 the resource planning process, as you meet with Mr. Boehm
12 and others with Aquila, are you looking to the future with
13 respect to construction plans for additional CTs?

14 A. We are not looking to where the future
15 generation sites should be, just as to what they should
16 build or purchase to meet the future needs.

17 Q. And that I understand. In fact, in your
18 testimony, that portion that had been classified as highly
19 confidential but which has now been made a part of the
20 public record, you do acknowledge that through resource
21 planning Aquila has indicated its intention to build
22 another CT in 2009 and again in 2010; is that correct?

23 A. And that is consistent with what was in
24 Mr. Boehm's testimony.

25 Q. Well, in fact, Mr. Boehm's testimony in

1 JGB-5 and JGB-6, Mr. Boehm indicated Aquila's plans are to
2 build another 10 megawatt CT in 2007.

3 MS. SHEMWELL: Excuse me. Ms. Mantle,
4 would you like a copy of that to refer to?

5 THE WITNESS: Yes, I would.

6 MS. MARTIN: I'd be happy if I could
7 approach.

8 JUDGE PRIDGIN: You may.

9 BY MS. MARTIN:

10 Q. Ms. Mantle, I've given you my copies of
11 what have been prepared and produced by Mr. Boehm as a
12 part of his testimony admitted into evidence yesterday,
13 and in particular his charts or Schedules JGB-5 and JGB-6.
14 And do you see note with respect in particular to JGB-5 of
15 Aquila's intentions to construct a 105 megawatt CT in
16 2007?

17 A. Yes, I do see that.

18 Q. And then again in 2009?

19 A. Yes.

20 Q. And then again in 2011; is that correct?

21 A. That is correct.

22 Q. Is that not consistent with what has been
23 reported to you in resource planning?

24 A. It is.

25 Q. And so then the discrepancy between

1 Mr. Boehm's graph, which is JGB-5, and your testimony with
2 respect to Aquila's plans to build another CT in 2009
3 would be explained how?

4 A. What is in my testimony came from a
5 presentation given on February 9th, 2004. What is on
6 JGB-5 came from a presentation on January 20th, 2005. I
7 believe that would account for the differences. I'm not
8 for sure, but that would be my guess at this point in
9 time. I would have to go back and look at the
10 presentations.

11 Q. Do you have an independent recollection as
12 you sit here today, having participated in resource
13 planning with representatives of Aquila where they have
14 reported to you their intentions to build another
15 105 megawatt CT in 2007, 2009 and 2011?

16 A. That is consistent with my recollections.

17 Q. And I understand again, Ms. Mantle, that
18 your job is not to discuss where those particular CTs
19 might be constructed, but having said that, can you tell
20 me whether in resource planning there have been
21 discussions with representatives of Aquila about utilizing
22 the available space purposefully constructed on the South
23 Harper site for those additional three CTs?

24 A. There have been discussions of that, yes.

25 Q. And those discussions have been an

1 acknowledgement by Aquila of their plans to place those
2 three CTs on the South Harper site; is that correct?

3 A. That is not correct.

4 Q. Has there been discussion by Aquila of
5 their hope or desire to place those three CTs on the South
6 Harper site?

7 A. The only -- I cannot -- we would have to go
8 in-camera, I believe. I don't want to discuss that
9 without knowing from talking with Aquila's folks to know
10 whether that's highly confidential or not.

11 MS. SHEMWELL: Judge, let me note that I'm
12 not sure the plans for future CTs has a relevance in the
13 case. We're talking about the current plan. Aquila has
14 told this Commission if they're going to build additional
15 plants at this site, they will come back. I have no
16 reason to doubt Mr. Swaengen's word as to that. So I
17 don't see the relevance in terms of this particular
18 certificate of convenience and necessity to discuss their
19 future plans for adding CTs wherever.

20 MS. MARTIN: If I may respond, your Honor,
21 I appreciate that. This particular application for a CCN
22 is a first. It is a situation where the Commission has
23 been directed to evaluate land use issues, and though I
24 appreciate there's some dispute amongst the parties, the
25 level to which that evaluation will occur and the weight

1 to which the land use factors will be considered by the
2 Commission, it is nonetheless a factor in this case, as
3 directed by the Court of Appeals' opinion.

4 I think, therefore, if the intention in
5 constructing South Harper, as has already been evidenced
6 by Aquila's witnesses, was to design the plant to create a
7 footprint identical to the location of the existing three
8 CTs to accommodate three additional CTs that are
9 absolutely a part of resource planning for Aquila, that it
10 is relevant for us to inquire about that not only possible
11 but highly expected intentional -- or intended land uses
12 that could affect the Commission's evaluation of land use
13 issues in this case.

14 JUDGE PRIDGIN: I'm going to --

15 MS. SHEMWELL: May I respond, please?

16 JUDGE PRIDGIN: I'm sorry. Yes, ma'am.

17 MS. SHEMWELL: Ms. Mantle could only
18 speculate as to what Aquila plans to do. I doubt they
19 know today where they're going to place those. I mean, if
20 they have told Ms. Mantle exactly what they're going to
21 do, then perhaps she could say. But otherwise, for her to
22 speculate is not helpful to this Commission.

23 MS. MARTIN: I've not asked her to
24 speculate. I've asked her what Aquila has told her in
25 resource planning. She's already admitted that, in fact,

1 it has been discussed in resource planning, the placement
2 of these three CTs at the South Harper plant. I'm
3 exploring what she knows based on what she's been told. I
4 am not asking this witness to speculate.

5 JUDGE PRIDGIN: All right. I'm going to
6 overrule. If we need to go in-camera, Counsel, please let
7 me know so we can go into private session.

8 THE WITNESS: These are meetings that are
9 held in confidence, and everything that we're given in
10 these meetings are considered HC, and that's why I would
11 like to confer with the company.

12 MR. SWEARENGEN: That's correct. That's
13 the understanding that we operate under in those meetings,
14 and I think to violate that would probably be a mistake.
15 I told this Commission, I've told them twice on the record
16 in this proceeding that if the company gets the authority
17 it's seeking today in this application, which involves
18 only the three units that are there, even though the site
19 may accommodate additional units, we would not intend to
20 utilize that authority.

21 And obviously you could restrict any grant
22 to prevent that from happening. But in any event, we
23 would not utilize that authority without coming back to
24 the Commission and asking for additional authority to use
25 that site for additional units, if that would be the

1 prudent thing to do sometime in the future. So that's all
2 I can say on that.

3 I think this is just simply an effort to
4 tie up the record and sensationalize things way beyond
5 where we need to be.

6 MS. MARTIN: Well, with --

7 MR. SWEARENGEN: And with respect to that,
8 I don't think the Commission's doing anything differently
9 here than they did back in the 1970s when they
10 certificated plants and took into account land use issues.
11 The record will reflect that the Commission certificated
12 the Iatan station unit back in the 1970s, a site that's
13 capable of handling four coal units, only one of which was
14 built at that time, and the hearing in that proceeding
15 lasted one day. Thank you.

16 JUDGE PRIDGIN: Let me go ahead, and what
17 we're going to do is go in-camera, and I expect this
18 in-camera session to be rather brief, and that is for
19 Ms. Moore to ask what, if anything, Ms. Mantle knows. If
20 we start getting into speculation, conjecture, I'm going
21 to sustain any objections. And if Aquila didn't know what
22 it was going to do at those meetings, then obviously
23 Ms. Mantle probably didn't know as well.

24 So let me go -- is there anybody in the
25 hearing room that does not belong here before we go

1 in-camera?

2 MR. EFTINK: Your Honor, may I speak up on
3 behalf of a lot of the people that live around there?
4 This should not be confidential. The people have a right
5 to know, just like in a land use planning hearing, what
6 their future plans are. It affects a lot of people. They
7 have got the right to hear this. That's all I've got to
8 say about that, but it shouldn't be in confidence.

9 MS. MARTIN: And if I -- before we go
10 in-camera, if I could simply respond for the record?

11 JUDGE PRIDGIN: Yes, ma'am.

12 MS. MARTIN: Because I do think it
13 important for the Commission to understand. It is not the
14 County's desire to sensationalize this issue. I
15 absolutely believe that the expected or intended use of
16 this site is relevant today with respect to this
17 application, just as it would for any land use evaluation
18 in front of the County. That's the purpose of this
19 inquiry.

20 I don't believe it's designed to tie up the
21 record, and though I appreciate greatly Aquila's
22 commitment that they would come back to secure a separate
23 specific CCN with respect to any additional turbines that
24 are placed on the site, with due respect to this
25 Commission, as I mentioned yesterday, we do not know and

1 cannot predict what the composition of this Commission
2 will be a year from now or two years from now.

3 And I fear for the record that if a
4 Commission issues a CCN today for a three-CT site, it will
5 be a mere rubber stamp process in the future because once
6 the horse is out of the barn, the horse is out of the
7 barn. I think for the record it's absolutely relevant to
8 the consideration today what the plans are for this site.

9 JUDGE PRIDGIN: And that's exactly why I
10 overruled the objection, and we'll go in-camera, if you'll
11 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 6, pages 674 through 676 of the transcript.)

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1 JUDGE PRIDGIN: Ms. Martin, when you're
2 ready.

