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STATE OF MISSOURI

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PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS

5

HEARING

6

May 1, 2006

Jefferson City, Missouri

7

Volume 8

8

9

10 In the Matter of the Application)

of Aquila, Inc., for Permission )

11 and Approval and a Certificate )

of Public Convenience and )

12 Necessity Authorizing It to )

Acquire, Construct, Install, )

13 Own, Operate, Maintain, and )Case No. EA-2006-0309

Otherwise Control and Manage )

14 Electrical Production and )

Related Facilities in )

15 Unincorporated Areas of Cass )

County, Missouri Near the Town )

16 of Peculiar )

17

18 RONALD D. PRIDGIN, Presiding,  
REGULATORY LAW JUDGE

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JEFF DAVIS, Chairman

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STEVE GAW,

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CONNIE MURRAY,

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LINWARD "LIN" APPLING, COMMISSIONERS.

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REPORTED BY:

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PAMELA FICK, RMR, RPR, CCR #447, CSR

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

2 JUDGE PRIDGIN: All right. Good  
3 morning. We're on the record. We're resuming the  
4 hearing in Case No. EA-2006-0309. I note that we  
5 have a new court reporter, and for her benefit, could  
6 I get oral entries of appearance from counsel again,  
7 please, beginning with staff?

8 MS. SHEMWELL: Lera Shemwell and Nathan  
9 Williams representing the staff of the Missouri  
10 Public Service Commission.

11 JUDGE PRIDGIN: Ms. Shemwell, thank you.  
12 Aquila, please?

13 MR. SWEARENGEN: James Swearengen and  
14 Dale Youngs representing Aquila.

15 JUDGE PRIDGIN: Mr. Swearengen, thank  
16 you. Cass County, please?

17 MR. COMLEY: Good morning, Judge  
18 Pridgin. Mark W. Comley and Cindy Reams Martin, who  
19 is on my left, and Debra Moore, who is immediately  
20 behind me, on behalf of Cass County.

21 JUDGE PRIDGIN: Mr. Comley, thank you.  
22 On behalf of StopAquila.org, please.

23 MR. EFTINK: Jerry Eftink on behalf of  
24 StopAquila.org.

25 JUDGE PRIDGIN: Mr. Eftink, thank you.

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1 On behalf of intervenors, Dillon, Miller and Doll,  
2 please.

3 MR. COFFMAN: John B. Coffman, appearing  
4 on behalf of those nearby residents. Matthew Uhrig  
5 will join us later as well.

6 JUDGE PRIDGIN: Mr. Coffman, thank you.  
7 On behalf of the City of Peculiar, please.

8 MR. DOUGLAS: Elvin Douglas appearing on  
9 behalf of the City of Peculiar.

10 JUDGE PRIDGIN: Mr. Douglas, thank you.  
11 I don't see anybody here from Office of the Public  
12 Counsel yet. Have I skipped anyone?

13 (NO RESPONSE.)

14 JUDGE PRIDGIN: All right. Very good.  
15 I understand that we're going to begin with Ms. Dunn  
16 from Aquila; is that correct?

17 MR. SWEARENGEN: That's correct, your  
18 Honor.

19 JUDGE PRIDGIN: And then afterwards we  
20 will move on to, is it Mr. Fisher?

21 MR. DOUGLAS: Yes.

22 JUDGE PRIDGIN: All right. Very good.  
23 And then Mr. Lewis?

24 MR. DOUGLAS: Yes.

25 JUDGE PRIDGIN: Very good. All right.

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1 Anything from counsel before we have Ms. Dunn come  
2 forward to be sworn?

3 (NO RESPONSE.)

4 JUDGE PRIDGIN: Hearing nothing,  
5 Ms. Dunn, if you would please come forward and be  
6 sworn. If you'll raise your right hand, please.

7 (WITNESS SWORN.)

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

10 Mr. Swearengen or Mr. Youngs?

11 MR. SWEARENGEN: Thank you, very much.

12 NORMA DUNN, testified as follows:

13 DIRECT EXAMINATION BY MR. SWEARENGEN:

14 Q. Would you state your name for the  
15 record, please.

16 A. My name is Norma Dunn.

17 Q. By whom are you employed?

18 A. Aquila.

19 Q. And your position with Aquila?

20 A. I am senior vice-president of  
21 communications and stakeholder outreach.

22 Q. Did you cause to be prepared for  
23 purposes of this proceeding certain direct and  
24 surrebuttal testimony in question and answer form?

25 A. I did.

1           Q.       And do you understand that your direct  
2 testimony has been marked for purposes of  
3 identification as Exhibit 10 and your surrebuttal  
4 testimony has been marked for purposes of  
5 identification as Exhibit 11?

6           A.       Yes.

7           Q.       Do you have copies of that testimony  
8 with you on the witness stand this morning?

9           A.       I do.

10          Q.       Are there any changes or corrections  
11 that you wish to make with either your direct or your  
12 surrebuttal testimony?

13          A.       Not at this time.

14          Q.       So if I asked you the questions that are  
15 contained in those testimony, Exhibits 10 and 11,  
16 would your answers this morning under oath be  
17 substantially the same?

18          A.       Yes.

19          Q.       And are those answers true and correct  
20 to the best of your knowledge, information and  
21 belief?

22          A.       Yes.

23                 MR. SWEARENGEN: With that, your Honor,  
24 I would offer into evidence Exhibits 10 and 11 and  
25 tender the witness for cross-examination.

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1 JUDGE PRIDGIN: Mr. Swearengen, thank  
2 you. Any objections to Exhibits 10 or 11?

3 (NO RESPONSE.)

4 JUDGE PRIDGIN: Hearing none, Exhibits 10  
5 and 11 are admitted into evidence.

6 (EXHIBIT NOS. 10 AND 11 WERE RECEIVED  
7 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

8 JUDGE PRIDGIN: Any cross-examination  
9 from staff?

10 MS. SHEMWELL: No, thank you, your  
11 Honor.

12 JUDGE PRIDGIN: I don't see Southwest  
13 Power Pool. City of Peculiar, any cross-examination?

14 MR. DOUGLAS: None.

15 JUDGE PRIDGIN: Very good. Cass County?  
16 Ms. Martin?

17 MS. MARTIN: Thank you, your Honor.

18 CROSS-EXAMINATION BY MS. MARTIN:

19 Q. Good morning, Ms. Dunn. Thank you for  
20 your patience as I get myself organized this morning  
21 on a Monday morning. I appreciate the opportunity to  
22 ask you a few questions with respect to the direct  
23 and surrebuttal testimony that you're sponsoring in  
24 this case. Would that be all right?

25 A. Yes, ma'am.



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1           Q.       And I understand that you've described  
2     your title with Aquila as vice-president of  
3     communication and stakeholder outreach; that's  
4     correct?

5           A.       That's correct.

6           Q.       When did you begin that position?

7           A.       I went to work for Aquila in April of  
8     '05.

9           Q.       And so your first and only position with  
10    Aquila which began in April of '05 is the position  
11    that you've described?

12          A.       Yes.   The title changed from corporate  
13    communications to communications and stakeholder  
14    outreach.

15          Q.       In the position that you have of senior  
16    vice-president of communications and stakeholder  
17    outreach, do your duties and responsibilities include  
18    responding to public concerns with respect to Aquila  
19    activities?

20          A.       I am responsible for public relations  
21    which would include what you've stated.   It includes  
22    media relations and working with other business units  
23    to provide services to them in their response to  
24    community issues.

25          Q.       And given those responsibilities, both

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1 with respect to coordinating with members of the  
2 public and with the press, I take it that you're in a  
3 position where you are in the loop, so to speak,  
4 relative to management decisions and management  
5 strategies in connection with Aquila activities?

6 A. To some extent.

7 Q. Given the timing of your being hired by  
8 Aquila, which was April of 2005, I assume you played,  
9 then, no role in the negotiations between Aquila and  
10 the City of Peculiar?

11 A. That is correct.

12 Q. And that you played no role in any  
13 meetings or open houses that might have been held in  
14 September or October or August of 2004 by the City of  
15 Peculiar in connection with the South Harper plant?

16 A. That is correct.

17 Q. That you played no role in any  
18 discussions with Cass County officials about the  
19 South Harper plant being built in unincorporated Cass  
20 after the Peculiar annexation did not occur?

21 A. I began my work on South Harper probably  
22 the summer of '05.

23 Q. And so then you played no role in  
24 Aquila's decision to proceed with the construction of  
25 the South Harper plant despite the fact it had no

1 local zoning from unincorporated Cass?

2 A. I was not involved in anything related  
3 to Aquila or South Harper prior to my employment  
4 there in April of '05.

5 Q. And by the time you started with Aquila  
6 and by the time you actually began working in  
7 connection with the South Harper plant issues, you  
8 were aware two lawsuits had already been filed  
9 against Aquila in connection with that plant; is that  
10 correct?

11 A. Eventually I learned about it. I didn't  
12 know about it when I went to work for Aquila.

13 Q. You learned at some point that a lawsuit  
14 had been filed by StopAquila.org, correct?

15 A. Yes.

16 Q. And that a lawsuit had been filed by  
17 Cass County, correct?

18 A. Yes.

19 Q. And the Cass County lawsuit, in fact, by  
20 the time you learned of that lawsuit, had actually  
21 progressed to the point where an injunction had been  
22 issued against Aquila with respect to construction of  
23 the South Harper plant; you learned of that, I  
24 assume?

25 A. Eventually.

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1           Q.       When you say eventually, Ms. Dunn, when  
2 do you recall learning that an injunction had been  
3 issued against Aquila with respect to construction of  
4 the South Harper plant?

5                   MR. SWEARENGEN: Your Honor, I'm gonna  
6 object, relevance.

7                   JUDGE PRIDGIN: Overruled.

8                   THE WITNESS: I -- I can't tell you  
9 exactly when I learned about anything in particular  
10 with the plant. I started working on issues  
11 surrounding the plant in -- in the summer of '05, and  
12 really my work started with -- with neighbors around  
13 the plant as opposed to any legal issues within the  
14 company.

15 BY MS. MARTIN:

16           Q.       And as I understand it, from your  
17 testimony when you did begin this work with the  
18 members of the public, your goal was to develop and  
19 implement a plan to identify and address concerns of  
20 citizens with respect to the plant; is that correct?

21           A.       I wouldn't necessarily put it that way.  
22 I -- the company had plans and goals on identifying  
23 concerns. I started meeting with local neighbors to  
24 understand what their concerns were as a result of  
25 e-mails that came into my group.

1 Q. And --

2 A. The group being communications. I'm  
3 sorry for interrupting.

4 Q. No problem. And I appreciate that. And  
5 if I understood your testimony, then, you were the  
6 person who was receiving e-mails from members of the  
7 public expressing concerns about the plant, and you  
8 did what you could to respond to those concerns?

9 A. Yes. I -- I -- rather than saying I did  
10 what I could to respond to their concerns, I wanted  
11 to meet with them to understand their concerns.

12 Q. The concerns that were being expressed  
13 to you, Ms. Dunn, would you characterize them in  
14 generally two categories: Concerns relating to the  
15 physical presence of the plant itself and its impact  
16 on neighbors as the first category; and concerns with  
17 respect to the fact the plant had been built without  
18 first complying with Cass County zoning as the second  
19 category? Would you agree?

20 A. The first part is correct. They had  
21 concerns about the physical aspects of the plant. I  
22 would categorize their concerns as being dealing with  
23 noise and appearance, and then the second category I  
24 really didn't understand it to be a zoning issue. I  
25 understood their concerns to be on the way that they

1 were perceived that they were treated on issues  
2 concerning everything about the plant. But I don't  
3 remember specifically discussing zoning issues.

4 Q. You understood the citizens were  
5 concerned that Aquila had not first gone through  
6 county processes before building the plant; you  
7 understood that?

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

10 MS. MARTIN: I don't think she answered  
11 my question.

12 JUDGE PRIDGIN: I'll overrule and let  
13 her answer if she does know.

14 THE WITNESS: I understood the concerns  
15 to be the way the plant was built, but I didn't have  
16 specifics when I started meeting with them on what  
17 exactly those concerns were.

18 BY MS. MARTIN:

19 Q. Now, with respect to the concerns  
20 relating to the plant and its physical presence  
21 itself, you've described in your direct and  
22 surrebuttal testimony certain measures that you feel  
23 Aquila has undertaken to address those concerns. And  
24 you'd agree with me that those measures have been  
25 taken subsequent to the plant's construction; is that

1 correct?

2 A. There were a number of issues that were  
3 being addressed before I started working for the  
4 company.

5 Q. The efforts that you made, Ms. Dunn,  
6 with respect to your activities with citizens, you'd  
7 agree with me were after the plant was constructed?

8 A. Because -- yes. And they started in the  
9 summer of '05.

10 Q. And you described the efforts that you  
11 feel have been undertaken by you and Aquila as  
12 efforts to demonstrate that Aquila remains a good  
13 corporate citizen in Cass County. Do you recall that  
14 testimony from your direct?

15 A. Yes.

16 Q. By good corporate citizen, I presume you  
17 mean good neighbor?

18 A. I do.

19 Q. And I presume you mean cooperative with  
20 local interests and concerns?

21 A. I do.

22 Q. And I presume you mean law-abiding?

23 A. I do.

24 Q. Do you consider Aquila's decision in  
25 November of 2004, after it learned Peculiar would not

1 annex the South Harper site, to proceed with  
2 construction of the plant, the decision of a good  
3 corporate citizen?

4 A. I really can't speak to that since I  
5 wasn't with the company at that time.

6 Q. Well, certainly, