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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS
Hearing
April 28, 2006
Jefferson City, Missouri
Volume 7

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

RONALD D. PRIDGIN, Presiding,
REGULATORY LAW JUDGE.
CONNIE MURRAY,
STEVE GAW,
ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
COMMISSIONERS.

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

2 (EXHIBIT NO. 83 WAS MARKED FOR

3 IDENTIFICATION.)

4 JUDGE PRIDGIN: Good morning. We are back

5 on the record. As I understand as we adjourned last

6 night, Mr. Wood was still on the stand, and it was Cass

7 County's turn to cross-examine.

8 Is there anything else counsel needs to

9 bring up before we resume Mr. Wood's testimony?

10 Hearing nothing, Mr. Comley.

11 MR. COMLEY: Thank you, Judge Pridgin.

12 JUDGE PRIDGIN: And, Mr. Wood, I'll remind

13 you you're still under oath, sir.

14 THE WITNESS: Yes.

15 WARREN WOOD testified as follows:

16 CROSS-EXAMINATION BY MR. COMLEY:

17 Q. Good morning, Mr. Wood.

18 A. Good morning.

19 Q. Sounds like all the equipment is working.

20 I can hear you from there.

21 Mr. Wood, first let me ask you, can you

22 explain your position with the Commission? And I know

23 Mr. Eftink has visited with you about that, but one more

24 time for me, what is your position with the Public Service

25 Commission?

1 A. I'm the director of the utility operations
2 division, and in that responsibility I oversee a number of
3 divisions within the Public Service Commission dealing
4 with gas, electric, telecommunications, water, sewer and
5 manufactured housing.

6 Q. Are you also in the position of developing
7 policies for your division?

8 A. Yes.

9 Q. Also, you and your department are somewhat
10 at the heart of rulemakings in the electric industry; is
11 that correct?

12 A. Yes.

13 Q. Would it be fair to say that you are also
14 somewhat of an enforcement arm for the Commission?

15 A. Relative to operations issues. There's
16 also a services division within the Commission which also
17 deals with a great number of auditing, financing,
18 management audit functions. In terms of the rules and
19 tariffs, that's primarily on the operations side as you
20 indicate.

21 Q. And that's your side?

22 A. Uh-huh.

23 Q. And if I've got this correct, if you or
24 members of your immediate staff think that a utility may
25 be violating the terms of a tariff or violating the terms

1 of an Order of the Commission or indeed violating a
2 statute, would it be your department that would coordinate
3 with General Counsel on whether a complaint would be
4 filed?

5 A. In many cases that would be true. There
6 are issues with overearnings, things of that nature that
7 can trigger complaints from the services side as well.

8 On the operations side, let's say that a
9 utility is violating some provision of its tariffs or
10 rule. We would take a look at that, determine if the
11 compliance was -- compliance issue was something that
12 necessitated immediate complaint filing.

13 We could also look at something as an
14 administrative or recordkeeping issue and indicate that
15 they have a relatively short time frame to comply with the
16 rule and tariff and provide proof or show evidence that
17 they have come into compliance with that rule and tariff
18 to avoid a complaint filing.

19 Q. Kind of as a follow-up to one of my earlier
20 questions, if there were going to be any rulemakings in
21 connection with the processes by which utility companies,
22 particularly electric companies, would file for authority
23 to build and construct power plants, would that be
24 something your department, your division would be involved
25 in?

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1 A. Yes.

2 Q. I know that Mr. Eftink visited with you
3 yesterday about the letter addressed to Nannette Trout,
4 but I thought because I had questions about that, I wanted
5 to bring that to your attention again.

6 A. Okay.

7 Q. And this was marked as part of Mr. Empson's
8 schedules, as I recall, and I've got that myself.

9 MR. COMLEY: May I visit with him directly
10 about it?

11 JUDGE PRIDGIN: You may.

12 THE WITNESS: It's also in the stack here,
13 but if you've got a copy, that would be appreciated.

14 Thank you.

15 BY MR. COMLEY:

16 Q. Now, going over what we visited about, my
17 understanding is that although Mr. Quinn was the signatory
18 on that letter, you had a chief role in authoring that;
19 would that be correct? Is that too much to say? Tell me
20 what you said yesterday. I got the impression that you
21 helped him write that letter.

22 A. If you look through the words in this
23 letter, certainly the majority of them are mine. There
24 was some review from our General Counsel's Office as well.
25 I can't recall how extensively they edited it or not. I

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1 do believe the intention here and language in the letter
2 is largely mine.

3 Q. All right. Well, the third paragraph I
4 think on the page is the one that comes to mind most
5 directly for me, and see if I've got this correctly in my
6 own notes, that this says that the Missouri Public Service
7 Commission is involved in the resource planning of Aquila
8 and in review of its generation addition plants and
9 timing, but this authority does not extend to an ability
10 to order the utility not to construct a generation
11 facility in a particular location within their service
12 territory. Missouri Public Service Commission authority
13 and this generation facility size, fuel type, timing and
14 location will be of particular interest when Aquila
15 requests this plant be included in its rates.

16 Is that a fair reading of the paragraph?

17 A. Yes.

18 Q. Pretty close?

19 A. Uh-huh. I think that said what it said.

20 Q. Do you recall if there was another letter
21 about the proposed power plant in Cass County that was
22 sent to one of our members in the General Assembly in
23 June, I think?

24 A. I don't remember the exact date. I do
25 remember there was an inquiry from a member of the

1 Legislature, and there was a response provided to a number
2 of questions that he had.

3 MR. COMLEY: May I approach the witness
4 again?

5 JUDGE PRIDGIN: You may.

6 BY MR. COMLEY:

7 Q. Mr. Wood, I've handed you what has been
8 previously marked by the court reporter as Exhibit 83. Do
9 you recognize that as a letter to the Honorable Rex Rector
10 dated June 2nd, 2004?

11 A. I do.

12 Q. And were you also copied on this letter?

13 A. Yes, I was.

14 Q. Now, I understand this was sent to Rex
15 Rector, despite the fact that our copy lacks a signature,
16 from Toni Messina; is that correct?

17 A. Yes. I cannot absolutely confirm this was
18 the final version, but it does look like it, very similar
19 to the letter if not the letter that was sent.

20 Q. All right. Well, maybe the fact that it's
21 not the final version, I think more expressly is the
22 position taken on page 2, there's a question and answer
23 there. I think Rex Rector asked, does Aquila have to
24 abide by county zoning requirements? Are there state laws
25 that supersede a county's authority in this area?

1 And I'm reading from the text, and please
2 correct me if I'm wrong, but the answer goes like this:
3 Without more facts relating to the County zoning question,
4 we cannot provide a generic answer. Generally, however,
5 the courts and the Commission in past decisions have
6 viewed local government as being preempted by the state
7 authority of a public utility to exercise its certificate
8 of convenience and necessity granted by the Commission
9 under Chapter 386, RSMo, the Public Service Commission
10 Law.

11 And then there's another paragraph that
12 talks about a position taken by Union Electric. The third
13 paragraph, I would read that. The Commission itself has
14 held that under state law, municipal and local political
15 subdivisions are prohibited from imposing unique terms and
16 conditions which are different from or in addition to
17 those already contained in tariffs and the rules of this
18 Commission.

19 Is that a correct reading of that letter
20 and those paragraphs that I just read?

21 A. Under the title, does Aquila have to abide
22 by county zoning requirements, you've read the first and
23 third paragraph?

24 Q. Yes.

25 A. Yes, I believe you read those accurately.

1 Q. Thank you. And this was a letter that you
2 did receive? Was this something that the Commission did
3 adopt, as far as you know?

4 A. I don't know that the Commission adopted
5 this. I know it was developed by Staff and General
6 Counsel in response to Representative Rector's request.

7 Q. Thank you.

8 MR. COMLEY: I move for the admission of
9 Exhibit 83.

10 JUDGE PRIDGIN: Any objections?

11 MR. COMLEY: I'm sorry. I have not handed
12 that out. Jim, why didn't you tell me that?

13 JUDGE PRIDGIN: Hearing no objections,
14 Exhibit 83 is admitted.

15 (EXHIBIT NO. 83 WAS RECEIVED INTO
16 EVIDENCE.)

17 BY MR. COMLEY:

18 Q. I'm going to ask you a little bit about
19 what those letters confirm. Would it be fair to say,
20 Mr. Wood, that these letters confirm for the recipients
21 that the Commission and even its Staff is not involved in
22 how Aquila will locate its power plants?

23 A. As of the date of those letters, I would
24 say that what the letters represent is what they say, and
25 that is -- I think you've somewhat paraphrased it, but I

1 would agree.

2 Q. Now, isn't this because the Missouri Public
3 Service Commission lacks legislative authority to site or
4 even move the site of power plants?

5 A. I would say -- and I think this calls for
6 some speculation as to what -- it's a legal issue I don't
7 know that I'm qualified to respond to.

8 Q. Well, to the extent that you do have
9 responsibilities in interpreting some of the laws of the
10 Commission, to the extent you have that ability, isn't it
11 true, based upon your understanding now, the Commission
12 lacks legislative authority to either site or move the
13 site of a power plant?

14 A. No, I don't believe that.

15 Q. What legislative authority do you think
16 they have?

17 A. I believe what we were acting on at the
18 time those letters was written was our understanding of
19 the 1960, 1973 and 1980 court cases and Commission cases
20 determining that within -- largely going back to the 1960
21 Harline case.

22 Q. Your position then would be because of the
23 cases that had been decided since that time, that the
24 authority has changed, is that what you're saying?

25 A. Yes, I believe I would say that.

1 Q. But would you agree with me that there's
2 been no additional legislative action since those cases?
3 The legislative -- the Legislature has not acted at all
4 since those cases have been decided? The statutes are
5 still the same, aren't they?

6 A. I know a lot of statutes have changed. I
7 don't know if they've specifically impacted those areas
8 since 1960. I don't know.

9 Q. I'm trying to recall, too. I think --
10 didn't you testify about this in an earlier hearing? Take
11 you back to January 2005.

12 A. Yes.

13 Q. Do you remember being asked a question like
14 that?

15 A. I remember being asked questions along the
16 lines of the Nannette Trout letter and our interpretation
17 of our current authority, but I --

18 Q. Just a minute.

19 A. If you have the transcript...

20 Q. Let me confirm with you, though, were you
21 called as a witness in the hearing before Judge Dandurand,
22 I think it was on January the 5th, 2005?

23 A. I remember a subpoena and being there to
24 testify, yes.

25 Q. You were subpoenaed?

1 A. Yes.

2 Q. Were you placed under oath at that time?

3 A. Yes, I was.

4 Q. And were you questioned by Carl Zobrist in
5 the course of that hearing?

6 A. Yes, I believe so.

7 Q. Do you remember this question: Now, does
8 the Public Service Commission have siting authority? And
9 do you remember this answer: Do you mean, like, in the
10 context of such -- like the state of Iowa where a utility
11 comes in and says, well, I want to build a transmission
12 line from point A to B and the statute lays out a group
13 that has to end up approving that? Do you remember that
14 answer?

15 A. Yes, I believe I do.

16 Q. Do you remember this question: Right. Do
17 we have that in Missouri? Answer: No, we don't.

18 Do you remember that answer?

19 A. Yes, I do.

20 Q. If I have your testimony correct right now,
21 you sense that the Court of Appeals opinions since the
22 date of your testimony in January of 2005 have changed the
23 Commission's authority?

24 A. Yes.

25 Q. Let me ask you this question: Even if you

1 and the General Counsel of the Commission disagreed and
2 would not approve of a site chosen by an electric utility
3 for a power plant, is there anything that you and the
4 Commission could do to stop it?

5 A. At this point in time, are you referring to
6 the current, with the court cases that have taken place --

7 Q. Exactly right.

8 A. -- the states and the circuit courts?

9 Q. Exactly. What action could the Commission
10 or your staff take to stop that utility from building in a
11 place you disagreed with?

12 A. Well, given what the courts have now said,
13 if I'm reading them correctly -- and once again, I'm not
14 an attorney -- it would appear that a utility would either
15 need to come here to get specific, somewhat like a
16 certificate of public convenience and necessity for a
17 specific site, or they would need to go to the local
18 jurisdiction for the zoning or the SUP or special use
19 permit, something along those lines.

20 Q. Well, let me stop you there. I'll ask you
21 this question: Even though the Court of Appeals has ruled
22 in this way, let's presume a public utility has not come
23 to this Commission for advance approval. It's just going
24 out there and building the plant. What action could the
25 Commission do to stop it from building on that site?

1 A. Well, if we denied the ability of -- I
2 mean, if a utility came in and applied for a certificate
3 of public convenience and necessity for a plant and it was
4 denied by this Commission, they said, no, this is not an
5 appropriate site or there's not a need or this is not
6 consistent with public convenience and necessity, then
7 they wouldn't have the authorization from the Commission.

8 Q. And then you could go down there and get an
9 injunction because they didn't get the certification,
10 correct?

11 A. I'm not sure what legal process you're
12 referring to to --

13 Q. But you would have authority in some
14 respects to try to stop them from building the plant?

15 A. Well, they would either need approval from
16 the Commission or from the local jurisdiction, in this
17 case, if it were an unincorporated area, Cass County.

18 Q. Right. So in other words, as far as the
19 right to build a plant, that's something you can enforce.
20 The right to locate the plant would still be with the
21 local authority; is that correct?

22 A. I wouldn't agree with that. I believe that
23 the Commission's ability to approve a certificate of
24 public convenience and necessity for a specific site could
25 authorize construction of a plant at a specific site.

1 Q. It could do that, but in the absence of a
2 certificate like that, wouldn't the County still have the
3 obligation to enforce its zoning law against that power
4 plant? The Commission would not have the authority to do
5 that under the existing state of affairs even given the
6 Court of Appeals case; isn't that correct?

7 A. No, I don't agree with that.

8 Q. Would you agree with me that there has not
9 been a change in the existing rules of the Commission to
10 handle the contingencies that we're dealing with in this
11 case?

12 A. I would agree that our rules have not
13 changed yet as a result of the contingencies as you've
14 described them in this case.

15 Q. And what I'm gathering from your statement
16 is that the Staff is in the process of developing rules on
17 this; is that correct?

18 A. Actually, we have a certificate of
19 convenience and necessity rule, our 3.105 rule, that has
20 been -- we were in the process of revising it in response
21 to the 2003 UE LIN. There was a transmission line case
22 that was quite controversial here before the Commission.
23 Quite a few conditions were imposed by the Commission
24 along the specific corridors identified with that
25 transmission line in response to objections and concerns

1 by the public.

2 We had started making changes to that rule
3 and were in the process at the time that all of this began
4 with the South Harper site. We have left that rulemaking
5 open in anticipation of eventual resolution of this case
6 to make additional changes to the rule depending on how
7 this worked out.

8 Q. So there is an open docket on that
9 rulemaking now?

10 A. Yes, there is.

11 Q. But as far as I know, these rules have not
12 been adopted by the Commission?

13 A. That is true.

14 Q. I'm going to direct you to pages 6 through
15 8 of your rebuttal testimony.

16 COMMISSIONER CLAYTON: Mr. Comley, could I
17 interrupt you just for one second. I was confused by
18 Mr. Wood's answer. Is there a case docketed working on
19 those rules right now?

20 THE WITNESS: Yes. There's an EX case
21 that's open for that rule right now. It has been open for
22 some time. We've been waiting on the eventual resolution
23 of these matters, because we figured that however they
24 worked out, maybe our existing rule would be acceptable or
25 it would need to have additional changes.

1 COMMISSIONER CLAYTON: Maybe at some point
2 Mr. Williams or you could supply that number.

3 THE WITNESS: Certainly.

4 COMMISSIONER CLAYTON: I wasn't aware that
5 there was a case docketed. Thank you.

6 THE WITNESS: It's been open for some time,
7 given the time frame that this issue has been going on.

8 BY MR. COMLEY:

9 Q. Turning again to pages 6 through 8.

10 A. Very good.

11 COMMISSIONER CLAYTON: Excuse me. I
12 apologize.

13 THE WITNESS: I'm there.

14 BY MR. COMLEY:

15 Q. It's there you describe your model of the
16 reasonable site determination process and the ten-step
17 process you described earlier; is that correct?

18 A. Yes, the ten-step process.

19 Q. Ten-step process.

20 A. With some -- and then starting at the
21 bottom of page 8 it begins to address some cases where
22 those steps would vary or be modified significantly.

23 Q. So there's a ten-step with a two step?

24 A. Ten-step two step if you want to call it.

25 Q. All right. Well, tell me first, what is

1 the origin of your process?

2 A. When I started looking at the fact that
3 Aquila had filed this case before us, it was pretty clear
4 that we were going to need to put down on paper a pretty
5 clear methodology for the major attributes to be looked at
6 in siting of a power plant.

7 In coming up with these, the ten-step two
8 step as you describe it, I started by looking at the 1960
9 Harline case, the 1973 Missouri Power & Light case, the
10 1980 Union Electric case, and I can't -- EA-79-119
11 perhaps, and looking at some surrounding states like the
12 Kentucky siting and generation transmission, looking at
13 the Iowa model, the Nebraska Power Review Board, although
14 it's somewhat limited in its application since all of
15 their plants are munis or coops.

16 Kansas although their law used to apply
17 broadly, now it only applies to nuclear units, the
18 Arkansas model, which really has some statutes that deal
19 specifically with power plant siting, and I would note
20 that it's one of the states that provides for the
21 Commission's ability to specifically and attempt to comply
22 or consider land use and planning, but the ability of the
23 Commission to decide not to adopt those local regulations
24 if they find them too restrictive.

25 I think that summarizes what I looked at.

1 Q. So it represents a hybrid or synthesis of
2 all these particular plans?

3 A. Yeah. And if you go through all of those
4 different laws or different past cases and you look at
5 those other state processes, you'll end up with a list of
6 like, I seem to recall there was about 16 topics that I
7 hit on that were considered in these past cases by the
8 Commission and in other states' siting processes.

9 Rather than in testimony laying out all of
10 these different criteria that would need to be considered
11 by the Commission, I figured given the complexity in how
12 the South Harper site was arrived at it would be better to
13 break it down into an ordered list of things that would be
14 generally considered in a certain order.

15 I wouldn't say that in these other state
16 cases -- state cases within Missouri or these other state
17 siting processes that they laid out an order of how to go
18 about coming up with a site. They were largely issues
19 that the Commission should consider in siting of a power
20 plant. And I figured what I wanted to do here was not
21 only talk about the site they arrived at, but the process
22 they arrived at getting to that site.

23 Q. Some of the citations you gave me, isn't it
24 true that, for instance, I think it may be the -- you
25 mentioned Kentucky. Kentucky has a very substantial

1 process on how to locate power plants, and, in fact, it
2 does consider some length. I think Mr. Peshoff even
3 brings it up in his own testimony. Is that a correct view
4 of your citation to Kentucky?

5 A. Yes. I would note some exemptions,
6 however, from what Mr. Peshoff identified. The process in
7 Kentucky is largely for merchant generation.

8 Q. At the same time, there are processes
9 through Kentucky and others that rely heavily on land use
10 planners; is that correct?

11 A. Yes.

12 Q. And in your processes, it's true, isn't it,
13 that in no part of the process you've described do you
14 expressly require the utility to confirm that the plant
15 will comply with local zoning authorities?

16 A. I do not explicitly state that, no.

17 Q. And there's nothing in the process which
18 expressly requires utilities planning power plants to
19 submit plans to a county or city government for
20 development review by land use planners; is that correct?

21 A. It does not specifically state that. It
22 also doesn't exempt them from doing that, as I do believe
23 it would be very appropriate for a utility to take every
24 opportunity to take best practices or a good faith effort
25 to work with the local community.

1 Q. Well, in light of your faith on that,
2 wouldn't it be appropriate to put in your process
3 somewhere that there should be local land use approval?
4 You have the same faith. I'm thinking isn't it true that
5 that should be an appropriate condition for you to put in
6 your process?

7 A. I would say it should be a consideration.
8 There should be a good faith effort to work there. I did
9 not want to put it in as an item that would be required in
10 order to site a plant.

11 Q. But without it, without something like
12 that, under your process as you've written it, isn't it
13 possible that under the right circumstances a regulated
14 utility company could justify locating a peaking facility
15 or any other facility almost anywhere; isn't that correct?

16 A. No.

17 Q. Let's look at page 9 of your testimony.
18 I'm looking at the top of the page.

19 JUDGE PRIDGIN: Mr. Comley, I'm sorry. The
20 rebuttal or surrebuttal?

21 MR. COMLEY: The rebuttal.

22 JUDGE PRIDGIN: Thank you.

23 THE WITNESS: I'm there.

24 BY MR. COMLEY:

25 Q. On page 3 I read, recognizing that there

1 may be no site free of local opposition, the utility
2 attempting to site generation to reliably and cost
3 effectively serve its customers cannot continually cycle
4 from step ten back to six. I'll not elaborate on those.
5 They're in here. At some point the utility will have to
6 actually move ahead with construction of the generation
7 facility if it is committed to meeting its capacity needs
8 by construction of generation.

9 Now, isn't it true, isn't it true that if
10 you and the utility company conclude that there is a
11 sufficient need for the plant, the company could virtually
12 put it anywhere without respect to any zoning control or
13 any land uses; isn't that correct?

14 A. No.

15 Q. Let's go to page 10 of your rebuttal. I
16 think it's there that you have described how Aquila
17 followed the process that's in your testimony. Under
18 No. 8 and 9 of your analysis, you mention communication
19 about the proposal, and you address -- and to address
20 negative public sentiment.

21 A. Which page are you on?

22 Q. Well, I guess I've moved on a little bit.
23 That would be on page 14.

24 A. Okay.

25 Q. I think I had this down. You start talking

1 about it on page 14, you have numbers 8 and 9. But here
2 you mention that public meetings were conducted, and you
3 had included public meetings that concern the Camp Branch
4 facility. Am I reading your testimony correctly?

5 A. Is this at the bottom of page 14 you're
6 talking about?

7 Q. Yes.

8 A. Okay. Yes.

9 Q. That's true. Okay. But truthfully, Cass
10 County, Missouri did not hold any public meetings related
11 to the construction of the South Harper facility; isn't
12 that correct?

13 A. Well, you would have to describe the nature
14 of the SUP app for Camp Branch. Was that a public
15 meeting?

16 Q. That was a public meeting, but it was for
17 Camp Branch.

18 A. Right.

19 Q. And I'm differentiating the two, and can
20 you do that, too? Isn't Camp Branch different in location
21 than the South Harper facility?

22 A. Yes.

23 Q. And with respect to the South Harper
24 location for this facility, it's true, isn't it, that Cass
25 County has not had any public hearings concerning that

1 location?

2 A. That is true.

3 Q. Now, I'll ask you this: Under your
4 process, are you saying that if there was a public hearing
5 about another power plant, another site for a power plant,
6 and that's held by a public entity, that would excuse the
7 public utility from holding another one even if it moved
8 the site?

9 A. No.

10 Q. Okay. All right. That's just what I
11 wanted to clear up.

12 A. No. That's certainly not the intent. By
13 the way, when you started your question, you said how
14 Aquila followed my process. I would point out that I
15 don't believe they followed this process step by step.
16 They took some twists and turns to get to the South Harper
17 site. It certainly wasn't a clean ten-step progression to
18 here, but --

19 Q. It encourages me that you say that, and we
20 will be visiting about that.

21 A. Okay.

22 Q. On page 15 of your rebuttal, under Step 9.

23 A. Yes.

24 Q. This is where concerns are addressed of
25 nearby communities and residents. Now, wouldn't this step

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1 be the appropriate place where zoning approval would be
2 appropriate to eliminate the uproar, to control the
3 situation about public interest, public objection?
4 Wouldn't this be the step where you would include local
5 zoning approval or land use planning to minimize public
6 out roar and outcry?

7 A. Actually, I would probably look at that
8 relative to Step 6 in the first portion here where it
9 talks about sites that would appear suitable for such a
10 prospective generation facility.

11 Q. So Step 6, you would agree that Step 6
12 could include -- I mean, that would be the place where you
13 would put a local zoning approval process?

14 A. That's certainly a place where you would
15 begin to look at the land use, talk to, and then when you
16 get into Step 7 and 8, particularly 8, 8 and then 9 as you
17 address, anywhere in there I would expect a utility that
18 was looking at a site to be communicating with the local
19 communities and looking at the land uses in the proximity
20 of the power plant sites they were considering.

21 Q. Now I'm going to give you a chance to make
22 an explanation I've been wanting to hear for a year.

23 A. Okay.

24 Q. Why haven't you included local zoning
25 approval in Step 6 or any other step? Why haven't you

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1 included that?

2 A. Actually, I wouldn't -- what I made a
3 point -- we talked about this a little earlier. I did not
4 specifically require zoning approval, but I also did not
5 specifically exempt it. I tried to make these steps
6 consistent with the exemption that, under advice of
7 counsel, is available to public utilities under 64.235.

8 Q. All right. Let's talk about that. Now, we
9 know the Court of Appeals has ruled on applications of
10 this nature. It's your understanding that Aquila could
11 have gone to the County planning board and this Commission
12 both to acquire land use authority and regulatory
13 effectively -- excuse me -- respectively to build that
14 plant, both?

15 It could have gone to the County commission
16 and to this Commission for land use authority and
17 regulatory authority respectively. Is that a correct
18 understanding of that opinion? Is that how you read it?

19 A. I'm sorry. I lost you about halfway
20 through all that.

21 Q. Forgive me.

22 A. Maybe if you want to unpack it or you can
23 ask it again.

24 Q. Is it your understanding of the case that
25 Aquila could have gone to the County planning board --

1 A. I'm sorry. Which case is this?

2 Q. The Court of Appeals case that you were
3 talking about.

4 A. This is the January?

5 Q. It would be the Court of Appeals opinion
6 that came down in December of 2005, on the basis of that
7 opinion, and I know you're talking about advice of your
8 counsel about the exemption, that kind of thing.

9 A. Yeah.

10 Q. I think all of this originates with the
11 court's opinion in many respects. But Aquila could have
12 gone to the County planning board to get local zoning
13 approval; is that correct?

14 MR. WILLIAMS: I'm going to object. It
15 sounds like you're asking him for a legal conclusion. Are
16 you just asking for his understanding of the opinion?

17 MR. COMLEY: Exactly.

18 BY MR. COMLEY:

19 Q. I'm thinking that at some point your
20 division has had to review the Court of Appeals opinion
21 with General Counsel's Office to come up with some
22 guidance on how to direct the rulemaking. Am I correct?

23 A. Yes.

24 Q. So you've had some kind of familiarization
25 with the rulings in that court case?

1 A. Some familiarity. There's a number of
2 legal arguments in there I'm not particularly familiar
3 with, but I am familiar with it to the degree of looking
4 through 64.235, visiting with counsel, and recognizing
5 that that exemption and the term or of coming either to
6 the Commission or going to the County would provide for
7 the ability to go to either place to receive approval.

8 Q. So understand that concept?

9 A. Yes.

10 Q. If Aquila had gone to the County, then
11 isn't it true, using the procedures that are there, its
12 proposal to build South Harper would have gone under a
13 development review; is that correct?

14 A. Yes.

15 Q. And it would have all the, I'll say
16 accoutrements of development review, including a land use
17 planner's opinion about whether or not it is in accordance
18 with the comprehensive plan, for instance; isn't that
19 true?

20 A. That is my recollection of the planning
21 board review process.

22 Q. Now, at the County level, that would either
23 be approved or disapproved? Would that be the likely
24 turnout in that case, it would either be approved or
25 disapproved?

1 A. Yes.

2 Q. True?

3 A. Yes. And then it would be referred to the
4 board of -- the County commission, BZA.

5 Q. And then up the line of review, including
6 circuit court and appellate courts. Now, we're dealing
7 with a situation here where Aquila qualifies for an
8 exemption under 64.235, the exemption you just mentioned.

9 A. Uh-huh.

10 Q. Now, what is your recommendation, what is
11 Staff's recommendation on how this Commission should
12 review land use issues related to the construction of
13 power plants?

14 A. I've laid out ten steps, and then in the
15 prehearing briefs provided by our General Counsel's Office
16 and in the response to the motion to dismiss, there have
17 been numerous filings in this case that our General
18 Counsel has worked on. I have had the opportunity to
19 review many of them, agree with many of the -- much of the
20 information provided there.

21 And if you look at that body of
22 information, you'll find an extensive background over
23 which the Commission could make a decision in this case
24 regarding need, the appropriateness of the infrastructure
25 at the site, the compatibility of the land use of this

1 particular plant at this particular site with the
2 surrounding land uses, and could deal with community
3 impacts and apply conditions to approval of the South
4 Harper site.

5 Q. Nothing in what you've told me, then,
6 nothing -- you're not telling me that you expect the
7 Commission to engage in an independent evaluation of the
8 land use impacts that would be consistent with the
9 comprehensive plan of Cass County; is that correct?

10 A. I do believe they can consider those
11 factors, but I don't know that they have to, they must
12 decide that they absolutely comply with the master plan in
13 order to approve that certificate at that site.

14 Q. I know that you've been here throughout the
15 whole hearing.

16 A. Almost. I've been called away for a number
17 of different things during the hearing. Most of the time.

18 Q. I know you were here when Jon Empson was
19 testifying, weren't you?

20 A. Yes, I believe I was.

21 Q. At least I think you were here when I was
22 examining him. Do you agree with Mr. Empson that land use
23 issues and the effects on local residents are issues that
24 can be a part of the Commission's analysis of need of the
25 plant and they should not be given any independent

1 analysis? Do you agree with that statement?

2 A. There were two parts there. There was the
3 part to need.

4 Q. I'll go back. I'll break it up.

5 A. Okay. Thank you.

6 Q. You agree that land use issues and the
7 effects on local residents are issues that can be part of
8 an analysis of need for the plant only?

9 A. I don't believe you can only look at the
10 need. If you're talking about siting of a facility, as is
11 this case, I don't believe you can only make your decision
12 based on need.

13 Q. Are you going to say that there will be
14 given -- that land use issues are to be given independent
15 and meaningful evaluation by the Commission, or are they
16 to be collapsed into some consideration of public
17 necessity?

18 A. The Commission, as this proceeding clearly
19 illustrates, has the ability to take evidence from a wide
20 range of parties that are for or against granting of a
21 certificate for South Harper. So I don't want to say that
22 it's collapsed into a process where there's no opportunity
23 for independent presentation, information to the
24 Commission. I'm not sure under what context the term
25 independent is being referred to.

1 Q. Well, let me put it this way. The Staff
2 has not hired or retained an independent land use expert
3 in connection with its testimony in this case; is that
4 correct?

5 A. That is correct.

6 Q. I have another reference to page 9 of your
7 testimony.

8 A. Page 9 of rebuttal?

9 Q. Rebuttal.

10 A. Okay.

11 Q. Maybe I've asked it before. If I have, I
12 don't mean to do it again. But on page 9, when we talk
13 about -- lines 3 through 7 of your testimony.

14 A. Page 9, 3 through 7.

15 Q. You say in line 5, at some point the
16 utility will have to actually move ahead with construction
17 of the generation facility if it is committed to meeting
18 its capacity needs by construction of generation.

19 By saying that, Mr. Wood, aren't you saying
20 that at some point the Staff will approve a certificate of
21 a generation facility and do it in utter and complete
22 disregard for local zoning if the need is so intense?

23 A. No.

24 Q. That's not going to happen?

25 A. What the Commission would approve or not, I

1 can't say. Okay. But I do not -- I have no reason to
2 believe whatsoever that given the -- given the burdens
3 that now in my view shift to the Commission in terms of
4 their ability to consider siting of power plants, I have
5 absolutely no history to go on, no reason to believe that
6 our Commission would simply approve something based on
7 need without consideration of other factors associated
8 with land use, infrastructure, community impact.

9 They have a long history and numerous
10 community inputs, numerous round tables, workshops, I know
11 because I conduct a lot of them, and they are very
12 interested in hearing community impact issues, land use
13 issues, and are well capable of not only considering the
14 needs of a small area where the power plant is located,
15 but also the impact of that power plant generation on the
16 overall service in the state of Missouri.

17 Q. Well, let's talk about if they see that
18 there's a need for the plant, there's a generation
19 shortfall somewhere, that everything falls in line, just
20 like the other factors that you've described in your
21 testimony, and the only thing holding up the plant is the
22 local zoning approval.

23 Under your process, are you saying that the
24 Commission has the right to approve that plant despite the
25 local zoning issues?

1 A. Could you ask that again, please?

2 Q. Assuming everything is equal, assuming
3 you've gone through the process and everything matches up
4 correctly, the only issue left is whether or not it
5 complies with local zoning. Under your analysis, if the
6 need is so great, are you recommending that the Commission
7 can approve that plant despite the local land use issues?

8 A. Let me see if I can -- I'll attempt to
9 answer your question. Let me run through the steps here.
10 If I understand what you're asking, if need has been
11 determined, okay, let's say need's been determined. Let's
12 say land use has been considered, community impacts have
13 been considered, and the Commission arrives at the
14 conclusion that the plant is just absolutely in need,
15 we're running out of time in order to meet some sort of a
16 capacity or whatever, and the Commission makes a
17 determination they would have to -- at some point in the
18 process, I think, in the process you would contemplate
19 submittal by the utility of have they complied with local
20 zoning, do they have a SUP or not, much like the Arkansas
21 process actually.

22 And the Commission would have to make a
23 determination as to if they believed that the zoning or
24 special use permit was overly burdensome given the time
25 frame. And I do believe that they would have the ability,

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1 if I'm -- once again, it's under advice of counsel.
2 64.235 provides that exemption. They would be able to say
3 all of these other reasons are in line, land use,
4 community impact, need and infrastructure, but we have
5 decided not to require compliance with local zoning, yes.
6 Did that answer your question?

7 Q. That answered the question.

8 A. Okay. Because it was quite a bit of stuff.
9 I wanted to make sure I broke it down.

10 Q. And you've added another element, and that
11 would be the timing?

12 A. Yes.

13 Q. So I'm sensing that timing or the capacity,
14 timing for construction, all these would go into as
15 ingredients in the process, and eventually, if they got to
16 a certain level, local zoning would no longer be a concern
17 under your process?

18 A. No, I would never say it -- I can't say it
19 would never be a concern. I will say that in the siting
20 and building of generation, timing is always a big issue.
21 When we look at a coal-fired plant or, you know, in the
22 future if we start building nuclear power plants again,
23 the timing horizon over which to arrive at a plan for
24 resource addition and how many years ahead of need you
25 have to begin to construct is an issue. And if you're

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1 building gas-fired, you may have a shorter time frame that
2 you're required to consider all of those factors under.
3 But timing's always a consideration in that issue.

4 Q. Let me ask the question a different way.
5 And I understand I -- when I said that they no longer have
6 a concern about zoning, but isn't it true under your
7 process that if need and timing become such critical
8 factors, that the Commission can disregard local zoning?

9 A. You mean can they disregard? As I --

10 Q. Have the ability to disregard local zoning
11 in their decision.

12 A. We've been through this a couple different
13 way, and I'm sorry if I'm not answering your question.
14 I'm attempting to. I believe 64.235 provides an
15 exemption.

16 If the Commission gets to a point they've
17 considered all of the factors and the only one that's left
18 out to put the unit in is zoning or a special use permit
19 or something like that from the local jurisdiction, and
20 they decide that that requirement is overly restrictive,
21 my current reading, based on General Counsel advice, is
22 the Commission would not be required to make that a
23 condition for approval of the plant.

24 Q. As I read the cases that the Commission has
25 decided before, Cass County vs. Aquila, I'll say pre Cass

1 County vs. Aquila, some land use issues and zoning were
2 considered as part of an analysis of need for the plant.
3 Would that be a fair understanding that you have, too?

4 A. Some cases I do recall the zoning was
5 specifically identified as that there was a zoning or
6 local approval, and that's -- that is a situation you see
7 in some other states as well. I think Mr. Peshoff has
8 pointed out some of those in his testimony.

9 Q. Now, even after the opinion has been
10 rendered in Cass County vs. Aquila?

11 A. Uh-huh.

12 Q. Isn't the process you're describing for the
13 Commission pretty heavily weighted toward need?

14 A. I would say need is certainly a significant
15 factor. I mean, if you don't need the generation, then a
16 lot of other issues fall away pretty fast.

17 Q. Wouldn't you agree that your process would
18 subordinate land use issues to need?

19 A. No, I wouldn't say that.

20 Q. So they are on equal playing with need, is
21 that what you're contending?

22 A. I would say I haven't gone to the effort to
23 look through need, infrastructure, land use and community
24 impacts and attempted to rank those.

25 Q. Do you think there's any difference between

1 what was happening before Cass County vs. Aquila, what is
2 happening in this case after the Cass County vs. Aquila
3 opinion? What's changed?

4 A. As we have talked about some in some of
5 your previous questions, looking at the 1960 Harline as
6 a -- as a past case decision that took the Commission out
7 of the realm of determining siting within a certificated
8 service territory, I would say that the court decisions in
9 this case and the dissenting opinion by Commissioner Gaw
10 and other decisions that have taken place up to the recent
11 decision in late December have brought the Commission into
12 a role where they will need to consider those issues that
13 previously we did not view as having jurisdiction over.

14 Q. In this process, in the process that Aquila
15 followed, there was always -- there was also that
16 injunction, the injunction that was issued against Aquila
17 in January of 2005. Now, you didn't fit that into the
18 process description, but isn't that a part of the process
19 Aquila followed? It was enjoined from building this plant
20 in 2005. That's correct, isn't it?

21 A. Yes.

22 Q. If you were to include that injection in
23 your process somewhere, what number would it be in?

24 A. The process I've described is one where you
25 would begin without a plant, you would begin with a need

1 for a plant, and you would begin to start with a picture
2 of the region of the United States and then figure out
3 where the areas are that a plant would go.

4 There's not any effort in this planning
5 process to try to identify points where a utility should
6 plan on getting into conflict with a local community and
7 ending up in injunctions and certain courts and all of
8 that.

9 Part of this ten-step process, the ten-step
10 two step as you've addressed it, is to arrive at a plant
11 site with the lowest possible level of controversy and
12 something where the greatest number of stakeholders are
13 satisfied with the outcome.

14 Q. So the contingency that there would be this
15 degree of conflict and confrontation is not included in
16 your process?

17 A. No.

18 Q. On page 20 of your rebuttal, at the top of
19 the page, you state that Aquila generally followed a
20 reasonable process for determining that the South Harper
21 site was an appropriate location. Have I read your
22 testimony correctly?

23 A. Yes, you have.

24 Q. Now, that raises for me the question, did
25 Aquila do anything unreasonably in the location and

1 construction of South Harper?

2 A. There were a number of twists and turns
3 arriving at the South Harper site. I certainly would not
4 say that this was a process without its faults.

5 Q. And can you list them? Which one comes to
6 mind first, Mr. Wood?

7 A. Well, the first inclination is to say
8 timing. I recognize, and it was addressed some in
9 Mrs. Mantle's testimony, the need to issue an RFP in 2001,
10 the need for an RFP to be reissued later in response to a
11 changing market condition, the timeline to consider the
12 bids and arriving at the decision to self-build. That
13 pinched them on a pretty significant time frame.

14 So timing was one issue where I don't have
15 a lot of good suggestions on how to improve time frame,
16 where things happened. It was very unfortunate that it
17 came to be as short as it was.

18 Q. Other than timing, are there others?

19 A. Other than timing? Well, certainly in
20 arriving, coming to the Camp Branch site, the Camp Branch
21 site, when I looked through the 12 sites that were
22 considered by Aquila before they started breaking ground
23 on South Harper, I arrived at the Greenwood site, Camp
24 Branch and South Harper as -- that's not necessarily the
25 ranking Aquila arrived at, but when I looked at the sites,

1 those are the ones that looked like ones that were
2 certainly worthy of significant additional further
3 consideration. And, you know, it's hard to say now --
4 hindsight's 20/20. It's hard to go back now and say what
5 things they did wrong or unreasonably.

6 I would say there's some things obviously
7 that didn't go well, and that was, you know, the public
8 hearing that was conducted related to the Camp Branch
9 site. Actually, Aquila was looking at how to go ahead and
10 move ahead at that site, and we were one of the parties
11 that said, well, you really need to make sure that you're
12 working with the community and you hold that public
13 hearing.

14 I remember being in a meeting where we made
15 sure and we identified to Aquila the absolute need to move
16 ahead and involve the public hearing as early as possible
17 in getting that public hearing to take place.

18 The public hearing was largely ran by
19 somebody other than Aquila. It was more a shouting match
20 than a thoughtful discussion on how to go about building
21 more buffers, trees, sound attenuation and making the
22 project a more reasonable application in this area near an
23 incorporated area.

24 Q. Forgive me. Was that public hearing under
25 Aquila's control? I say control. Did they hold the

1 meeting?

2 A. I'd say they set it up, they put the booths
3 there, but I wouldn't say they were necessarily in control
4 of the meeting. I've been to public meetings like that,
5 and I understand people can be very concerned and upset
6 about the idea of a power plant being in their area.

7 I don't have any good suggestions on how to
8 change that particular process, how it quickly became
9 something where people were very clearly not going to let
10 a power plant come in that area without a great deal of
11 controversy.

12 I suppose there were also some aspects of
13 working with Cass County, City of Harrisonville and City
14 of Peculiar all that obviously didn't go as well as I
15 think I would contemplate in a smooth process for siting a
16 power plant. Obviously we ended up in court injunctions
17 and circuit court and different interpretations of law and
18 counsel opinions to parties that in the end didn't hold up
19 under court decisions.

20 I mean, I'm attempting to give you a list
21 with some explanation of the things walking through this
22 that caused me to pause and say, this obviously -- I'm not
23 going to represent here that this was a process without
24 some twists and turns and some real problems.

25 What I arrive at is a technical assessment

1 of this is a -- is South Harper a reasonable site? I
2 don't want to represent -- I've made a point several
3 places here to state that they didn't step through this
4 thing in a clean or consistent manner, but I do believe
5 they touched on different aspects on all the different ten
6 two-step measures that I've identified.

7 So if you've read my language there to say
8 that they were reasonable or that this -- maybe I should
9 say if you've read this to say I think the process was
10 without some problems, you shouldn't read it that way.

11 Q. Very well. Can you think of any other
12 problems? I've got down timing, Camp Branch public
13 hearing, working with Cass County, Harrisonville and
14 Peculiar. Anything else that comes to mind?

15 A. I think that's a good list to start with.

16 Q. All right. So it's not an exhaustive list.
17 I think it was Jerry Eftink yesterday that brought this
18 up. In considering the reasonable process that Aquila
19 followed, in your opinion, in Staff's opinion, was it
20 reasonable for Aquila to continue construction of the
21 South Harper plant despite the injunction directing it to
22 do otherwise?

23 A. I believe I've addressed that in rebuttal,
24 if I could go back and find it. Really, if you could
25 repeat your question, please.

1 Q. In Staff's opinion, was it reasonable for
2 Aquila to continue construction of the plant despite the
3 injunction directing it to do otherwise?

4 A. That's a little different question than the
5 Q and A in my rebuttal on page 18.

6 Q. Exactly.

7 A. Yeah.

8 Q. And, you know, Cass County would consider
9 this a very important question.

10 A. Sure.

11 Q. What is Staff's opinion about when a
12 utility ignores a directive from a circuit court? I'm
13 saying that with full knowledge that Aquila complied with
14 the court's order and got a supersedeas bond and continued
15 construction under its protection. But the issue is, was
16 that a reasonable thing to do in the construction of the
17 South Harper plant?

18 A. In making that determination, and I'll get
19 to answering your question, if I could, please.

20 Q. I'm going to let you go on, but you know
21 that's not really what I asked you.

22 A. Okay. You're asking a yes or no question.
23 Okay. And I expect if I -- whatever answer I get, I'll
24 probably have opportunities to clarify with Commission
25 questions, but my answer to that --

1 Q. Absolutely.

2 A. Yeah, I think so. Yes.

3 Q. It was reasonable?

4 A. I think their determination to move ahead
5 with their continued -- at the point in January when they
6 had the injunction, there were a number of factors going
7 into the decision to move ahead or not. I would give
8 quite a bit of explanation as to that. But if you want a
9 simple weighing of the scales, yes or no, given everything
10 that happened up to that point and the advice that they
11 had at that time, and I'm -- I'm speculating on what
12 Aquila, if I were in their shoes --

13 Q. And based upon what you've learned about
14 Aquila and what they were doing, I gather that. I
15 understand that.

16 A. Yes.

17 Q. So it's your testimony that it was
18 reasonable for Aquila to build a plant despite the
19 injunction that was issued by Judge Dandurand directing
20 them to tear it down?

21 A. Given what they have expressed as their
22 reading of the law, given the statements that they had
23 received from counsel, and knowing that there was a desire
24 to move forward with the self-build option, and knowing
25 that they were having a capacity contract terminating the

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1 following June, putting all those into the bowl of
2 considerations, I would say I can certainly understand why
3 they moved ahead with continuing to build South Harper.

4 Q. And your answer is yes?

5 A. Yes.

6 Q. On page 21 of your testimony, moving on,
7 you talk about the conditions that you would put on the
8 certificate if the Commission should issue it in this
9 case. I want to talk to you about the first one, the
10 first one you have there on line 16, the roads must be
11 repaired at the conclusion of work to equal or better
12 condition than when Aquila first started working on this
13 site.

14 I think it's on the next page, on line 9
15 that you say that Aquila has already satisfied condition
16 1. Is that a correct reading of your testimony?

17 A. Yes.

18 Q. Have you confirmed this with the County
19 engineer --

20 A. No, I haven't.

21 Q. -- Mr. Wood?

22 Let me represent to you that we take issue
23 with this.

24 A. Okay.

25 Q. Did you confirm this with anybody at the

1 County level, that this has been repaired?

2 A. No.

3 Q. You just -- was it a personal inspection?

4 A. Yes.

5 Q. Now, did you and the Staff consider other
6 conditions that may have been imposed on the certificate
7 in connection with your testimony?

8 A. What I wanted to do is look back at the 248
9 case. That's when we last developed our list of
10 conditions, and I identified those six as ones that needed
11 to be immediately on our first list of six. I suppose
12 additional conditions could be talked about, such as
13 planting trees, things of that nature, but I decided to
14 stay with the six conditions identified here.

15 Q. Well, I've got a few conditions I'd like
16 for you to consider.

17 A. Okay.

18 Q. In going through the list, do you think it
19 would be fair and reasonable to condition Aquila's
20 operation of the plant on Aquila creating a pool of
21 resources to compensate all the local residents whose way
22 of life has been affected by the location of this plant?
23 Would that be fair and reasonable?

24 A. If you could define a pool of resources.

25 Q. An account where there would be money set

1 aside based upon the number of claimants, for instance,
2 that would say we've estimated the damages these people
3 have experienced as a consequence of locating a plant in
4 their neighborhood, and we want this pool of resources
5 available in the event that they're going to make claims.
6 We want that to be handled up front. We don't want to
7 have extensive litigation over these things. We just want
8 to have that money available for them to go in and claim.
9 Is that fair and reasonable?

10 A. I have no opinion on that. At this point,
11 I haven't had the opportunity to think through the merits
12 and detriments of such a provision. I would note,
13 actually, very recently there have been some articles on
14 the idea of property value impacts associated with public
15 utility infrastructure. Such an article proposing just
16 such an idea was recently in one of the power magazines
17 here recently.

18 But I haven't had the opportunity to think
19 through the pluses and minuses of such an opinion. Don't
20 have an opinion today on that.

21 Q. At least it's something you would give some
22 worthwhile consideration to, would it to be?

23 A. It's something when I first read it, it --
24 it's kind of a new kind of a -- kind of a new idea that we
25 haven't heard much about. I do think it may have some

1 merits and detriments that would need to be considered in
2 the future maybe.

3 Q. I think I know the answer to the next
4 question I'm going to ask you, but I'm going to ask you
5 anyway. Would it be fair and reasonable to condition
6 Aquila's certificate and the operation of the power plant
7 on acquiring local zoning approval from Cass County?
8 Maybe I'm wrong.

9 A. I would condition it -- I wouldn't have any
10 hesitancy to condition it on a showing of best practices
11 or of a good faith effort, but I would not require the
12 Commission's -- I would not think -- I would not want the
13 Commission to condition it on county zoning approval.

14 Q. Would it be fair and reasonable to
15 condition Aquila's operation of the South Harper facility
16 on Aquila reimbursing all those parties who have contended
17 successfully that Aquila failed to comply with the law in
18 the erection of the South Harper facility and the Peculiar
19 substation?

20 A. I have no opinion on that today.

21 Q. Is it an opinion -- rather, is it a
22 condition that you would give worthwhile consideration to?

23 A. I don't know.

24 Q. Would it be fair to condition -- let's see.
25 Regarding the roads, would it be fair to condition the

1 certificate and the operation of the plant on repairs to
2 the road reasonably satisfactory to the County engineer?

3 A. Actually, this is an interesting one, given
4 that Aquila has paved the roads in those areas. I drove
5 those roads March 15th, and I live on a gravel road. I
6 know they can be torn up pretty quickly with heavy
7 equipment on them and a lot of traffic, and I know when I
8 drove the areas of where the quarry trucks drive north and
9 south there and the east/west road, I think 243rd, it may
10 be, those roads were in pretty bad shape on March 15th.

11 I don't know what portion of that was
12 related to South Harper, which of it was just related to
13 maintenance levels on the roads over time frame, lots of
14 rain, soft mud under the gravel. I don't know. The roads
15 were not very good that day.

16 Since then, when I've driven the roads, and
17 I've been out there at least two or three times since the
18 roads were paved, I thought the roads were really in
19 pretty good condition for a newly paved road. If there
20 was going to be a condition like that, I understand there
21 is a \$350,000 bond, I think, maybe posted by Aquila
22 relative to those roads?

23 Q. That's my remembrance, in that range.

24 A. I seem to recall something like that. If
25 there was going to be a condition like that, I would think

1 there would also be recognition of the monies spent by
2 Aquila to pave those roads, because my view, from the day
3 I drove them on March 15th and relatively any gravel roads
4 that I've driven versus their paved current condition, I
5 would certainly want that taken into consideration before
6 there was some expectation that Aquila would further
7 improve those paved roads from where they are today.

8 Q. Let me make -- I don't think we're -- Cass
9 County's going to be responsible for the maintenance of
10 those roads?

11 A. Yes. And I would agree that power plants
12 like this shouldn't place suburban or urban type demands
13 on a county --

14 Q. I think it's well expressed in their master
15 plan --

16 A. -- yes, I would agree with that.

17 Q. Forgive me for talking over you.

18 A. I'm sorry.

19 Q. They were rural-type roads to begin with.
20 They had to be improved to handle the extra traffic, and
21 Cass County is going to be responsible for maintaining
22 those; is that your understanding?

23 A. I don't believe they needed to be improved
24 for increased traffic. I don't believe the South Harper
25 project itself increased traffic.

1 Q. It's true that Cass County's going to
2 maintain those roads in the future?

3 A. Yes.

4 Q. And they should be brought up to a
5 satisfactory grade before Cass County has to take on those
6 maintenance obligations; would that be correct from an
7 engineering standpoint?

8 A. Yes, it would be. My only caveat is there
9 should be a recognition that there's been a lot done to
10 make the roads as good as they are today.

11 Q. Another condition to consider regarding
12 expansion of the plant, and this may echo some things that
13 Mrs. Mantle said during the in-camera proceeding
14 yesterday.

15 Would it be fair and reasonable under all
16 these circumstances, all the circumstances that have
17 attended the construction, the siting, the conflicts over
18 South Harper, wouldn't it be fair and reasonable under all
19 these circumstances to condition the operation of the
20 plant such that three and only three combustion turbines
21 can be operated or erected on this site?

22 A. No.

23 Q. That is not reasonable?

24 A. I believe you could condition it upon them,
25 the current three onsite, and that any additional units in

1 the future be required to come before the Commission for
2 an additional certificate of public convenience and
3 necessity for any additional units on that site.

4 Q. Maybe it's time to talk about that. We'll
5 come back to the conditions perhaps. But on page -- I
6 think it's page 8 of your testimony.

7 A. Rebuttal?

8 Q. Rebuttal. We're still in rebuttal.

9 A. Okay. 8.

10 Q. Question: Is this the only reasonable
11 process for determining a site to locate a power plant?

12 Answer: No. Steps 3 through 10 may be skipped if an
13 existing generation facility site has available space for
14 the needed additional unit or units and newer upgraded
15 transmission facilities are not prohibitively expensive to
16 serve the ideas identified in Step 2.

17 Is that a fair reading of your testimony?

18 A. Yes.

19 Q. So Mr. Swearngen has raised the issue. I
20 say raised the issue. He has told us that if there are
21 going to be three more combustion turbines at this site,
22 Aquila will file an application?

23 A. Yes. That was my understanding as well.

24 Q. Because of the process you're describing, I
25 take it, then, that there will be no land use issues at

1 all in that proceeding; isn't that correct?

2 A. No.

3 Q. Land use issues will be considered in that
4 proceeding?

5 A. The list of issues I've described
6 associated with a site-specific certificate of public
7 convenience and necessity, if the Commission were to take
8 that up in rulemaking in one of the future applications,
9 I've indicated you would be talking about need, you'd talk
10 about infrastructure, you'd talk about appropriate land
11 uses in the vicinity and community impacts.

12 Q. I'm looking at this. You said that you can
13 skip those steps.

14 A. Yes. And your question was, conditional to
15 this particular site, I would think that that would be
16 something that would be appropriate.

17 Q. On this site?

18 A. Yes.

19 Q. You would say that there would again be the
20 land use impact based upon your process, that the
21 Commission would consider that. So the process you
22 describe on page 8, line 16 through 19, you're saying
23 would not apply to an application filed by Aquila to have
24 three more CTs on the South Harper site; is that correct?

25 A. I would say as an additional condition on

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1 this particular certificate would be the requirement to
2 place -- if you were to come in and put additional units
3 on this site, you would submit yourself to that process
4 before the Commission or get the County zoning approval.

5 Q. Now, that's another thing. Would it be
6 fair and reasonable as a condition of operation of this
7 that if they want to have three more CTs on the South
8 Harper site, they apply for a special use permit at Cass
9 County? Would that be fair and reasonable?

10 A. I would submit that they would either come
11 before the Commission or they would come before the
12 County. I wouldn't necessitate that they have to go to
13 both.

14 Q. We got to that point because Cass County
15 filed suit, and I'm asking you under all the circumstances
16 that are in this case, is that condition fair and
17 reasonable? And your answer is?

18 A. Is your question that we would condition
19 their requirement that they come before the County for SUP
20 or zoning, is that the question?

21 Q. I would say -- I'll repeat it.

22 A. Okay. Thank you.

23 Q. Is it fair and reasonable for the
24 Commission to condition the further operation of South
25 Harper on the condition that if they decide to have three

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1 more CTs at South Harper, they must get a special use
2 permit from Cass County before they come to this
3 Commission and get authority or whatever, maybe
4 simultaneously?

5 A. No. I would encourage the Commission to
6 consider or, come before one body or the other.

7 Q. One body. Let's get to that, too. Don't
8 you think that coming to this body where you don't have
9 independent land use planning, you don't have independent
10 land use evaluation going on, wouldn't the utility always
11 come to this body without going to the County or city
12 authorities for local zoning approval?

13 A. No, I don't believe that.

14 Q. You don't believe it?

15 A. No.

16 Q. Now, while we're on page 8, it comes to
17 mind that we've talked a lot about the Aries facility a
18 number of times with other witnesses. It's been -- I
19 remember Mr. Huslig's testimony where he included the
20 Aries site as a preferred spot for transmission facilities
21 anyway. We all know that the Aries site is there, it's
22 producing power. We all know that Calpine is in
23 bankruptcy; is that correct?

24 A. That's my understanding and -- go ahead.

25 Q. Is there -- is it possible that the CTs,

1 any additional capacity that Aquila may need, any
2 additional capacity we're talking about for peaking
3 facilities, for a peaking facility, isn't it reasonable
4 that the Aries plant could now be considered for that?

5 A. Aries isn't a peaking unit per se. It's
6 more of an intermediate combined cycle unit.

7 Q. Let me take you back to some of the
8 testimony. Apparently there's some land adjacent to the
9 existing facility that was set aside for a peaking
10 facility. Is that your remembrance of the testimony?

11 A. I have heard that testimony, yes.

12 Q. Does that play into what we're trying to do
13 here as well?

14 A. I do not know.

15 Q. Now we're ready to go to your surrebuttal.

16 A. Okay.

17 Q. It's on page 6, I'll direct you first.
18 There you're talking about Mr. Mallory's testimony and his
19 statement that power plants are no different than any
20 other proposed development. Is that a correct reading of
21 your testimony?

22 A. The statement that power plants are no
23 different than any other proposed development, is that
24 what you were asking?

25 Q. Yes, I'm referring to that, and you're

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1 talking about Mr. Mallory's statement and your response to
2 that statement?

3 A. Yes.

4 Q. And then on page 7, you go through a list
5 on how you think that a power plant is different than the
6 normal development?

7 A. Yes.

8 Q. I'm going to ask you a little hypothetical
9 about that. Let's consider a steel plant. Let's go
10 through each of your list.

11 A. Sure.

12 Q. Now, wouldn't you agree that a steel plant
13 would need large quantities of natural gas?

14 A. Not necessarily under these pressures and
15 not necessarily under a noncurtailable capability.

16 Q. Not the same pressures, but there would
17 need to be large quantities. Where's Stu Conrad?
18 Wouldn't you need large quantities?

19 A. Yes, you could.

20 Q. Okay. No. 2, the need for onsite access to
21 high-voltage transmission lines. Steel business requires
22 a lot of high-voltage transmission lines to its facility;
23 is that correct?

24 A. Yes, it does.

25 Q. And steel businesses often serve a lot of

1 customers over a large area; wouldn't that be a fair
2 statement?

3 A. Yes, but if the steel mill stops producing
4 steel, everybody's lights don't go out.

5 Q. Well, if they stop producing steel, some
6 people don't stand upright either. So there is a need for
7 their services.

8 A. Well, if they don't produce steel, it's
9 likely over a short time period until the infrastructure
10 is repaired and they can begin making steel again.

11 Q. We better go on. They still have emissions
12 issues?

13 A. They certainly do.

14 Q. And they need to have major transmission
15 systems to be constructed with alternative power so that
16 they can continue operating, don't they?

17 A. Depends on the nature of the steel mill.
18 If you go to like a Noranda Aluminum, I would say that's
19 probably true because the cost of shutting down is so
20 large. There are certainly conditions where steel mills
21 can go without continuous operation.

22 Q. But you're not suggesting that Cass County
23 can't regulate steel mills, are you?

24 A. No, I'm not.

25 Q. Now, on page 9 you talk about Mr. Mallory's

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1 testimony about applying conditions to special use
2 permits, and you talk about the conditions that you have
3 in your own testimony, in your rebuttal testimony; is that
4 correct?

5 A. Yes.

6 Q. Wouldn't you agree that this is the first
7 time that the Staff and the Commission itself is
8 undertaking the task of adding conditions to site
9 developments and that kind of thing in connection with
10 power plants; isn't that correct? Like berms, visual
11 screens, that sort of thing; isn't that true? You never
12 had that opportunity before; isn't that correct?

13 A. Relative to transmission structures, I know
14 we have. Relative to power plants, I haven't had the
15 opportunity to go back through the case history to say if
16 we put conditions in like that or not.

17 Q. I had no idea you did it for transmission
18 facilities. My point is, wouldn't you -- wouldn't you
19 consider that Cass County, who has done this many times,
20 knows about what kind of conditions should be placed on
21 site developments?

22 A. I would say that Cass County certainly has
23 that capability.

24 Q. On page 14, you talk about Mr. Peshoff's
25 testimony where he says siting considerations appear to be

1 an objection at this point. That mischaracterizes what's
2 gone on before this Commission I think since 1913. Lots
3 of power plants have been sited by this Commission under
4 393.170. Some of those cases are recited in the Staff's
5 Brief. I mentioned some others yesterday. So I think
6 he's mischaracterizing the law.

7 JUDGE PRIDGIN: Mr. Comley?

8 MR. COMLEY: I was just asking what
9 Mr. Wood's recitation of the law was and the Commission's
10 recitation of the law was in those two documents that
11 we've identified earlier in his testimony.

12 JUDGE PRIDGIN: I'm sorry. I'll overrule.
13 To the extent that he knows the answer to the question,
14 I'll let him answer. If he doesn't know, he can say so.

15 THE WITNESS: I was simply going to refer
16 to, and this is based on reading legal documents as a
17 non-lawyer, looking at past case sites where that has been
18 considered.

19 BY MR. COMLEY:

20 Q. Now, on page 18, lines 4 through 5, you
21 state that, in part Aquila arrived at the South Harper
22 plant site due to input from the public and encouragement
23 from the City of Peculiar officials. Is that a correct
24 reading of your testimony?

25 A. Yes.

1 Q. Now, I think you were also here when
2 Ms. Reams Martin examined Mr. Hedrick. Were you not here
3 then?

4 A. I was here for much of the -- for much of
5 the cross-examination.

6 Q. Now, isn't it true, at the point that the
7 South Harper facility was coming to the attention of
8 Aquila, it wasn't necessarily from public input, it was
9 from input from Mike Fisher; isn't that correct?

10 A. Well, the sentence -- what I'm referring to
11 as public input, it's public -- maybe it would have been
12 more accurate to say public outcry near Harrisonville and
13 encouragement from City of Peculiar officials. Okay. I
14 wouldn't say there was a broad group of the public in the
15 South Harper area saying, come here. Okay.

16 Q. On page 19 of your surrebuttal, you talk
17 about the Aries plant and that Mr. Peshoff is explaining
18 that Aquila has not always claimed it is exempt from Cass
19 County zoning. I think a fair reading of your testimony
20 is that you point out that at that time Aquila did not
21 participate in the building of the plant, it was an Aquila
22 subsidiary at the time. Is that a correct paraphrase?

23 A. I'm sorry. Where are you reading from, or
24 where are you paraphrasing from? I'm sorry.

25 Q. Let's see if I can find it.

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1 A. Oh, is it the top of page 19 that you're
2 going to?

3 Q. Yes, that's exactly right.

4 A. Okay. Now if you could ask your question.

5 Q. So you're saying that Cass County would
6 have the authority to impose zoning control over
7 independent power producers, but it would not have the
8 authority to do so over regulated utilities?

9 A. Yes, similar to the provisions in the
10 Kentucky siting laws where it goes to merchant plants.
11 And really when an electric independent power producer or
12 merchant decides they want to build in a particular
13 location, since there's under 64.235 or whatever, there's
14 no provision for them needing to come here, really the
15 only remaining place they would have to go would be the
16 county or city. So yes, I would say they would fall under
17 your zoning authority.

18 Q. Let's see. You've also testified, and I
19 can't find my notes on where it is, but I think your
20 testimony reflects that you are saying to use the Cass
21 County 2005 comprehensive plan in evaluating the site for
22 South Harper?

23 A. Where's this? Yeah. I know it's in the
24 testimony. I'm just trying to figure out --

25 Q. You're going to have to help me.

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1 A. I think it starts on page 16.

2 Q. Would you agree with me, based upon your
3 review of the plan, that the 2005 plan was approved after
4 Aquila started site clearing and improvements at South
5 Harper?

6 A. I would say it was being -- changes were
7 being considered to it during the time frame construction
8 was taking place, and it was approved before the plant was
9 finished.

10 Q. It was approved before the plant was
11 finished?

12 A. I mean, the plant was finished -- well, the
13 plant was finished in time for the summer '05, but this
14 Cass County master plan I believe was February 1st, 2005.

15 Q. I think the date on it is February 1. As
16 far as the date of adoption, I can't recall, but I think
17 it was --

18 A. I think it may have been February 1st, 2005
19 as well.

20 Q. We're dealing -- I think you're implying
21 there's been a change of condition that is in Aquila's
22 favor on this, and in light of that, I'm going to ask you
23 another question. On April 11th, 2006, Aquila made a
24 brief presentation to the Commission about the Calpine/
25 Aries plant. Do you recall that?

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1 A. April 11th? This would have been very
2 recent.

3 Q. 2006?

4 A. Yes, this was a presentation by Aquila, is
5 that what you said?

6 Q. And it was about Calpine bankruptcy, and I
7 think a press release about perhaps a purchase of the
8 Aries plant.

9 A. I've received a copy of the press release
10 that was one of the handouts in that meeting, but I was
11 not able to attend.

12 Q. Let's go back to the conditions again.
13 Let's say, would you think it a fair condition on the
14 operation, the continued operation of the South Harper
15 plant that in the event that Aquila should purchase the
16 Aries/Calpine plant, purchase the interest in the Aries/
17 Calpine plant?

18 A. Let's say there's a future -- they decide
19 to sell that unit off, Calpine does, and the regulated
20 Aquila moves in and the price is acceptable and it works
21 out to be a cost effective resource and they buy it, and
22 it's now one of their -- one of their resources to serve
23 load.

24 Q. You're on the wavelength that I want you to
25 be.

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1 A. Okay.

2 Q. Would it be fair and reasonable for the
3 Commission to condition the certificate or the continued
4 operation of the South Harper plant by requiring Aquila to
5 dismantle the South Harper plant within five years?

6 A. No.

7 Q. And at the same time take that capacity and
8 put it beside the Aries plant?

9 A. No.

10 MR. COMLEY: I would like to talk with
11 Ms. Martin a minute. I think I'm pretty close to
12 finished. With your permission, I may just follow up with
13 those questions from the table there.

14 JUDGE PRIDGIN: Yes, sir. Mr. Comley, do
15 you need a few minutes to consult?

16 MR. COMLEY: I think that would be very
17 kind of the Commission to allow me to do that.

18 JUDGE PRIDGIN: Let's take a brief recess.
19 When we come back on the record, we may need to discuss
20 when Cass County is finished with cross-examination of
21 Mr. Wood, if we need to readjust our schedule, because I
22 understand Mr. White is available only today; is that
23 correct?

24 And that might be something counsel can
25 discuss over the break, is what kind of cross-examination

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1 they anticipate of Mr. White and see if we need to get
2 Mr. White on the stand. So let's go off the record. I
3 see the clock at the back of the room's a little after 10.
4 Let's resume at 10:15.

5 (A BREAK WAS TAKEN.)

6 (EXHIBIT NO. 84 WAS MARKED FOR
7 IDENTIFICATION BY THE REPORTER.)

8 JUDGE PRIDGIN: We're back on the record.
9 Mr. Comley, I understand you have some more
10 cross-examination?

11 MR. COMLEY: Yes. I want to thank the
12 Commission for the brief break.

13 JUDGE PRIDGIN: Before you begin, let me
14 announce what I intend to do, is after Cass County is
15 finished cross-examining Mr. Wood, I would like to get
16 Mr. White on the stand. I understand he's only available
17 today, and rather than run the risk that the
18 cross-examination take a long time and we run out of time,
19 because Mr. Wood will be available other times and
20 Mr. White will not, I do want to get Mr. White on the
21 stand after Cass County has finished cross-examining
22 Mr. Wood.

23 And then we will resume with -- give
24 Mr. Coffman the chance to cross-examine Mr. Wood, and
25 obviously, the Commission may have questions for him. I'm

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1 sorry. Mr. Williams?

2 MR. WILLIAMS: Judge, earlier Commissioner
3 Clayton had asked for a case number for a rule revision.

4 JUDGE PRIDGIN: Yes, sir.

5 MR. WILLIAMS: I believe I have that. The
6 case number I've been provided is EX-2003-0366.

7 JUDGE PRIDGIN: Mr. Williams, thank you.
8 Mr. Comley, when you're ready, sir.

9 MR. COMLEY: Thank you.

10 BY MR. COMLEY:

11 Q. Mr. Wood, while we were still off the
12 record, I handed you again Exhibit 83. Do you have that
13 in front of you?

14 A. Yes, I do.

15 Q. There's another paragraph that I had
16 intended to visit with you about, and that is at the
17 bottom of the first page. And the question is, does the
18 Commission have any regulatory authority before a plant is
19 built and in operation? And the answer on the exhibit is,
20 the Commission has no statutory authority to approve or
21 disapprove an electric utility's decision on plant
22 location if it is located within its service territory.

23 Now, the question I have for you is, you
24 would agree with me that the Court of Appeals opinion did
25 not rewrite the Commission's statutory authority; isn't

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1 that correct?

2 A. It did not rewrite it. It just revised
3 their interpretation of it.

4 Q. And there is, as far as you know, no
5 statute that gives the Commission or the Staff the right
6 to site the location for a power plant?

7 MR. SWEARENGEN: Once again, your Honor,
8 same objection I made this morning. That's a misstatement
9 of the law.

10 JUDGE PRIDGIN: Mr. Comley?

11 MR. COMLEY: Again, the issue is whether
12 there is -- do you know of any statute?

13 JUDGE PRIDGIN: I'll overrule. You can
14 answer the question.

15 THE WITNESS: I'm sorry. If you could
16 repeat the question.

17 BY MR. COMLEY:

18 Q. Do you know of any statute that gives this
19 kind of authority to the Public Service Commission?

20 A. To site a power plant?

21 Q. Right.

22 A. Yes.

23 Q. Which statute is it?

24 A. I believe -- and I'm not an attorney. I'm
25 just simply referring to the language from 393.170.3 and

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1 46.235 for first-class non-charter counties.

2 Q. Between those two statutes, you claim that
3 the Commission now has the authority to site power plants?

4 A. Once again, I'm not a lawyer, and there may
5 be other provisions in other court sites that would give
6 additional information. I know of at least those two.

7 Q. Let me go to your ten-step process again.
8 Would you agree that your ten-step process has not yet
9 been promulgated through the formal rulemaking proceedings
10 in the Commission?

11 A. Yes.

12 Q. And would you agree that -- well, there's
13 no guarantee that that process will eventually become part
14 of your promulgated rules?

15 A. Actually, the specific step-through here,
16 the ten-step two-step you've described, I doubt that the
17 rule would be formatted in that nature, but it could very
18 possibly require a showing by the utility that they met a
19 great number of these provisions.

20 Q. But there's no guarantee that all of them
21 would be in part of that?

22 A. That's true.

23 Q. Would you also agree that your ten-step
24 process has been developed strictly for your testimony
25 here?

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1 A. No, I wouldn't agree to that.

2 Q. Have the parties like the County had any
3 advance notice of the process that you've developed here?

4 A. By advance --

5 Q. Just the filing of your testimony, I
6 suspect; is that correct?

7 A. Yes.

8 Q. That was the only advance notice of that
9 process. And we didn't have it in advance of the time
10 when South Harper was being constructed, did we?

11 A. That's true.

12 Q. I think it's a fair understanding of your
13 testimony that I think you would agree with me that under
14 the Court of Appeals opinion of December 20th, 2005, that
15 there are essentially two things that must happen in order
16 for a plant to be approved for construction, and that
17 would be there must be a CPCN, a certificate of public
18 convenience and necessity from this Commission, and land
19 use considerations must be evaluated in connection with
20 that plant's location.

21 Would that be a fair statement of your
22 testimony that I recall?

23 A. I followed you on the first part. If you
24 could repeat the question one more time.

25 Q. There's two things that would happen in

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1 order to get a -- for approval of a construction of a
2 power plant. The first would be a certificate from the
3 Commission under Section 393.170.1. Do you agree?

4 A. Possibly with conditions under .3 as well,
5 but go ahead.

6 Q. And there has to be land use considerations
7 evaluated in connection with the plant's location?

8 A. That there would need to be a consideration
9 of, yeah, the need of the infrastructure, the surrounding
10 land uses and community impacts.

11 Q. And on that second point, you agree with me
12 that land use issues could be submitted to either the
13 County or the Commission?

14 A. If you could repeat it one more time. Did
15 you say land use?

16 Q. Land use issues.

17 A. Or the county commission.

18 Q. Right. It would be here or the county
19 commission, in either place?

20 A. I'm not an attorney attempting to interpret
21 the Circuit Court decisions, but I do recall saying that.

22 Q. Would you agree that in the county zoning
23 process, if the utility agrees to go to county zoning, the
24 County will, through that process, provide an up or down
25 approval for a plant's proposed location independently of

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1 the Commission's consideration of need?

2 A. I can't say as to what the County would do
3 or not do.

4 Q. You don't think the County would consider
5 need for the land, would you? And I think you've talked
6 about that in your testimony.

7 A. Yes, I have. And actually, I'm not certain
8 what the County would do or not do, given the comments of
9 Mr. Mallory and Mr. Peshoff in their testimony.

10 Q. But more than likely, independent of need
11 for the plant, the County would give an up or down
12 decision about the zoning issue?

13 A. It's an -- once again, I don't know that
14 the County would. It's my expectation that would happen,
15 but I don't know.

16 Q. Let me ask you this: Would you agree that
17 there is no language in the Court of Appeals decision that
18 says the Commission review the propriety of a plant's
19 location can or should be handled any differently than
20 before the County?

21 A. I don't know.

22 Q. You also testified that as a best practice
23 or a good faith effort to comply with local zoning would
24 be a legitimate requirement of the Commission to impose on
25 a utility before issuing a specific certificate. Isn't

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1 that your testimony?

2 A. A showing of good faith effort, I think,
3 going forward, yes.

4 Q. Now, wouldn't you agree that in this case
5 Aquila made no application with the County to comply with
6 the local zoning for the South Harper plant before it was
7 constructed?

8 A. That is my recollection.

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

10 JUDGE PRIDGIN: Mr. Comley, thank you.

11 What I would like to do because of schedules is to ask
12 Mr. Wood to step down, but obviously you'll be recalled.
13 Mr. Coffman still needs to cross-examine.

14 Mr. Coffman?

15 MR. COFFMAN: Your Honor, could we perhaps
16 schedule some time like next week maybe to continue
17 Mr. Wood since we've interrupted at this point? I don't
18 know what the plan is. We do have Dunn and Fisher on
19 Monday.

20 JUDGE PRIDGIN: Does counsel see any reason
21 why we couldn't continue Mr. Wood on Monday?

22 Commissioner Murray?

23 COMMISSIONER MURRAY: One reason I wanted
24 to continue yesterday evening was because I was hoping to
25 get through Mr. Wood.

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1 MR. COFFMAN: That was my preference, too.

2 COMMISSIONER MURRAY: I realize it was some
3 of our preferences. We didn't do that. We're running
4 behind. We were told yesterday that the Aquila witness
5 needed to begin at least by 10 a.m. this morning. Now, we
6 are here with Mr. Wood. He's not even finished with his
7 cross-examination. Certainly we're not yet to questions
8 from the Bench.

9 I want to be here when Mr. Wood is
10 questioned, and I'm going to be out of the office on
11 Wednesday and Tuesday afternoon. All morning Tuesday is
12 totally booked with our agenda, with our Universal Service
13 Board meeting. And it's important to me that we not delay
14 Mr. Wood. So however the Judge can work with this altered
15 schedule, I'd sure appreciate whatever you can do.

16 JUDGE PRIDGIN: Then with that in mind, it
17 might be better, and understanding -- I'm sorry.
18 Mr. Swearengen, when is it that Mr. White would have to
19 leave? Let's see if we can compress this all in today, as
20 best we can.

21 MR. SWEARENGEN: He's available today.

22 JUDGE PRIDGIN: Today until what time, I
23 guess is my question, because I don't know how long
24 cross-examination will be of Mr. Wood.

25 MR. SWEARENGEN: He's available this

1 afternoon.

2 MR. COFFMAN: Your Honor, I don't know why
3 I couldn't probably proceed. As I said, my
4 cross-examination should take 20 minutes at the most.

5 JUDGE PRIDGIN: All right. Let's go ahead,
6 and because of schedules, let's proceed at least for now
7 with Mr. Wood. And, Mr. Coffman, if you have any
8 questions for Mr. Wood, and we'll certainly try to keep an
9 eye on the clock and see if we can get Mr. Wood and
10 Mr. White done today.

11 MR. COFFMAN: I'll try to be brief.
12 Mr. Comley did cover a lot of what I intended.

13 JUDGE PRIDGIN: Thank you, Mr. Coffman.

14 MR. COFFMAN: And I do wish that Mr. Wood
15 can get this over with today.

16 THE WITNESS: That would be nice.

17 CROSS-EXAMINATION BY MR. COFFMAN:

18 Q. Good morning, Mr. Wood.

19 A. Good morning, John.

20 Q. I am generally very impressed with the
21 analysis on the work that you do at the Commission, so I
22 appreciate this opportunity to talk to you because I
23 really have a hard time getting to the bottom line that
24 you have in this particular recommendation.

25 I don't know that it's been fully asked at

1 any point yet, but could you explain to me how the Staff
2 position as an entity came to be what it is today? Was
3 that a group decision amongst senior members of the Staff,
4 was it your decision, was it the General Counsel's
5 decision that led to the position that the Staff as an
6 entity is taking?

7 A. It was mine. It was my position. I
8 arrived at this position, as well as did Mrs. Mantle and
9 Mr. Bender. They each worked on their initial pleadings
10 and testimony, or I should say their initial drafts of
11 testimony. I reviewed them. I did not change the
12 direction or intent of their testimony in any way. I
13 agreed with their conclusions. My testimony was
14 developed, provided through our General Counsel, other
15 witnesses read it, and there were no efforts to change its
16 direction.

17 Q. My next question relates to what interest
18 the Staff is representing. You're here representing what
19 the position of the Staff as an entity is?

20 A. Yes.

21 Q. I know that that -- who the Staff
22 represents is a question that gets different answers
23 depending on who you ask, so I have to ask what you
24 believe the Staff's interest is in this case?

25 A. It's a good question. I'm glad you asked

1 it, because it is not an easy role. We're attempting to
2 balance the interest of the utility and all the consumers
3 that they serve while being considerate of the people in
4 the immediate vicinity of this plant. So really there's
5 those three broad groups of interest to the utility, all
6 of the consumers that receive electric service from this
7 utility and the people in the immediate vicinity of the
8 facility.

9 Q. Would it be fair to say that you believe
10 that the primary elements of the public interest that the
11 Commission is here to protect are those of the
12 shareholders and the ratepayers, and that other factors
13 are subordinate to those?

14 A. I hesitate on the term subordinate. I
15 would definitely agree that our long-term and what we
16 always are attempting to do is balance the interest of the
17 utility -- the utility shareholders, I should say, and the
18 customers that they serve. I think you can do that and
19 continue to maintain a very significant level of interest
20 and concern for those people in the immediate vicinity of
21 the plant.

22 For instance, in Linn, the 19-- or the 2003
23 Linn case where we required that no houses would need to
24 be relocated and made some changes to that transmission
25 routing, specifically to address the concerns of some of

1 the citizens along the route.

2 Q. I assume that you're aware of court cases
3 and Commission cases that define the public interest as
4 being primarily that of regulated ratepayers, or are you?

5 A. I am not an attorney. I have read that in
6 some of the pleadings in this case and others, yes.

7 Q. Now, but in this particular instance, you
8 believe that the Commission's public interest that it's
9 here to protect involve other factors, other
10 externalities?

11 A. The proceedings of this case and the
12 circuit and the court decisions have certainly brought to
13 a higher level of interest, and in this proceeding
14 particularly, the types of externalities I think that
15 you're probably referring to.

16 Q. When you did your analysis and came to your
17 recommendation, did the fact that the proposed site
18 already contains the power plant that is proposed factor
19 at all into your analysis?

20 A. And I'm glad you asked that, because it's
21 easy to look through this and reach the conclusion that
22 you've just started at the back and worked to the front,
23 you know, from your conclusion to go back and justify it.

24 I made a structured attempt when I was
25 writing this to start with the procedure, start with past

1 court cases and other state siting processes and looking
2 at the infrastructure, tried to step back, forget the
3 plant was there and talk about where's the gas line,
4 where's the infrastructure, where's the need, you know,
5 what's the land use surrounding this plant, how does it
6 compare to the land use surrounding other plants, and talk
7 about what provisions could be made to deal with community
8 impacts.

9 And I speak of the local community that's
10 most impacted by this plant in arriving at the conclusion
11 that, you know, all of those things put together, this is
12 a reasonable location for the power plant.

13 Q. Okay. I'm going to ask a yes or no
14 question. Do you think that whether or not a certificate
15 application is prospective or retroactive, should that
16 factor at all into the Commission's analysis or should it
17 be blind to that fact?

18 A. You want a yes or no?

19 Q. Yeah.

20 A. Ask the question one more time.

21 Q. Should the analysis that the Commission
22 makes in determining when a certificate should be granted
23 for a power plant, should that take into consideration at
24 all whether or not it's prospective or retroactive, in
25 other words, whether the power plant has already been

1 built or not?

2 A. May I ask a clarification?

3 Q. All right.

4 A. Is it this case or future cases?

5 Q. In general.

6 A. The answer is different depending on this
7 case.

8 Q. You think this case should be treated
9 differently than all other cases?

10 A. Yes.

11 Q. Okay. Do you recognize that 393.170,
12 subsection 1, the specific statute that this case is based
13 on, says that no electric company shall begin construction
14 before having first obtained the approval of the
15 Commission?

16 A. Yes.

17 Q. Are you aware that the recent Court of
18 Appeals decision said that the Legislature intended this
19 certificate process take place months before, months
20 before construction?

21 A. Before a spade full of dirt is turned, I
22 believe is what it says, yes.

23 Q. That is correct.

24 A. Uh-huh.

25 Q. So -- and this is just in general, not

1 specifically talking about this case, but again, if you
2 became aware of one of the regulated electric utilities in
3 Missouri beginning construction and you knew that it was
4 beginning construction without a specific certificate and
5 without local zoning, would you recommend that the
6 Commission take action to stop that construction?

7 A. Today?

8 Q. Yes.

9 A. Yes.

10 Q. And what actions would you recommend that
11 the Commission take?

12 A. Well, we would be in immediate contact with
13 the utility first saying, where's your certificate of
14 public convenience and necessity for the siting of this
15 power plant?

16 Q. Should the Commission seek an injunction to
17 stop the construction?

18 A. I don't have a recommendation today as to
19 what the Commission would do or what I would recommend
20 that they do.

21 Q. And you acknowledge that the law has not
22 changed as a result of the recent Court of Appeals
23 decision?

24 A. The words have not changed. Their
25 interpretation may have.

1 Q. In making your analysis, did the fact that
2 there was a compressed schedule that Aquila found itself
3 for whatever reason in a tight spot, as far as timing
4 goes, did that factor into whether or not this was a
5 reasonable process?

6 A. It would be one of the factors considered,
7 and if this was a reasonable process, yeah.

8 Q. And you think the Commission should
9 consider that as a factor in determining whether a
10 certificate should be granted?

11 A. The timeliness, yes.

12 Q. And should that factor also take into
13 account whether this compressed schedule, this timing
14 crunch, was the result of factors beyond the control of
15 the utility or whether the utility was somewhat
16 responsible for the situation that it found itself in its
17 time crunch?

18 A. Yes.

19 Q. Yes to which?

20 A. Yes. Yes, to -- you asked --

21 Q. That who's responsible for the timing
22 crunch should be something the Commission considers in
23 determining whether or not to grant the certificate?

24 A. Yes.

25 Q. And can you imagine a situation where a

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1 timing rush, a timing crunch was the result of negligence
2 or unreasonable actions on behalf of the utility, that
3 that could lead to a certificate applic-- a grounds for
4 the Commission to deny a certificate?

5 MR. WILLIAMS: I'm going to object to that
6 as calling for speculation.

7 JUDGE PRIDGIN: I'll overrule. He can
8 answer.

9 THE WITNESS: If you could ask the question
10 one more time.

11 BY MR. COFFMAN:

12 Q. And I'm asking you this because we have no
13 rules and this case is likely to become a template for
14 certificate cases. Generally, should the Commission
15 consider these factors, whether or not the utility's rush
16 or timing scheduling problems as far as a rush to build
17 something, whether or not that situation was the result of
18 the utility's actions or factors beyond that utility's
19 control?

20 A. Yes.

21 Q. Are you comfortable with this particular
22 fact situation becoming, I guess, the low bar or the fact,
23 the case that is then used as some type of precedent going
24 forward as to how a certificate process should be granted?

25 A. If I understand your question, you're

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1 asking should this case be a template for future utilities
2 to look at as the low bar for acceptability?

3 Q. Yes.

4 A. No.

5 Q. As I understand the process that you
6 recommend, the reasonable site determination process, your
7 ten-step process, that this is a process determined to get
8 to the answer is this a reasonable site, not necessarily
9 the best site, is that a fair --

10 A. It is -- it is a reasonable site. It's not
11 a perfect site or it's not a site that has absolutely no
12 public objections. It's a reasonable site.

13 Q. So you don't believe the Commission should
14 hold a utility to the standard of whether this is the best
15 site in the region?

16 A. There should certainly be a consideration
17 of other available sites and how this site happens to be
18 significantly better than the others, and that there's
19 been a thorough effort to identify appropriate sites.

20 Q. I want to ask you a couple questions about
21 your steps, starting with Step No. 8, which is I guess
22 relevant to the controversies here.

23 A. Yeah, page 8, Step 8.

24 Q. On page 8 you list -- you would suggest
25 that the utility should communicate with nearby

1 communities and residents to receive feedback on concern
2 for the construction. Now, is this component of your test
3 just talk? In other words, would there be any expectation
4 that the utility would respond to those concerns that are
5 raised by residents?

6 A. In Step 9 then I say, you address the
7 concerns the nearby residents to the greatest extent
8 possible associated with the optimal site, and I don't
9 know what the --

10 Q. I suppose my question really is to No. 9.
11 You say that the utility should address concerns of nearby
12 communities. Is -- this is just saying, no, that's not a
13 valid concern, is that addressing a concern, or is
14 addressing the concern actually taking some concrete steps
15 to answer every complaint raised?

16 A. I suppose their responsiveness in
17 addressing those concerns or not would be a matter that
18 the Commission would be considering in their determination
19 of granting a certificate of convenience and necessity for
20 a particular site or not. If it appeared that it was just
21 window dressing, there really wasn't any concrete effort,
22 everything was swept under the rug or whatever, I expect
23 that would come out in the hearings that would take place
24 and be reflected in the Commission's decision.

25 Q. Okay. Let me go back -- before I finish,

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1 back to the factors you think that this Commission should
2 consider. We obviously have the shareholders and the
3 ratepayers, and we have other resident interests or
4 property owner concerns. And you were un-- I guess
5 unwilling to state that those are subordinate or lesser
6 considerations; is that correct? You think all of these
7 factors should have essentially equal weight?

8 A. I haven't really thought through the
9 ranking of those. I'm hesitant to make one of them appear
10 less significant to considerations and along the lines
11 that, well, we'll consider it as we have time or that we
12 don't give it a thorough consideration.

13 Q. Well, my concern obviously is that resident
14 concerns or property owner concerns are only an
15 afterthought. They come at the very tail end of the
16 process.

17 A. Are you asking me to respond to that or
18 not?

19 Q. Let me just -- just let me ask the ultimate
20 question that I have a hard time understanding, is why
21 would you recommend to this Commission that they go beyond
22 the determination of need, beyond the question of whether
23 this is a good location from operational efficiency
24 purposes, from an engineering and operational energy need
25 perspective, and go beyond that to recommend that this

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1 Commission take action to trump local zoning control,
2 actually taking away the jurisdiction that has generally
3 been understood to be land use planning at the local
4 level?

5 A. Because I believe the statutes allow us to
6 do that, and it's our responsibility to do so by the
7 statutes.

8 Q. You believe that this Commission should
9 exercise that super authority that you see in the law any
10 time it has an opportunity?

11 A. If you look at the plain language of
12 64.235, it appears to contemplate that the Commission
13 would have the ability to provide for an exemption from
14 zoning or special use permits, if it determined it was
15 appropriate.

16 Q. And are you saying -- are you saying the
17 Commission should always attempt to overrule local
18 control?

19 A. No.

20 Q. But are you saying that in this particular
21 case it makes sense to override Cass County zoning control
22 because of some particular fact situation in this case?

23 A. I'm sorry. Could you ask the question one
24 more time?

25 Q. I think I got an answer from you that in

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1 general you're not suggesting that this Commission should
2 always attempt to use the super authority that you see in
3 the law to trump local control or to take over local
4 zoning issues. But I'm asking now, in this case, are you
5 recommending that the Commission do that in this case
6 because of some particular fact situation in this case
7 that compels that extra step?

8 A. I don't recommend they condition approval
9 of this on zoning approval.

10 Q. And doesn't that have the same effect in
11 your interpretation of the law, the Staff's interpretation
12 of the law, you believe that if the Commission doesn't
13 condition it, that they would then -- that the resident
14 and Cass County would have no recourse as to land use
15 review of this project?

16 A. I don't know the answer to that.

17 Q. You think that the Public Service
18 Commission should be getting into the business generally
19 of considering whether or not to take over local land use
20 decisions?

21 A. I wouldn't go along with the term take
22 over. I think what we're talking about is a certificate
23 application process before the Commission to approve
24 generation siting, and what the final form of rules would
25 look like or what showings were required of the utility

1 regarding its efforts toward receiving local authority
2 approval in first-class noncharter counties remains to be
3 seen. I'm not sure what that language would look like.

4 Q. You have no fear that this will lead to
5 other cases of its kind taking up resources of the
6 Commission with these type of controversies in the future?

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

9 Q. If the Commission adopts your
10 recommendation in this case, do you worry about the
11 message this sends to other utilities, that it might lead
12 to other controversies being referred to this body, as
13 opposed to local zoning authorities, as to the siting of
14 power plants?

15 A. I don't know the answer to that.

16 Q. Have you considered what impact that might
17 have on Staff resources?

18 A. Performing these sort of reviews in the
19 future has certainly caused me some concern in terms of
20 the Staff resources necessary to support the case, because
21 this does take quite a bit of work to support a case of
22 this type.

23 Q. You testified earlier that you had some
24 review or some experience with the Aries plant?

25 A. A little bit.

1 Q. Are you familiar whether that was built
2 with having first obtained local zoning approval?

3 A. That is my understanding.

4 Q. And have you reviewed the cases that --
5 each of the cases that your counsel has put in its
6 prehearing brief involving other power plant approvals?

7 A. Some of them.

8 Q. And have you seen any of those cases in the
9 past where local zoning had not first been obtained before
10 a certificate was requested?

11 A. I don't recall seeing if they -- one way or
12 the other if they -- there was some where they
13 specifically identified they had received zoning approval.
14 Others I don't recall if there was a statement if they had
15 or had not.

16 Q. Are you aware of any other case in Missouri
17 history where a utility has built a power plant, a
18 regulated Missouri utility has built a power plant without
19 first having obtained local zoning approval?

20 A. No.

21 MR. COFFMAN: I think I may be done here.
22 Just one minute.

23 BY MR. COFFMAN:

24 Q. I think we covered this before, but in your
25 testimony you claim that Aquila had received some public

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1 input, and you referred to the SUP, the special use permit
2 application regarding the Camp Branch facility?

3 A. Right.

4 Q. You're not telling this Commission that
5 this public hearing would suffice as to the residents who
6 live nearby or across the street from the South Harper
7 facility site?

8 A. No.

9 Q. You're not saying that my clients should be
10 on the lookout for every zoning issue in the county or the
11 region --

12 A. No.

13 Q. -- in order to assert there in case someone
14 said, no, do it at South Harper?

15 So where do my clients get their due
16 process? Where do they go to have their concerns about
17 their property rights and the other nuisances?

18 A. Well, they're getting it right now. That's
19 one of the issue in this proceeding.

20 Q. So you think that that's sufficient, that
21 the process provided by the Commission is equivalent to
22 what they would receive in a local zoning board hearing?

23 A. I do believe the concerns of the local
24 citizens can be addressed in a Commission proceeding, yes.

25 Q. In your reasonable site determination

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1 analysis that you recommend, you talk about the community
2 and the residents and suggest that the Commission should
3 take that into account, at least in some manner there, in
4 8 and 9. And when the Commission is considering the
5 community and the residents, should they give any higher
6 consideration to those folks that live directly across the
7 street from the power plant, as opposed to those who live
8 two miles away?

9 A. Yes.

10 Q. Okay. And when community interest is
11 expressed on behalf of the City of Peculiar, a city that
12 doesn't have jurisdiction over this area, should that be
13 considered community interest for this particular site and
14 the people that live in proximity to that plant?

15 A. I would say if there's a local city
16 expressing an interest, passing resolutions, doing things
17 that deal with the final overall cost to ratepayers of a
18 plant related to annexation or lack thereof, I would say
19 that would be one of the considerations as well.

20 Q. I think this relates to my question. When
21 you -- we were discussing that letter attached to
22 Exhibit 1 which relates to your November letter to
23 Representative Rex Rector.

24 A. Is it Exhibit 83, I think?

25 Q. Yes.

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1 A. Yeah.

2 Q. Now, when you wrote that letter, at that
3 time you believed that you were -- that the City of
4 Peculiar was going to annex the South Harper location;
5 isn't that correct?

6 A. I'm sorry. It must not be -- you're
7 referring to the Nannette Trout letter?

8 Q. Yes. I'm sorry.

9 A. Okay. I'm sorry. It's not the
10 Representative Rector one then.

11 Q. I'm sorry. The letter to -- I misspoke.
12 When you wrote the letter or helped write the letter that
13 went to Ms. Trout, were you at that time under the
14 impression that this South Harper site would be annexed by
15 the City of Peculiar and thus within their jurisdiction,
16 Peculiar's?

17 A. I don't recall if I was aware of the
18 annexation before or after that letter.

19 Q. Okay.

20 A. Or the efforts to annex the area at that
21 time.

22 Q. One more question. In response to
23 Mr. Comley's suggestion of a condition that the Commission
24 could impose in this case regarding Aquila setting aside a
25 pool of resources that would be available for claims made

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1 by residents who were impacted by the power plant, you
2 mentioned an article that you had read in a power trade
3 journal of some type?

4 A. Uh-huh.

5 Q. Do you recall what that article was that
6 you read, what journal that was in?

7 A. I do not. I could provide it to you at the
8 break.

9 Q. Could you provide it as a late-filed
10 exhibit in this case?

11 A. I could provide it to you and somebody
12 could make a copy and make an entrance to put it into the
13 record.

14 Q. Okay. I would appreciate that.

15 A. Uh-huh.

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

18 JUDGE PRIDGIN: Mr. Coffman, thank you.

19 Let me see if we have any questions from the Bench.

20 Commissioner Murray?

21 COMMISSIONER MURRAY: Thank you, Judge. I
22 do have a few.

23 QUESTIONS BY COMMISSIONER MURRAY:

24 Q. Good morning, Mr. Wood.

25 A. Good morning.

1 Q. I'm just going to ask you a few very basic
2 questions to begin. Would you say that the issue of the
3 location of this power plant has become pretty emotionally
4 charged?

5 A. Unquestionably, yes.

6 Q. Would you say that this plant also has been
7 the subject of some political tension, or do you know?

8 A. I don't know.

9 Q. Would you agree that your position in
10 support of granting the certificate of convenience may be
11 subject to a great deal of emotional opposition?

12 A. Yes.

13 Q. And yet you've taken the position that it
14 is in the public interest for this Commission to grant the
15 certificate. I assume it would have been easier for you
16 to have taken the opposite position?

17 A. Yes.

18 Q. In determining that you think that it is in
19 the public interest for us to grant this certificate, as
20 you suggest, without conditioning it upon zoning approval
21 from the County, did you consider such things as, for
22 example, what is the obligation of Aquila in terms of
23 supplying service to its customers?

24 A. Yes. Yes, I did.

25 Q. And is Aquila obligated to or expected

1 rather to keep the lights on for its customers?

2 A. Yes.

3 Q. Is Aquila expected to keep the rates for
4 its customers at a reasonable level?

5 A. Yes.

6 Q. And in order to do so, is it necessary that
7 Aquila provide an adequate level of plant generation to
8 supply its customers?

9 A. Yes.

10 Q. And do you know if anyone, any party in
11 this proceeding is taking the position that the generation
12 supplied by this plant is not necessary and convenient for
13 the public interest?

14 A. There have been some parties, I think, that
15 are along the arguments that an alternative source would
16 have been better, but I would answer that yes.

17 Q. But is anyone taking the position that the
18 power supply itself is not needed?

19 A. No.

20 Q. And, just hypothetically, if the County
21 itself is saying that -- taking the position that this
22 plant should be dismantled and that whatever happens in
23 the meantime happens basically, if Aquila runs out of
24 power to supply its customers or if it can obtain power
25 but at very increased rates to do so, at least for a

1 period of time, if the County is taking that position,
2 would it be reasonable for the County to have a special
3 tariff, something to the effect of if the power supply is
4 not adequate to meet the needs of Aquila's customers, that
5 the County will be the first to forego receiving power?

6 A. I don't know. I haven't thought through
7 the merits and detriments of that approach.

8 Q. There are such things as curtailable
9 tariffs, are there not?

10 A. Yes, there are.

11 Q. You were asked a question about a utility
12 having to make a good faith effort to the community. I'm
13 not sure exactly how the question was phrased, but it
14 sounded in the way it was phrased as if it would
15 necessarily include applying to the County for zoning
16 approval. Now, it's my understanding that you are not
17 saying that a good faith effort would necessarily include
18 applying to the County for zoning approval, are you?

19 A. It would not necessarily require it.

20 Q. And, in fact, as you have cited to the
21 Statute 64.235, the County would be precluded from
22 interfering with such development or public approval that
23 had been specifically authorized or permitted by a
24 certificate of public convenience and necessity, would it
25 not?

1 A. And I've read the language that you're
2 referring to in 64.235. I do believe that the process
3 before the Commission, if the County so chose could -- or
4 would provide for their opportunity to come here and
5 provide input as well. If there weren't something done in
6 the County or City, they would be able to come here and
7 input. So I don't know if that would -- not saying that
8 they're completely prohibited from their ability, just
9 that it might be here.

10 Q. I apologize to you for asking you a legal
11 question.

12 A. Thank you.

13 Q. But unfortunately, everybody has been
14 asking you legal questions this morning and your counsel
15 has never to my knowledge objected, which I don't quite
16 understand. But I realize you're not an attorney. And I
17 wanted to ask you about something in your testimony. In
18 your surrebuttal, you have -- I'm sorry. In your
19 rebuttal, on page 27 you make reference to the substation
20 on the South Harper site is not just a plant substation?

21 A. Yes.

22 Q. It's also a bulk substation?

23 A. Yes, it is.

24 Q. Would you explain why it is necessary as a
25 bulk substation, what it actually does?

1 A. Certainly. There's a 69,000 volt probably
2 not -- a backbone's probably not a good description for
3 it, but it's a miniature provider of power to the
4 communities in the Harrisonville/Peculiar area, down in
5 some of the areas south. There's a loop 69 system there,
6 a 69,000 volt system.

7 The power that feeds that 69 KV loop from
8 the Peculiar side is fed into that at the Peculiar
9 substation from the 116,000 volt system through a
10 transformer that then takes it to 69,000 volts. So where
11 a power plant substation would only provide for power
12 plant voltage step up to transmission level at
13 161,000 volts, this substation also includes the
14 161,000 to 69 drop, voltage drop to feed a ring system
15 that serves that area.

16 And if that were removed, you would then
17 have -- if it were removed and some other provision wasn't
18 made for feeds to that 69,000 volt system, the communities
19 there would be severed off of a radial system, as opposed
20 to a loop system, which is more subject to higher, you
21 know, likelihood of an outage in the event of some sort of
22 a problem with that transmission system.

23 Q. So this is more reliable, you're saying?

24 A. Yes, it is.

25 Q. And reliability is an important aspect of a

1 public utility's service to its customers, is it not?

2 A. Based on numerous ice storm reports,
3 vegetation reviews, I would say absolutely.

4 Q. Do we get a lot of complaints, do we hear a
5 lot of complaints when people lose power?

6 A. There's no question people's lives are
7 impacted when they lose electricity.

8 Q. You had attached to your surrebuttal an
9 article basically, and I -- it was an article in your
10 Schedule WW-12 that is titled Calpine Overcomes
11 Development Obstacles Once Reserved for Nuclear Plants to
12 Build Combined Cycle in Silicon Valley?

13 A. Yes.

14 Q. I assume the reason you included that in
15 your testimony was to show that public opposition to a
16 power plant is sometimes extremely fierce?

17 A. It was put in to illustrate that there can
18 be a great deal of public objection to a power plant being
19 sited, and this gave examples of the types of approaches
20 that are being used in some of those areas to deal with
21 that. And this illustrated the idea of -- you know,
22 between these articles, the idea of berms and trees and
23 offsets and visual impact, addressing visual impacts,
24 public meetings, things of that nature.

25 Q. Now, has Aquila done some of those things

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1 like the buffering with the trees and berms and mitigating
2 some of the visual impacts and things of that nature on
3 this site?

4 A. Yeah, they have. There's been quite a bit
5 of equipment installed onsite, and I recently went out and
6 reviewed, regarding silencers on a lot of different
7 equipment, inlet and outlet silencers to bring sound
8 levels down. There's been berms constructed. The site
9 was chosen with the ability to cut into a hill and build a
10 berm on the north side.

11 The stacks -- actually, most of what you
12 can see when you go into the area and look at the plant
13 are the tops of the stacks. And the stacks would have
14 been shorter if it weren't for the silencer, so it's kind
15 of a plus or minus deal. But I think the people closer to
16 the plant would certainly appreciate the silencers being
17 on the stacks and bringing it down to a residential level
18 of noise.

19 There have been trees planted. You know,
20 how much of that would have been agreed to or before the
21 plant was built and how much of it now is remediation
22 attempting to work with the community now that the plant's
23 in, I can't say, but a lot of those measures have been put
24 onsite.

25 Q. Do you think it's possible that there are

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1 more mitigating things of that nature being done now than
2 would have been done had this been addressed in the
3 beginning?

4 A. It's possible. To be honest, I don't know,
5 but it's possible.

6 Q. There were several other sites, potential
7 sites mentioned by some of the parties in this case that
8 have alleged that Aquila could have or should have chosen
9 instead of this site. To your knowledge would any of
10 those sites be without public opposition?

11 A. I don't know.

12 Q. Have you ever seen a power plant proposed
13 in which there was no public opposition received?

14 A. I don't know.

15 Q. You don't recall?

16 A. Yeah, I don't recall if there -- it's
17 possible there may have been some. I don't know. It may
18 have been in a very remote area where nobody could see it,
19 and there might not have been objections.

20 Q. But now there's a problem with very remote
21 areas, is there not, where no one is located near them, in
22 terms of the power plant, getting the power to where the
23 people are located?

24 A. Yes. And it's one of the things that
25 generally, if you look at our siting of most of the

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1 gas-fired generation units, nuclear and coal, the
2 disadvantages of living close to one of those sites tends
3 to push them to quite remote areas, where you end up
4 paying for the transmission to bring them into load
5 center.

6 Gas-fired units are a little different in
7 terms of their footprint and their impact and noise levels
8 and visual issues and all of that, and they tend to be
9 located in fringe areas around communities where there's
10 still land available with a low density of population,
11 where the infrastructure's available to support them. But
12 they're not located in closer to town where there would be
13 a potential for more impacts and bringing transmission of
14 natural gas into an urban type of setting.

15 Q. How difficult is it to bring transmission
16 of natural gas into an urban setting?

17 A. If you can find a corridor that comes in
18 where there's a lot of other industrial applications
19 there, it may not be troubling. In many of those
20 circumstances, however, I think you would generally run
21 into more resistance to bring the high voltage
22 transmission in and high pressure gas, in particular, the
23 high voltage transmission.

24 There's a number of cases where St. Louis
25 particularly here recently where they have wanted to bring

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1 in high voltage transmission through areas that developers
2 were working on near the city, and there have been a lot
3 of objections, a lot of EMF and stray voltage issues that
4 would have been nice if we didn't need to bring the lines
5 in, but we did need to do it to serve the load.

6 Q. When you're serving the load, the further
7 you are, the further the power from the load, the more
8 transmission lines you need; would that be accurate?

9 A. Well, there are losses the further away you
10 go. There's some loss in power as you move it over
11 distances.

12 Q. And then I assume costs increase as well?

13 A. Yes, it's expensive, and it's visual
14 impacts, easement impacts on land use and everybody that's
15 affected, wherever that transmission corridor goes.

16 COMMISSIONER MURRAY: I believe that's all
17 I have. Thank you, Judge.

18 JUDGE PRIDGIN: Commissioner Murray, thank
19 you. Commissioner Gaw?

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. Good morning.

22 A. Good morning.

23 Q. Earlier there's been -- you've made some
24 statements in regard to your interpretation of statutory
25 provisions, including Section 64.235; is that correct?

1 A. On advice of counsel, and I don't know that
2 I can go into them deeply, but I have made reference to
3 them.

4 Q. Well, the reason I'm asking is because
5 sometimes you have put that caveat in that you're relying
6 on advice of counsel in your opinion, and sometimes you
7 have not. So just for purpose of clarification, all of
8 the testimony that you have made in regard to your belief
9 or interpretation of 64.235 and any other legal provision
10 is based upon advice from your legal counsel?

11 A. Yes.

12 Q. All right. In regard to the general
13 question here about what we are to determine, would it be
14 fair to say that generally there are at least two central
15 determinations to be made, one being need?

16 A. Yes.

17 Q. And the other being location?

18 A. Yes.

19 Q. I know those can be broken down a lot into
20 different subcategories, but is there any other major
21 determination we should be making in this proceeding, as
22 far as you are concerned?

23 A. And you can -- if you address the public
24 convenience and necessity, are you then breaking that down
25 into the need and the location, is that --

1 Q. Right now I'm just asking, aside from those
2 two general areas, is there anything else that we should
3 be looking at in regard to the question before us or the
4 issues before us?

5 A. The need issue is very simple. I shouldn't
6 say it's simple. There's a lot of work that goes into
7 determining that. The siting or location, I wonder are
8 there subcategories under that?

9 Q. Yes, I think there could be.

10 A. To infrastructure, local community impact.

11 Q. Yes, all of those things might be -- I was
12 just looking for --

13 A. Okay. Yes. Then I would say yes to your
14 question.

15 Q. -- if there's anything else under a broad
16 category.

17 So you're telling me you think that that
18 could cover it, depending upon the subcategory?

19 A. Yeah. And I think in my rebuttal I said,
20 it really comes down to being need and siting, is this a
21 reasonable location.

22 Q. Let me ask you first in regard to need, a
23 few questions.

24 A. Uh-huh. And Mrs. Mantle's the need
25 witness. I can attempt to paraphrase or refer to her.

1 Q. If I get out of your area of expertise,
2 feel free to let me know.

3 A. Okay.

4 Q. And perhaps I can have Ms. Mantle return
5 sometime later in the proceeding.

6 A. Okay.

7 Q. As far as generation needs are concerned,
8 overall, currently you believe that Aquila has a need for
9 additional generation today, if we exclude the
10 availability of this facility at South Harper?

11 A. Generally, do they need capacity without --
12 if South Harper weren't there?

13 Q. Yes.

14 A. Yes.

15 Q. Tell me how -- generally, what their
16 additional capacity needs would be currently.

17 A. I'd have to defer that to Lena Mantle.

18 Q. Okay. And would you agree that in regard
19 to assessing capacity needs, after you determine whether
20 or not there is additional need, it is also appropriate
21 for you to examine the most prudent type of generation to
22 meet the type of load that a company has to meet?

23 A. Base load, intermediate or peak. We need
24 the fuel type, the size, things of that nature.

25 Q. Yes.

1 A. Yes, that needs to be done in conjunction
2 with the determination of the need for capacity.

3 Q. Okay. And would Ms. Mantle be the
4 appropriate witness for me to inquire as to those things
5 as well?

6 A. Specific to the Aquila - MPS --

7 Q. Yes.

8 A. -- St. Joe Light & Power system?

9 Yes. If it's a general broad question, I'm
10 capable of answering that.

11 Q. Okay. I notice that in some of the
12 testimony there was a reference to the MPS and St. Joe
13 systems together; is that correct?

14 A. Yes.

15 Q. Do you know whether or not Staff has broken
16 those into two divisions in regard to assessing need for
17 this case?

18 A. I do not recall Lena Mantle's breakdown
19 there, no.

20 Q. In regard to examining just generally, just
21 examining the need that a company might have looking out
22 in the future, does Staff have an opinion as to the
23 lookout, the look forward that should be done by a
24 company, examining what its loads will be going forward
25 and how much generation it ought to have in order to meet

1 that load?

2 A. Reflected in our Chapter 22 integrated
3 resource planning rules, yes. There are processes for
4 determining that, considering demand side management,
5 energy efficiency, load growth and consideration of
6 required reserve margins, and all of that goes into -- and
7 the forecasted load growth goes into determining capacity
8 level.

9 Q. Generally how far out do those rules
10 provide that those question of load and available
11 generation should be examined?

12 A. I believe 20 years.

13 Q. And within that 20-year period that's the
14 look forward, give me just generally an understanding of
15 why it is important to look out that far in assessing
16 need.

17 A. If you are continually -- let's say a
18 utility was taking everything five years at a time. Well,
19 if you're into that sort of a planning process, you're
20 always going to find short-term solutions.

21 You're going to tend to do things that look
22 good in the short term, but over the long term you're
23 missing the -- let's say a much more expensive -- and a
24 coal unit would probably never come out on top in a
25 five-year analysis. The capital costs are so great and

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1 the time frame of the unit's operation wouldn't yield the
2 full advantages in terms of lower fuel costs and
3 opportunities for off-system sales, things of that nature.

4 And so a longer-term -- a longer-term view
5 is necessary for making those bit decisions. And if you
6 are not looking at a longer view, you may always -- even
7 if you did it in a coal unit, you can't get it built in
8 time to serve the capacity you've identified.

9 Q. Because it takes about how long to build a
10 base load coal unit?

11 A. Depending on where you are in your siting
12 permit and type of site you have, it's probably five years
13 plus. In other words, if you have a brownfield site, it's
14 shorter; if you have a greenfield site, it could take
15 longer.

16 Q. Would you say that the amount of time that
17 it takes to build a base load plant today is the same as
18 it was, say, ten years ago in regard to the amount of time
19 it takes to get all of the approvals completed and plant
20 up and running?

21 A. Depends somewhat on that siting relative to
22 an emissions source. Like if you're in a nonattainment
23 area, it could be longer. Generally I would say the
24 construction time frame for building the unit has probably
25 dropped some, but in terms of the overall siting and

1 approvals, I imagine that has probably gotten longer.

2 Q. Okay. So in regard to the examination
3 then, if I understand you correctly, it is important to
4 look out over the longer term in order to accurately
5 assess what is the most prudent thing, decisions to make,
6 what are the most prudent and reasonable decisions to make
7 in regard to future generation construction and purchased
8 power agreements?

9 A. Yes.

10 Q. In regard to assessing the most reasonable
11 and prudent generation that might be accessed by a
12 regulated utility, does Staff believe that this is helpful
13 for RFPs to be issued by a company to determine what might
14 be the most reasonable alternative to meet its load needs?

15 A. Yes, and the types of RFPs can vary
16 somewhat. We would want to see pursuit of partial
17 ownership operation of the unit, RFPs for simple buy of
18 power or capacity to see what those compare, and
19 opportunities for buying distressed units.

20 Q. Okay. I may not have any more questions on
21 the need portion, but -- and defer those to Ms. Mantle,
22 but we'll see. I want to ask you a few questions in
23 general on location. In your testimony, the list of
24 factors that you have constructed, can you tell me if
25 those are something that -- that you have put together

1 yourself based upon an analysis that you have done or
2 research that you have done?

3 A. Yes, it was based on my research.

4 Q. So is it fair to say that there is no place
5 currently in any case that this Commission has decided or
6 any rule that this Commission has promulgated where those
7 factors as you laid them out in your testimony exist?

8 A. I would say you have to look at a number of
9 different cases in order to determine those primary
10 factors, and I don't know of any case where they've all
11 been sequenced or necessarily all those factors have been
12 identified in one case.

13 Q. Okay.

14 A. It's really a compilation of several past
15 cases and of some surrounding states' siting processes.

16 Q. So these are just generally your
17 recommendations on what the Commission should examine?

18 A. If you were going to look at a process
19 rule, it would be -- I would propose that this would be a
20 possible path to pursue to be considered. It's certainly
21 very likely to be structured in what I would bring to you
22 in a draft rule, if you were interested in going through a
23 process.

24 Q. Okay.

25 A. If you were looking more at findings about,

1 have all these individual things been addressed, it might
2 be a different format, but it would largely be based on
3 the same list of factors.

4 Q. Back to my question, are these generally
5 your recommendations in regard to what we should look at
6 in this case?

7 A. Yes.

8 Q. Okay. And so they're based upon your
9 opinion as to what you think might be appropriate?

10 A. Yes.

11 Q. Now, in looking at some of the other states
12 that you examined, give me the list of states again that
13 you looked at.

14 A. I looked at Arizona, I looked at Iowa,
15 Illinois, Kentucky, Tennessee, Arkansas, Kansas, and
16 Nebraska. And I had -- I would have visited more with
17 Oklahoma, but we've been playing a lot of phone tag. I
18 haven't got the input from them I would have liked.

19 Q. Now, do you have in your testimony listed
20 all of the factors that each state examines in a siting
21 case?

22 A. No.

23 Q. All right. So in regard to the factors
24 that you have compiled here, can you tell me whether all
25 of the factors that all of the states consider are

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1 included?

2 A. No. The process that I've described in my
3 testimony doesn't get into the level of detail. Like in
4 some states they have specific provisions where they note
5 sound attenuation, berms and planting trees and things
6 like that. I haven't gone into that level of detail in
7 the process, kind of the high level process I've described
8 here.

9 Q. Is it fair to say that you have engaged in
10 picking and choosing those things that you thought ought
11 to be included in your recommendations from the state's
12 siting criteria?

13 A. My process does not go to the level of
14 detail to exempt anything from those other state
15 processes. In fact, I expect that if you had a list, it
16 was probably like 16 different things when I started on
17 working on shaping a process. That list of items would be
18 something we would look at in development of rules going
19 forward.

20 Q. Is it fair to say that you engaged in
21 picking and choosing those factors that you thought would
22 be appropriate in regard to this state, this Commission
23 examining the criteria or sets of criteria?

24 A. No.

25 Q. Okay. If you didn't pick and choose, then

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1 would it -- then I'm having a little difficulty
2 understanding why you're telling me that some of the
3 things are not in here.

4 A. I made a point -- instead of giving you a
5 list of -- a checklist of 16 factors, like are there any
6 natural artifacts, wetlands, things of that nature,
7 Department of Resources compliance with environmental
8 things, instead of putting all of those into a checklist
9 in here, I opted to describe a process where all of those
10 different kind of things could come in without -- you
11 know, without identifying, well, at this step, you would
12 do all of those different smaller subset items.

13 It was complicated enough and lengthy
14 enough without getting into that. And I really -- where I
15 expected those kind of things would come in is in the
16 rulemaking when we develop that.

17 Q. So in other words, you have not given this
18 Commission that level of detail of guidance in regard to
19 some of those more specific questions that other states
20 inquire into in regard to determining appropriate siting?

21 A. I have not in my testimony, no.

22 Q. Okay. I assume it's possible for you to
23 provide that to us?

24 A. That list of 16 items from -- that I'd
25 listed out when I was reviewing other states? The answer

1 to your question is obviously yes.

2 Q. On all of the details that some of those
3 states do require in regard to assessing siting.

4 A. I can -- from my review of what was there,
5 I created a list as I went, and I can certainly provide
6 that to you.

7 Q. Or you can provide the actual material that
8 you reviewed, could you not?

9 A. Sure I could.

10 Q. In regard to why you chose these particular
11 states, can you tell me why these states were chosen?

12 A. They surround the state of Missouri, and
13 Arizona -- well, all the ones that surround the state of
14 Missouri, obviously, Oklahoma I didn't, as I indicated,
15 because I haven't been able to keep in contact with them
16 to get the information I needed. And Arizona I included
17 because when I was conducting my initial research, I
18 thought that that had a good listing of factors to be
19 considered.

20 Q. So did you happen to just look at Arizona
21 by accident or did you run across it in some other review
22 of the possible states that would have siting rules to
23 examine?

24 A. Well, when I was looking at my -- the
25 articles in the magazine that I've identified in my

1 surrebuttal, I believe, Schedule WW-12, that unit was
2 located in Arizona, in Gilbert, Arizona, so I sought it
3 out to take a look at their siting process.

4 Q. Did you see any other states or examine any
5 other states other than the ones that you listed?

6 A. No.

7 Q. Would it be fair to say that there are a
8 number of -- that most states have siting criteria in
9 regard to transmission or generation siting?

10 A. I don't know if most states do or not.

11 Q. You've never took -- you've never examined,
12 other than for this proceeding, any other state's siting
13 criteria?

14 A. No, I wouldn't agree with that.

15 Q. So you have?

16 A. Yes.

17 Q. All right. Do you have information on --
18 from previous examinations of other states' siting
19 criteria, do you have information in regard to those
20 siting criteria?

21 A. I don't recall. It would have been spotty
22 over a period of different periods in the past. I don't
23 remember the states or the information from those reviews.

24 Q. Would you have that in your files?

25 A. No.

1 Q. Are you familiar -- so would it be fair to
2 say you are not familiar with the siting rules in Ohio?

3 A. That's fair.

4 Q. Would it be fair to say you're not familiar
5 with siting rules in Wisconsin?

6 A. That's fair.

7 Q. In Massachusetts?

8 A. That's fair.

9 Q. Any of the other New England states?

10 A. That's fair.

11 Q. Any of the states in the west, other than
12 Arizona?

13 A. I'm somewhat familiar with the California
14 process.

15 Q. Does California have -- require some siting
16 approval before generation is sited, is located or built?

17 A. I'm not sure of the current status of law
18 in Oklahoma. When I was working on the Argus
19 co-generation expansion project, it's a coal-fired unit,
20 one of the last coal-fired units built in California. It
21 was in Death Valley. We had to work through the
22 California Energy Commission in order to get the necessary
23 siting for that unit.

24 And when I lived in San Jose, actually we
25 rode our bikes past the site where that unit is now built

1 by Calpine, south of San Jose. And they were beginning to
2 talk about construction at that time, and there was --
3 there were -- there was a lot going on in terms of trying
4 to get approval for that site. What particular local
5 jurisdiction siting approval or not was taking place at
6 that time, I'm not aware.

7 Q. Okay. So you do -- you are not
8 specifically familiar with the siting criteria in
9 California?

10 A. Not at this time.

11 Q. Of the states that you did examine, are you
12 familiar with whether or not there was local authority
13 that was -- that was given in regard to siting of power
14 plants?

15 A. Iowa, yes. Iowa's the one from my brief
16 summary of notes here. Iowa was definitely one that did
17 require that. Some states such as Arkansas and Kansas had
18 specific exemptions if the Commission determined it was
19 appropriate.

20 Q. And the other states, you do not know the
21 answer to the question in regard to that?

22 A. Well, Illinois was restructured in 1997, so
23 the Commission doesn't have the authority over those
24 plants for siting. Kentucky --

25 Q. Let me stop you for just a minute. When

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1 you say the Commission doesn't have authority for the
2 siting, does that mean there is no authority over the
3 siting of those plants?

4 A. Oh, I believe it goes back to the local
5 jurisdictions, much like a merchant plant I think would
6 now operate in the state of Missouri.

7 Q. I'm sorry. The next state you were going
8 to talk about was?

9 A. Kentucky.

10 Q. Yes.

11 A. And they have a siting process, but it's
12 only for utilities that received their certificate of
13 convenience and necessity after April 15, 2002, and then
14 for all other merchant generation, and they're required to
15 get the site compatibility certificate.

16 Q. Which means?

17 A. When -- my review of that, it does appear
18 they need the zoning or local authority approval.
19 Tennessee is -- when I spoke with the staff there,
20 TVA controls 99 plus percent. It's all really under the
21 federal government.

22 Arkansas, as I noted, they have a
23 requirement that the plant be as close as practicable to
24 local land use approvals. And I don't remember the exact
25 language in the statute, but they can refuse requirement

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1 to comply with local zoning or SUP if they considered them
2 unreasonably restrictive.

3 Q. Okay. So they have to find the zoning
4 requirements unreasonably restrictive before they can
5 ignore them?

6 A. Yes. Uh-huh.

7 Q. Do you know about Kansas?

8 A. Yeah. Kansas is for -- for years it was
9 quite broad, but then it was recently revised to only
10 apply to nuclear power plants, and there's no zoning
11 approval required if the Commission grants them a
12 certificate, and they actually have an exemption from
13 siting approval if they're siting a unit on a site with an
14 existing unit or next to an existing unit.

15 Q. Okay. I'm a little unclear about what you
16 just told me.

17 A. I understand. It was sort of convoluted.
18 In Kansas, for years they had a siting process that was --
19 appeared quite extensive, but then they came back and put
20 nuclear in front of everything that talked about a power
21 plant.

22 Q. Okay.

23 A. So now it only applies to the nuclear
24 units, and there's a specific exemption from local zoning
25 requirement approval if the Commission says that it's okay

1 at its current site.

2 Q. Now, stop for just a minute.

3 A. Okay.

4 Q. The qualifier now that exists in regard to
5 nuclear facilities, does that mean that the Commission
6 does not have siting authority for every other kind of
7 plant?

8 A. That is my understanding from speaking with
9 staff in the Kansas PSC.

10 Q. Okay. So does that also mean that local
11 authorities then have siting authority for other kinds of
12 plants?

13 A. I don't know the answer to that question.

14 Q. It would stand to reason, would it not,
15 that if the Commission can override siting or zoning
16 requirements of the localities, that if that authority is
17 only derived from the statutory provisions that now are
18 qualified by just nuclear facilities, that they would no
19 longer have the ability to override local zoning, would it
20 not, on other plants?

21 A. I don't know.

22 Q. Okay.

23 A. I don't know the other related Kansas laws.

24 Q. I understand. And you're not an attorney.
25 You already told us that.

1 A. Right. Yes, I'm not. And in Nebraska,
2 when I spoke with them, they said all of that is munis or
3 cooperatives. The public service offers basically a
4 convenience and necessity certificate, much like ours.
5 They say it doesn't have a negative impact on the local
6 county or environment or transmission system. It's not
7 duplicative. It's economically viable.

8 And when I spoke with their -- their deputy
9 director with the Nebraska Power Review Board, they were
10 not -- they were not familiar with any involvement with
11 local government. They said that generally, without going
12 back to the law, she just recited that it appears that
13 they take care of that before they come to us. She wasn't
14 sure if they had local approval or not, presumed that they
15 didn't, and that was a problem. They'd hear about it in
16 their hearings at the Power Review Board.

17 Q. Nebraska has a rather unique system, do
18 they not --

19 A. Yeah.

20 Q. -- in regard to their --

21 A. I think it's probably the only state in the
22 country that is all munis and coops, public-owned
23 utilities.

24 Q. Are you familiar with all that was done by
25 the company in this case to identify all possible sites

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1 for this generation that is an issue here?

2 A. Did you say all?

3 Q. Yes.

4 A. I'm aware of the 12 sites they considered,
5 and I -- and I made a point to visit two of the ones with
6 existing generation, and also went by the Aries plant
7 associated with that review of sites. If there were other
8 sites that they considered and haven't conveyed to me that
9 they looked at, I don't believe -- I don't know them.

10 Q. Did Staff specifically inquire as to all of
11 the sites that Aquila examined for placement of this
12 generation?

13 A. Yes. We -- yes. Let me qualify that.
14 When this case was filed, I requested on an expedited
15 basis the ability to sit down with Sega and Aquila and I
16 wanted to figure out how did you arrive at that list. And
17 in those meetings, what was provided to me of those 12 are
18 the ones that they had -- they had arrived at for further
19 consideration.

20 At that time, I did not request what are
21 all the other ones that you did consider or at least you
22 just from a very high level thought about but didn't
23 bother to put into your list. 12 was quite a few sites
24 for me to go back and look at in terms of my review
25 already, and I didn't ask for them to give me those lists

1 of ones that didn't make the short list.

2 Q. Okay. So you may have inquired, but you
3 don't -- that list wasn't provided, that more extensive
4 list?

5 A. No.

6 Q. Of those that were provided, tell me what
7 evaluation was done in regard to the appropriateness of
8 those sites by the company.

9 A. Okay. I'll be referring to the exhibits
10 of -- well, I don't have the numbers or exhibits for the
11 other Staff or the other Aquila folks. Is that what
12 you're asking about?

13 Q. You know, I'm asking from -- from you
14 whatever is easy to help you.

15 A. Oh, okay. Was your question what I
16 reviewed or what the utility reviewed?

17 Q. My question is what you know that the
18 utility reviewed.

19 A. Oh, okay. I know they looked at -- and you
20 know, basically, this is just right off the matrix that
21 was provided by Aquila witness Chris -- Mr. Rogers, I
22 believe, and it goes back to location in Missouri, city,
23 township, range, section, elevation, description, the area
24 for development, acquisition cost, access to electric
25 transmission, access to natural gas supply.

1 And under both electric transition and
2 natural gas supply, there was some estimate of the
3 distance, type of pipeline or electric transmission
4 upgrade as necessary, access to potable water, sanitary
5 sewer, air permits. And then in the fatal flaw column,
6 there was a compilation of issues that may have been
7 identified in the columns preceding, and also recognition
8 if there was a -- if this was some local support of some
9 type, if there was an issue with visibility from nearby
10 communities, if there were some issues, concerning
11 regarding ability to receive an emissions permit in that
12 area.

13 I'd say that's a quick summary of the items
14 I could notice from the tables.

15 Q. Do you see -- do you see zoning listed?

16 A. There were some notices in there regarding,
17 this is in a city limit, so we wouldn't have that issue or
18 an expectation of litigation if we consult this site
19 because we don't have zoning approval. There wasn't -- I
20 mean, is that the kind of zoning references you're
21 referring to?

22 Q. Well, I'm looking for whatever was
23 referenced in regard to local zoning and whether or not
24 there was a clear enunciation of what the zoning was for
25 that particular site in each of those 12 sites.

1 A. The references to zoning occur in many of
2 the different sections. I wouldn't say they apply in all
3 of them.

4 Q. Okay. So if I were to ask you to tell me
5 how each of those sites is zoned, could you do that from
6 what you have seen?

7 A. No.

8 Q. Okay. Did you ask the question of how
9 these different sites were zoned of the company?

10 A. No.

11 Q. Is the fact that you did not ask them a
12 reflection of Staff's belief as to -- or feeling as to the
13 importance of the zoning requirements of a site?

14 A. I'm sorry. Could you repeat the question?

15 COMMISSIONER GAW: Read it back, please.

16 (THE REQUESTED TESTIMONY WAS READ BY THE
17 REPORTER.)

18 THE WITNESS: It reflects -- it reflects a
19 primary concern for land use compatibility in the area.

20 BY COMMISSIONER GAW:

21 Q. First, Mr. Wood, would you answer my
22 question as it was asked?

23 A. Okay. Should it be --

24 COMMISSIONER GAW: I think it's a yes or
25 no, Judge.

1 BY COMMISSIONER GAW:

2 Q. If the judge disagrees with me --

3 A. No, I can answer it as yes or no.

4 Q. Okay.

5 A. No.

6 Q. All right. Explain to me if you did not
7 inquire as to the zoning on each site, how that is not a
8 reflection of Staff's view of the importance of zoning in
9 each site.

10 A. I believe land -- zoning reflects the
11 surrounding -- to the degree zoning reflects the
12 surrounding land uses, I was looking at what the land use
13 in the vicinity was, as opposed to what it may now be
14 currently zoned as.

15 Q. In other words, would it be fair to say
16 that Staff did not view a county's determination as to
17 land use or a municipality's determination as to land use
18 within their jurisdiction as an important factor in
19 determining whether or not a site is ranked higher or
20 lower?

21 A. No, it did not.

22 Q. If I understood you correctly, you just
23 told me that you did not view it as a factor?

24 A. What's hanging us up here is, I'm keeping
25 land use attached to the issue of zoning. I did consider

1 land use very important, but zoning was not one of the
2 issues that I addressed in the matrix when I was looking
3 through this.

4 Q. All right. So in regard to your
5 recommendation in this case, you are not considering the
6 zoning requirements of the sites that might be potential
7 sites for this generation as being a direct factor in your
8 recommendation?

9 A. Well, in arriving at the final South Harper
10 site, I did ask for --

11 Q. First, it's a yes or no, please.

12 A. Yes, I did.

13 Q. You did?

14 A. Okay. So --

15 A. Yes.

16 Q. -- you did?

17 So tell me, now that you have not -- you've
18 told me that you didn't ask the question on the sites
19 about the zoning requirements. Tell me now, did you wish
20 that you had gone back or do you think you should go back
21 and ask the question about the zoning requirements of
22 these -- of all of the 12 sites?

23 A. No, I don't.

24 Q. Okay. But you do believe that zoning is an
25 appropriate factor to be considered in ranking sites?

1 A. When you get down to your final optimal
2 sites, yes.

3 Q. Okay.

4 A. At your early screening level, I don't know
5 that it's appropriate, but later when you get to your
6 optimal sites, I think zoning is something you have to
7 consider.

8 Q. All right. How many optimal sites were
9 there to be examined in this case?

10 A. Aquila identified initially 12, or
11 initially they did not identify 12. After they left the
12 Camp Branch and started speaking with the City of
13 Peculiar, there were 12 sites.

14 Q. But you do not know, if I -- and I'm not
15 going to belabor this, because I think you've answered
16 this. You do not know the zoning of any of those -- or
17 any of the sites, except perhaps the South Harper site?

18 A. I'm not even certain of that, because I've
19 asked for the map but I have not received it yet.

20 Q. So you're telling me you don't know how the
21 South Harper site is zoned today, as you testify?

22 A. I have made multiple requests to Cass
23 County asking for that map. I do not have it yet. All
24 representations have been made that it is agriculturally
25 zoned. It's my expectation that it likely is, but I

1 cannot confirm beyond a shadow of a doubt that it is zoned
2 agricultural.

3 Q. Do you use the same standard of requiring
4 information before you believe it from all the parties in
5 this case?

6 A. Trust and verify would be typically the
7 version. If you receive something, you have some reason
8 to believe it may be questionable, then you would seek
9 another source for verification.

10 Q. Okay. And in this case, you think that the
11 zoning of the South Harper site might be questionable; is
12 that correct?

13 A. It's questionable, yes.

14 Q. And what do you have to base that belief
15 upon?

16 A. The reason is I don't have anything to base
17 one way or the other on. That's why it's questionable to
18 me.

19 Q. Are you familiar with whether or not Cass
20 County -- how Cass County keeps its zoning requirements?

21 A. Based on the deposition of Mr. Mallory, it
22 sounds like there are a number of maps with markings kept
23 on them to keep track of zoning, but I haven't seen it.

24 Q. Are those maps nonpublic?

25 A. I expect they're public.

1 Q. Have you ever been to Cass County,
2 Mr. Wood?

3 A. Yes, I have, several times.

4 Q. Have you ever been by the Cass County
5 offices, by chance?

6 A. Yes, I have.

7 Q. During the time when you were there, did
8 you ever ask to see those maps?

9 A. Yes, I did.

10 Q. And you were refused?

11 A. We went and looked for them and didn't see
12 them.

13 Q. Who did you talk to?

14 A. I spoke with Darrell Wilson and -- who is
15 the planning and zoning director there, and when I was
16 there, I visited with Karen, who is his -- I assume she's
17 his assistant or the person that works the front desk and
18 phone there. And I've also spoken with Debra Moore, who
19 walked us down to the map room where those were supposed
20 to be, and we've asked for them from Gary Mallory after
21 the deposition.

22 Q. And when you were in the Cass County
23 offices, you're telling me that those maps were not there?

24 A. If they were there, we didn't know where
25 they were.

0880

1 Q. Who is we?

2 A. On different occasions, it would have been
3 different people. I've been there with Lena Mantle, Leon
4 Bender, and I've also been there with Nathan. I think we
5 were there for the deposition.

6 Q. And the Cass County officials that you were
7 with couldn't find them for you?

8 A. And Darrell Wilson wasn't there when Debra
9 Moore walked us down, so I don't know that she would have
10 been expected to know where they were.

11 Q. There's been considerable testimony in
12 regard to the necessity of this generation to be located
13 in Cass County. Can you tell me how important it is in
14 regard to evaluating location here that this generation is
15 in Cass County, as opposed to somewhere else outside of
16 Cass County or farther away?

17 A. There is a desire to locate power plants
18 closer to load centers, and I would say in looking at
19 Aquila's generation that they have available to them in
20 Cass County currently at this time, that would be the
21 Ralph Green 3 unit. In the future it may include other
22 units such as merchant units as we've talked about at some
23 length.

24 But there is a desire to try to keep those
25 units, especially peaking units, closer to load centers

0881

1 and there's no question Cass County is -- it's the 11th
2 ranked population, populous county in the state, and it
3 has a very high growth rate with a disproportionate load
4 toward residential.

5 And so do I think it's an appropriate
6 county to be talking about siting generation? Yes. What
7 are the -- and I think part of your question is, what does
8 it mean, what are the impacts if you move it to a
9 different location, say outside of Cass County; is that
10 your question?

11 Q. I'm asking about how important it is that
12 the generation be located in Cass County, yes.

13 A. It largely comes down to what sort of
14 expense the utility wants to or is willing to incur, and
15 then likely place into rates, for additional transmission,
16 electric transmission and gas transmission to reach those
17 units.

18 Q. Well, let's assume that the access to the
19 transmission and to the gas line is the same.

20 A. Uh-huh.

21 Q. Just talk about in terms of the
22 generation -- the generation's proximity to the load and
23 how important that is in regard to your assessment of the
24 appropriate location for this facility.

25 A. Well, the farther you move the generation

1 from its load, the larger the losses, the larger -- the
2 longer the transmission lines to reach the load.

3 Q. So you think it becomes inadvisable for a
4 utility to utilize a generation facility that is a greater
5 distance away than what it would be to put this plant
6 outside of Cass County, for instance?

7 A. All other things being equal, yes.

8 Q. So if a utility accesses generation from a
9 distance that would amount to several hundred miles, that
10 would be imprudent?

11 A. Not necessarily. It depends on the cost
12 and the TLR history on that transmission path.

13 Q. In fact, isn't it true, Mr. Wood, that this
14 Commission's Staff has on occasion accepted and
15 recommended facilities for use by regulated utilities that
16 may be hundreds of miles away from load, from the basic
17 load of that regulated utility?

18 A. Yes.

19 Q. In fact, if we were to look in recent
20 history, is it not true that our utility on the eastern
21 side of the state, AmerenUE, has recently acquired peaking
22 plants that are located in Illinois?

23 A. Yes.

24 Q. How many miles are those peaking plants
25 from the load centers of AmerenUE?

0883

1 A. I do not know.

2 Q. You have no clue?

3 A. I haven't looked at the maps recently. I
4 know it's a number of miles.

5 Q. Hundreds of miles?

6 A. I don't know.

7 Q. Over 100 miles?

8 A. I don't know.

9 Q. Isn't it also true that in today's world of
10 electricity, that transactions occur in regard to
11 generation and load that can be many hundreds of miles
12 apart?

13 A. They can.

14 Q. And frequently do; is that not true?

15 A. That is true.

16 Q. Is it also not true that in the MISO region
17 of that -- which is an independent system operator for a
18 great deal of the midwest, correct?

19 A. Yes.

20 Q. -- that there is not a deliverability
21 requirement in order to be a network resource for the MISO
22 region for generation?

23 A. I believe that's true.

24 Q. Is it also not true that Aquila has in the
25 past accessed generation that is not just -- not located

0884

1 in Missouri but in other states?

2 A. True.

3 Q. And does this Commission Staff believe that
4 accessing that generation is unreasonable?

5 A. Depends on the cost and the reliability
6 history on that corridor.

7 Q. Has this Commission Staff filed a complaint
8 in regard to the imprudence of Aquila accessing such
9 generation?

10 A. I don't believe so.

11 Q. Has this Commission denied in rates the
12 recovery of expenses from any generation source of that
13 sort for Aquila?

14 A. I'm not aware of any.

15 Q. Okay. Do you know whether or not -- well,
16 let me ask you this: What's the status of Aquila in
17 regard to its membership in the regional transmission
18 organization, do you know?

19 A. It's a member of the SPP regional
20 transmission organization.

21 Q. Really? When did we approve that?

22 A. Oh, let me clarify that. That hasn't
23 happened officially yet, I don't believe.

24 Q. Is there an application -- an application
25 pending for Aquila to join an RTO?

0885

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

2 Q. I don't believe so either, but I wasn't
3 sure.

4 A. Yeah, that's a good point. Actually, SPP
5 is currently Aquila's open access transmission tariff
6 administrator, and they're a NERUC approved regional
7 reliability council. But your other point is well taken.

8 Q. Thank you. In regard to SPP, is it
9 accurate to say that SPP is headed toward an open market
10 for day one transactions in the fall?

11 A. I believe so, based on my communication
12 with other Staff. I haven't had a chance to check on that
13 in the last couple of weeks.

14 Q. Is it also true that the MISO currently has
15 day one and day two markets available for trading and
16 procuring electricity that are up and running?

17 A. That is my understanding based on Staff
18 discussions.

19 Q. In regard to the question of the siting of
20 the 12 locations that you discussed, was there included in
21 the evaluation of need in regard to these generation units
22 purchased power agreements that might have been done in
23 lieu of these three generating units?

24 A. No. That was really addressed in the need
25 aspect, what was the appropriate resource. My analysis

0886

1 picks it up from the point that they've decided that a
2 self-build option is appropriate and that this is the type
3 of unit they want to build.

4 Q. It would be true, would it not, that if a
5 purchased power agreement would have been utilized instead
6 of a build, that the siting question here might not have
7 been --

8 A. That's true.

9 Q. -- before us?

10 A. Yes, that's true.

11 Q. Mr. Wood, right now I don't have any more
12 questions, but I want to see those factors, and when I do
13 that, I might have more later.

14 A. Sure.

15 COMMISSIONER GAW: But right now, Judge,
16 I'll stop.

17 THE WITNESS: And how should we bring
18 those, just give them to Nathan and we'll figure out how
19 to do that?

20 COMMISSIONER GAW: Yes.

21 JUDGE PRIDGIN: Commissioner Clayton?

22 And then after Commissioner Clayton's
23 questions, we will likely break for lunch.

24 QUESTIONS BY COMMISSIONER CLAYTON:

25 Q. Mr. Wood, I have written down notes all

1 over the paper up here and nothing is in order, nothing is
2 organized.

3 A. Okay.

4 Q. And I'm afraid if I go past lunch, I'm
5 going to completely lose track of all the questions I was
6 going to ask. I wanted to start with a question about a
7 statement that you made, I believe, on cross-examination
8 about this process and the difference between the process
9 in this case versus potential future cases. And you said
10 that this case is different. You said that this Aquila
11 siting matter was different than any potential utility
12 siting matter --

13 A. Going forward.

14 Q. -- going forward.

15 A. Right.

16 Q. And I was wondering if you could -- first
17 of all, is that accurate?

18 A. Yes.

19 Q. And can you explain to me why you believe
20 this case should be treated differently than any future
21 case?

22 A. Certainly. I think that was in response to
23 Mr. Coffman's cross, and the difference would be, this
24 site moved ahead under an interpretation -- well, I'm not
25 an attorney. I'm not even going to get into that at this

0888

1 time.

2 Q. Are you an attorney, Mr. Wood?

3 A. No, I'm not.

4 Q. We haven't heard today whether or not
5 you're an attorney. I'm not sure if it's in the record,
6 so if you could --

7 A. I happen to be an engineer, but I'm not an
8 attorney. Okay. The end of one of the court decisions
9 talked about, albeit at this belated -- I'm not going to
10 attempt to quote it -- albeit at this belated date they
11 can come back here and ask for approval. And so I
12 wouldn't want the impression left that Staff believes that
13 they can't come back here. So I wouldn't say they have to
14 have had a certificate in order to build it, so it has to
15 be torn down since they didn't have one at that time.

16 Okay. Going forward, I think my impression
17 of what's going on here, if we talk about putting a rule
18 together and have to have a certificate of environmental
19 compatibility or whatever we end up calling it or calling
20 it site-specific CCN, that would be something that would
21 be required before the first, and I think is one of the
22 circuit court decisions, before the first spade full of
23 dirt is turned.

24 Q. So did -- so did you assess this case --
25 with full knowledge that the plant was already under

0889

1 construction, did you assess it from the perspective that
2 the plant is there, rather than the plant not being there
3 as if the case had never happened?

4 A. I started with the 12 sites, to answer your
5 question. I did not start with the plant being built and
6 work back with hindsight 20/20 and say, see, it was the
7 right thing to do. I didn't start with that
8 determination. I started with the 12 sites they had.

9 Actually, a number of the sites they had I
10 removed from consideration pretty quickly because they
11 were in areas quite distant from gas lines. We're going
12 to talk a lot of issues to get to those sites. It was
13 pretty clear to me initially that the sites to be looking
14 at more closely were close to Harrisonville and close to
15 Peculiar, given the infrastructure.

16 Q. If the plant is going to be sited in Cass
17 County?

18 A. Right.

19 Q. Did the company have options of siting a
20 plant elsewhere or were they restricted Cass County?

21 A. Actually, they did look at a site,
22 Greenwood.

23 Q. Is Greenwood in Kansas?

24 A. I think it's in Jackson County. Correct me
25 if I'm wrong.

0890

1 Q. It is Jackson.

2 A. So there was that one that was not in Cass
3 County, and Greenwood is actually one of the three sites I
4 was -- in my initial assessment, I thought that, you know,
5 Greenwood offered a good potential site, as did the Camp
6 Branch, or the north or south 235th Street and South
7 Harper all fell out as good sites, given the
8 infrastructure, for further consideration.

9 Q. Can you tell me when the 12 sites, this
10 listing was given to you or given to Staff, approximately?

11 A. First time I believe I saw --

12 Q. And you could answer in comparison with
13 events as well.

14 A. I don't know if I have any particular --
15 you're wanting kind of a date, time frame?

16 Q. Well, were these given to you before or
17 after they started construction on the plant?

18 A. After.

19 Q. After they started construction?

20 A. Yes.

21 Q. Were these sites shown to you before or
22 after the injunction was entered in Cass County Circuit
23 Court?

24 A. After. I believe my first review of these
25 was about the time frame that the 248 case was coming

0891

1 before the Commission.

2 Q. Which one was the 248 case? I'm sorry.

3 A. That was the application for clarification
4 that they previously had approval under their CCN or that
5 they could receive site-specific authorization. I don't
6 remember the nature -- the description and the nature of
7 the case. It was the 0248 case.

8 Q. Mr. Wood, do you believe this case is
9 different because of the potential change in
10 interpretation of state law?

11 A. Yes.

12 Q. Is it a fair statement that Staff believed
13 from the very beginning of the discussion of whether or
14 not a facility would be built here, that -- that the Staff
15 believed that no additional authorization from either the
16 locality or the Commission was necessary for Aquila to
17 move forward?

18 A. I'm sorry. Could you give me the time
19 frame?

20 Q. From the very beginning of -- boy, I don't
21 know. When did this whole thing begin?

22 A. We've had so many cases. I would say
23 probably, what, 2004. It went back. The injunction was
24 in December '04.

25 MS. MARTIN: January '05.

1 COMMISSIONER CLAYTON: Everybody chime
2 right in there.

3 BY COMMISSIONER CLAYTON:

4 Q. Well, going back to the time that the plant
5 was going to be constructed and around thereabouts the
6 injunction was entered, what was Staff's position and were
7 you in a position to know what Staff's position was?
8 Because I know you've changed roles with the Commission.

9 A. Prior to around 2000 -- 2003 and before, I
10 don't know that I had a lot of involvement in that. I
11 don't know what Staff's view was. At the time that the
12 letter to Nannette Trout was sent and the response to
13 Representative Rector's response came out, we were of the
14 view, at least based on General Counsel's review of issues
15 at that time, no additional authority was required for a
16 utility to build in its service territory once it had the
17 CCN for that service territory.

18 Q. And Staff believed that it had the CCN for
19 that territory?

20 A. Yes.

21 Q. Okay. Can you think of any other instances
22 where a utility relied on a CCN that went back a
23 considerable number of years in similar circumstances
24 where the answer of Staff would have been the same under
25 such an inquiry?

0893

1 A. I don't know.

2 Q. You don't know. Okay. And you've been
3 with the Commission for seven years --

4 A. Yes.

5 Q. -- is that right?

6 A. Uh-huh.

7 Q. Okay. And before you were director of
8 utility operations, not services, what was your role
9 before?

10 A. Energy department manager.

11 Q. And you began as energy department manager
12 when you came to the Commission?

13 A. No.

14 Q. So what were you before that, Auditor III
15 or something?

16 A. As an engineer they won't let me be an
17 auditor, which is probably a good thing. I started as a
18 procurement analysis department engineer in natural gas,
19 moved into being gas department manager, moved into energy
20 department manager and then my current role.

21 Q. Okay. Thank you for that.

22 A. And all the gas side. We didn't deal with
23 these issues. It was more on the electric side when I
24 moved to that role.

25 Q. Okay. In arriving at your decision, did

0894

1 you consider or how did you consider -- instead of asking
2 a bad question, I'm going to start over because I'm not
3 helping things.

4 A. Okay.

5 Q. In arriving at your conclusion in this
6 case, was it impacted at all by the fact that Staff had
7 taken a position prior that the company already had
8 authority to move forward with this plant?

9 A. In this case?

10 Q. In this case.

11 A. No.

12 Q. So you don't believe Staff bears any
13 responsibility for -- and I'll tell you what, I'll say
14 Staff and the Commission as a whole, because there are
15 prior Commissions that have been involved in the Harline
16 decision in the past. But does Staff believe or do you
17 believe that Staff has caused any impact on this case
18 because of its prior actions and decisions?

19 A. Certainly one of the -- well, it's my
20 impression that one of the factors that Aquila looked at
21 in its decision to say, hey, you know, I can move ahead on
22 this, was their review of our past letters, a review of
23 the 248 case decision. How much bearing those had in the
24 overall decision to move forward ahead or not, I don't
25 know.

1 Q. Okay. Do you believe that because of those
2 prior decisions of the Commission or positions of the
3 Staff, that Aquila should have been given much wider
4 opportunities or broader discretion to move forward with
5 this type of development?

6 A. I'm sorry. I don't understand the
7 question.

8 Q. I didn't understand the question either.
9 You and Ms. Mantle -- or actually Ms. Mantle is the
10 witness that is providing testimony related to need; is
11 that correct?

12 A. That's true.

13 Q. Now, you have some exhibits attached to
14 your testimony which relate to population of Cass County.
15 Does that relate to need?

16 A. Well, actually, it does relate kind of to
17 need, but it's also to siting because you start with this
18 picture of the state of Missouri, and really it probably
19 would have been better off to draw all of their
20 certificated service territories and area surrounding that
21 and say, now, it isn't appropriate to go to all of these
22 different cities and counties and start talking about
23 where to put a power plant before I've got some idea as to
24 the general areas I'm looking at actually building a
25 plant.

1 So you have to start from a very high level
2 and start saying, well, let's talk about the population,
3 let's talk about growth areas, let's talk about where
4 existing plants are and then try to zero in on areas. And
5 I mean areas in a pretty broad sense, and this would be
6 easily be multiple miles in each direction, but are in a
7 reasonable proximity to load and the infrastructure to
8 build a plant.

9 Q. Okay. Earlier you suggested that this
10 location was a reasonable location and not a perfect
11 location. Is that an accurate reflection of your
12 testimony?

13 A. Yes.

14 Q. Prior statement?

15 A. Yes.

16 Q. Is there a perfect site anywhere?

17 A. I'm not aware of one. I'm not -- I can't
18 tell you that there is not a perfect site in the area.

19 Q. Are there other reasonable sites or
20 acceptable sites?

21 A. Yes.

22 Q. Could you identify which sites those were?
23 I know you probably have already.

24 A. Well, when I went through the -- if I could
25 quickly review the sites again here. There were three

1 primary. These are ones that made my short list for very
2 serious consideration when I first went through it. It
3 was Greenwood power plant in Jackson, which is up north of
4 Pleasant Hill. The advantages of that were --

5 Q. That's okay. Just give me the list for
6 right now.

7 A. The Camp Branch and South Harper. And I
8 should note Camp Branch is really kind of -- there were
9 two options quite close to each other there, but I'll
10 generally refer to them as three different sites.

11 Q. And on the Camp Branch site, why did you --
12 why did you believe it should not be a more appropriate
13 site than --

14 A. I dropped it off the list based on the
15 July 13, 2000 -- well, actually, I dropped it off the list
16 because of the public hearing that Staff attended before
17 the July 13th Harrisonville city council meeting and
18 resolution where they said -- they passed a resolution and
19 said, we don't want it here, go away.

20 Q. And that was in the city of?

21 A. It was the City of Harrisonville passed the
22 resolution for that, which really left me then with, well,
23 if I were -- if I was thinking all greenfield sites or
24 existing plants, where would I, as an engineer looking at
25 this, trying to figure out where to zero in on, I would

1 then have Greenwood and South Harper.

2 Q. Well, if you rejected Camp Branch solely
3 because of public outcry, what is the difference between
4 Camp Branch and South Harper?

5 A. South Harper, as you look at the site --
6 and I have not been to the Camp Branch site. I dropped it
7 off before I had a chance to go out and take a look at it.
8 When I looked at the South Harper site, there are
9 significant capabilities to -- it's on the fringe of a
10 growing population area. There's available land without
11 condemnation. The housing density is rural in nature and
12 can be shielded and sound attenuation measures can be put
13 in place.

14 Q. Do you know if those measures were
15 available at Camp Branch?

16 A. I don't.

17 Q. So then if you don't know what measures are
18 available at Camp Branch, then how do you know that -- why
19 do you think South Harper's preferable to Camp Branch,
20 considering that you've got public outcry at both
21 locations? I make that statement.

22 A. At the time that they were moving into --
23 that they left the Camp Branch site, they had the City of
24 Peculiar. This is -- at the time they moved there, I
25 don't know what sort of input they were receiving or not

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1 receiving. My input as to what they -- what folks were in
2 support of the plant is based on my attendance at the
3 public hearing on March 15 of 2005 in the 248 case.

4 And at that time -- well, actually prior to
5 that, I am aware of the City of Peculiar discussions on
6 annexation, on Chapter 100 financing and the public water
7 district, fire district, the Raypack School there. There
8 were folks standing -- standing up indicating a desire to
9 have the plant there, whereas I --

10 Q. Now, what point in time are you talking
11 when you -- when you make reference to the City of
12 Peculiar, the school district, the financing, what point
13 in time in this process were you evaluating that South
14 Harper was better based on these factors?

15 A. You mean better than the Camp Branch site?

16 Q. Yes. Yes.

17 A. This is the time frame of this case. You
18 mean the time that Aquila was making the decision or the
19 time I was making this decision?

20 Q. Well, I guess identify either. I guess if
21 Aquila made the decision at the time -- are you saying
22 that you -- in your opinion that South Harper is a
23 preferred site to Camp Branch only in the context of this
24 case in the last four, five months, is that your
25 testimony, or were you evaluating it before dirt was

0900

1 turned or immediately after?

2 A. It's just relative to this case in this
3 time frame, since their filing in late January of this
4 year.

5 Q. Okay. So you know that the City of
6 Peculiar didn't annex, correct?

7 A. Uh-huh.

8 Q. So you know that the Chapter 100 financing
9 has been unwound to some extent by some case?

10 A. At least it's setting before the Supreme
11 Court right now.

12 Q. It's in question?

13 A. Yes.

14 Q. Maybe it's not completely unwound?

15 A. Yes.

16 Q. So you're aware of those factors, and
17 you're aware of the public outcry at South Harper,
18 correct?

19 A. Yes.

20 Q. So given the benefits of hindsight, you
21 still testify that you believe that South Harper's a
22 preferred site to Camp Branch?

23 A. Given all the factors available at the time
24 they were making the decision of Camp Branch or South
25 Harper, I consider South Harper a preferred site.

0901

1 Q. So you're putting a -- you're approving
2 Aquila's choice, you're not putting your assessment that
3 today it's the best choice?

4 A. Of the sites reviewed, I say it's the best
5 choice today.

6 Q. Based on what?

7 A. Based on the -- well, we've already talked
8 about the need at some length. Based on the
9 infrastructure.

10 Q. But the need to be addressed at either
11 location?

12 A. Right.

13 Q. So that's a wash. That's a wash between
14 the two locations?

15 A. Yep. And then if you look at that, there's
16 the infrastructure, the cost to build infrastructure to
17 serve South Harper, the land use in the vicinity of South
18 Harper and the community and the local impacts on the
19 housing in that area.

20 Q. Well, since you haven't gone to Camp
21 Branch, how can you say it's preferable to the land use
22 impact of the area?

23 A. Before I made that assessment, I dropped
24 off Camp Branch. It was already a site that had -- you
25 know, City of Harrisonville passed a resolution. It was

1 very clear at that point in time that it was no longer
2 likely a good site. At the time they were making the
3 decision, they had a lot of expectations for litigation.

4 In the end, looking back, it's very clear
5 that South Harper was going to have many of the same
6 issues, but they had a city, Peculiar, they had passed a
7 resolution at that time. The annexation was proposed, the
8 Chapter 100 was out there. And if you look at the
9 dollars, the ability to deal with shielding berms, trees,
10 all of those different things, South Harper was looking
11 like a reasonable site.

12 Q. Well, Mr. Wood, I'm sorry. I'm just
13 confused, because a number of the reasons that you've
14 given me, I'm confused in how they played in your
15 position. You mentioned that South Harper had a
16 preferable land use, but you really have no point of
17 reference to compare land use at Camp Branch. You make
18 reference to the threat of litigation at Camp Branch when
19 there's been more litigation at South Harper since then to
20 at least call it a wash, rather than say it's a preferred
21 site. The financing angle, obviously there have been
22 problems with that?

23 A. Uh-huh.

24 Q. And I guess I'll ask this final question.
25 Are you assessing the actual siting locations in your

0903

1 testimony or are you assessing Aquila decision-making and
2 processes?

3 A. The siting of the facility, not Aquila's
4 process to arrive here. I have described a process, and
5 as I've identified several times, they took a lot of
6 twists and turns to get to the South Harper site. But
7 when I take their list of 12 sites and I begin to drop off
8 ones that there's quite a long distance --

9 Q. But do you drop them off thinking at the
10 time of December 2003 or 2004 or are you thinking present
11 day, with the information that is available present day?

12 A. I'm dropping them off at the time -- I'm
13 dropping them off based on -- you know, forget about what
14 Aquila did for a moment. I'm dropping them off my list
15 for further consideration at the time that they were
16 making the decision to build.

17 Q. So you're looking back to a point in time
18 when they're making the decision?

19 A. Yes.

20 Q. Okay.

21 A. And I would -- and initially when they
22 first went through this, they did not identify the South
23 Harper site. To date, I don't understand why the South
24 Harper site didn't come out in their first cut given its
25 infrastructure. Okay. I just want to clarify, I was

0904

1 looking at the 12 sites at the time they were considering
2 South Harper, not the -- you know, I took the broader
3 view, not just the eight they were looking at before.

4 Q. And what time would -- at what point in
5 time would you be looking at those? Would that have been
6 about six months prior to dirt being turned?

7 A. This decision-making process with the
8 12 would have happened in the July/August 2004 time frame,
9 before dirt was turned.

10 Q. And when was the public hearing? There was
11 a public hearing held in the Peculiar area, the South
12 Harper area for this particular siting, not the Camp
13 Branch siting. Do you recall when that was?

14 A. Yeah. I've noted a number of dates in my
15 testimony, if I could find those real quick. Yeah.
16 Meetings started with - there was a -- you know, they
17 really started in -- and there may be other meetings
18 preceding these. The ones I'm immediately aware of was a
19 meeting in mid September, and then news release on
20 October 6th, and then a meeting October 11th. And
21 October 7th, there were some open houses at other units in
22 the area. So in the late September/October time frame.

23 Q. And are you aware of whether the sentiment
24 of the area residents was being made known to Aquila at
25 the time of these meetings?

0905

1 A. Not to the full extent that obviously
2 developed in the months that followed.

3 Q. What hearing were you referring to when you
4 said it was pretty rough or it was a lot of yelling, a lot
5 of shouting? What hearing was that?

6 A. That was the -- it was either May or -- it
7 may have been May or June of 2004 near the -- it was the
8 one held by Aquila that the Shafer Estates people who
9 would have been able to see the Camp Branch site came to.

10 Q. So that was not a -- that was not the South
11 Harper?

12 A. No, it was a different site.

13 Q. So there was never a -- they were just open
14 houses to discuss the plant, there was never a public
15 airing of the site plans?

16 A. For South Harper?

17 Q. For South Harper.

18 A. I wasn't in the meetings in September and
19 October of '04.

20 Q. So you don't know?

21 A. I don't know what was presented there.

22 Q. You don't know if this was a hearing or
23 there was -- or you do know?

24 A. Representations have been made there were
25 hearings. I do not know what was presented at those

1 hearings.

2 Q. Okay. Do you know when the lawsuit was
3 filed to stop construction of the facility?

4 A. Was that late November, early December of
5 that year? I know other parties here could give you an
6 exact date. I don't recall exactly.

7 Q. Would the filing of a lawsuit be a factor
8 that ought to be considered by a utility whether to site a
9 facility in a particular location?

10 A. You mean if there's an expectation there'll
11 be a lawsuit filed?

12 Q. Any threat of litigation.

13 A. Sure.

14 Q. Was it too late in the -- was it too late
15 in the process for that litigation or that threat of
16 litigation for -- in your opinion, for reevaluation of
17 this siting of the facility?

18 A. Did you say was it too late for -- you mean
19 for Aquila under whose --

20 Q. Was it -- had the process of siting the
21 facility by Aquila gone to a point beyond where it could
22 be stopped after learning of the threat of litigation?

23 A. No.

24 Q. So it could have been stopped, in your
25 opinion?

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1 A. There had been some site work done. My
2 understanding is that major foundation, some of the heavy
3 equipment was not onsite at that time.

4 Q. And it would be appropriate at that time to
5 possibly reevaluate the site?

6 A. There would need to be a consideration as
7 to move ahead at that site or not, given that litigation.

8 Q. Okay. If we're looking at a time frame of
9 late August and early September where these open houses
10 began, where there were discussions in public about the
11 siting of this facility, was Staff aware of these plans
12 before that time?

13 A. Aware of what plans?

14 Q. Were you aware of the plans to build the
15 South Harper site prior to the public knowing?

16 A. I believe we knew about the desire to move
17 to the Peculiar site about the same time I saw that
18 information coming out in the newspapers.

19 Q. Okay. So about the same time the
20 Commission Staff found out about this siting as the
21 general public?

22 A. Yeah. There was a -- there was a meeting,
23 I forget if it was just a phone conference or whatever,
24 about the same time that they were -- that it was showing
25 up in the newspapers that they were planning to leave the

0908

1 Camp Branch site and move over to another site they were
2 looking at near Peculiar.

3 Q. Well, if -- does the Commission have any
4 power, assuming -- making the assumption that under the
5 existing law or presumed law at the time that the
6 certificate of public convenience and necessity was in
7 place granting Aquila this authority to build a plant
8 within their service territory and assuming no litigation
9 yet, would the Commission have had any power or would the
10 Commission have had any authority to stop construction of
11 the plant at that site?

12 A. I don't know.

13 COMMISSIONER CLAYTON: Okay. Judge, I'm
14 probably going to have to stop for right now, although I
15 may have additional questions if he's still on the stand
16 or in the building.

17 JUDGE PRIDGIN: Thank you. This looks to
18 be a convenient time to break for lunch. I show the clock
19 at the back of the wall being 12:35. Let's try to resume
20 around 1:45 or so. And also I understand that Mr. White
21 is available only today, and may need to ask counsel maybe
22 over lunch to see what type of recross they anticipate
23 asking Mr. Wood to see how we need to arrange schedules.

24 Is there anything else before we go off the
25 record?

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1 (No response.)

2 JUDGE PRIDGIN: Hearing nothing, we will go
3 off the record and we will resume at 1:45. Thank you.

4 (A BREAK WAS TAKEN.)

5 JUDGE PRIDGIN: We are back on the record.
6 It is about 1:45 p.m., and for scheduling concerns, I have
7 asked Mr. Wood if he would step down, and we're going to
8 move on to Mr. White, because as I understand,
9 Mr. Swearngen, Mr. White is only available today; is that
10 correct?

11 MR. SWEARENGEN: That's correct, your
12 Honor.

13 JUDGE PRIDGIN: Unless I'm hearing anything
14 else from other counsel, I do want to move on to
15 Mr. White, and then as time permits, we will see if we
16 have time to cross-examine Mr. Wood anymore or move on to
17 something else. Is there anything else before -- from
18 counsel before I swear in Mr. White?

19 (No response.)

20 JUDGE PRIDGIN: Hearing nothing, come
21 forward to be sworn, sir. Raise your right hand to be
22 sworn, please.

23 (Witness sworn.)

24 JUDGE PRIDGIN: If you would please have a
25 seat, and Mr. Swearngen or Mr. Youngs?

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1 MR. YOUNGS: Judge, thank you.

2 STEVEN MARK WHITE testified as follows:

3 DIRECT EXAMINATION BY MR. YOUNGS:

4 Q. Would you go ahead and just state your full
5 name for the record, please.

6 A. Steven Mark White.

7 Q. Are you the same Mark White that filed
8 surrebuttal testimony that's been marked as Exhibit 14 in
9 this case?

10 A. Yes, I am.

11 Q. And do you have that surrebuttal testimony
12 before you today?

13 A. Yes, I do.

14 Q. Also, we marked and distributed what is now
15 marked as Exhibit No. 84, which is your resume that was
16 previously referred to in your surrebuttal testimony, but
17 I understand was not originally attached to it; is that
18 correct?

19 A. That's correct.

20 Q. All right. You also have that in front of
21 you today?

22 A. Yes, I do.

23 Q. Do you have any corrections to either
24 Exhibit 14 or Exhibit 84 that we need to make before you
25 get started?

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1 A. Just one to Exhibit 14. That will be on
2 page 9 on -- near the bottom of the page, line 19, after
3 the word yes, before the words each site, I would insert,
4 it is my understanding that.

5 And then on page 22 at the bottom of the
6 page --

7 MS. MARTIN: Wait. Wait. Sorry.

8 MR. YOUNGS: Let everybody make note of
9 your change.

10 JUDGE PRIDGIN: Mr. White, I'm sorry. That
11 sentence should now read, it is my understanding that each
12 site is zoned, et cetera?

13 THE WITNESS: That's correct.

14 JUDGE PRIDGIN: Thank you.

15 MR. EFTINK: What page is that?

16 THE WITNESS: Page 9, line 20 -- I mean 19,
17 I'm sorry. Line 19. And then on line 22, it is the
18 second to the last word in the entire page, change the
19 word the to an, so it would now say an agricultural zoning
20 classification.

21 BY MR. YOUNGS:

22 Q. Are those the only corrections that you
23 need to make to Exhibit 14?

24 A. That's correct.

25 Q. And with those corrections, if I asked you

0912

1 those questions today, would your answers be the same as
2 in Exhibit 14 as corrected?

3 A. Yes.

4 Q. Is there any additional information that
5 needs to be placed on Exhibit No. 84?

6 A. No, there's not.

7 MR. YOUNGS: Your Honor, with that, I move
8 the admission of Exhibit 14 and Exhibit 84 and tender
9 Mr. White for cross-examination.

10 JUDGE PRIDGIN: Mr. Youngs, thank you. Any
11 objections?

12 (No response.)

13 JUDGE PRIDGIN: Hearing none, Exhibits 14
14 and 84 are admitted.

15 (EXHIBIT NOS. 14 AND 84 WERE RECEIVED INTO
16 EVIDENCE.)

17 JUDGE PRIDGIN: We'll proceed to cross.
18 Anything from the Staff?

19 MR. WILLIAMS: Yes.

20 JUDGE PRIDGIN: Mr. Williams?

21 CROSS-EXAMINATION BY MR. WILLIAMS:

22 Q. Mr. White, you just made a change on page 9
23 at line 19 to say it is your understanding that each site
24 is zoned A, agricultural, under the Cass County zoning
25 order of 2005?

0913

1 A. That's correct.

2 Q. What's that understanding based upon?

3 A. It's based upon the special use permit
4 applications that I indicated early in the testimony that
5 I reviewed. Those applications indicated that the site
6 was zoned agricultural, and so that was my assumption
7 based on this.

8 MR. WILLIAMS: No further questions.

9 JUDGE PRIDGIN: Mr. Williams, thank you.

10 Double check and make sure of my list for Aquila
11 witnesses.

12 Cass County, Mr. Comley?

13 CROSS-EXAMINATION BY MR. COMLEY:

14 Q. Mr. White, we may share something in
15 common, and that is that I know Professor Robert Freilich
16 and I was one of his students, and I understand you were
17 as well.

18 A. I was a partner of his. I wasn't a student
19 of his.

20 Q. I think if you were a partner of his, you
21 probably were a student.

22 A. That's correct. Not his classroom, but
23 yes, I learned a lot from him.

24 Q. All right. Let me ask you, when did Aquila
25 ask you to be a witness in this case?

1 A. Let's see. I believe it was sometime in
2 mid April.

3 Q. It had to have been before April 18th. Can
4 you give me approximately what point in April?

5 A. Let's see what the date of the -- was
6 April 15th a Tuesday? I'm trying to remember. It was the
7 Friday that preceded --

8 Q. The filing of your testimony?

9 A. -- the filing of the testimony.

10 Q. So what I'm gathering is that you had about
11 three days to review the materials for your testimony?

12 A. That's correct.

13 Q. What did you review in preparation of your
14 testimony?

15 A. They are indicated in the paragraph I
16 believe, let's see, on page 2, beginning with line 5. So
17 that would be the special use permit applications, the
18 Cass County comprehensive plan update 2005, the zoning
19 order and Mr. Peshoff's rebuttal testimony.

20 Q. Now, do you think of yourself as a planner
21 or do you think of yourself more as a land use attorney?

22 A. Well, it depends on the context. If --
23 typically most of my practice is writing zoning and land
24 use regulations, and in that context I think of myself
25 more as a planner.

0915

1 Q. As I understand it, a planner would be
2 someone who would analyze projects for development, review
3 extensively. Would that be a correct understanding of
4 that role?

5 A. That would be one thing planners do.

6 Q. But as a planner, you would also say that
7 you would be in the process of advising clients on how
8 their zoning ordinances should appear and in drafting
9 those ordinances; would that be correct?

10 A. Yes. I -- typically what I do is I draft
11 the ordinances.

12 Q. All right.

13 A. That's right.

14 Q. All right. On page 1, let's see -- at the
15 bottom of page 1, your testimony indicates that the
16 location and design of the South Harper peaking facility
17 and Peculiar substation are consistent with sound planning
18 principles, were sited using defensible planning practices
19 and are compatible with surrounding development and are
20 consistent with the Cass County comprehensive plan. Is
21 that a correct reading of your testimony?

22 A. Yes.

23 Q. In your opinion, do sound planning
24 principles include or mean that a developer can make a
25 unilateral decision to submit or not to submit a

0916

1 development review application?

2 A. Depends on what kind of developer it is.

3 Q. So there are developers that can make
4 choices about whether they submit development review
5 applications under sound planning principles?

6 A. Well, it -- again, it depends on the type
7 of developer. Typically there is some sort of review
8 process, such as the one that's occurring here. So I
9 don't know of any situations where the developer makes a
10 unilateral decision unless they're exempt from zoning.
11 There's -- for example, animal feeding operations in
12 Missouri are generally exempt from county zoning, so they
13 can unilaterally decide where they go and nobody reviews
14 them, other than the state Department of Natural Resources
15 under their criteria.

16 So in a situation such as this, the
17 developer, being the power station, would decide where the
18 plant goes and go through a review process with the Public
19 Service Commission.

20 Q. But as far as the decision on how to do
21 that, isn't that generally regulated by the ordinances you
22 draft?

23 A. The ordinances I draft are typically for
24 counties or cities, and they regulate residential
25 development, commercial development, and typically

0917

1 utilities are exempt. But to the extent that they have
2 jurisdiction over projects, they regulate those projects.

3 Q. Okay. Your ordinances would have -- your
4 ordinances would in some respects have provisions that do
5 regulate the location of public utility structures; would
6 that be correct?

7 A. It depends on what state I am and --

8 Q. So is --

9 A. -- what the local environment is.

10 JUDGE PRIDGIN: If I could interrupt and
11 try to get us refocused. I think the question was, would
12 that be correct?

13 THE WITNESS: Well, not necessarily. If
14 the utilities are exempt from zoning, then the regulations
15 I write would not regulate the location of utilities.
16 That decision would be made else somewhere.

17 BY MR. COMLEY:

18 Q. By operation of law perhaps?

19 A. By operation of law.

20 Q. Okay. Now, with respect to the sound
21 planning principles you've mentioned in your testimony, do
22 you know whether the Missouri Public Service Commission
23 has adopted any of those sound planning principles in
24 connection with siting of plants?

25 A. No, I do not.

0918

1 Q. Have you reviewed the rules and regulations
2 of the Commission?

3 A. Quickly. I haven't reviewed them in
4 detail.

5 Q. Now, isn't it true that other jurisdictions
6 have given state regulatory bodies standards on which to
7 site power plants?

8 A. Yes.

9 Q. That is not true of Missouri, as far as you
10 know; would that be a correct statement?

11 A. The standards in Missouri are very general.
12 It's my understanding it's a general convenience and
13 necessity standard, which could embrace a number of
14 different things.

15 Q. But in connection with your research, did
16 you find any legislative grant of authority to the
17 Missouri Public Service Commission by which to use sound
18 planning principles to site power plants?

19 A. It depends on how you interpret convenience
20 and necessity, and I'm not here to testify about the --
21 the legal interpretation of that language.

22 Q. But in terms of the sound planning
23 principles you've mentioned in your testimony, there is
24 nothing in legislative form that would match sound
25 planning principles for this agency; is that a correct

0919

1 statement?

2 A. There's nothing that lays out in detail to
3 the extent that the other state regulations that were
4 discussed earlier lay them out, no.

5 Q. I've asked you about what you reviewed, and
6 I don't hope to hold you to that, but did you have a
7 chance to review Mr. Wood's testimony in this case and the
8 process he set forth in his testimony by which a utility
9 may reasonably locate or site a power plant?

10 A. I don't recall reviewing that.

11 Q. Again, on page 1 you use the preference --
12 you use -- excuse me. It's on page 2. You use the term
13 defensible planning, defensible planning practice?

14 A. Uh-huh. Yes.

15 Q. Would it be fair to say that that term more
16 generally is used in connection with describing the
17 situation where a community has made a land use decision
18 and is having to defend that in a court or some other
19 agency with jurisdiction?

20 A. No.

21 Q. On page 3 you discuss comprehensive plans
22 in the state are advisory documents not mandatory. Now,
23 is that the law with respect to both counties and cities
24 in the state of Missouri?

25 A. That's my understanding, yes.

0920

1 Q. It's true under Missouri law that the
2 comprehensive plans do not need to be in a separate
3 document; is that correct?

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

5 Q. And the plan can be discerned from the
6 zoning ordinance itself?

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

8 Q. Now, can zoning entities in Missouri by
9 virtue of their respective ordinances provide that
10 decisions implementing a comprehensive plan, such as
11 rezonings, permit approvals or variances, must be in
12 accordance with the comprehensive plan?

13 A. I believe they can say that. What the
14 legal effect is I don't think anybody knows.

15 Q. With respect to Cass County, do you know if
16 its ordinance is that specific?

17 A. Yeah, I don't recall off the top of my head
18 whether their zoning ordinance provides that or not.

19 Q. All right. Now, on page 2, you say a
20 comprehensive plan is the statement of a jurisdiction's
21 land use policies. Would you agree with that?

22 A. Yes, I agreed with it when I wrote it, and
23 I still agree with it.

24 Q. All right. That's good. Now, you would
25 agree with me on these things, too, that a comprehensive

0921

1 plan establishes the vision for the community?

2 A. It should.

3 Q. That the comprehensive plan establishes a
4 policy and guidelines that provides the basis for zoning
5 and land use decisions?

6 A. Yes.

7 Q. Would you agree with me that the
8 comprehensive plan is a guide to determine whether a land
9 use is compatible?

10 A. Yes.

11 Q. Would you agree that generally the
12 jurisdiction that adopted the comprehensive plan is the
13 one which determines whether a land use is compatible
14 under the plan?

15 A. Generally, yes.

16 Q. Would you agree that planning and zoning
17 are important for growth in a community?

18 A. Yes.

19 Q. Would you agree that planning is essential
20 for proper management?

21 A. Yes. As a general statement, yes.

22 Q. Would you agree that growth management
23 often reduces conflict?

24 A. Excuse me. That growth management often
25 reduces conflict?

0922

1 Q. Yes.

2 A. Could you explain what you mean by growth
3 management?

4 Q. Control growth management would reduce
5 conflict among stakeholders, how's that?

6 A. Often that's the genesis of conflict
7 between stakeholders, so I don't know if I would say that
8 as a general proposition. Sometimes that's exactly what
9 people are fighting about, what the policy should be.

10 Q. Would you agree that without management the
11 chance for more conflict would be higher?

12 A. Not necessarily.

13 Q. Would you agree that planning and zoning
14 provide fairness?

15 A. It depends on what the planning and zoning
16 policies say. You can have some very unfair planning
17 and -- planning policies and unfair zoning ordinances.

18 JUDGE PRIDGIN: And if I could redirect, in
19 the future, the it depends answer might be enough. We can
20 let counsel go from there.

21 THE WITNESS: Okay.

22 JUDGE PRIDGIN: Thank you.

23 THE WITNESS: Thank you, Mr. Chairman.

24 BY MR. COMLEY:

25 Q. Well, let me ask you this: Have you ever

1 promoted an ordinance for one of your clients that you
2 considered contained unfair provisions?

3 A. No, not that I recall.

4 Q. Would you agree that in the land use
5 planning field, development review is intended to be an
6 anticipatory function?

7 A. Yes.

8 Q. Would you agree that development review
9 should occur before development, not afterwards?

10 A. Generally speaking, yes.

11 Q. Would you agree that development review
12 should be an unbiased process before a neutral and
13 impartial body disconnected from the developer?

14 A. Yes.

15 Q. Would you agree that proper planning can
16 have a positive effect on property valuations?

17 A. It can. That's possible.

18 Q. Would you agree that for areas of rapid
19 population growth, planning and zoning can be even more
20 critical?

21 A. Yes.

22 Q. I have a question for you that relates to
23 one of Mr. Peshoff's attachments. I was going to ask you,
24 would you agree that the energy policy guide of the
25 American Planning Association is authoritative, that is,

1 that it's generally accepted and accredited within your
2 profession?

3 A. Yes.

4 Q. Now, you've also said that with respect to
5 the zoning at this site, it's your understanding that it
6 is zoned agricultural; is that correct?

7 A. That was my understanding based on what the
8 special use permit application indicated.

9 Q. Do you have any reason to doubt that that
10 was the zoning at that location?

11 A. I don't have any reason to doubt it, but
12 given the testimony I heard this morning, I'm starting to
13 wonder if there's any zoning in Cass County. Without a
14 zoning map, there's no zoning. So nobody can find the map
15 and everybody's saying that it's agricultural, so I
16 don't -- I haven't seen a map that says anything to the
17 contrary.

18 Q. Well, if I represent to you that there is a
19 map or ask you to assume that there is a zoning map and
20 it's been in existence since 1959, would your opinion
21 change about that?

22 A. And if it said it was zoned agricultural?

23 Q. Exactly.

24 A. Yes.

25 Q. On page 4, you bring up the 2003 plan,

1 page 4 of your testimony.

2 A. Uh-huh.

3 Q. Would you agree first that Aquila in this
4 case did not make its decisions about where to put the
5 South Harper plant in reliance on the Cass County 2005
6 comprehensive plan?

7 A. I don't have any knowledge of whether they
8 consulted that plan or not.

9 Q. On page 4, line 24, you state that land use
10 compatibility requires only a comparison of a proposed use
11 with current surrounding uses. Do you know when the South
12 Harper site was first proposed?

13 A. No, I don't know when it was first
14 proposed, but it also says current surrounding land uses
15 and land use policies.

16 Q. Excuse me.

17 A. I don't know, but -- no, I don't know when
18 it was first proposed, off the top of my head.

19 Q. Presuming that it was proposed to the City
20 of Peculiar, for instance, in mid summer of 2004, using
21 your testimony as a guide, would you agree with me that we
22 would need to look at surrounding uses as of the time it
23 was proposed to the City of Peculiar?

24 A. If you are making your compatibility
25 determination at that time, yes.

1 Q. Would you contend that even if Aquila
2 started construction of the site in say mid 2004, that we
3 would still be looking at the 2005 plan to determine
4 whether it was consistent with the comprehensive plan?

5 A. Yes.

6 Q. Have you ever drafted an ordinance or
7 recommended adoption of a plan that permitted grading or
8 erection of site improvements or installation of public
9 improvements, street, water, sewer, in advance of
10 development review?

11 A. I can't recall. I don't write a lot of
12 grading regulations specifically. Usually there's some
13 sort of erosion control or some sort of review that
14 occurs. It's not a plan compatibility review. But most
15 of my ordinances did require that some review of some sort
16 occur before development.

17 Q. Let's go to page 5 on line 12. I think you
18 say that -- on line 12 on page 5, you say that given the
19 time to prepare an application for zoning or special use
20 permit, Aquila in this case would not have made a filing
21 until after the County had already adopted the changes
22 that now comprise the 2005 comprehensive plan. Is that a
23 correct reading of your testimony?

24 A. Yes.

25 Q. Would it be further your testimony that the

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1 amount of time a developer may take to prepare -- may need
2 to prepare an application is an appropriate excuse to
3 proceed without any development review?

4 A. No.

5 Q. On page 7, line 11 of your testimony,
6 you're quoting from the 2005 plan. I think it's under,
7 the plan provides that no land may be approved for urban
8 services without adequate public facilities, including
9 electric service. Is that a correct reading of your
10 testimony?

11 A. What line are you looking at?

12 Q. I think I got down to line 11 too quickly.
13 I was looking at lines 9 through 11 on page 7.

14 A. Oh, on page 7. I'm sorry. I thought you
15 said page 11. That's right. I mean, it sounds like you
16 just read direct from my testimony.

17 Q. I did.

18 A. So yes.

19 Q. I did. I just wanted to confirm that --

20 A. It was true when I wrote it and it's still
21 true today.

22 Q. With respect to the electrical service
23 mentioned there, first, do you know whether that was in
24 the 2003 plan as well?

25 A. No. I haven't reviewed the 2003 plan, just

1 the 2005 plan.

2 Q. With respect to that, wouldn't that refer
3 to extended electrical service lines, rather than capacity
4 additions?

5 A. They're all considered electrical service,
6 as far as I'm concerned.

7 Q. So in the context of this plan, you think
8 that electrical service would not only include whether or
9 not the site has adequate facilities for electric service,
10 it would be even adequate capacity somewhere else that the
11 power plant would somehow be considered part of electrical
12 service; is that correct?

13 A. Well, the line is useless without the power
14 behind it, so they're both considered service.

15 Q. Let's go to page 9, lines 4 through 16. I
16 think at that -- you're talking about how the peaking
17 plant and substation are compatible with agricultural
18 uses. In your answer there you're talking about how
19 agricultural uses can be intense, and on line 14 you say,
20 therefore, agricultural uses can be compatible with some
21 kinds of industrial uses, especially those that do not
22 impair agricultural functions, such as growing crops or
23 livestock.

24 You've also mentioned what I call CAFOs,
25 confined animal feeding operations, in your answer. Let

1 me see. I'm kind of condensing this, but basically I
2 think all of us know that feed lots are big, they're
3 generally bad and people don't like them. Would that be
4 the same that you feel about that, Mr. White, knowing full
5 well that you've been involved in a number of CAFO
6 litigation.

7 A. I've been involved in CAFO litigation,
8 that's correct. I would say many of them are big, some
9 of -- and some of them smell. I wouldn't go as far as
10 saying that they're all bad.

11 Q. But isn't it true that power plants
12 somewhat share the same characteristic, they're big, a lot
13 of public outcry about them, and people don't want them
14 anywhere near them; is that correct?

15 A. I would -- I would say that there can be
16 public outcry about them. I mean, we've seen that in this
17 case more so than I've seen anywhere else, but it's -- but
18 that doesn't mean that they share the same characteristics
19 as a CAFO.

20 Q. Have you ever argued in any of your
21 experience that counties cannot regulate confined animal
22 feeding operations?

23 A. Have I argued that counties cannot regulate
24 them?

25 Q. Exactly. Have you ever argued that they

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1 cannot?

2 A. Okay. I'm going to elaborate on that just
3 so you'll know what question I'm answering. I argued to
4 the Missouri Supreme Court that counties should have -- or
5 townships should have that authority. The Missouri
6 Supreme Court ruled that they're exempt from zoning, and
7 because counties have the same language and the same
8 exemption that townships have, I typically tell my county
9 clients that CAFOs are exempt from county zoning.

10 A. But would you agree that a CAFO and a power
11 plant share some common characteristics and that since
12 CAFOs, as you have argued, have a strong regulatory
13 interest in those, that the same should be said for power
14 plants?

15 A. No.

16 Q. Let's go to the bottom of page 11. You
17 talk about regional general welfare there. I think that's
18 where that is. Let's see.

19 A. It begins --

20 Q. Doctrine of regional welfare?

21 A. Right.

22 Q. You've mentioned that the regional need --
23 I'm trying to find that quote here.

24 A. Looking on lines 23, near the bottom?

25 Q. Does the doctrine stand for the idea that

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1 regional need for certain facilities outweighs their local
2 land use impact?

3 A. Yes.

4 Q. How many other uses of property or what
5 uses of property do you consider this regional welfare
6 principle vital to?

7 A. In addition to utilities like electrical
8 services and plant, it's been applied to affordable
9 housing, it's been applied to hazardous waste transfer
10 facilities.

11 Q. Has it been applied to things like halfway
12 houses?

13 A. This's federal legislation that governs
14 halfway houses --

15 Q. How about prisons?

16 A. -- or group homes.

17 Q. Excuse me. How about prisons?

18 A. Prisons, it could be applied to that. I'm
19 not aware of any cases, but I can see it being applied to
20 that.

21 Q. I want you to assume that there's a
22 manufacturing entity that buys ground in Cass County in an
23 agricultural district and begins to excavate the ground
24 and very shortly after that starts site improvements in
25 October -- excuse me -- December of 2004. In the normal

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1 course, would you agree that that manufacturing concern
2 should have filed for a rezoning, an SUP or some other
3 form of development review before the site improvements
4 were constructed?

5 A. Whatever review is required by the zoning
6 ordinance, right, depending on how it's classified and
7 whether it's a use permitted by right or a special use,
8 whatever is required. You're talking about a private
9 manufacturing concern, I'm assuming?

10 Q. Yes. There are several statutes involved
11 in this case, and I don't know to what extent you've had a
12 chance to review them in connection with your testimony.
13 But one of the sections we talked about is 64.235, and in
14 the Court of Appeals opinion that seems to be framing most
15 of the issues in this case, not all of them, there is also
16 a footnote about Section 64.255.

17 In the course of your review for your
18 testimony today, have you made any analysis of the
19 application of that statute to this situation?

20 A. No.

21 MR. COMLEY: Thank you. I have no other
22 questions for Mr. White.

23 JUDGE PRIDGIN: Mr. Comley, thank you.

24 Mr. Eftink?

25 CROSS-EXAMINATION BY MR. EFTINK:

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1 Q. Where do you reside, Mr. White?

2 A. Lee's Summit.

3 Q. And, of course, we know you're being paid
4 for your services. How are you being compensated?

5 A. I anticipate they will write me a check.
6 Are you asking how much?

7 Q. Yeah. Are you charging by the hour or --

8 A. By the hour, right.

9 Q. How much are you charging by the hour?

10 A. 300.

11 Q. How much time have you put in so far?

12 A. I don't know. I'd have to go look at my
13 records. I've done all this month and haven't tallied up
14 my time for any client this month yet.

15 Q. I want to ask you some questions first
16 about what kind of information was supplied to you and
17 perhaps what kind of documents that you reviewed in
18 preparing your opinion. I've laid in front of you --
19 unless somebody picked it up, I laid in front of you about
20 six exhibits, and I believe the first one is Exhibit 81.
21 Do you have that in front of you?

22 A. Yes.

23 Q. And I want to ask you about each of these
24 documents. I want to ask you if you were supplied these
25 and if you reviewed these documents. Exhibit 81 is a

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1 document where the County agreed to allow Aquila to put a
2 peaking facility right next to the Aries plant. Have you
3 seen that before?

4 A. No.

5 Q. If you would look at Exhibit 41, which is a
6 special use permit application filed by Aquila in June
7 2004 for the area that we have referred to as Camp Branch,
8 have you seen that before?

9 A. No.

10 Q. You have in front of you Exhibit 63, and
11 that is an e-mail from an employee of Aquila to an
12 employee of the City of Peculiar asking the City of
13 Peculiar to support it in its request to get zoning
14 approval from Cass County. My question is, have you seen
15 that exhibit before?

16 A. No.

17 Q. If you'd look at Exhibit 67, and I believe
18 it's got a cover sheet attached to it, which is an e-mail.
19 It's a letter to the County asking it for -- or showing
20 support for a rezoning effort for Aquila. Have you seen
21 that before?

22 A. No.

23 Q. Exhibit 71 is a letter on behalf of Aquila
24 withdrawing its request for rezoning. Have you seen that
25 before?

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1 A. No.

2 Q. Exhibit 72 is an application by Aquila to
3 the County for a construction permit. At the bottom it's
4 got language that talks about Aquila complying with the
5 zoning ordinance. My question is, have you seen that
6 before?

7 A. No.

8 Q. Did anyone make you aware of the facts that
9 are shown in these documents that you just looked at?

10 A. Since I haven't seen what's in those
11 documents, I'm not -- I don't know what facts you're
12 talking about.

13 Q. Well, the fact that Cass County agreed that
14 Aquila could put combustion turbines right next to the
15 Aries plant, the fact that Aquila applied for a special
16 use permit for the Camp Branch facility, the fact that for
17 the present project Aquila asked the City to support it to
18 try to get rezoning for the substation from Cass County.
19 Were you made aware of those facts?

20 MR. YOUNGS: I'm sorry, your Honor, I
21 object. There's four or five questions in one, and in
22 fairness to the witness, I think he should be able to take
23 them one at a time.

24 JUDGE PRIDGIN: Sustained. That's
25 compound. If you could break that up, please.

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1 BY MR. EFTINK:

2 Q. Okay. Let me break that up. Did someone
3 make you aware that Cass County had agreed in 2002 to
4 permit Aquila to put combustion turbines next to the Aries
5 plant?

6 A. No.

7 Q. Did anyone make you aware of the fact that
8 Aquila had applied with the County for special use permit
9 for the Camp Branch facility?

10 A. I believe there's some mention of a Camp
11 Branch facility in Mr. Peshoff's testimony which I
12 reviewed, but beyond what he mentions, I don't have any
13 knowledge of that.

14 Q. Did anyone make you aware that Aquila asked
15 Peculiar city employees to help support it in its efforts
16 to get rezoning for a substation in 2004 --

17 A. No.

18 Q. -- as an application to the County?

19 A. No.

20 Q. Did anyone make you aware that Aquila
21 withdrew that application that it had submitted to the
22 County for rezoning for the substation in 2004?

23 A. I think I've heard discussion of that, but
24 I -- beyond that, I don't know.

25 Q. And did anyone make you aware that in early

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1 2005, Aquila signed this application for a permit where it
2 has language at the bottom saying that Aquila would comply
3 with zoning ordinances of Cass County?

4 A. No.

5 Q. Now, at page 6, line 5 of your affidavit,
6 you say that the comprehensive plan is not a zoning
7 document?

8 A. That's correct.

9 Q. So zoning controls over the comprehensive
10 plan?

11 A. In Missouri it does.

12 Q. Zoning is specific and controlling while
13 the comprehensive plan, whichever one we look at, is more
14 general?

15 A. Yes.

16 Q. On page 6, line 18, you cite some language
17 from the 2005 comprehensive plan, and in your affidavit
18 you say that the multi-use tier is representative of
19 development that exhibits the following characteristics,
20 positioned as transitional, located along rural highways,
21 predominantly developed for a mix of land uses. When the
22 comprehensive plan talks about a mix of different uses,
23 you would envision that it's talking about a proper mix of
24 different uses, correct?

25 A. No, just a mix of different land uses.

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1 Q. So it could be an improper mix in your
2 opinion?

3 A. It could be an improper mix in a lot of
4 people's opinions.

5 Q. But that's why we have a planning and
6 zoning board and a county commission to decide what is the
7 proper mix, wouldn't you agree?

8 A. That's what they did in designating the
9 site as a multi-use tier.

10 Q. But the zoning controls over the
11 comprehensive plan. You already said that?

12 A. The zoning's a legal document, and the plan
13 is used to formulate the zoning.

14 Q. Now, when someone like me buys a house and
15 we move in and we have sewer lines and gas lines and
16 electric lines, maybe there's a transformer at the end of
17 the block, these things are all called utilities, aren't
18 they?

19 A. Yes.

20 Q. And when most of us speak of utilities or
21 electric service, we're talking about the lines that come
22 into our house, aren't we?

23 A. I don't think people have any -- any
24 specific idea of what they're talking about or where the
25 service comes from. I think most people see it all as a

1 bundle.

2 Q. And perhaps people that write planning and
3 zoning and those statutes and the court decisions are
4 confused, too, but let me go on. On page 7, line 9, you
5 quote from the 2005 comprehensive plan as saying that no
6 land shall be approved for urban services without adequate
7 public facilities, including electric service?

8 A. Correct.

9 Q. Is it your position that when the
10 comprehensive plan discusses quarterly growth, it's
11 reasonable to interpret it to mean that because you have
12 gas lines, transmission lines, telephone lines coming into
13 your house, you have to accept a power plant next door to
14 you?

15 A. No, that's not what I had meant by that.

16 Q. Okay. I didn't think so. When the plan
17 talks about electric service for urban land, it couldn't
18 have been talking about a power plant, could they?

19 A. Yes, they could.

20 Q. Well, on page 7, line 8 you say that the
21 2005 comprehensive plan says, no land may be approved for
22 urban services without facilities, including electric
23 service. So you interpret that to mean that no land can
24 be approved for urban services unless it includes a power
25 plant?

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1 A. No.

2 Q. Okay. That must mean electric service in
3 the way of a transmission line, correct?

4 A. Well, can you repeat the question?

5 Q. Well, what you said on page 7, line 8 is,
6 the 2005 comprehensive plan says no land may be approved
7 for urban services without facilities, including electric
8 service?

9 A. That's correct.

10 Q. You wouldn't interpret that to mean that no
11 land can be approved for urban services without facilities
12 including a power plant?

13 A. It would mean no land can be approved
14 without adequate electric connections that have adequate
15 capacity to service the development.

16 Q. Okay. And on page 7, line 8, when you
17 refer to orderly growth, doesn't that orderly growth mean
18 that power plants should go into an area that have been
19 designated for power plants?

20 A. No.

21 Q. But if you have some control over where
22 power plants would be located, that would enable the
23 people to know where those things are going to be located
24 and make their decisions accordingly as to where they're
25 going to go?

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1 A. If you had that jurisdiction and authority,
2 yes.

3 Q. And that would be desirable to designate
4 certain areas for power plants and certain areas for
5 residential and certain areas for agriculture?

6 A. No.

7 Q. It's not desirable?

8 A. No, not for the County to do that, not in
9 my opinion. No.

10 Q. Well, I represent a group of several
11 homeowners, so I'm not sure if you knew that because I
12 didn't introduce myself. I represent StopAquila.org, and
13 I want to give you a hypothetical.

14 If you're a resident of Cass County and in
15 1999 the County approved an area for a power plant, we'll
16 call it the Aries plant, and then in 2002 the County
17 agreed that combustion turbines could be added next door
18 to the area where the Aries plant is, and you live along
19 South Harper Road in what is zoned as a residential area,
20 across the street is an area zoned agricultural, would you
21 as a homeowner have an expectation that the County would
22 not permit a power plant be put in across the street from
23 your house?

24 MR. YOUNGS: Judge, I'll object to the form
25 of the question. It's not a hypothetical. It's listing

1 some hypothetical facts and then asking him for a personal
2 opinion, asking him to put himself in the place of a
3 homeowner. That's an improper hypothetical, under the
4 circumstances, and I object to it.

5 JUDGE PRIDGIN: Mr. Eftink?

6 MR. EFTINK: It's not an improper
7 hypothetical. As a land planner, he should have an
8 opinion as to what people have a right to expect.

9 JUDGE PRIDGIN: I'll overrule and let him
10 answer, if he has an opinion.

11 THE WITNESS: Well, I was going to say --
12 what I was -- I was going to say, I don't know where the
13 Aries plant is. So you began by saying the County
14 designated the Aries plant and allowed something to go
15 next to it, and then you were a homeowner on South Harper.
16 I don't know where the Aries plant is relative to South
17 Harper.

18 BY MR. EFTINK:

19 Q. Okay. Well, let me add another assumption
20 to my hypothetical, and that is that the Aries plant is
21 about 20 miles away from South Harper.

22 MR. YOUNGS: Just for the record, my
23 objection is --

24 JUDGE PRIDGIN: I understand. Overruled.
25 Do you understand the question, Mr. White?

1 THE WITNESS: No.

2 JUDGE PRIDGIN: Could you repeat it? It
3 was a rather long question.

4 BY MR. EFTINK:

5 Q. I'll incorporate that additional
6 assumption. The hypothetical is that you are in the place
7 of a resident in Cass County. In 1999, the County has by
8 zoning approved an area for a power plant called the Aries
9 plant, and then in 2002, the County agreed that the
10 company -- or Aquila in this hypothetical can place
11 combustion turbines right next to the Aries plant, and
12 then you live on South Harper, approximately 20 miles from
13 that location. Would you as a homeowner have an
14 expectation that the County would not permit a power plant
15 to be built across the street from you?

16 A. No.

17 Q. And why wouldn't you have that expectation?

18 A. Because there's no expectation that there's
19 only going to be one power plant in a county, especially
20 one that's growing as rapidly as Cass County is growing.

21 Q. Do you know how many megawatts of power are
22 required for all the residences of Cass County?

23 A. No. I'm not an electrical engineer, and I
24 haven't expressed an opinion on that sort of thing.

25 Q. So in my hypothetical, you're saying that a

1 person should not have any expectation that the County
2 will try to stop somebody from building a power plant
3 directly across the street from your house?

4 A. No.

5 Q. I accurately stated your opinion, correct?

6 A. My -- could you repeat the question?

7 Q. Yeah, because you said no, and I'm not sure
8 if you were agreeing with what I said or not.

9 A. Well, I think what you said is, is my
10 opinion that the -- as a homeowner, would I have an
11 expectation that the County would stop a power plant from
12 going in across the street from my house? And my answer
13 to that was no.

14 Q. On page 10, line 3 of your affidavit you
15 seem to be saying that just because it's legally possible
16 that something can be permitted by a special use permit,
17 that means it's compatible with the surrounding area?

18 A. That's not quite accurate. What I'm saying
19 is that these are uses that are permitted in the same
20 zoning district as the power plant.

21 Q. But they're not automatically permitted,
22 are they?

23 A. They have a process they have to go
24 through.

25 Q. That means it goes to the planning board or

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1 the board of zoning adjustments and --

2 A. The special uses do.

3 Q. Right. So it's a decision made by local
4 officials as to what will be given a special use permit?

5 A. On many of those, yes.

6 Q. So that doesn't mean that just because
7 they're listed in this laundry list here that those
8 operations have a right to put that kind of facility in
9 Cass County?

10 A. They do have that right if they comply with
11 the standards in the zoning ordinance.

12 Q. Again, they have to go to the planning
13 board to get that?

14 A. And the planning board determines whether
15 they comply with those standards, and if they comply with
16 those standards, they have a right to approval of the
17 permit.

18 Q. Now, you read the Court of Appeals decision
19 in what's been referred to as StopAquila vs. Aquila?

20 A. Yes.

21 Q. Or sometimes referred to as Cass County vs.
22 Aquila, which was handed down in December 2005?

23 A. Yes.

24 Q. And at the beginning of its analysis, the
25 Court of Appeals said that there were no statutes that

1 gave zoning authority to the Public Service Commission.

2 Do you agree with that statement?

3 A. I don't recall off the top of my head
4 whether it said that, but I guess that's part of the
5 record and it's a public document that anybody can go look
6 at.

7 JUDGE PRIDGIN: If I can interrupt, I
8 understand he is an attorney, so I will give you some
9 leeway, but I mean, we can all certainly take notice
10 whatever the opinion says.

11 BY MR. EFTINK:

12 Q. On page 10, Footnote No. 2, you say that a
13 special use permit is a species of administrative zoning
14 permission which allows a property owner to put his
15 property to a use which regulations expressly permit under
16 conditions specified in the zoning regulations?

17 A. That's correct.

18 Q. It allows a land use that is authorized by
19 a local legislative body and deemed conducive to the
20 general welfare of the community; is that correct?

21 A. That's correct.

22 Q. And my question to you is, isn't it true to
23 say that the determination of what is conducive is made by
24 the local zoning authority?

25 A. For the ones that the local zoning

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1 authority has jurisdiction over, that is correct.

2 Q. On page 11, line 15, you say that Missouri
3 does not have strong home rule practices?

4 A. That's correct.

5 Q. But you don't site any authority for that
6 proposition. Is there any Missouri authority for that
7 proposition?

8 A. Case law, statutes.

9 Q. But you didn't put them in your statement?

10 A. No, but I -- I wasn't preparing a legal
11 brief. I was preparing an expert witness opinion. I --

12 JUDGE PRIDGIN: That answers the question.

13 Thank you.

14 MR. EFTINK: Thank you. I pass the
15 witness.

16 JUDGE PRIDGIN: Mr. Eftink, thank you.

17 Mr. Uhrig?

18 MR. UHRIG: Yes, your Honor. Just a few
19 questions, Judge.

20 CROSS-EXAMINATION BY MR. UHRIG:

21 Q. Mr. White, my name is Matt Uhrig. I, along
22 with John Coffman, represent some of the folks that live
23 around the power plant. I just have a few very brief
24 questions for you. I want to go back to Mr. Eftink's
25 hypothetical with the power plant, you, the homeowner, and

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1 the power plant being built directly across from you.

2 Would you expect that that power plant would be providing
3 electricity for you?

4 MR. YOUNGS: Same objection to the
5 hypothetical as previously stated.

6 JUDGE PRIDGIN: Thank you. Overruled. You
7 can answer.

8 THE WITNESS: Not directly.

9 BY MR. UHRIG:

10 Q. But you would expect that you would benefit
11 from it in some way?

12 A. Not necessarily. I mean, the plant
13 serves a much larger region than that neighborhood. The
14 expert -- or the testimony that I provided earlier
15 indicated that it's consistent with the orderly growth
16 pattern because of the service available to that
17 development.

18 Q. Actually, I'm glad you brought that up. On
19 the topic of the orderly growth pattern, your testimony,
20 as I read it, did not suggest that Aquila was exempt from
21 zoning, correct?

22 A. My impression is that determination was
23 made by the Court of Appeals in its December 2005 opinion.

24 Q. And as Judge Pridgin had reiterated, my
25 question calls for a yes or no answer. Aquila is not

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1 exempt from zoning?

2 A. That's --

3 MR. YOUNGS: Excuse me. I'll object to the
4 form of the question. I think that misstates the Court of
5 Appeals decision. If this Commission gives them the
6 authority that they requested, then they are, in fact,
7 exempt from county zoning. So I object to it.

8 JUDGE PRIDGIN: I understand, and I guess
9 I'll sustain, except I don't think you asked a question; I
10 think you made a statement. You can certainly ask the
11 question, the Court of Appeals did or did not say this,
12 didn't they, and he can answer.

13 BY MR. UHRIG:

14 Q. Yes or no, Aquila's not exempt from zoning?

15 MR. YOUNGS: Same objection.

16 JUDGE PRIDGIN: Overruled.

17 THE WITNESS: It is exempt from zoning, if
18 they have a certificate of convenience and necessity.

19 BY MR. UHRIG:

20 Q. Let me ask you this: You talked about
21 planning and zoning and land use as being part of a
22 continuous and fluid process; is that correct?

23 A. That's correct.

24 Q. And that process would include notice; is
25 that correct?

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1 A. Ordinarily it does.

2 Q. And you would agree that the process would
3 also include the opportunity for all the parties to be
4 heard; is that correct?

5 A. Ordinarily, there's -- well, it depends.
6 It depends on what the nature of the use is. A lot of --

7 JUDGE PRIDGIN: Okay. That answers the
8 question. It depends. Thank you.

9 THE WITNESS: Okay.

10 BY MR. UHRIG:

11 Q. Let's say we're talking about a special use
12 permit. Then that process would include the opportunity
13 for the developer to be heard as well as landowners who
14 may be affected by the special use?

15 A. For uses that are within the purview of the
16 county zoning authority, that's correct.

17 Q. And this notice and the opportunity to be
18 heard, this would occur before the development began; is
19 that correct?

20 A. For those uses, that's correct.

21 Q. And it would also include the right to
22 appeal that decision?

23 A. For those uses, that's correct.

24 Q. Have you worked on any other projects for
25 Aquila?

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1 A. No.

2 Q. I want to -- I want to direct you to the
3 first page of your testimony. I believe on that first
4 page you identify, is it two publications that you have
5 authored?

6 A. I believe I identified three.

7 Q. Three. And what is the first one?

8 A. Classifying and Defining Uses and Building
9 Forms, et cetera, et cetera.

10 Q. Does that publication deal with the siting
11 or location of power plants?

12 A. No.

13 Q. What is the second publication you listed?

14 A. State and Federal Planning Legislation and
15 Manufactured Housing in the Urban Lawyer.

16 Q. Does that publication deal with the siting
17 or location of power plants?

18 A. No.

19 Q. And the third publication?

20 A. Affordable Housing, Proactive and Reactive
21 Planning Strategies.

22 Q. And same question, does that publication
23 deal with the siting or location of power plants?

24 A. No.

25 Q. Have you ever dealt with this issue before?

1 A. Not to this extent, no.

2 Q. I saw some of your prior publications dealt
3 with urban sprawl and transportation issues?

4 A. Yes.

5 Q. I guess most professionals have a specific
6 area of interest. Would the siting and location of power
7 plants be a specific area of interest that you concentrate
8 on regularly?

9 A. It is now. It hasn't been in the past.

10 Q. Well, let's say prior to --

11 A. No.

12 Q. -- this case?

13 A. No.

14 Q. Prior to that fateful day in April when you
15 got the call from Aquila to ask you to serve in this
16 capacity, had you ever looked at this issue before?

17 A. Not to this extent, no.

18 Q. Mr. Eftink asked you how much money you
19 were being paid by Aquila. I believe you said you were
20 being paid \$300 an hour?

21 A. That's correct.

22 Q. Can you give me an estimate of how many
23 hours you have invested in this matter?

24 A. I don't know. If I had to estimate, I'd
25 say maybe 20 or 25.

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1 MR. UHRIG: No further questions. Thank
2 you.

3 JUDGE PRIDGIN: Thank you very much. Let's
4 see if we have any questions from the Bench. Commissioner
5 Murray?

6 COMMISSIONER MURRAY: Maybe a couple, thank
7 you.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Good afternoon.

10 A. Hi.

11 Q. What I wanted to ask you about is the
12 comprehensive plan, the updating of the comprehensive
13 plan. If I understand your testimony right, the updated
14 plan refers to a multi-use tier; is that correct?

15 A. That's correct

16 Q. Rather than an agricultural zone, as was
17 referenced in the earlier --

18 A. The agricultural tier I think it was.

19 Q. And how would you describe the difference
20 between an agricultural tier and a multi-use tier?

21 A. The -- I believe they call it -- just
22 refreshing my memory, I think they call it the rural
23 density tier, and that's low density, primarily
24 residential development. The multi-use tier is a tier
25 that, No. 1, allows a number of land uses, one of which is

1 industrial uses or uses that have an industrial intensity.

2 And second of all, they provide a
3 transition between the agricultural areas of the county
4 where the plan discourages urban scale development and the
5 incorporated areas of the county and the areas immediately
6 outside of the incorporated areas of the county where the
7 plan encourages development, and this provides kind of a
8 bridge between those two areas and allows a wide variety
9 of uses, including public services and utilities such as
10 this.

11 Q. And it's your testimony that both the
12 peaking plan and the substations are located in the
13 multi-use tier; is that correct?

14 A. That's correct.

15 Q. And there was some controversy about which
16 plan should be referenced in determining or applying to
17 this plant, and I don't recall whether it was your
18 testimony or somebody else's that spoke to that issue as
19 to why the 2005 plan should be used. Was it yours?

20 A. That was mine.

21 Q. Would you explain that then, please?

22 A. The 2005 plan is the most current statement
23 of both land use conditions on that site and the County's
24 land use policies on that site. It wouldn't make sense to
25 go to a prior version of the plan that's no longer in

1 effect. When you're considering an issue today to
2 determine whether a particular use is compatible, it just
3 doesn't make any sense. That's -- in fact, it would be
4 incompatible with the plan to make that decision based on
5 the 2003 plan.

6 Second of all, I mentioned the plan's a
7 continuous process, it's a fluid process. Plans are
8 constantly being updated, and they're also future
9 oriented. It's typically the policy of a city or a county
10 when somebody's going through a process to apply whatever
11 is the most current version, even if that's something
12 that's in process.

13 There's a doctrine known as the pending
14 ordinance doctrine that says when you've noticed a zoning
15 regulation or a plan and it's a public notice, then you
16 expect developers and applicants to start following that
17 plan and not to try to rush to the permit counter under an
18 older plan that would be inconsistent with the vision in
19 the current future plan.

20 So that I think dictates and argues in
21 favor of using the 2005 plan, which is the one that was
22 under consideration in late October when Peculiar decided
23 not to annex the site, and at that time the County, as I
24 understand it, was going through its update and developing
25 the 2005 plan, so it seems to me appropriate to use that

1 document here.

2 Q. So it was in the County plans at the time?

3 A. That's correct.

4 Q. County's consideration for their updated
5 plan?

6 A. Right.

7 COMMISSIONER MURRAY: I think that that's
8 all I have. Thank you.

9 JUDGE PRIDGIN: Commissioner Murray, thank
10 you. Commissioner Gaw?

11 QUESTIONS BY COMMISSIONER GAW:

12 Q. I'm not sure how all this relates, but
13 earlier you were talking about CAFO litigation, and I
14 understood that you said that you'd been involved in some
15 of that litigation. Can you give me more detail of that,
16 please?

17 A. Yes. In I believe it was '93 or '94, I
18 represented Lincoln township in a case called Premium
19 Standard Farms vs. Lincoln Township where Premium Standard
20 was arguing that they were exempt from township zoning and
21 I argued that they were not. And I was also the counsel
22 for Lynn County in a case called Boron, B-o-r-o-n vs.
23 Farrencoff, where I defended a county health ordinance
24 that governs the concentrated animal feeding operations.

25 Q. Okay. And can you give me the cites on

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1 those two cases?

2 A. I don't have those in front of me. I don't
3 have the SW 2d cites, but I could furnish them if you need
4 them.

5 Q. Could you provide them for me?

6 MR. YOUNGS: Commissioner, we'd be happy to
7 provide those cites to you.

8 COMMISSIONER GAW: Thank you.

9 BY COMMISSIONER GAW:

10 Q. And can you tell me how that relates to
11 this case again, those matters?

12 A. I'm trying to remember the context where it
13 was brought up today and go into my testimony where that
14 was used as an example. There are certain -- well, there
15 is two ways. First of all, agricultural uses can be
16 intensive, and those are considered agricultural uses.

17 The information that I had in front of me
18 when I prepared my testimony was that this was an
19 agricultural zone. Even knowing what I've learned since I
20 prepared the testimony, and having visited the site, the
21 areas certainly to the south of the site are agricultural,
22 and those can be considered quite intense.

23 Secondly, it's not uncommon, this being one
24 example, for uses to be exempt from county zoning and
25 reviewed by a state agency.

1 Q. Let's go to the Lincoln township case
2 first, and if you would, tell me what the issues were
3 there.

4 A. There were a number of them, and I'll try
5 to summarize them as quickly as I can. The township
6 zoning enabling statute exempted farm buildings and farm
7 structures from township zoning ordinances, and Premium
8 Standard had a quite large and intensive CAFO operation
9 that they had proposed.

10 I argued that, given the size of that, it
11 should be considered industrial, which would be subject to
12 zoning. They argued that, because they were raising
13 animals, it was considered a farm, it was a cattle farm.

14 Q. All right.

15 A. And the Missouri Supreme Court ruled that
16 it was a farm. If you raise animals, it's a farm, end of
17 story.

18 Q. Okay. Other issues?

19 A. There was an -- there was an -- there was a
20 provision in the board of adjustment statute that limited
21 members of the board of adjustment to free holders, and
22 the constitutionality of that statute was challenged, and
23 because of that, the trial court ruled that the statute
24 was unconstitutional. That's why we went straight from
25 trial court to the Missouri Supreme Court. I'm trying to

1 remember if there's any others. Those were the two main
2 issues.

3 Q. Okay. So as it relates to this case, the
4 closest issue that might be said to have some relation to
5 this case would be the first issue, not the second one,
6 correct?

7 A. That's correct.

8 Q. Now, in that case, if I understand you
9 correctly, you're telling me that the issue was whether or
10 not an animal operation because of its size was -- could
11 be considered as not being agricultural and instead being
12 commercial or industrial?

13 A. That's what I --

14 Q. Is that generally the statement?

15 A. Generally.

16 Q. And the court said -- the court in the end
17 said, no, we think that this is still agricultural?

18 A. Regardless of the size, large or small.

19 Q. All right. And in the other case that you
20 mentioned, the Lynn County case, that case -- did that
21 case have to do with zoning or the -- or did it have to do
22 with health ordinances?

23 A. It was health ordinances. The animal
24 operator argued that it was zoning in disguise and,
25 therefore, subject to the exemption for farms. The court

1 ruled in our -- I represented the County there, and the
2 court ruled in our favor and found that it was not zoning,
3 it was a health ordinance and was considered valid.

4 Q. And, in fact, that health ordinance then
5 was allowed to stand?

6 A. That's correct.

7 Q. And there were at least some oversight
8 powers that were vested in the County in regard to certain
9 animal operations in that situation?

10 A. Correct.

11 Q. And, in fact, subsequent to that, there
12 have been other counties in the state that have adopted or
13 looked at adopting similar health care ordinances?

14 A. That's correct.

15 Q. Now, help me to understand what it is about
16 this generation plant that should make me believe that it
17 has something to do with animal operations or raising
18 crops.

19 A. The -- well --

20 Q. I mean, are we seeing calves being born in
21 this facility or maybe --

22 A. No.

23 Q. Maybe there's a few pigs coming out that we
24 don't know about?

25 A. No.

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1 Q. Okay.

2 A. My impression is that they're not raising
3 livestock at the facility.

4 Q. At least not inside of the generating unit,
5 right?

6 A. Not inside the generating unit.

7 Q. They may be making other things, but
8 they're not considered living beings, right?

9 A. They're making electricity, as far as I
10 know.

11 Q. Okay. All right. So go ahead. I'm sorry
12 for the humor.

13 A. Well, the parallel here was first of all
14 that it is -- you know, it's certainly not unheard of and,
15 in fact, it's common for certain uses to be exempt from
16 local zoning. There's precedent for that in Missouri.
17 That's certainly what the ruling was this December on this
18 case the way I understand it.

19 And second of all, I -- you know, I would
20 argue that this facility is not like an animal feeding
21 operation, which once you pump hog waste into an open
22 waste lagoon, it tends to smell 24 hours a day, which this
23 is a peaking station which in terms of its intensity,
24 smells, noises, truck traffic, traffic in general, is I
25 would argue much less intense than an animal feeding

1 operation, and serves a regional need and has public
2 benefits and public considerations that certainly outweigh
3 local zoning considerations.

4 Q. Okay. But that argument has nothing to do
5 with the 1993 Lincoln township argument, does it?

6 A. No. Only to the extent that, you know,
7 it's not unheard of for a use to be exempt from local
8 zoning, and all the cross-examination I'm getting keeps --
9 I keep getting asked, well, if there's a use it's supposed
10 to be reviewed by the planning commission, is it not? And
11 not all of them are.

12 Q. Okay. And the standard on what should and
13 should not be or what must be reviewed and what does not
14 have to be reviewed is set forth in what case law?

15 A. Well, I mean, it depends on the use. I
16 mean, in that particular case, that standard was based on
17 Missouri township zoning enabling statutes, and the case
18 that we have before us comes from 64.235, and it's if
19 there's a public certificate of convenience -- if there's
20 two -- a certificate of convenience and necessity, then
21 the county zoning cannot stand in the way.

22 Q. Now, you're going in a circle on me. I'm
23 looking for this just general basic principle where you're
24 saying that there are times when zoning does not have to
25 be complied with because there is some exception. Is

1 there case law that says that as a general principle?

2 A. Yes.

3 Q. What is that case law? If it's -- I'm not
4 talking about 64.235.

5 A. Okay. Well, it begins with the famous
6 Supreme Court case upholding Local zoning. Euclid vs.
7 Ambler said there will be times when there's such a strong
8 public policy interest that local zoning can't stand in
9 the way. There is a body of case law --

10 Q. Can you give me the cite on it?

11 A. I don't have the U.S. cite committed to
12 memory, but it's -- I could find it easily.

13 Q. Okay.

14 A. There's a whole body of case law in some
15 cases. New Jersey, for example, has a body of case law
16 from a case called NAA -- Southern Burlington County NAACP
17 versus Township of Mount Laurel, where local communities
18 were using their zoning ordinances to exclude affordable
19 and low-income houses, and the court found that because of
20 that, they had to take regional needs into consideration
21 when they prepared their local zoning plans and ordering
22 ordinance. They couldn't just look at local compatibility
23 considerations. They had to allow a fair share of
24 affordable housing.

25 Q. Okay.

1 A. There are the cases, some I believe of
2 which were cited in the December case involving electric
3 utilities that transcend and cross municipal lines, and
4 the courts had said when there's a need for this type of
5 thing, the local zoning can't stand in the way. I believe
6 there's cases -- and I can't remember the name of the
7 case. I think it's Flora Realty, F-l-o-r-a Realty, but
8 I'm not sure, where courts have said that neighbors can --
9 people who live outside of the city limit can challenge a
10 zoning decision inside the city limit because it has an
11 effect on them. So they have to consider regional needs.

12 Q. All right. Now, in all of those cases when
13 you're looking at them, would you say for one thing the
14 zoning ordinance cannot be unconstitutional?

15 A. That's correct.

16 Q. Cannot conflict with statutes that have --
17 that supersede the zoning ordinance?

18 A. That's correct.

19 Q. Anything else?

20 A. Basically, zoning has to be authorized and
21 consistent with state and federal constitutional law.

22 Q. Okay. So basically that's it, correct?

23 A. Right.

24 Q. All right. So in this case, is the -- is
25 the argument in regard to whether or not zoning has to be

1 complied with in regard to this unit in your opinion
2 entirely hinged upon this interpretation of Chapter 64?

3 A. Not entirely, no. It would be possible --
4 it wasn't an issue in this case, and judges don't decide
5 issues that aren't in front of them, but it would be
6 possible to argue, I believe, that even -- even if that
7 statute were in existence, it would be unconstitutional
8 for a local government to use its zoning powers in such a
9 way as to impair the provision of utilities for people in
10 an entire region in a way that has adverse effects on
11 people who live outside of the zoning jurisdiction.

12 Q. Did Cass County have the opportunity in
13 this case to decide to not grant an exception to its
14 zoning ordinances for this generation plant? Was there an
15 application that was filed that Cass County turned down?

16 A. My understanding is that --

17 Q. If you know.

18 A. -- special use permit applications were
19 filed with the County, and they declined to process them.

20 Q. Do you know why?

21 A. No.

22 Q. Would you perhaps know whether or not at
23 the time there was an injunction in place that prohibited
24 any construction -- or excuse me -- that would have
25 required the removal of the plant at the time of the

1 filing of that?

2 A. I know there was an injunction.

3 Q. At the time of the filing of that
4 paperwork, are you aware of that?

5 A. I have heard that. I don't know what the
6 specific terms of the injunction were. I don't know what
7 the wording was.

8 Q. Okay. So you don't know?

9 A. I don't know.

10 Q. And your opinion in regard to the Court of
11 Appeals decision that's been discussed here regarding Cass
12 County and Aquila and this interpretation of whether or
13 not there should be approval of this plan, is that based
14 upon your interpretation of that case?

15 A. That is my interpretation of that case.

16 Q. That's your opinion, correct?

17 A. That's my opinion, that's right.

18 Q. Okay. Would you be surprised if attorneys
19 had differing opinions on cases?

20 A. Oh, I'd absolutely be shocked.

21 Q. And I assume you're being facetious?

22 A. For the record, I'm being facetious. Yes,
23 attorneys often disagree.

24 Q. Since the tone of your voice may not be
25 reflected by the court reporter, maybe we'd better clarify

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1 that.

2 A. That's right. Yes.

3 COMMISSIONER GAW: Thank you, Judge. Thank
4 you, sir.

5 JUDGE PRIDGIN: Commissioner Gaw, thank
6 you. Commissioner Clayton?

7 QUESTIONS BY COMMISSIONER CLAYTON:

8 Q. Mr. White, I can't help but notice that you
9 published an article entitled State and Federal Planning
10 Legislation and Manufactured Housing, New Opportunities
11 for Single Family Shelter in the Urban Lawyer in the
12 spring of 1996. Is that your article?

13 A. Yes.

14 Q. I guess I wanted to ask if you had ever
15 submitted articles to the Urban Lawyer prior to 1996?

16 A. I think the only other one I had submitted
17 was one on -- I believe I had a book review on a book
18 called Incentive Zoning that was published sometime before
19 that. I can't --

20 Q. How many years before?

21 A. I believe it was in '90 or '91. It was
22 early --

23 Q. Oh, early '90s?

24 A. Early '90s.

25 Q. I was an articles editor in '94. Just

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1 recross from counsel, and if so, to what extent they
2 expect it because this may be a time for a break but I
3 want to get Mr. White on the road as well.

4 Mr. Comley?

5 MR. COMLEY: I have several questions, and
6 I thought I'd try to ask them from here, if that's all
7 right.

8 JUDGE PRIDGIN: That's certainly all right.

9 MR. YOUNGS: Would it be possible to take a
10 quick break?

11 JUDGE PRIDGIN: That's fine. It's just a
12 few minutes after three, so let's try to take about ten
13 minutes, and then we'll get back and try to get Mr. White
14 done.

15 We're off the record.

16 (A BREAK WAS TAKEN.)

17 JUDGE PRIDGIN: Back on the record, please.

18 I understand that we're finished with
19 cross. I do think another Commissioner has a question or
20 two, and then Mr. Comley, did you have some questions for
21 Mr. White?

22 MR. COMLEY: Yes, I do.

23 JUDGE PRIDGIN: All right. Thank you.
24 Commissioner Murray?

25 COMMISSIONER MURRAY: I just had one other

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1 question, Mr. White.

2 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

3 Q. In light of what you said earlier about the
4 court's decision regarding the raising of animals on a
5 property, could Aquila avoid any possible zoning
6 controversy by just raising animals on the property?

7 A. That would create some pretty interesting
8 controversy of its own, I think, the interaction of the
9 animals with electric facilities. I'm not sure how that
10 would work.

11 MR. YOUNGS: Move to strike.

12 COMMISSIONER MURRAY: Thank you. That's
13 all I had.

14 JUDGE PRIDGIN: Thank you. Mr. Comley, any
15 cross?

16 Motion overruled, by the way.

17 MR. COMLEY: Thank you, Judge Pridgin.

18 Mr. White, just a few questions.

19 RECROSS-EXAMINATION BY MR. COMLEY:

20 Q. It was in response to questions from
21 Commissioner Murray, I believe, that you were talking
22 about the updates to the 2005 comprehensive plan. The
23 question I had is, despite the updates contained in the
24 Cass County 2005 comprehensive plan, are you aware of any
25 change in the zoning for either the South Harper plant

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1 site or for the Peculiar substation site?

2 A. No.

3 Q. The other question I think may have come
4 from Commissioner Gaw, and I think you were talking about
5 the way in which the comprehensive plan would apply to
6 circumstances now.

7 Let me ask you this: Have you written the
8 opinions and other text in your testimony presuming that
9 the Commission will evaluate Aquila's application in this
10 case under circumstances as they do exist now?

11 A. I'm sorry. Could you repeat the question?

12 Q. Have you prepared your testimony with the
13 assumption that the Public Service Commission will be
14 evaluating Aquila's application in this case under the
15 circumstances as they exist now?

16 A. Yes.

17 Q. And is that why you're saying that the 2005
18 plan should be the one that applies?

19 A. Yes.

20 Q. There's also been some testimony in
21 response to Commissioner Gaw's questions, you have said
22 several times that Aquila would be exempt from zoning. I
23 think that's the way you said it. You would be exempt
24 from zoning if they had acquired a certificate of public
25 convenience and necessity from the Commission in this

1 case. Is that on the basis of Section 64.235, your
2 understanding of that?

3 A. Yes.

4 Q. Do you have a copy of that statute in front
5 of you?

6 A. No.

7 Q. Do you mind if I bring a copy that's on the
8 back of the opinion and show it to you?

9 MR. COMLEY: May I approach the witness?

10 JUDGE PRIDGIN: You may.

11 THE WITNESS: That would be fine.

12 BY MR. COMLEY:

13 Q. Mr. White, I was going to ask if you would
14 take a moment to read the text of Section 64.235 in
15 connection with the answers you've been giving about
16 whether zoning -- whether Aquila would be exempt from
17 zoning in connection with acquiring a specific CCN in this
18 case?

19 A. Okay. Okay.

20 Q. Now, with respect to Section 64.235, is
21 there anything in the text there indicating -- is there
22 anything in the text on zoning?

23 A. It's -- yes. It's part of the zoning
24 statute.

25 Q. It is part of the zoning statute, but in

1 this statute particularly do you see reference to the
2 zoning in Cass County?

3 A. The word zoning, I don't think is in there.

4 Q. Doesn't the text of that apply mostly to
5 planning boards and review of developments consistent with
6 the master plan?

7 A. Yes, but I think that's part of the zoning
8 process.

9 Q. It is part of the process, but for the
10 purposes of my question, it's clear that -- it's true that
11 zoning does not come up within the text of that statute,
12 correct?

13 A. The word zoning I don't think it appears.

14 Q. Now, you're not -- I think you mentioned in
15 my cross-examination that you had not become familiarized
16 with Section 64.255?

17 A. 255?

18 Q. Would you take a moment to review that?

19 A. Okay.

20 Q. And I have one more thing for you to digest
21 before I ask my question. Would you mind reading
22 Footnote 8 in the opinion?

23 A. Okay.

24 Q. Based upon I know a very quick and probably
25 unplanned reading of those texts, would you agree with me

1 that the Court of Appeals' opinion specifically notes that
2 Section 64.255 revised statute includes no exemption from
3 the zoning authority for first-class non-charter counties
4 for public utilities?

5 MR. YOUNGS: Your Honor, I'm sorry. Just
6 for the record, to ask this witness, who is admittedly a
7 lawyer, but to comment on a holding in a case that's been
8 litigated for the past two years by parties who have
9 probably read this opinion about 80 times apiece, I just
10 think it's unfair and I need to object to it for the
11 record.

12 JUDGE PRIDGIN: I understand, and I'll
13 overrule it because he is an attorney and I believe the
14 cross-examination did ask his opinion of the current state
15 of zoning law. And he is a land use lawyer. I think he
16 can give his opinion, and as Mr. Comley said, I think he
17 may have just read these opinions for the first time. It
18 may temper his opinion on the statutes being new to him.
19 If you need to ask the question again, Mr. Comley.

20 THE WITNESS: That would be great. Thanks.

21 BY MR. COMLEY:

22 Q. With respect to your very quick reading and
23 recent reading of 64.255 and also the footnote of the
24 court, would you agree that the Court of Appeals
25 specifically notes that Section 46.255 includes no

1 exemption from zoning -- from zoning authority for
2 first-class non-charter counties with respect to public
3 utilities?

4 A. I would agree that it says that, that
5 64.255 does not include a zoning exemption.

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

7 JUDGE PRIDGIN: Mr. Comley, thank you.
8 Mr. Eftink?

9 MR. EFTINK: No questions.

10 JUDGE PRIDGIN: All right. Thank you. Any
11 further recross? Mr. Uhrig, yes, sir?

12 RE-CROSS-EXAMINATION BY MR. UHRIG:

13 Q. Mr. White, were you aware -- were you ever
14 told by Aquila that they were prepared to submit to the
15 City of Peculiar's zoning ordinances, rules and
16 regulations if this land was ever annexed by the city?

17 A. No.

18 Q. No, you were not told or, no, you were not
19 aware?

20 A. I'm not aware.

21 Q. So you were not told by Aquila of that
22 situation?

23 MR. YOUNGS: Excuse me. I'll just object
24 for the record. That assumes facts not in evidence.

25 JUDGE PRIDGIN: I'll overrule and make sure

1 that I understand the question. Could you ask the
2 question again, please, Mr. Uhrig?

3 MR. UHRIG: My question was whether -- I
4 asked him if he was aware, whether he was told that Aquila
5 was prepared to abide by the City of Peculiar's zoning
6 rules, regulations, ordinances if the land were annexed by
7 the City of Peculiar. He answered no. I then asked
8 whether no -- whether no meant he was not told or no, he
9 was not aware.

10 THE WITNESS: I was never told nor aware.

11 BY MR. UHRIG:

12 Q. And I just have one more question. Would a
13 nuclear plant be compatible with agricultural zoning in
14 this particular area of Cass County?

15 A. Depends upon the size and scale and design,
16 whether they had buffering and, you know, met the criteria
17 in the plan.

18 Q. Which plan are you referring to?

19 A. The 2005 plan.

20 MR. UHRIG: That's all I have. Thank you.

21 JUDGE PRIDGIN: All right. Thank you. Any
22 further recross?

23 (No response.)

24 JUDGE PRIDGIN: Redirect?

25 MR. YOUNGS: Aquila has no questions of

1 this witness. Thank you, Judge.

2 JUDGE PRIDGIN: Thank you. May this
3 witness be excused?

4 THE WITNESS: Thank you.

5 JUDGE PRIDGIN: If there's nothing further
6 from the Bench, Mr. White, thank you very much, sir.

7 THE WITNESS: Thank you.

8 JUDGE PRIDGIN: Mr. Williams?

9 MR. WILLIAMS: Mr. Wood was called away to
10 attend to a personnel matter involving the Commission's
11 business. I expect he'll be back probably in 10 or
12 15 minutes.

13 JUDGE PRIDGIN: All right. If I'm not
14 mistaken, we don't have any further -- we would be waiting
15 on Mr. Wood for just a moment; is that correct?

16 Well, I hate to break again this quickly,
17 but -- is there anything else from counsel? I hate to
18 break again this quickly. Could perhaps somebody -- I
19 mean, I understand that Mr. Wood has other duties, but
20 could somebody possibly let Mr. Wood know that the
21 Commission is waiting on him to resume cross-examination?
22 We'll just briefly go off the record, then.

23 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

24 JUDGE PRIDGIN: We're back on the record.
25 I believe all counsel are back, and Mr. Wood is back on

1 the stand. Counsel, please correct me if I'm wrong. If I
2 understood, we interrupted Mr. Wood's testimony, I think
3 we had been through some of the recross, and I think Cass
4 County has cross-examined Mr. Wood and Aquila has; is that
5 correct? I'm seeing a couple nods.

6 Mr. Uhrig, did you have any
7 cross-examination?

8 MR. UHRIG: Judge, I think John Coffman did
9 all the cross-examination.

10 JUDGE PRIDGIN: That's right. He did
11 already cross.

12 MR. COMLEY: And I think we've had the
13 Commission go through a round of examination, too. I
14 think that's where we are.

15 MS. MARTIN: We're up to recross from
16 Commission questions.

17 JUDGE PRIDGIN: Recross, then. I
18 apologize. Do we have any recross? Mr. Comley? We have
19 a volunteer.

20 MR. COMLEY: I anticipated your question,
21 had my hand ready.

22 WARREN T. WOOD testified as follows:

23 RE-CROSS-EXAMINATION BY MR. COMLEY:

24 Q. Mr. Wood, from the convenience of this
25 desk, I'm going to ask just several questions.

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1 A. Okay.

2 Q. I think in questions posed by Commissioner
3 Gaw, you were talking about meetings that were started in
4 Peculiar, Missouri. I wanted to confirm with you, isn't
5 it your understanding these were not public hearings but
6 rather they were open houses about the South Harper
7 facility?

8 A. How about I go back to my rebuttal? I
9 think I gave a description for each of the meetings there
10 and I'll give the dates as they've been represented to me.

11 JUDGE PRIDGIN: And, Mr. Wood, to the
12 extent that you're able, when you're asked a leading
13 question, would you try to limit your answers to yes, no,
14 that kind of thing. I know sometimes the answers need
15 some explanation.

16 THE WITNESS: Okay.

17 BY MR. COMLEY:

18 Q. But I think it's perfectly proper for you
19 to refer to your rebuttal.

20 A. Peculiar Chamber of Commerce meeting
21 September 14th, 2004. News releases on October 6, 2004
22 regarding public information meeting that was held at
23 Peculiar Lion's Club on October 11th. And on October 7th,
24 Aquila published open house notices in some of the
25 newspapers. Those are the ones I identified in rebuttal.

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1 Q. So I think it's the only one that would be
2 even close was the Chamber of Commerce, was that what you
3 said?

4 A. That was the one on September 14th, and the
5 Peculiar Lion's Club October 11th.

6 Q. All right. You had been asked questions
7 about your understanding of the zoning for both the tracts
8 involved in this case, the South Harper tract and the
9 Peculiar substation tract. Now -- and you've mentioned
10 those doubts. There have been two witnesses who have ---
11 that are professed professionals in some land use areas
12 that have understood the zoning to be agricultural. Do
13 you have any reason to disbelieve what they're saying?

14 A. I don't have any reason to believe those
15 aren't agricultural tracts. I just haven't seen a map to
16 confirm it beyond a shadow of a doubt.

17 Q. I think there were other questions that you
18 were receiving about how this case is different from those
19 that may come in the future, similar cases in the future;
20 is that correct?

21 A. Yes.

22 Q. And I think that your answers were that
23 you're going to treat this case a little differently than
24 those that come in the future; you're going to insist
25 those in the future, they are pre-construction hearings;

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1 is that correct?

2 A. Yes.

3 Q. Can you explain for me again why this case
4 is being treated differently?

5 A. Because the utility's already built.

6 Q. Is it also because the Staff somehow had
7 given Aquila an understanding of what its authority may
8 have been?

9 A. I -- Aquila has probably taken some --
10 taken some interest in letters that have been issued in
11 the past recording that policy and regarding decisions
12 such as the 248 case.

13 Q. You mentioned the 248 case. Wasn't the 248
14 case filed after the injunction against Aquila was issued
15 by Judge Dandurand?

16 A. Yes.

17 Q. Regarding the plant itself, the South
18 Harper plant, isn't the bulk of the capacity, the power
19 rather, used at South Harper going to be used for
20 residents in Jackson County?

21 A. I do not know where all the flow of that
22 power will go.

23 Q. Then I take it you have no idea about what
24 percentage of that power may flow to Cass County
25 residents?

1 A. I haven't gone through a flow study to look
2 at where the flow from South Harper would go, only its
3 siting relative to its need and infrastructure, some of
4 the land uses and community impact.

5 Q. I take it then you do not know what the
6 power -- what kind of power will be flowing to Cass County
7 residents; is that correct?

8 A. That is true.

9 Q. In response to questions from Commissioner
10 Gaw about the site evaluation and the criteria that was
11 used in the South Harper selection, there were several
12 comments I think in your testimony about your thoughts
13 that, at least during the course of evaluation, the South
14 Harper plant was less expensive to construct than Camp
15 Branch. Do you remember that line of questioning from
16 Commissioner Gaw?

17 A. Yes, I do.

18 (EXHIBIT NO. 85 WAS MARKED FOR
19 IDENTIFICATION BY THE REPORTER.)

20 BY MR. COMLEY:

21 Q. Mr. Wood, I've asked the court reporter to
22 mark as Exhibit 85 a document called Aquila Project Cost
23 Comparison. Let me represent to you that in response to a
24 Data Request submitted to the Staff, Cass County received
25 this in response. Are you familiar with this document?

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1 A. I am. In fact, I prepared the DR response.

2 JUDGE PRIDGIN: And if I could interject, I
3 do notice HC marked up at the top, and I would hope that
4 if we do get into any HC, I'll be alerted so we can go
5 in-camera.

6 MR. SWEARENGEN: As far as I know, Judge,
7 everything on here is highly confidential.

8 JUDGE PRIDGIN: All right. Thank you.

9 MR. COMLEY: I'm going to try my best to
10 keep us from having to go in-camera.

11 BY MR. COMLEY:

12 Q. But the date of this document is what,
13 Mr. Wood?

14 A. October 20th, 2004 is the print date I see
15 on the spreadsheet here.

16 Q. And in looking at the results of the
17 comparison, there's a line called project totals, and I'll
18 ask you this: Looking at the totals as of October 20,
19 2004, between the Camp Branch Energy Center and the South
20 Harper peaking facility, can you tell the Commission which
21 one would cost more under that comparison?

22 A. The project total's in the middle of the
23 sheet, and after you've added other considerations and
24 future transmission grid modifications --

25 Q. It would be just the project totals in the

1 mid part of the page.

2 A. Okay. Well, that's not a complete total of
3 the numbers, but at that line, South Harper is more
4 expensive than Camp Branch.

5 Q. All right. Then show me what that means
6 about the future transmission grid modifications.

7 A. If you go through other considerations, and
8 actually, when I was looking at the numbers here, if
9 you -- if you assume that the lawsuit and lawsuit delay
10 numbers disappear from the Camp Branch numbers or you
11 apply them equally to both Camp Branch and South Harper,
12 basically take that effect out of it, leave the NPV tax
13 differential in there, and then put in the future
14 transmission grid modifications with and without South
15 Harper, the outcome is different than the project totals
16 in the middle of this spreadsheet.

17 Q. Well, can we carry the totals down, just to
18 explain this further so I understand what's going on?

19 A. Certainly. Okay. Well, if I don't give
20 any numbers, is it okay?

21 Q. Yes, that's fine.

22 JUDGE PRIDGIN: I'm sorry. Mr. Swearngen,
23 is that all right with Aquila?

24 MR. SWEARENGEN: That's fine with us, too.

25 JUDGE PRIDGIN: Okay.

1 THE WITNESS: If you go to the project
2 total line, let's just start on the left with the Camp
3 Branch Energy Center. You take that number under project
4 totals, which is in the middle of the spreadsheet, and
5 then you go down and you only add to it the third number
6 under other considerations before the double line there.

7 BY MR. COMLEY:

8 Q. Yes.

9 A. And then you add -- then you go through the
10 without South Harper peaking facility, there are then a
11 number of transmission upgrades that were not necessary in
12 order to do the Camp Branch, but Aquila had future plans
13 for performing as a result of Belton/Pleasant Hill
14 transmission loading problems identified in their 2002
15 transmission study. If you then add the total down at the
16 bottom that's on the right side, it's noted as net
17 transmission difference.

18 Q. Yes.

19 A. Okay. You add the numbers -- you know, you
20 go to the number project totals on the camp Branch side,
21 go down and add the third number from other
22 considerations, and then add the last number under total
23 with the identification on the right of net transmission
24 difference, you will get a number. And then you do the
25 same on the South Harper peaking facility, and you don't

1 have that third number, NPV tax differential, and you put
2 in the total net transmission difference of that amount
3 that doesn't -- isn't as big as the side with the Camp
4 Branch, and you get a different number. And you'll notice
5 -- when you go through these numbers, what you will notice
6 is that the Chapter 100 makes a difference.

7 Q. So I was going to say if the Chapter 100 at
8 South Harper did not materialize, as a consequence there
9 would be more figures on that side of the equation,
10 correct?

11 A. Yes.

12 Q. And basically, on the basis of what you
13 prepared in this cost comparison, after all the numbers
14 are considered --

15 A. Well, I didn't prepare this, but I've taken
16 numbers out it that I didn't think were reasonable or that
17 would have been applied on both sides.

18 Q. Anyway, under the analysis as I have
19 explained it by including -- taking the Chapter 100 out of
20 it, wouldn't South Harper peaking facility be more
21 expensive?

22 A. According to the numbers on this sheet,
23 yes.

24 MR. COMLEY: Your Honor, I'd offer
25 Exhibit 85 into evidence.

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1 JUDGE PRIDGIN: Any objections?

2 (No response.)

3 JUDGE PRIDGIN: Okay. Seeing none,

4 Exhibit 85 is admitted.

5 (EXHIBIT NO. 85HC WAS RECEIVED INTO
6 EVIDENCE.)

7 MR. SWEARENGEN: I just want to make sure
8 for the record that will be treated as a highly
9 confidential document.

10 JUDGE PRIDGIN: Yes, thank you,
11 Mr. Swearengen, that is highly confidential HC.

12 MR. COMLEY: I have no other questions.

13 JUDGE PRIDGIN: Mr. Comley, thank you.

14 Mr. Eftink?

15 MR. EFTINK: Yes.

16 RE-CROSS-EXAMINATION BY MR. EFTINK:

17 Q. Do you still have Exhibit 85 in front of
18 you?

19 A. Is that the one that was just --

20 Q. Yes.

21 A. Yes, I do. I have the one I marked on that
22 I couldn't give to her. Okay.

23 Q. Who prepared Exhibit 85?

24 A. I believe Aquila prepared this.

25 Q. It's got a date of October 20, 2004 on it,

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1 correct?

2 A. Yes.

3 Q. And is it your recollection that on
4 October 23, 2004, the City of Peculiar decided not to
5 annex South Harper?

6 A. That is my recollection.

7 Q. Now, when you were being questioned by one
8 of the Commissioners, you suggested that Aquila could
9 either go to the Commission for authority or go to Cass
10 County for authority. My question to you is, who decides
11 whether they get to go to Cass County or go to the Public
12 Service Commission?

13 A. Are you asking does the utility have the
14 choice of going there?

15 Q. Yes.

16 A. I believe in terms of a certificate of
17 convenience and necessity for the power plant itself, it's
18 my impression that they would likely have to come here in
19 either scenario.

20 Q. But for siting of a power plant, is it your
21 testimony that they could choose to either go to Cass
22 County or go to the Public Service Commission?

23 A. Not being a lawyer -- and how many times do
24 we have to say that, I don't know.

25 Q. Just one more time.

1 A. Okay. One more time. It is my impression
2 that, yes, they'd go one place or the other for the siting
3 approval.

4 Q. My question is, is it your understanding
5 from what you have written, what you've been told by
6 Staff, that Aquila gets to choose where they go?

7 A. Purely related to the siting.

8 Q. Now, you also testified about a ten-step
9 process that you developed, and you were asked if this
10 ten-step process was developed for your testimony here in
11 this case, and you said no. But was part of your ten-step
12 process developed for this case?

13 A. I'm sorry. I don't recall the question
14 where I said no to if that was developed for this case.

15 Q. I think the question was if all of the ten
16 steps were developed for your testimony in this case or
17 for this case. And I'm following up on that by asking you
18 if part of that ten-step process was developed for this
19 particular case?

20 A. I'm trying to recall the question where I
21 would have said that this was not developed for this case.

22 JUDGE PRIDGIN: My memory may be faulty. I
23 recall that he said that that was developed for this case,
24 and I -- if we need the court reporter to go back and
25 look, but I recall him answering.

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1 BY MR. EFTINK:

2 Q. Let me ask you, then, so we can make sure
3 what your testimony is.

4 A. I remember your question. You asked if I
5 created this ten-step process for this case.

6 Q. That's right.

7 A. And I believe my response was a long
8 drawn-out -- my apologies, Judge -- discussion on other
9 states, on past cases and siting processes and identifying
10 a number of issues and then figuring out a process, laying
11 out a process by which those issues could be addressed.
12 And it was developed for this case.

13 Q. Now, you said something about being in Cass
14 County and going by the courthouse and asking to see the
15 map. Did you call in advance and talk to Darrell Wilson
16 and set up an appointment to go by and look at the maps
17 that he's in charge of?

18 A. The day before I came, I believe it was the
19 5th -- let me just go back and look that up.

20 Q. Was it the day of the deposition?

21 A. Hold on. I can find it real fast here.
22 Yes, on April 5th was the day before the April 6th, I
23 called, knowing I would be in the area, because I wanted
24 to get a larger copy of the land use plan map, and I also
25 identified the interest in the zoning map identified in

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1 the master plan. And was told, well, the map that we have
2 in there is the one noted after page 30 in the master
3 plan, which is the land use plan map. It shows the
4 tiering, and that there wasn't another one.

5 I said, okay. Well, I'd like to get a
6 larger copy of that. And then when I came by on the 6th
7 -- and this is the April 6th there, I got larger -- the
8 11-by-17 of the map, which I have it here, and asked for
9 that other map. And I believe Darrell stepped out for a
10 minute, and I asked Karen about the other one. And then
11 she said, well, this is the map that's there.

12 And then on the next day, when I came back,
13 I called again to make sure, isn't there another map?
14 They're like, no, that's the map we have that's identified
15 in the master plan as the -- let me go find it here. I
16 put that page. It's the official zoning map. It's known
17 as the official zoning map of Cass County, Missouri.

18 And it was later at Mr. Mallory's
19 deposition we brought that issue up again, and it was
20 clarified that, well, there's a marked-up map that has the
21 stuff in pencil and pen, after BZA or planning board
22 meetings or really after the BZA meetings where there is a
23 change in some sort of zoning that that's identified on.

24 At that time we asked for a copy of it.
25 I'm assuming -- I have to assume there's a map that that

1 stuff is identified. I just haven't seen a copy of it.

2 Q. And Mr. Darrell Wilson was gone that day?

3 A. On the?

4 Q. The day I was there also, Mr. Wilson --

5 A. Yes, the day that Debra -- that we were
6 there for the deposition, he was not there that day.

7 Q. He was not there that day?

8 A. Uh-huh.

9 Q. Okay. Now, did you or did Staff prior to
10 January 2005 represent to Aquila that they did not have to
11 get county zoning?

12 MR. WILLIAMS: I'm going to object to that
13 as being asked and answered. I think he's getting beyond
14 the scope covering Commissioner questions in his recross.

15 MR. EFTINK: Well, if it's been asked and
16 answered, I forgot his answer. Maybe you can help us,
17 Judge.

18 JUDGE PRIDGIN: I was going to sustain, but
19 if you forgot, answer the question as succinctly as
20 possible. I think it's been asked and answered as well.

21 MR. EFTINK: My apologies.

22 JUDGE PRIDGIN: That's all right.

23 BY MR. EFTINK:

24 Q. What's your answer?

25 A. If there was some sort of identification

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1 prior to January 1st of 2005?

2 Q. To Aquila that it was the position of Staff
3 that they did not have to comply with county zoning.

4 A. There was a previous letter, and if they
5 refer to the Nanette Trout letter and there was a letter
6 to Representative Rector.

7 Q. That was after that. The letter to
8 Nannette Trout is to Nannette Trout, not to Aquila, right?

9 A. Right.

10 Q. My question is whether you made any such
11 representation to Aquila that they did not have to comply
12 with County zoning?

13 A. I don't recall right now.

14 Q. Of course, the letter to Nannette Trout
15 said something different. It said that the PSC did not
16 tell utilities where to not build, but it didn't say
17 anything about whether they had to comply with county
18 zoning, correct? That's a different issue, right?

19 A. It was specific to you don't need
20 additional authority from the Commission to construct.

21 Q. Now, in doing your analysis, did you review
22 the Missouri Power & Light case, the case out of Jefferson
23 City involving a peaking plant?

24 A. Yes. The 1973 Missouri Power & Light case?
25 Yes, I did.

1 Q. You're aware that in that case the Missouri
2 Public Service Commission said that the utility had to
3 comply with local zoning? You're aware of that, aren't
4 you?

5 A. I don't recall that language exactly in
6 there.

7 Q. You talked about Aquila perhaps relying
8 upon what was said by the Public Service Commission case
9 0248 last year, but that case was decided by the Public
10 Service Commission in April 2005?

11 A. Yes.

12 Q. And that was several months after Aquila
13 started the process of building the peaking plant,
14 correct?

15 A. I didn't say they proceeded with
16 construction based on that. I said it was one of the
17 factors they may have considered in their decision to
18 proceed forth to continue construction.

19 Q. But if the decision in case 0248 came in
20 April 2005, Aquila could not have relied upon that prior
21 to that time, could they?

22 A. No.

23 MR. EFTINK: Thank you, your Honor.

24 JUDGE PRIDGIN: Mr. Eftink, thank you.

25 Mr. Uhrig?

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1 MR. UHRIG: No questions.

2 JUDGE PRIDGIN: I'm sorry. Mr. Wheatley?

3 MR. WHEATLEY: Uh-huh.

4 JUDGE PRIDGIN: Didn't mean to ignore you.

5 RE-CROSS-EXAMINATION BY MR. WHEATLEY:

6 Q. Good afternoon, Mr. Wood.

7 A. Good afternoon.

8 Q. I just wanted to follow up on a couple of
9 questions that you were asked. Commissioner Gaw and
10 Commissioner Clayton I believe asked you where the main
11 service of the South Harper unit goes or is used?

12 A. Asked me where the -- where the power from
13 the plant --

14 Q. Where the power goes.

15 A. I don't recall their questions along those
16 lines. I remember that in cross from Mr. Comley.

17 Q. Okay. And do you recall that it's Jackson
18 County?

19 A. I remember his question of that nature, and
20 my answer is I don't know.

21 Q. Well, would you take -- assume for a moment
22 that it is Jackson County. Okay. You've indicated in
23 your questions to -- or answers to Commissioner Gaw that
24 there was -- that the facilities should be located closer
25 to the load center; is that correct?

1 A. Yes.

2 Q. And so if, in fact, the load center in this
3 case was Jackson County, should it be located closer to
4 Jackson County?

5 A. Well, if your question is, if all of the
6 power from this plant was going to Jackson County, should
7 it be located closer to Jackson County, that would depend
8 on the transmission to that area and the gas line
9 infrastructure cost, the land uses in the area of the
10 plant further north, closer to Jackson County, and
11 community and basically the siting issues would go into
12 putting a plant there.

13 Q. Well, when Commissioner Clayton was talking
14 with you, you mentioned three possible sites, and those
15 were Greenwood, Camp Branch and the South Harper plant?

16 A. That's correct.

17 Q. And Greenwood is located in Jackson County;
18 is that correct?

19 A. Yes, it is.

20 Q. And I want to follow up on two questions
21 that Commissioner Gaw asked you, and these were fairly
22 simple questions, in that there are two major issues as
23 Commissioner Gaw put it was the need --

24 A. Yes.

25 Q. -- for the facility and also siting?

1 A. Yes. For the location of the plant, was it
2 a reasonable location. Yes.

3 Q. What I'd like for you to do is to -- is to
4 follow a common sense type of approach with me, and if you
5 were -- if you were going to get your shoes fixed, would
6 you go to a heart surgeon or would you go to a shoe
7 cobbler?

8 A. If I needed my shoes fixed, I'd go to an
9 expert on shoes, a cobbler, I imagine.

10 Q. All right. Let me ask you the reverse of
11 the question. If you needed brain surgery, would you go
12 to a shoe cobbler or would you go to a brain surgeon?

13 A. A brain surgeon.

14 Q. All right. And as far as a determination
15 of need for additional plant, would it be, in your
16 opinion, better to go to the PSC or to Cass County?

17 A. I would think you'd go to the Public
18 Service Commission.

19 Q. Now, the reverse of that question, if you
20 wanted to look at a zoning matter, would you go to in Cass
21 County -- would you go to Cass County, Missouri and follow
22 their master zoning plan or would you go to the PSC?

23 A. If I had a zoning matter that I felt I
24 needed to address, I would go to the county of that
25 zoning.

1 Q. Let me ask you this, then: Section 393.170
2 that we've talked about does not make any mention of
3 siting, does it?

4 A. Depends on how you read the 393.170.3 and
5 the public convenience and necessity.

6 Q. Let me read you subsection 1. No gas
7 corporation, electrical corporation, water corporation or
8 sewer corporation may begin construction of gas plant,
9 electric plant, water plant or sewer system without first
10 having obtained the permission and approval of the
11 Commission. Doesn't say anything in there about siting,
12 does it?

13 A. Well, it's hard to begin construction of a
14 plant without having somehow addressed siting.

15 Q. Exactly. But as far as the issue of need,
16 you previously testified that you would go to the PSC; is
17 that correct?

18 A. Yes.

19 Q. I want to ask you, you've discussed this
20 Western District opinion, and I'd like to ask you another
21 hypothetical. Let's say I have a son, okay, and his name
22 is Linwood, and we call him Lin for short, and I say I'm
23 going to the office, and I'm -- Lin, by the time I get
24 home, I want you to clean up your room and take out the
25 garbage. Okay?

1 Well, Lin gets tied up in his Game Boy or
2 whatever video game he happens to play, and I get home
3 from the office and I haven't -- and I say to Lin, he
4 hasn't done either one of those, and so I say, you haven't
5 cleaned your room or taken out the trash. That's a common
6 meaning of the word or, correct?

7 A. He hasn't done A or B that you requested,
8 yes.

9 JUDGE PRIDGIN: Mr. Wheatley, I do want to
10 give you some leeway, since other counsel have asked him
11 about the law. I'm pretty sure I know where you're going
12 with this, and if you could be quick about it.

13 MR. WHEATLEY: One more question.

14 BY MR. WHEATLEY:

15 Q. The Court affirmed the Circuit Court's
16 judgment indicating that they have not obtained the
17 approval of the County Commission or the Public Service
18 Commission. That's my point in what I was doing with my
19 son Linwood. I was not -- because I used the word or, you
20 haven't cleaned up your room or taken out the trash, have
21 I relieved him of one of those duties?

22 A. In this specific example you've noted, no.

23 MR. WHEATLEY: That's all I have.

24 JUDGE PRIDGIN: Mr. Wheatley, thank you. I
25 don't think we have any further recross. Any redirect?

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1 MR. WILLIAMS: Sure.

2 REDIRECT EXAMINATION BY MR. WILLIAMS:

3 Q. Mr. Wood, do you recall when Mr. Coffman
4 was asking you about you having applied some kind of a
5 reasonable site standard as opposed to a best site
6 standard? Do you recall that?

7 A. Yes, I do.

8 Q. Is there such a thing as a best site for a
9 power plant?

10 A. Probably depends on the person or the
11 different parties doing the analysis as to what a best
12 site for a power plant is, so I don't know that there's
13 one best site that everybody would agree is the best site.

14 Q. Are you saying that reasonable minds could
15 differ as to what a best site would be for a power plant?

16 A. Yes.

17 Q. Do you recall you were asked by Mr. Coffman
18 if you were aware of any case where the Commission had
19 issued a certificate of convenience and necessity for a
20 plant without zoning?

21 A. Yes.

22 Q. Have you done any research to see whether
23 or not the Commission has issued such a certificate?

24 A. I believe my response is, I don't know, and
25 I don't know because I hadn't done that sort of an

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1 investigation or search of past cases or asked General
2 Counsel to do so.

3 Q. So you didn't make a search back to 1913
4 for cases?

5 A. No, I didn't.

6 Q. And in response to Mr. -- Commissioner Gaw,
7 you ended up talking about load losses being a factor for
8 why a plant should be located close to a load that it's
9 supplying electricity to. Are there any other factors?

10 A. Yes. Certainly reliability is one of them.

11 Q. And can you explain what you mean by
12 reliability?

13 A. And this is something you run into quite
14 often when you start looking at the ability of a munic--
15 we hear about this quite a bit with the municipals and the
16 cooperatives and their ability to reliably move power over
17 significant distances, and the Aquila -- the area
18 surrounding Aquila is certainly an example of a place
19 where on peak days transmission load release or TLRs or
20 other reliability measure or redispatching are necessary
21 in order to avoid overload. And if you're starting from a
22 blank slate with green field, nothing built, the point I
23 would make is that if you can locate the generation source
24 closer to a load, all other things being equal, that is
25 probably a better place to try to put it.

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1 Q. And is there any relationship between
2 transmission distance and load -- I mean and reliability?

3 A. Yes.

4 Q. And what would that relationship be?

5 A. Obviously the greater the distance you
6 travel, you're losing some power, but that's not as
7 directly related to reliability as the opportunity or the
8 threat of overload on any particular segment that may be
9 in the chain of linkages for you to receive power during
10 peak day.

11 Q. Okay. Do you have any familiarity with how
12 Aquila dispatches power to serve its Missouri customers?

13 A. Joint. St. Joe Light & Power and the MPS
14 districts jointly.

15 Q. And what is that joint dispatch, what
16 relationship would that have to the South Harper facility?

17 A. I mean, it would be in their dispatch order
18 when they needed to serve load, and it would be dispatched
19 according to its incremental cost.

20 Q. Well, you've been asked questions about
21 whether or not the South Harper unit would be serving load
22 in Jackson County or if it would be in Cass County. Can
23 you tie your response to those questions?

24 A. Actually, somewhat related to that -- and
25 I'll try to be quick -- I was somewhat intrigued by some

1 of Mr. Peshoff's concerns about Cass County having more
2 than some appropriate share of power installed within the
3 county and went back and looked at the population ranking
4 of all the counties in the state, and I went back and
5 looked at the installed megawatts in all of the counties
6 in the state. And I included Aries as if it were up and
7 running, Ralph Green 3 and South Harper.

8 And interestingly enough, Cass County ranks
9 out at the 11th population. It also ranks out 11th in
10 terms of installed capacity, and I was quite surprised the
11 ranking worked out exactly that way. So I only bring that
12 up as a measure. If we talk about is a particular county
13 bearing more than its share or more than its fair share,
14 if you were to succumb to that sort of analysis being
15 appropriate, I wanted to point out that factor.

16 Q. I was getting more into would South Harper
17 be dispatched to meet load demands that might be generated
18 in Cass County, as well as in Jackson County, as a
19 practical matter?

20 A. Oh, yes. I'm sorry. I read more into your
21 question.

22 Q. There's quite a bit of discussion about
23 opposition by the public to Camp Branch and South Harper.
24 Do you know if there's any public support for either site?

25 A. Based on the public hearing March 15th and

1 more recently on the 20th and the one that followed, I've
2 recently read through all those transcripts, and just the
3 most recent ones were, I think, over 600 pages, and there
4 were some people testifying in support of the plants.

5 Q. I sort of hate to get into this because I
6 think it's perhaps making it look more significant than it
7 should be, but did Staff make any special trips in order
8 to look at maps regarding the Cass County zoning?

9 A. Make any -- I'm sorry.

10 Q. Did you go to Cass County in particular
11 just to look at zoning maps?

12 A. Not just to look at zoning maps. We made a
13 point to do other things while we were there to be
14 productive.

15 Q. Would it be fair to say that the purpose of
16 the trip was for something else and the request for zoning
17 map was made as well?

18 A. Yes.

19 Q. And I think I'm going to have you just step
20 through exactly what steps you're aware of that were done
21 in order to try to obtain a copy or view the zoning map
22 with Cass County.

23 A. As you know, I don't want to spend a lot of
24 time on this, overemphasize the perceived importance of
25 it, but I knew I was going to be up there on the 6th, made

1 a call up because I wanted to have a larger copy of the
2 map, you know, than the 8 1/2-by-11. This one is easier
3 to read.

4 Q. What was the purpose of your trip on the
5 6th?

6 A. Wanted to go up to the plant and have an
7 opportunity to look through it now that it was constructed
8 and get up there, take pictures before the trees filled
9 out because I knew it would be hard to see the plant from
10 some places after the trees filled out.

11 Q. That was the primary purpose?

12 A. Yes, I wanted to see it, and I also wanted
13 to have an opportunity to tour or go visit Aries, Ralph
14 Green and Greenwood and look at some of the gas support
15 and electric support infrastructure in the area.

16 Q. Had Staff made a request for any
17 information prior to your trip, I believe it was April
18 6th?

19 MR. COMLEY: Your Honor, I'm going to
20 object on the grounds that all of these have just been
21 asked and answered almost by all the attorneys involved.

22 MR. WILLIAMS: I don't believe all this
23 information's been asked and answered, but if the
24 Commission's heard enough, I'm ready to quit.

25 JUDGE PRIDGIN: Sustained.

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1 MR. WILLIAMS: I have no further questions.

2 JUDGE PRIDGIN: Mr. Williams, thank you.

3 Anything further from the Bench?

4 (No response.)

5 JUDGE PRIDGIN: Seeing nothing --

6 COMMISSIONER GAW: Not at this moment.

7 JUDGE PRIDGIN: I understand. And,
8 Mr. Wood, you may step down, but you may be recalled at a
9 later date. Mr. Wood, thank you.

10 THE WITNESS: Thank you.

11 JUDGE PRIDGIN: Do I understand from
12 counsel that we are out of witnesses for the day?

13 (No response.)

14 JUDGE PRIDGIN: Let me go over how I
15 perceive the witness list will go from here, and do I
16 understand that Aquila may offer the prefiled testimony of
17 Beth Armstrong and that counsel may not have any
18 cross-examination for her; is that correct?

19 MR. SWEARENGEN: That's correct, your
20 Honor.

21 JUDGE PRIDGIN: Does any counsel feel
22 otherwise? Does counsel plan to cross-examine
23 Ms. Armstrong?

24 MR. WILLIAMS: Staff is willing to
25 stipulate Ms. Armstrong's testimony into the record.

1 MR. COMLEY: Cass County has no questions
2 for Ms. Armstrong.

3 JUDGE PRIDGIN: Okay. And if I can talk to
4 the Bench briefly. Does the Bench -- do any of the
5 Commissioners know if they would have any questions for
6 Ms. Armstrong from Aquila?

7 And, Mr. Swearengen, if you could just
8 briefly describe what her testimony's about.

9 MR. SWEARENGEN: She sponsors some
10 financial data, I think an SEC filing, a recent SEC
11 filing.

12 JUDGE PRIDGIN: Thank you. Does the Bench
13 anticipate having any questions? And I assume we can
14 excuse Ms. Armstrong from travel.

15 I'm sorry. Counsel will have no
16 cross-examination for Beth Armstrong. She is Aquila's
17 witness that has financial information, and I'm trying to
18 see if we need Ms. Armstrong to travel if counsel has no
19 questions, if the Bench anticipates any questions for her.

20 If she were to be here, that would -- would
21 she be called on Monday?

22 MR. SWEARENGEN: What?

23 JUDGE PRIDGIN: I'm sorry.

24 COMMISSIONER MURRAY: I have no questions,
25 Judge.

1 JUDGE PRIDGIN: I do see that she is
2 unavailable May 1st and 2nd on an Aquila filing, so if she
3 is available, that would be May 3rd, and so I guess we'll
4 figure that out later. I do see as potential witnesses
5 Norma Dunn for Aquila; is that correct?

6 MR. SWEARENGEN: Yes.

7 JUDGE PRIDGIN: And then we would perhaps
8 move on to Mr. Fisher, Michael Fisher, and George Lewis.
9 Those are my notes.

10 MS. MARTIN: That's correct.

11 JUDGE PRIDGIN: All right. And then again,
12 of course, this is just a rough road map. Tuesday would
13 be some StopAquila witnesses, which would be Mr. Stanley,
14 Ms. January, Ms. Noonan. Then Wednesday tentatively would
15 go on to Cass County witnesses Mr. Peshoff and
16 Mr. Mallory.

17 I'm seeing some nods. Yes, Ms. Martin?

18 MS. MARTIN: Probably in reverse order.

19 JUDGE PRIDGIN: I'm sorry. Okay. Does
20 that fit in with everyone's -- all right. What I'll plan
21 to do then, unless I'm hearing anything else from counsel,
22 we will begin Monday morning at 8:30 with Ms. Dunn. Is
23 that every one's understanding of how we would proceed?

24 (No response.)

25 JUDGE PRIDGIN: Is there anything further

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1 from counsel before we adjourn?

2 MR. EFTINK: We can talk off the record,
3 but I'm just wondering if I should have my people here
4 Monday afternoon, because I don't know how much time some
5 of these other witnesses on Monday are going to take.

6 JUDGE PRIDGIN: I understand. That's
7 something we can take up off the record exactly when
8 witnesses will be needed. Is there anything further?

9 (No response.)

10 JUDGE PRIDGIN: If there's nothing further,
11 we will go off the record, and we will reconvene Monday
12 morning at 8:30. Thank you very much.

13 WHEREUPON, the hearing of this case was
14 recessed until May 1, 2006.

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