3 MS. MARTIN: Thank you very much

4 BY MS. MARTIN:

5 Q. Ms. Mantle, would you please turn to page 7
6 of your rebuttal testimony?

7 This is the same page that Mr. Swearengen
8 directed you to during his cross-examination, and I also
9 had a few questions of you about your discussion beginning
10 on line 4, if we could, please.

11 You talk about the residential class annual
12 energy usage as compared to industrial class usage; is
13 that correct?

14 A. Yes.

15 Q. And though you identify the Aquila - MPS
16 entity or side of Aquila as having a high ratio, so to
17 speak, of those two parameters, it is true, is it not,
18 that your testimony does not indicate where those
19 residences are located; is that correct?

20 A. That is correct.

21 Q. And in fact, there is a pie chart attached
22 to your direct testimony, I believe it is marked as
23 Schedule 2 to your testimony; is that correct?

24 A. There are pie charts on Schedule 2, that is
25 correct.

1 Q. And those pie charts are intended to
2 reflect relative percentages of usage for various utility
3 providers; is that correct?

4 A. For the investor-owned utilities that are
5 in Missouri, that's correct.

6 Q. Excuse me for interrupting you. Once
7 again, taking for example Aquila Networks - MPS pie chart
8 on your Schedule 2, you show residential usage of
9 45 percent; is that correct?

10 A. That is the percentage of the total energy
11 usage of Aquila Network's MPS division as a total of the
12 total -- percent of the total.

13 Q. But this pie chart does not show us where
14 those residents are located; is that correct?

15 A. That is not the intent of that pie chart,
16 no, it is not.

17 Q. And I appreciate that. I simply intend to
18 clarify that your testimony is not intended to sponsor any
19 type of evidence with respect to the number of Cass County
20 residents who are actually Aquila customers; is that
21 correct?

22 A. No. But my testimony does refer to
23 Mr. Wood's testimony that does talk about that population
24 in Cass County.

25 Q. And that is a subject we'll be addressing

1 with Mr. Wood. I simply wanted to clarify, since in this
2 portion of your direct you reference Mr. Wood's testimony,
3 that you are not sponsoring any testimony with respect to
4 the number of the residential usage or percentage of
5 residential use that is actually located in Cass County;
6 is that correct?

7 MS. SHEMWELL: Asked and answered, your
8 Honor.

9 JUDGE PRIDGIN: She was just about to
10 answer. I'll overrule, and then let's move on.

11 THE WITNESS: No, I did not see a need to
12 repeat what Mr. Wood was saying in his testimony.

13 MS. MARTIN: And, your Honor, that's
14 actually all I have of this witness. Thank you.

15 JUDGE PRIDGIN: Thank you very much.
16 Mr. Eftink?

17 MR. EFTINK: Yes, thank you.

18 MS. MARTIN: May I withdraw the two JGB
19 charts that I had left for the witness?

20 JUDGE PRIDGIN: Certainly.

21 MS. MARTIN: Thank you.

22 CROSS-EXAMINATION BY MR. EFTINK:

23 Q. Ms. Mantle, you refer to some resource
24 planning meetings, and if I recall this correctly, you
25 were talking about February 9, 2004 and January 20, 2005.

1 MS. SHEMWELL: Where's the reference,
2 please?

3 MR. EFTINK: I just made notes of her
4 testimony. She may have been looking at a document, but
5 it may be one I don't have.

6 BY MR. EFTINK:

7 Q. What I want to ask you, and you may look at
8 any documents that will help you to answer this, were you
9 involved in meetings in January 2004 in the nature of
10 resource planning meetings with Aquila?

11 A. In my rebuttal testimony, on line 17 of
12 page 5, I discuss a resource planning meeting with Aquila
13 where they came and discussed with the Staff their
14 resource plans.

15 Q. Was that in January 2004?

16 A. It says on January 27, 2004, Aquila again
17 met with Staff.

18 Q. And do your notes show that Warren Wood was
19 present in that meeting?

20 A. I do not know whether Warren Wood was
21 present at that meeting.

22 Q. Is it correct that at that time Staff told
23 Aquila that they needed to build more base load
24 facilities?

25 MS. SHEMWELL: Let me just double check

1 that we're not getting into confidential information
2 again. I need to rely on Aquila, I suppose, but as you
3 know, it's a misdemeanor for Staff to release highly
4 confidential information.

5 JUDGE PRIDGIN: I understand.

6 MR. SWEARENGEN: Well, I think there's
7 already been some testimony on that, that we have no
8 objection to that. The Staff has indicated that we do
9 that, and the testimony will further reflect that we're
10 taking steps in that direction.

11 JUDGE PRIDGIN: So we can stay in public
12 forum?

13 MS. SHEMWELL: Yes.

14 JUDGE PRIDGIN: Do you need the question
15 asked again, Ms. Mantle?

16 BY MR. EFTINK:

17 Q. If you want me to repeat it, I'll try to
18 repeat it. My question is, in January 2004, were you in
19 meetings where Staff told Aquila that they needed to
20 acquire more base load?

21 A. I know that we've told Aquila several times
22 that we were concerned with the amount of gas generation
23 that they were installing, and that we believed that they
24 need to look toward adding more base load capacity to
25 their generation portfolio. At one point I believe

1 Mr. Wood did send them a letter saying that they needed to
2 add more base load generation. I do not know exactly when
3 that letter was sent.

4 Q. Okay. Well, I think Mr. Wood's going to
5 testify, so I'll ask him about that.

6 Now, you say that Staff told Aquila several
7 times that it was concerned about two things, and let me
8 try to break this down. One is the amount of gas-fired
9 generation that was being installed?

10 A. Yes.

11 Q. And can you explain why Staff thought that
12 was a problem?

13 A. Because of the variation in gas prices, the
14 fluctuations that has in the gas market as we've all seen,
15 especially this past year, and the amount of gas capacity
16 that Aquila was in their portfolio.

17 Q. And you say there was a big fluctuation in
18 gas price this last year. Is it correct that gas prices
19 went way up?

20 A. Yes, sir.

21 Q. And is that a concern for the ratepayer if
22 gas prices now go up?

23 A. It's a concern for the ratepayer and the
24 stockholders of Aquila.

25 Q. And can you explain why that would be a

1 problem for the ratepayer?

2 A. Because it causes rates to go up.

3 Q. Is there some kind of a provision under the
4 law that allows utilities to pass on the increased cost of
5 increases in gas?

6 A. There's --

7 MS. SHEMWELL: Judge, I'm going to question
8 the relevance of this. That sort of issue is dealt with
9 in a rate case. The Commission is familiar with the way
10 gas prices are handled.

11 MR. EFTINK: Your Honor, this is one of the
12 reasons, I believe, why Staff told Aquila that it was
13 relying too much on gas-fired facilities.

14 JUDGE PRIDGIN: I'll overrule and let her
15 answer. Again, she's not an attorney. I'll let her
16 answer to the extent she knows the answer to your
17 question.

18 BY MR. EFTINK:

19 Q. Yes, to the extent that you know.

20 A. Could you repeat the question?

21 Q. Is it now a concern for the ratepayers if a
22 utility has gas-fired facilities and the price of gas goes
23 up?

24 A. Yes, it is.

25 Q. And is that because increase in gas prices

1 can now be passed on more readily to the consumer?

2 A. Currently there's nothing in effect for
3 Aquila where it can.

4 Q. But there's something that's being
5 discussed in the way of rulemaking?

6 A. Yes.

7 Q. Thank you. And you also said Staff
8 expressed to Aquila that it needed more base load. Can
9 you share some of the things that Staff said about the
10 reasons why it needed more base load?

11 A. It's good to have -- for a utility to have
12 a variety of different types of generation facilities, and
13 reliance on one type of fuel is not a good idea.

14 Q. Would it be correct to say that it's not
15 just a matter of diversity, but base load is usually
16 cheaper for the ratepayer?

17 A. Not always.

18 Q. Not always, but oftentimes?

19 A. A utility's generation fleet needs to match
20 its type of load. As I testified, MPS has a high number
21 of residential customers that have varying loads. They
22 need a type of generation that can quickly change, and for
23 those types of load, you do need some peakers that can
24 follow load very quickly, come on and off. A base load
25 plant cannot do that.

1 It's expensive to try to follow load with a
2 coal plant. Coal plants are very expensive to build.
3 They have a high cost of building. They are cheap to run,
4 but very expensive to build. So therefore, you need to
5 build them and run them constantly. You cannot bring them
6 down, bring them back up. They need to run constantly.
7 They're not good for loads that fluctuate a lot.

8 Q. Is it true that Staff through much of 2003
9 and 2004 was telling Aquila that it needed to acquire more
10 base load?

11 A. No. In 2003 we were telling them -- early
12 2003 we had told them, go out and reissue your RFP and see
13 what's out there to find. They did manage to get an RFP
14 or a bid on some very good base load contract, 75 megawatt
15 PPA for base load out of Nebraska, so they did acquire
16 some base load. They also have part of Iatan 2 that they
17 are going to get a piece of. So they have been working
18 toward getting more base load, just as Staff had been
19 asking them to look toward, and they're still trying to
20 get more base load.

21 The other thing with base load is you
22 cannot get it as quickly as you can with peakers. They
23 needed capacity right away, and you can get that with peak
24 capacity.

25 Q. I guess what I was trying to get at is, if

1 you could please tell me the time frame when Staff was
2 telling Aquila that it needed to acquire more base load?

3 A. We've been telling them to get more base
4 load at the same time that we've been telling them they
5 need to meet their capacity needs, 2000 -- I guess 2003,
6 2004, 2005. We constantly tell them they need to be
7 looking at all aspects of meeting their capacity in the
8 best way possible.

9 Q. Now, in your sworn testimony, I think it's
10 your direct or rebuttal actually, line 17, you say that
11 Aquila needed to replace the Aries contract, but isn't it
12 true that Aquila did replace the Aries contract with
13 another contract with Aries?

14 MS. SHEMWELL: Apparently Ms. Mantle
15 doesn't understand, so perhaps --

16 MR. EFTINK: Let me rephrase that.

17 BY MR. EFTINK:

18 Q. Isn't it true that Aquila is currently
19 under a contract to purchase energy from Aries?

20 A. For the summer of 2006?

21 Q. I was thinking of a contract that started
22 in about October of 2005.

23 A. Oh, I'm sorry. I was thinking of as soon
24 as the one that they had expired. Yes, they do have a
25 contract.

1 Q. All right. And I think everybody will
2 stipulate that a contract to purchase energy from Aries
3 expired in about the first of June 2005, but isn't it
4 correct that Aries entered into a contract to purchase
5 energy with -- let me back up.

6 Aquila entered into a contract in about
7 September 2005 for a year to purchase more energy from the
8 Aries plant?

9 A. They did, but not for the amount of
10 capacity that they had had with Aries.

11 MR. EFTINK: Thank you. I pass the
12 witness.

13 JUDGE PRIDGIN: Mr. Eftink, thank you.
14 Mr. Coffman?

15 MR. COFFMAN: Yes.

16 CROSS-EXAMINATION BY MR. COFFMAN:

17 Q. Good afternoon, Ms. Mantle. It's not my
18 intention to get into anything confidential. Please stop
19 me if you think that I am getting close. It's not my -- I
20 would tell you if I thought that you might.

21 But I would like to ask about the resource
22 planning meetings that we were discussing. These meetings
23 that you discuss that we were talking about as resource
24 planning meetings are meetings that are held roughly two
25 or three times a year between an electric utility, members

1 of the Public Service Commission Staff, and members of the
2 Office of the Public Counsel, correct?

3 A. That is correct. And sometimes the
4 Department of Natural Resources Energy Center is also
5 there.

6 Q. Is there any public notice of these
7 meetings?

8 A. No. These meetings are set up as part of a
9 waiver from the resource planning rules, and as part of
10 that, the agreement was at that time that it was just
11 Staff and the Office of Public Counsel. That was an
12 agreement between -- that was set --

13 Q. That was agreement between the Staff and
14 the Public Counsel and the utilities, correct?

15 A. That is part of the waiver, yes.

16 Q. That was not an agreement with any other
17 member of the public, was it?

18 A. No, it was not.

19 Q. But that waiver will be, I guess, going
20 away soon over the next couple of years; is that correct?

21 A. That's up to legal interpretation. Some
22 utilities think that that waiver has ended as of
23 December 5th of 2005.

24 Q. Could you characterize for me just
25 generally, at these meetings are issues of land use

1 generally discussed at these meetings?

2 A. I'm not for sure what you mean by land use.

3 Q. That is issues regarding zoning and whether
4 location of a particular utility's facilities were
5 compliant with the requirements of local municipal
6 authorities?

7 A. No, that's generally not discussed.

8 Q. Has Staff ever taken it upon itself to
9 advise a utility about whether it should be complying with
10 local zoning or not?

11 A. No.

12 Q. And there isn't anyone on the Commission
13 Staff currently that is a land use planner, is there?

14 A. Not to my knowledge.

15 Q. Before the controversy surrounding the
16 South Harper location, can you recall any other issues
17 that the Staff has been involved in in a contested setting
18 regarding whether or not local zoning has been obtained by
19 a utility?

20 MS. SHEMWELL: Judge, I'm going to object.
21 Ms. Mantle has testified numerous times that she's not
22 talking about the location, she's talking about the need
23 for the plant in terms of convenience and necessity. And
24 she's said time and again that she's not talking about a
25 particular location or locations in general, and her

1 testimony goes just to the needs of the public.

2 JUDGE PRIDGIN: I'll sustain.

3 MR. COFFMAN: With that understanding, I
4 assume any questions about locality might be referred to
5 Mr. Wood?

6 MS. SHEMWELL: Mr. Wood.

7 MR. COFFMAN: Thank you. That will be
8 fine.

9 JUDGE PRIDGIN: Mr. Coffman, thank you.
10 See if we have any questions from the Bench. Commissioner
11 Murray?

12 COMMISSIONER MURRAY: I don't believe so.
13 Thank you.

14 JUDGE PRIDGIN: Thank you. Commissioner
15 Clayton?

16 COMMISSIONER CLAYTON: I have a few
17 questions. Thank you, Judge.

18 QUESTIONS BY COMMISSIONER CLAYTON:

19 Q. Ms. Mantle, I want to ask a few questions,
20 and if you are not the right witness, please direct me.
21 Mr. Wood may be the right person. I'm sure you won't
22 hesitate deferring everything or anything to Mr. Wood.
23 That's what we do on the Commission.

24 I wanted to ask you a little bit about the
25 Aries plant, since you referenced it in your surrebuttal

1 testimony in response to Mr. Peshoff. And as I understand
2 it, in your surrebuttal testimony you differentiated some
3 characterizations, I believe, based on whether the Aries
4 plant was a regulated or unregulated venture; is that
5 correct?

6 A. That's correct.

7 Q. Okay. How long have you been with the
8 Commission?

9 A. Twenty-two and a half years.

10 Q. Really?

11 A. I started when I was eight.

12 Q. Good answer.

13 A. Oh, I'm supposed to tell the truth.

14 Q. That's what a solid education will get you.

15 I wanted to ask you -- the reason I asked you how many
16 years you'd been with the Commission, I wanted to ask if
17 you were here when the Aries plant was built?

18 A. Yes.

19 Q. Do you recall when that was?

20 A. I believe it was built in 1999.

21 Q. '99. And when the Aries plant was
22 constructed, was a certificate of convenience and
23 necessity awarded by the Commission for the development of
24 that plant?

25 A. No. It was built by Aquila Merchant

1 Services. We have no jurisdiction over them.

2 Q. I'm glad you said Aquila Merchant Services
3 because I would have gotten the title incorrect. Okay.
4 And it was in cooperation with Calpine, another company;
5 is that correct?

6 A. It is my understanding that it was
7 initially started by Aquila Merchant Services and Calpine
8 bought into it as a partner.

9 Q. Okay. Later on, I guess, after --

10 A. Pretty close to when it started, but not
11 initially.

12 Q. Okay. And once Calpine was a part of
13 Aries, is it public information about what percentage each
14 entity owned of the plant?

15 A. It's my understanding it was 50/50.

16 Q. Okay. When the Aries plant was developed
17 -- and it is located in Cass County, correct?

18 A. Yes.

19 Q. When it was built, are you aware whether or
20 not the County of Cass gave zoning approval for the plant?

21 A. Only from what I've heard at at the hearing
22 is there was zoning for that plant.

23 Q. And that Cass County issued a use permit
24 for -- whatever permitting is required?

25 A. From what I've heard at this hearing, yes.

1 Q. And it's yes to that, correct?

2 A. Correct.

3 Q. And the Commission had no involvement in

4 the development of that plant?

5 A. No.

6 Q. What is the size of the Aries plant, how

7 many megawatts?

8 A. It's 585 megawatts.

9 Q. And what fuel?

10 A. It's gas.

11 Q. It's gas?

12 A. It's a combined cycle plant.

13 Q. Okay. Is it characterized as a peaking

14 facility?

15 A. It's characterized as an intermediate

16 facility.

17 Q. What makes a facility intermediate or base

18 load or peaking? And I know the difference between base

19 load and peaking, but what makes it intermediate?

20 A. It's intermediate because it takes a couple

21 hours to come up, and it usually has a run time that it

22 has to be -- that it's more economical for it to run.

23 Q. What does the run time mean? Is that total

24 amount of time that you turn it on or --

25 A. That it's most economical to run over a

1 certain amount of time, about 12 hours, I believe.

2 Q. So it becomes not economical?

3 A. It's not good for it to come up and shut
4 down.

5 Q. I see. So the 12 hours is a minimum amount
6 of time?

7 A. To keep it up, yes.

8 Q. Okay. I was confused by that. Okay. Now,
9 in your surrebuttal testimony, you point out that this was
10 built without any Commission participation and that it was
11 part of Aquila's unregulated side, and I know that's been
12 asked and answered, but I just want to be clear on that.

13 A. That's correct.

14 Q. Okay. Can you tell me why the Staff
15 opposed Aries either closing or Aquila leaving
16 participating in the Aries plant in 2004?

17 A. Ask that again.

18 Q. There was a case that was before the
19 Commission relating to the Aries plant. Do you recall
20 that case?

21 A. Yeah.

22 Q. Maybe I'm confusing it. Was it relating to
23 the contract that perhaps Aquila had with -- through the
24 Aries plant or was a transfer of ownership, I believe, out
25 of the aries plant? And perhaps you can refresh my

1 recollection of that.

2 A. My understanding is Staff asked for the
3 Commission to allow Staff to look into the sale of
4 Aquila's Merchant Services to Calpine, that half of the
5 plant that they owned.

6 Q. Staff wanted to look into it?

7 A. Yes. We asked the Commission's permission
8 to look into that.

9 Q. Were you on the Staff at that point?

10 A. I was on the Staff, yes.

11 Q. Okay. Are you familiar with the case?

12 A. I have the Staff's motion for expedited
13 treatment before me.

14 Q. Okay. And the Staff felt that it should
15 look into the dealings regarding Aries, even though it was
16 on the unregulated side of Aquila; is that correct?

17 A. That's correct.

18 Q. Okay. Can you explain to me why Staff felt
19 that it should be able to look into the unregulated side
20 of Aquila?

21 A. Because we felt that this capacity would
22 probably be good for Aquila - MPS to have. There's been a
23 history with the aries plant and who should have built it
24 and actually who did, but the Commission in the Order for
25 this EO-2004-0224 case, the Commission and -- has said in

1 the Orders that it's owned by the merchant side of Aquila.
2 We have nothing to do with it. Staff knows you cannot do
3 an investigation of that. That's my un-legal opinion.

4 Q. That's all right. I'm not necessarily
5 interested in the legal side. I'm more looking at factual
6 and historical use of this information.

7 So Staff felt that the 585 megawatts would
8 be either useful or needed by Aquila?

9 A. That's correct.

10 Q. Is that correct?

11 A. That's correct.

12 Q. Now, in the discussion or the dialog that
13 you've had with a number of the attorneys today talking
14 about Aquila's need for capacity over time, has Staff
15 evaluated whether that 585 megawatts should have been kept
16 by Aquila?

17 A. We've looked at this as that's past, and it
18 was Merchant Services' plant. It was not Aquila Network's
19 plant. It was separate from this, so we had to go
20 forward.

21 Q. Well, can you replace peaking capacity --
22 or let me make sure I ask this question properly.

23 Can you use peaking capacity to replace
24 intermediate --

25 A. Actually --

1 Q. -- capacity, intermediate load capacity?

2 A. Looking at how Aquila used Calpine, the
3 Aries plant when they had the contract for it, they used
4 it as a peaking plant. So using that information, along
5 with looking at their -- the results of some of their runs
6 from -- the resource planning runs, it did look like
7 peaking was a more appropriate type of resource, combining
8 that with the fact they did get some base -- a base load
9 purchased power agreement.

10 So they were replacing this intermediate
11 purchased power agreement with peaking and they had a base
12 load piece also, because I too was concerned about that.

13 Q. Is it possible to speculate at this time
14 whether things would have been different if the Commission
15 had authorized Staff to investigate the Aries plant and
16 Aquila's participation in it and assume that these -- I
17 guess, 50 percent of the 585 megawatts would still be
18 available to Aquila, would we be here today with this
19 hearing? Is it possible to speculate?

20 A. I don't know.

21 Q. You don't know if it's possible to
22 speculate?

23 A. It's possible to speculate, but I don't
24 know whether we would have been here or not.

25 Q. Well, you could easily say that almost

1 300 megawatts of generation will be available to Aquila?

2 A. But you've got to remember, too, they're
3 replacing 500 megawatts. So there's still a piece out
4 there that they need.

5 Q. Okay. So it would have been 200 megawatts
6 they had to replace?

7 A. (Witness nodded.)

8 Q. How much -- and this may be repetitive,
9 and I apologize for that. These peaking facilities only
10 relate to part of it as well, they still made up power
11 needs elsewhere, correct?

12 A. That is correct.

13 Q. And how were those made up, through
14 purchased power agreements?

15 A. Through purchased power agreements.

16 Q. And notably, could you identify those for
17 me?

18 A. Well, for the summer they have a
19 200 megawatt purchased power agreement with the Aries
20 plant.

21 MS. SHEMWELL: Are you getting into
22 anything confidential here?

23 THE WITNESS: No.

24 MS. SHEMWELL: I'm sorry.

25 BY COMMISSIONER CLAYTON:

1 Q. And if it's confidential, just say, I can't
2 answer.

3 A. No. Mr. Eftink already brought that --

4 Q. Ms. Shemwell will straighten us out here.
5 Beyond the agreement with Aries, is there anything else?

6 A. No. Well, the 75 megawatt purchased power
7 agreement with Nebraska Public Power District is a
8 long-term agreement.

9 Q. Okay. Do you know how often the Aries
10 facility runs?

11 A. No, I don't.

12 Q. Do we keep track of any information on
13 merchant generators such as this, how long -- how often
14 they run or don't run?

15 A. No, we do not.

16 Q. So we don't know whether or not 385 other
17 megawatts are being used anywhere? I assume when they
18 turn it on, they're selling it onto the grid. Is that a
19 fair assumption?

20 A. Yes. They have come in and talked to Staff
21 at some points, and they've talked about the possibility
22 of mothballing the plant, but we don't know other than
23 that.

24 Q. Let me ask this question: Staff was asking
25 to simply investigate the Aries facility and Aquila's

1 participation in it. Had Staff made -- taken a position
2 on whether Aquila should be permitted to withdraw from
3 that agreement prior to the investigation?

4 A. I don't remember.

5 Q. You don't remember. Is it possible that
6 Staff would have -- if authorized, is it possible Staff
7 would have recommended not permitting Aquila to withdraw
8 from its agreements at Aries?

9 A. It is possible.

10 COMMISSIONER CLAYTON: Okay. Give me just
11 a second, Judge.

12 BY COMMISSIONER CLAYTON:

13 Q. Mr. Wood will provide all of Staff's
14 testimony relating to siting, correct?

15 A. That is correct.

16 Q. And forgive me. In Staff's brief, there's
17 a recitation of plant construction over about the last
18 30 years, and I'm not sure whose testimony, if anyone's
19 testimony that information is in, or is it not in anyone's
20 testimony?

21 A. It's not in anyone's testimony.

22 Q. It's just more or less take notice of past
23 Commission records?

24 A. Our fine attorneys did that.

25 COMMISSIONER CLAYTON: Fine attorneys.

1 Flattery will get you everywhere. Who wrote the Staff's
2 brief?

3 MS. SHEMWELL: Mr. Williams and I.

4 COMMISSIONER CLAYTON: I don't think I have
5 any other questions, but before I give up the mic, if I
6 could ask Ms. Shemwell a question about that.

7 Is that a -- is that a comprehensive list
8 of all plant construction since like 1960, I believe it
9 goes back to?

10 MS. SHEMWELL: I don't know that it's
11 complete as to every plant. Mr. Williams?

12 COMMISSIONER CLAYTON: Judge, I want to ask
13 about whether the list was complete or how -- whether
14 there were omissions or -- and if there are omissions,
15 whether that's information that has been compiled
16 somewhere that we could get.

17 MR. WILLIAMS: There weren't any
18 intentional omissions. I've learned that sometimes the
19 Commission has unpublished opinions. We did do a search,
20 and what we put in the brief were what were covered, but I
21 wouldn't represent that it's comprehensive.

22 COMMISSIONER CLAYTON: You would not. Is
23 there -- would Staff be able to supply a comprehensive
24 list of all new plants that have been built? It can't be
25 that many. I mean, we've got to be talking no more than

1 what, 15 since maybe 1965?

2 MR. SWEARENGEN: Judge, if I could speak to
3 that just for a second. We addressed --

4 COMMISSIONER CLAYTON: Well, you may have
5 the time necessary to answer the question.

6 MR. SWEARENGEN: I don't know if I do or
7 not. There were a couple of other cases involving the
8 Empire District Electric Company that we cited in
9 pleadings. I think if you go back and look at the history
10 of how this has evolved over the years, for example, the
11 Empire Asbury plant was built in the late '60s purely on
12 the basis of Harline, under the company's Aries
13 certificate. Thereafter, in the '70s, viewing situations
14 similar that we're faced here today, the company Empire
15 came to this Commission for authority to certificate the
16 Asbury Energy Center near LaRussel, Missouri, which was
17 right in its service territory.

18 Then later in connection with the Iatan
19 plant, Empire came back to get authority for another unit,
20 also at its energy center, also within its certificated
21 area. So there is some history of that up until 1980,
22 which is when the Commission issued its decision in the
23 Union Electric case and told the companies that if you
24 have an area certificate, you do not need to come to us
25 and we will not entertain such applications.

1 And that continued on up, I think, through
2 the '90s with the Missouri-American Water Company building
3 its water plant up in St. Joseph, Missouri. I think
4 Commissioner Murray remembers that decision. The company
5 asked for authority to build a plant up there, and the
6 Commission granted it to the extent that it was outside
7 its existing certificated territory.

8 So since 1980 up until now, this Commission
9 has acted as though, if you have an area certificate, you
10 don't need authority to build plant. There are some
11 examples where companies have come in asking for authority
12 outside their certificated areas to build substations,
13 power plants, transmission lines and what have you in
14 addition to those that were sited, I think, in the Staff's
15 brief.

16 COMMISSIONER CLAYTON: That's helpful,
17 Mr. Swearengen. I appreciate that.

18 I think what I'm asking is, is a recitation
19 in -- I hate to ask for another document, but what I'm
20 asking for is a typed list that shows to the best of your
21 knowledge the plant development and the timing of the CCN.
22 And I know that's partially in your brief, and I know
23 zoning is in part referenced in a number of them, but not
24 all of them, and I just -- if there are any omissions or
25 any other plants.

1 Mr. Williams, if you could find that out
2 and supplement your brief at some point, I would
3 appreciate that, if there are any omissions that you've
4 found. But I want to know whether in the past there's
5 been zoning or whether there's been a courtesy filing of
6 zoning or something like that. I just want to know that
7 history.

8 MR. WILLIAMS: We can see if we can find
9 more cases.

10 COMMISSIONER CLAYTON: If there are any
11 more. Thank you.

12 JUDGE PRIDGIN. Let's see if we have any
13 recross based on Bench questions.

14 MS. MARTIN: Briefly, your Honor.

15 JUDGE PRIDGIN: Ms. Martin. And when we're
16 done with Ms. Mantle, we'll take a break.

17 RE CROSS-EXAMINATION BY MS. MARTIN:

18 Q. Ms. Mantle, in response to Commissioner
19 Clayton's question with respect to the Staff's seeking the
20 opportunity to investigate the sale of a share of the
21 Calpine plant or the Aries plant, you testified that it
22 was because Staff felt that capacity would be good for
23 Aquila - MPS to have in its asset base. Do you recall
24 that testimony?

25 A. Yes, I do.

1 Q. And you're aware that very recently Aquila
2 made a presentation to the Commission with respect to the
3 possibility of acquiring that plant; is that correct?

4 A. Yes.

5 Q. Which would, in fact, be an action
6 consistent with what had motivated the Staff earlier to
7 request the opportunity to investigate the sale of an
8 interest in the Aries plant; is that correct?

9 A. State that again, please.

10 Q. Aquila's present intentions to explore the
11 possibility of purchasing the Aries plant would be
12 consistent with what had motivated the Staff to request an
13 opportunity to investigate a sale in that same plant of an
14 interest; is that correct?

15 A. No, that is not correct.

16 Q. Well, it would be correct to state that
17 Staff's interest in investigating was because Staff
18 believed that that plant would be a good fit for Aquila to
19 have on the regulated side; is that correct?

20 A. At that point in time.

21 Q. Now, with respect to the sale on the
22 nonregulated side of the interest in the Aries plant,
23 you're aware, are you not, that there was certain
24 inventory in the form of turbines, three CTs, in fact,
25 that were held on the nonregulated side by an aquila

1 subsidiary; is that correct?

2 MS. SHEMWELL: Judge, I believe this is
3 beyond the scope of questions asked by the Commission.

4 MS. MARTIN: It's intended to deal exactly
5 with the same issue with respect to the interest in Aries
6 and what motivated Aquila to essentially build this plant
7 when it sold its interest in the Aries plant.

8 MS. SHEMWELL: Well, Ms. Mantle can't speak
9 to what motivated Aquila.

10 MS. MARTIN: That's not what my question
11 was. I'm telling you what the issue goes to.

12 JUDGE PRIDGIN: I'll overrule and let her
13 answer to the extent that she knows.

14 BY MS. MARTIN:

15 Q. Ms. Mantle, are you aware that there were
16 three CTs held by the Aquila subsidiary on the
17 nonregulated side at the time of the sale of its interest
18 in the Aries plant?

19 A. I'm aware of that at this time.

20 Q. And you're aware that at some point Aquila
21 on the regulated side sought the authority of this
22 Commission to transfer those three CTs over to its
23 regulated side?

24 A. I'm aware that Aquila has -- that these are
25 the three CTs that are at the South Harper site.

1 Q. Would you agree with me for Aquila - MPS to
2 justify paying its nonregulated subsidiary for those three
3 CTs, that it needed to have a use for them?

4 A. That is correct.

5 MS. MARTIN: Thank you.

6 JUDGE PRIDGIN: Thank you. Any further
7 recross, Mr. Eftink?

8 RE CROSS-EXAMINATION BY MR. EFTINK:

9 Q. In response to a question from Commissioner
10 Clayton, if I wrote this down right, you said that someone
11 from Calpine talked to the Staff about mothballing the
12 Aries plant?

13 A. The possibility of mothballing.

14 Q. I want to explore that a little bit. Can
15 you tell me when this conversation occurred?

16 A. No, I cannot.

17 Q. If you were involved in it?

18 A. No, I cannot. I do not remember the date.

19 Q. You weren't involved in it, you mean?

20 A. I was invol-- I was at the meeting, but I
21 cannot tell you the date.

22 Q. Was this something in the last 12 months?

23 A. I don't remember.

24 Q. But it was -- do you remember perhaps who
25 the representatives were from Calpine said this?

1 A. No, I do not.

2 MR. EFTINK: Okay. Thank you.

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

5 (No response.)

6 JUDGE PRIDGIN: Redirect?

7 REDIRECT EXAMINATION BY MS. SHEMWELL:

8 Q. Ms. Mantle, when you testified that energy
9 and capacity are needed by Aquila, why does Aquila need
10 energy and capacity?

11 A. To serve its customers.

12 Q. Could you differentiate between energy and
13 capacity, please?

14 A. Capacity is demand put on the system at a
15 point in time. Energy is the demand over a period of
16 time.

17 Q. And we had a lot of discussion about
18 Aquila's need based upon its residential load, and would
19 you say how the residential, the large number of
20 residential customers affects its need for capacity?

21 A. Residential class load varies greatly
22 across time, whereas an industrial load is typically very
23 flat. It doesn't vary from hour to hour, whereas a
24 residential load will vary hour to hour, change quite a
25 bit from hour to hour. It's very weather sensitive.

1 Industrial load is not sensitive to the weather in any
2 given hour, as much as residential load is.

3 Q. So is your testimony that the residential
4 load can change within an hour, is that what you're
5 saying?

6 A. Within an hour, and from hour to hour.

7 Q. Could you only speculate about what Staff's
8 ultimate position would have been had Staff been allowed
9 to investigate the Aries sale?

10 A. It's pure speculation. That's why we asked
11 to do the investigation. We do not know what it would
12 have been had we been allowed to investigate.

13 MS. SHEMWELL: That's all I have. Thank
14 you.

15 JUDGE PRIDGIN: All right, Ms. Mantle,
16 thank you. Or Ms. Shemwell. Thank you, Ms. Mantle. You
17 can step down.

18 This is a good time for a break. Do I
19 understand that the next witness will be Mr. Wood from
20 Staff?

21 MS. SHEMWELL: Yes, sir.

22 JUDGE PRIDGIN: I show the clock at the
23 back of the room being ten to four. Let's recess until
24 five after four, please.

25 (A BREAK WAS TAKEN.)

1 JUDGE PRIDGIN: We're back on the record,
2 and I see Mr. Wood on the stand. If you would, please,
3 raise your right hand to be sworn.

4 (Witness sworn.)

5 JUDGE PRIDGIN: Thank you very much. If
6 you would please have a seat, Mr. Wood. Mr. Williams?

7 MR. WILLIAMS: Thank you, Judge.

8 WARREN WOOD testified as follows:

9 DIRECT EXAMINATION BY MR. WILLIAMS:

10 Q. Please state your name.

11 A. Warren Wood.

12 Q. Mr. Wood, did you prepare what's been
13 identified as Exhibit No. 19, which is entitled rebuttal
14 testimony of Warren T. Wood?

15 A. Yes, I did.

16 Q. Did you prefile it in this case?

17 A. I did.

18 Q. And did you also prepare what's been marked
19 as Exhibit No. 20, which is entitled surrebuttal testimony
20 of Warren T. Wood, and cause that to be prefled in this
21 case?

22 A. I did.

23 Q. If I were to ask you the questions that are
24 contained in each of those exhibits, would you have any
25 changes to those before you would say that the answers to

1 them contained therein would be your answers here today?

2 A. Yes, I do.

3 Q. And what changes do you have to your
4 rebuttal testimony, which is Exhibit No. 19?

5 A. To Exhibit No. 19, my rebuttal testimony, I
6 would go to page 13, line 19, seventh word, and change
7 that from the to their, t-h-e-i-r.

8 Q. So now the line would read, after Aquila
9 and Sega had identified their reasonable area?

10 A. Yes.

11 Q. Areas?

12 A. Yes. Then in my rebuttal testimony, this
13 is the correction I made in my surrebuttal testimony.
14 I'll identify it here for convenience. On page 23,
15 starting at line 19, with Q, through page 24, line 9, I
16 would strike that testimony.

17 MR. SWEARENGEN: Could you repeat that one,
18 please?

19 THE WITNESS: Yes, page 23, line 19,
20 starting with the Q, through page 24, line 9. It's the
21 same strike I noticed in my surrebuttal.

22 Then in my surrebuttal, near the back,
23 Schedule WW-13, this is the aerial photo of the area
24 surrounding the South Harper plant site to the north, and
25 the location where picture 6 was taken near the

1 intersection of those two roads, having gone back to the
2 site, the picture was taken -- if you're looking at an
3 8 1/2 by 11 sheet of paper, the picture was taken about a
4 half an inch further north on the map than what's shown on
5 Schedule WW-13. I don't think it changes the picture
6 significantly, but I wanted to make sure it is identified
7 being taken in the right place.

8 BY MR. WILLIAMS:

9 Q. As I'm looking at Schedule WW-13, you've
10 got -- looks to me like picture 6 is shown at the
11 intersection of a road that's running --

12 A. North/south and then an east road Ts into
13 the north/south road.

14 Q. I don't believe you've got any directions
15 noted on here.

16 A. North is up on the picture.

17 Q. You've got it at the intersection of a
18 road?

19 A. Uh-huh.

20 Q. It looks like there's a driveway or a road
21 just north of there as you described it that goes off to
22 the west. Would that be closer to the location or would
23 it be further north than that?

24 A. Picture 6 would be further north, about
25 halfway between the one road that's east/west where

1 picture 6 is now identified, about half the distance from
2 there to the next road north, the picture 7 was taken
3 from.

4 Q. With those changes, if I were to ask you
5 the questions that are contained in what's been marked as
6 Exhibit No. 19 and what's been marked as Exhibit No. 20
7 here today, would your answers be as in those exhibits
8 with the corrections you've provided?

9 A. Yes.

10 MR. WILLIAMS: Staff offers Exhibit
11 Nos. 19 and 20.

12 JUDGE PRIDGIN: Thank you. Any objection?

13 (No response.)

14 JUDGE PRIDGIN: Hearing none, Exhibit 19
15 and 20 are admitted.

16 (EXHIBIT NOS. 19 AND 20 WERE RECEIVED INTO
17 EVIDENCE.)

18 MR. WILLIAMS: Staff tenders the witness.

19 JUDGE PRIDGIN: Mr. Williams, thank you.

20 Questions from Aquila?

21 MR. SWEARENGEN: Just a couple, your Honor.

22 CROSS-EXAMINATION BY MR. SWEARENGEN:

23 Q. Mr. Wood, you said you've been with the
24 Commission for about seven years; is that correct?

25 A. Yes.

1 Q. And your current position is director of
2 the Commission Staff utility operations division; is that
3 correct?

4 A. Yes.

5 Q. And can you just kind of tell us generally
6 where is that in the pecking order or the hierarchy of the
7 Commission Staff?

8 A. I report to the Executive Director, and the
9 Executive Director's the senior management for Staff.

10 Q. And who's the Executive Director?

11 A. Wes Henderson.

12 Q. Having been employed here for approximately
13 seven years and in your current position, do you have any
14 reason to believe why the current Commissioners or members
15 of this Commission would not be qualified or otherwise
16 able with respect to the South Harper plant and the
17 Peculiar substation to consider in the context of
18 reviewing the request that's before them current
19 conditions, concerns and issues, including zoning?

20 A. I would say that the Commission Staff
21 and/or Commissioners, through countless number of public
22 hearings and through expertise available to Staff,
23 presently has the ability to deal with need, with the
24 appropriate infrastructure support for a power plant, for
25 land use compatibility in terms of the type of land use at

1 power plants generally and what the complaints or concerns
2 have been of citizens in the areas of power plant and/or
3 transmission lines.

4 Q. And you say the Staff would be able to do
5 that and, therefore, can I conclude from that that you
6 would say the Commissioners themselves would be in the
7 position to consider those factors?

8 A. Absolutely.

9 MR. SWEARENGEN: Thank you. That's all I
10 have.

11 JUDGE PRIDGIN: Mr. Swearengen, thank you.
12 Questions from StopAquila.org?

13 MR. EFTINK: Yes.

14 CROSS-EXAMINATION BY MR. EFTINK:

15 Q. Mr. Wood, I'm going to ask you to look at
16 the attachment to Exhibit 1, which is a letter which I
17 believe you drafted which was sent to Ms. Nanette Trout.

18 MR. EFTINK: And may I approach to help him
19 find that?

20 JUDGE PRIDGIN: You may.

21 BY MR. EFTINK:

22 Q. In Exhibit 1 there's an attachment that
23 appears to be a letter addressed, I believe, on
24 November 5, 2004 to Nanette Trout.

25 A. Yes, I see it.

1 Q. And I think you told us before that you
2 prepared that letter and Mr. Quinn signed it?

3 A. I had -- I prepared most of the text in the
4 letter. It did go through General Counsel's Office for
5 review before the Executive Director reviewed it and sent
6 it out.

7 Q. Now, in the third paragraph I want to ask
8 you about some language.

9 A. Uh-huh.

10 Q. In the third paragraph in this letter to
11 Ms. Trout, does it say that the authority of the Public
12 Service Commission does not extend to an ability to order
13 that a utility not construct in a particular location?

14 A. That's what the letter says.

15 Q. So then it's correct to say that in
16 November 2004, the Public Service Commission Staff says,
17 we, the Staff or the Public Service Commission, can't tell
18 Aquila where to not build?

19 A. The sentence says what it says, yes.

20 Q. Right. So you were later asked to review
21 the location, you were asked to review that after the
22 facility was completed?

23 A. Actually, associated with the 248 case,
24 there was some preliminary work started in terms of the
25 assessment of this facility, and I toured the facility for

1 the first time on March 15th, 2005 associated with a
2 public hearing in the 248 case.

3 Q. How much of the buildings had been
4 constructed by the time you made your first visit?

5 A. At least one of the generators was onsite.
6 The transformer fire walls were being poured. A number of
7 substation structures were installed. There were
8 construction people onsite, quite a bit of earth work
9 taking place. There was definitely construction taking
10 place at that time.

11 Q. Can you tell us who asked you to go to the
12 site for this visit that occurred in March 2005?

13 A. I don't believe anybody asked me to go to
14 the site. Associated with the public hearing, I knew I
15 would be in the Harrisonville area and decided that it
16 would be appropriate at that time to call Aquila and see
17 if we could not arrange the ability to be onsite to see
18 the current status of construction and to get a first
19 glimpse at the vicinity where they had sited this plant,
20 have an opportunity to begin to get some feel as to the
21 configuration of the plant and the surrounding land uses
22 and residential densities, as we were headed to a public
23 hearing that day and wanted to have some feel as to what
24 people were expressing concerns about.

25 Q. But would it be correct to say that because

1 the Public Service Commission Staff said it could not tell
2 Aquila where not to build, that you weren't too concerned
3 about land use at that time?

4 A. I wouldn't say that. Given the court
5 proceedings that had taken place to that date, we
6 recognized there may be some -- I suppose it calls for
7 speculation of a legal view. If you want me to go ahead,
8 I'll be happy to give that, but once again, I'm not a
9 lawyer.

10 Q. Well, I'm not sure my question asked for a
11 legal opinion. My question was whether it would be
12 correct to say that when you made this tour, in view of
13 the fact that you had written this letter saying you
14 couldn't tell Aquila where not to build, you weren't too
15 concerned about land use?

16 A. At the time the letter you're -- are you
17 referring to the November 5th, 2004 time period or the
18 March 15th, 2005 public hearing date?

19 Q. In my question I'm referring to March 15,
20 2005.

21 A. I wouldn't agree that we were not concerned
22 with land use, and in general I wouldn't say that we have
23 no concern for land use in any proceeding. But in this
24 case, certainly we saw a potential for a change in
25 interpretation of law from what had been previously

1 recognized and thought that it would certainly be
2 particularly important for us at that time to make sure
3 that we looked at the surrounding area to get a better
4 feel for public impact and land use.

5 Q. Now, didn't someone in the Public Service
6 Commission tell you to take a position to support the
7 plant remaining where it is?

8 A. No.

9 Q. But since you had already put in writing
10 that the Public Service Commission couldn't tell them to
11 not build there, you were pretty much locked into a
12 position, wouldn't you agree?

13 A. No.

14 Q. In your review which culminated in your
15 prefiled testimony, did you take a look at things like
16 pollution?

17 A. The degree of my environmental concern in
18 the project was reviewing that they had submitted permits
19 and had received approvals from DNR to construct the
20 plant.

21 Q. Before you prepared your sworn testimony,
22 did you see this noise assessment review that was marked
23 today as an exhibit?

24 A. No.

25 Q. That was never offered you by Aquila?

1 A. I believe I had received copies of
2 different sound studies associated with presentations and
3 in discovery requests and interviews, but I don't
4 particularly recall if that report was presented to me or
5 not.

6 Q. Now, in your sworn testimony, you said
7 that -- and I'm referring to page 16 of your rebuttal --
8 that the problems occurred in Step 9 where Aquila would
9 have addressed the concerns of the nearby communities and
10 residents. Is it your position that Aquila in deciding
11 where to locate did not address the concerns of the local
12 residents?

13 A. Could you repeat the question, please?

14 Q. Yeah. And I'm looking at page 16, starting
15 at line 20. Is what you're saying that Aquila didn't
16 address the concerns of the local citizens?

17 A. What I say is in Step 9, where they would
18 have addressed the concerns of nearby communities and
19 residents to the greatest extent possible, associated with
20 the optimal sites where problems have occurred, these
21 problems have brought the parties to the pending case.

22 I would say that, to paraphrase, Step 9 is
23 my view of where -- where if Aquila had had more time,
24 maybe if the construction unit had not started at the time
25 it had and more time had been put into their process for

1 their negotiations and work with the City of Peculiar,
2 Cass County, local citizens, that much of the -- many of
3 the issues that are now before us in this proceeding would
4 not be nearly as likely or be diminished.

5 Q. Well, in October 2004, did you become aware
6 of the controversy around Peculiar where people were
7 opposed to this project?

8 A. Through the press, phone calls and e-mails,
9 yes.

10 Q. In fact, didn't you refer people to Julie
11 Noonan of StopAquila.org instead of them talking to you
12 about this situation?

13 A. Actually, as I recall -- and I don't
14 remember which particular citizen it was. There was one
15 that had called me and had expressed a concern, and I had
16 received a call from another individual, and I said, well,
17 you know, if you're talking to somebody, would you mind if
18 I -- do you want to talk to them, is it okay if I let you
19 know who they are? And the individual responded with yes.

20 I know I've been in the public hearings
21 where I believe that may be Julie Noonan, but I can't
22 confirm that indeed that was the person I was talking
23 with. In general, I would not make it a practice that if
24 one individual calls, I send other people to them. This
25 individual had expressed an interest in knowing who in the

1 area was concerned about it.

2 Q. And after that conversation, did you refer
3 people to talk to Julie Noonan instead of talking to you?

4 A. Only in one case.

5 Q. Now, on page 19 at line 11 of your rebuttal
6 testimony, you state your opinion that this situation
7 comes down to two basic questions, which I would summarize
8 and shorten up as, is this power plant an appropriate
9 facility for Aquila, and are there -- are these reasonable
10 locations?

11 You don't say anything about whether Aquila
12 complies with the local zoning or complies with any
13 requirements of the local government. Why didn't you list
14 that?

15 A. Actually, if you go through Steps 1 through
16 10 earlier in the rebuttal, there are several places I
17 make reference to working with local communities.

18 Q. Okay. Could you point that out for me?

19 A. Certainly. In Step 6 I talk about review
20 county plat books for the areas identified in Step 5 to
21 determine if there are properties identified in Step 5
22 that appear suitable for such a prospective generation
23 facility and visiting with landowners to determine ability
24 to purchase potential parcels of land for such a
25 prospective facility.

1 I fully anticipate in Step 6 that a utility
2 would have an opportunity to begin to look at, if they
3 have not previously, and they could have in the previous
4 steps, but at that point in time, it becomes particularly
5 important to start looking at land use potential, is there
6 a good opportunity here, or in Step 8 to start dealing
7 more directly with the local communities, talk about
8 zoning, land use, residential, proximity, population
9 density, visual impacts, with the opportunities for
10 buffers, dust control, all those type of issues that are
11 of concern to citizens.

12 Q. Are you saying, therefore, that either
13 Step 6 or Step 8, if there are zoning requirements, that
14 you would expect Aquila to comply at those points in the
15 process?

16 A. I would say Step 6, 7, 8, 9. Really Step 6
17 down any of those are opportunities for that development.
18 I do believe on advice of counsel 64.234 provides for an
19 exemption to public utilities, and I believe that the
20 treatment of this going forward is actually something
21 where the Commission will certainly have the capability to
22 not necessarily require compliance with local zoning, but
23 it is something that they may consider.

24 Q. Well, it's certainly not proper for me to
25 argue the law with you, Mr. Wood.

1 A. Yes. I'm not a lawyer, and I only advise
2 that on advice of counsel.

3 Q. But in what you have written, tell me if
4 I'm wrong, but it seems like what you're saying is -- and
5 you're writing in your testimony, that point 6 through 8
6 is where they would comply with any local requirements in
7 this process?

8 A. They would certainly consider it as part of
9 their assessment as to appropriate locations for power
10 plant siting.

11 Q. At page 19, line 23, you state that the
12 second question boils down to whether Aquila used a
13 reasonable process for determining that the South Harper
14 site was an appropriate location.

15 A. Yes.

16 Q. In looking at what's reasonable, do you
17 think that it would be reasonable for Aquila to comply
18 with the court's injunction?

19 A. I don't have an opinion on that.

20 Q. If you would turn to your surrebuttal,
21 starting on page 10, line 14, where you opine that the
22 County record of reviewing substation siting has not been
23 consistent.

24 A. Yes.

25 Q. How can you say that?

1 A. I reviewed the 12 substations that are
2 currently located in Cass County that are not in
3 incorporated areas. Only one of them has gone through a
4 SUP or rezoning process. The other 11 appear to have been
5 built without any SUP or zoning changes, and thus far I'm
6 not aware of any complaints or any concerns at those
7 locations.

8 Q. You don't know when those substations were
9 built, do you?

10 A. Anywhere from 1960. I believe some of the
11 earlier ones were in the '60s to certainly more recent
12 dates than that.

13 Q. Who gave the information that they were not
14 zoned?

15 A. I have required -- requested that
16 information from Aquila, from their transmission
17 substation group, and I understand they also visited with
18 some of the other regulated utilities and co-ops in the
19 area. At least -- at least on the one quick review that
20 each of them did, they were not aware of requiring
21 separate rezoning either for substations.

22 Q. You didn't ask Cass County this, you asked
23 Aquila?

24 A. No, I did not.

25 Q. In your surrebuttal on page 11, line 15,

1 you say you disagree with the contention that Aquila
2 erected the South Harper plant and Peculiar substation
3 without advance public participation. Tell me what you
4 mean by that.

5 A. Yes. This is -- if I can go to that
6 portion of text from Mr. Peshoff, it will be helpful.

7 Q. Okay.

8 A. Just a moment. Yes. My testimony relative
9 to the point you've made on page 11, line 15 goes back to
10 the discussion on surrebuttal page 18 --

11 Q. You seem to be --

12 A. -- line 4.

13 Q. You seem to be saying that you think there
14 was public participation before Aquila went ahead.

15 A. I would say that it was -- there was not a
16 complete absence of public participation in the process.
17 Actually, one of the reasons they arrived at the South
18 Harper process -- project versus another site was because
19 of public input.

20 As you know, they started with the Camp
21 Branch site near Harrisonville, and as a result of public
22 input, they abandoned that site, and they moved to City of
23 Peculiar based on that input from City of Harrisonville,
24 its resolution and from the public hearing, and then
25 arrived at the South Harper site through communications

1 with City of Peculiar officials.

2 I would not represent that the timeline of
3 the communications between Aquila and the community in the
4 South Harper -- in the immediate vicinity of the South
5 Harper plant was conducive to there being a good
6 relationship at this point. I think it was too
7 abbreviated, but I wouldn't say there was a complete
8 absence of public input.

9 Q. Well, so you're talking about a county
10 planning board hearing that occurred regarding the Camp
11 Branch application, correct?

12 A. The -- June of '04 there was a
13 Harrisonville --

14 Q. About the first of July 2004, Camp Branch
15 application, planning board hearing, correct?

16 A. That's -- it was somewhere in that time
17 frame, June, July of '04.

18 Q. But, Mr. Wood, there's never been a hearing
19 before any county planning board or county commission
20 regarding the application to put this power plant at South
21 Harper. You know that, don't you?

22 A. That's my recollection.

23 Q. So how can having a hearing in front of the
24 planning board about putting in a power plant at Camp
25 Branch give any due process to the people that live around

1 South Harper?

2 A. This point in time, the input available to
3 the public, as I have indicated, there hasn't been in my
4 view the kind of timeline that would have been optimal or
5 would have been the objective of this planning for public
6 input at South Harper before the plant was built. Most of
7 the public input since then has been in the March 15, 2005
8 hearing and in the public hearings associated with this
9 case.

10 Q. Well, you're saying that Aquila didn't
11 allow enough time, and I appreciate that, but I really
12 need to ask you this question to try to get an answer.
13 When you talk about a hearing before the planning board
14 for the proposal to put the power plant at Camp Branch,
15 you would agree, wouldn't you, that the people who live
16 around South Harper have no reason to go to that hearing?

17 A. I would agree.

18 Q. Okay. And you would agree that there's
19 never been a hearing before the county planning board or
20 the county commission or whatever they want to call it
21 about the idea of putting a power plant at South Harper?

22 A. I agree.

23 Q. And you agree that there was a hearing in
24 front of Judge Dandurand about the 4th of January of
25 2005 --

1 A. Yes, I was there.

2 Q. -- where the judge heard testimony and then
3 entered an injunction before any of my clients got to
4 testify?

5 A. I don't know that.

6 Q. But you know the judge entered an
7 injunction against Aquila?

8 A. Yes.

9 Q. And you know that the City of Peculiar went
10 ahead and entered into this arrangement with Aquila
11 without having a public vote. You're aware of that,
12 aren't you?

13 A. I was not in attendance at the meetings. I
14 don't know the details as to what level of public
15 involvement took place beyond the representations made by
16 Aquila.

17 Q. So in your comment about how there's not
18 been an absence of public participation regarding putting
19 the power plant at South Harper, what public participation
20 are you referring to?

21 A. The first portion is the public input that
22 resulted in them not going to the Camp Branch site after
23 that. And it's noted in my testimony, there were notices
24 and there was some attendance meetings in September and
25 October, just before grading began. And by mid October,

1 certainly, Aquila was receiving some input from the local
2 people that they were -- some of them were not happy with
3 the unit being built there.

4 Q. Now, Mr. Wood, you've been present
5 throughout these hearings the last day and a half or two
6 days, correct?

7 A. Most of the time.

8 Q. And you heard testimony about discussions
9 between Staff and Aquila about the kind of resources it
10 needed to acquire?

11 A. Yes.

12 Q. I don't think this is confidential, but
13 Mr. Swearengen's not here.

14 A. He's there.

15 Q. Oh, there he is. He moved from one chair
16 to another. Isn't it correct that in 2003 Staff told
17 Aquila that it needed to acquire more base load?

18 A. I suppose you probably have a copy of a
19 letter I provided in response to a DR. If I could see
20 that real quick, I could confirm the date. But I do
21 remember sending a letter to them following an IRP meeting
22 where certain resources were being discussed.

23 MR. EFTINK: Okay. I believe this would be
24 82.

25 (EXHIBIT NO. 82 WAS MARKED FOR

1 IDENTIFICATION BY THE REPORTER.)

2 THE WITNESS: If you wouldn't mind, I'd
3 like the opportunity for Aquila to confirm that's a public
4 letter.

5 MR. EFTINK: Sure.

6 THE WITNESS: I stamped it HC out of
7 caution because it does include some information they may
8 consider HC.

9 MR. SWEARENGEN: Give us a minute. We'll
10 try to check the status of that. Thank you.

11 MR. EFTINK: We're ready.

12 JUDGE PRIDGIN: I don't know if Aquila is.

13 MR. SWEARENGEN: Yes. We've looked at it.
14 It's not highly confidential.

15 JUDGE PRIDGIN: Okay. Thank you.

16 THE WITNESS: Thank you.

17 BY MR. EFTINK:

18 Q. Mr. Wood, do you have Exhibit 82 in front
19 of you?

20 A. I do.

21 Q. Is Exhibit 82 a letter that you wrote on
22 January 30, 2004 to Denny Williams?

23 A. It is.

24 Q. Can you tell us who Denny Williams is?

25 A. Denny Williams was the -- I'm not sure of

1 his official title with Aquila. At the time he was -- he
2 was being treated as a regulatory liaison between Staff in
3 the resource planning meetings and Aquila.

4 Q. Now, is it fair to summarize this letter as
5 indicating that Staff was telling Aquila that it needed to
6 acquire more base load?

7 A. I wouldn't characterize it as a letter that
8 says, the only option you should be pursuing or the most
9 appropriate option is the base load coal-fired power
10 plant.

11 The letter expressed concerns with the
12 short time frame they were doing their analysis relative
13 to Aries, and the need to recognize that if a base load
14 coal-fired power plant is appropriate, they have a
15 significant lead time and that they need to be doing their
16 analysis over a longer time frame.

17 And I think I summarize that, you know, the
18 view that it isn't just a base load letter as the last
19 paragraph where I say, Aquila should not assume that
20 Staff's position is it is only prudent to add base load
21 generation when the difference between owned and
22 contracted generation sources is short of anticipated peak
23 load by at least the number of megawatts that are planned
24 to be added by the new unit or long-term contract.

25 Q. But didn't you also caution Aquila that

1 delays in getting more base load may likely result in
2 Aquila being more dependent on natural gas-fired
3 generation and take Aquila further from an optimal mix of
4 generation sources?

5 A. Yes. To summarize it, basically if the
6 utility -- if there is the view that a utility is
7 continually doing short-term planning, they're likely
8 going to be only left with short-term solutions to meet
9 capacity and energy needs, and we wanted to emphasize that
10 they need to be thinking over a longer term so that they
11 can identify those appropriate resources and take a longer
12 time to build.

13 Q. So would it be fair to say that this letter
14 in January 2004 is making two points, one being that you
15 really need to consider base load, and two acquiring
16 gas-fired peaking facilities may take you further away
17 from the optimum mix of base, intermediate and peaking?

18 A. At this point in time, we were noting the
19 short time frame over which this -- by the way, this
20 meeting that triggered this letter was not a standard
21 integrated resource planning that we conduct twice per
22 year. This was a special meeting talking primarily about
23 the five-year planning horizon and how Aries might fit
24 into that. So I don't want to leave you with the
25 impression this was one of the integrated resource

1 planning meetings where a longer time frame and a broader
2 range of resources are considered.

3 This was a shorter time frame, and we just
4 felt that it was appropriate after the meeting to make it
5 clear that we still believe that a longer time frame is
6 necessary for good planning, and that they need to be
7 considering base load. And that's -- and I do believe the
8 discussions and comments here were consistent with our
9 continued support of them acquiring more base load, and to
10 some degree they have acquired more base.

11 Q. That would be through a purchase agreement?

12 A. And participation in another unit, a
13 coal-fired unit.

14 MR. EFTINK: I move for introduction into
15 evidence of Exhibit 82.

16 JUDGE PRIDGIN: Any objections?

17 (No response.)

18 JUDGE PRIDGIN: Hearing none, Exhibit 82 is
19 admitted into evidence.

20 (EXHIBIT NO. 82 WAS RECEIVED INTO
21 EVIDENCE.)

22 JUDGE PRIDGIN: And, Mr. Eftink, at your
23 convenience, could you get copies for the Bench, please?

24 MR. EFTINK: I will.

25 BY MR. EFTINK:

1 Q. Would it be correct to say, Mr. Wood, that
2 there are no published rules that would guide the Public
3 Service Commission Commissioners in land use planning or
4 siting of power plants?

5 A. The scope of your question was what kind of
6 documents?

7 Q. Well, let me try to break it down to be
8 fair.

9 A. Okay. Okay.

10 Q. Is it correct to say that there are no
11 regulations that would guide the Commissioners of the
12 Public Service Commission in land use planning?

13 A. Land use planning broadly, in terms of --
14 or specific to power plants. I do think that public
15 convenience and necessity as identified in 393, the
16 provisions of 393.170(1), 2 and 3, if you take the broad
17 issue of public convenience and necessity, I think land
18 use planning could fall under those considerations.

19 Q. Other than you said 393.170(1), 2 and 3,
20 can you tell us of any other statutes or regulations that
21 would guide the Commission in making a land use
22 determination?

23 A. I'm not an attorney. I'm not familiar with
24 the other statutes that might exist there.

25 Q. Well, I certainly appreciate that. I'm

1 just -- as a good employee of the Public Service
2 Commission Staff, I was wondering if there are some
3 publications that we should be aware or, more importantly,
4 that the Commissioners should be aware of.

5 Same question with regard to the siting of
6 power plants. Are there any rules, regulations or
7 statutes you can point us to that set out any kind of
8 guidelines or criteria?

9 A. I'm not aware of any statutes or rules per
10 se that would address specifically the siting of power
11 plants.

12 MR. EFTINK: Okay. Thank you very much.

13 JUDGE PRIDGIN: Cass County? Do you need a
14 minute, Mr. Comley?

15 MR. COMLEY: Well, I'm going to suggest
16 something to the Commission. My cross-examination
17 probably will cover between 45 minutes to an hour, and I
18 understand that there will be other cross-examination. We
19 do have the luxury of two hours tomorrow morning before
20 the next witness will be available, Aquila witness, and I
21 was wondering whether or not, because of that, this may be
22 a convenient time to request a recess.

23 JUDGE PRIDGIN: Any other counsel's
24 positions on this?

25 MR. COFFMAN: I would predict I have

1 30 minutes. I would support the breaking here and
2 starting in the morning.

3 MR. SWEARENGEN: We need to be in a
4 position to start with our witness at 10 tomorrow morning.
5 So what I'm hearing is that there may be more than an hour
6 and a half's worth of additional cross for this witness,
7 so I would suggest we plow ahead.

8 JUDGE PRIDGIN: What might make sense is to
9 go ahead and let Mr. Coffman cross-examine, since his is
10 going to be shorter, and then once Mr. Coffman's is
11 complete, perhaps break for the evening.

12 COMMISSIONER CLAYTON: Judge, I think
13 Mr. Wood's testimony and the cross-examination on his
14 testimony is very important, at least to me, hearing what
15 information comes out of that. I have a commitment soon
16 after five o'clock that's not going to allow me to stay.
17 So whatever we can do so that the most of this part of the
18 examination that we can move to another day, and I
19 understand Aquila's concerns, and I know that other
20 Commissioners don't want to delay or want to keep moving.
21 But this is important to me, so I really hope we don't go
22 too far after five, because I'm going to have to leave and
23 I was hoping to participate in that part of the
24 examination.

25 MR. SWEARENGEN: Well, I think I just heard

1 the answer, so I'll modify my request. We're fine
2 quitting right now then.

3 JUDGE PRIDGIN: It looks like we've got
4 most of the counsel who are wishing to wrap it up, and
5 there's not an easy answer, because we do -- I think we
6 will have another Commissioner who is available tomorrow
7 who will have questions, so this may be a more convenient
8 time than not to recess for the day.

9 So if there's nothing further, what we'll
10 do is we will begin tomorrow with Mr. Wood back on the
11 stand, and we will -- after that Mr. White will be
12 available, if I'm not mistaken, and then we will have --
13 well, those will be potentially the only two witnesses
14 tomorrow, because others won't be available until Monday.

15 All right. Anything else from counsel?

16 MR. WILLIAMS: Judge, if no one would mind,
17 I'd like to ask a quick clarification questions of
18 Mr. Wood.

19 JUDGE PRIDGIN: Mr. Williams?

20 MR. WILLIAMS: In response to one of
21 Mr. Eftink's questions, you used the terminology SUP.
22 What did you mean by that?

23 THE WITNESS: I'm sorry. What was the --

24 MR. WILLIAMS: You used the term SUP.

25 THE WITNESS: Special use permit.

1 MR. WILLIAMS: That was my question.

2 JUDGE PRIDGIN: If there's nothing further,
3 we will be off the record, and we will resume at 8:30 a.m.
4 Thank you.

5 WHEREUPON, the hearing in this case was
6 recessed until April 28, 2006.

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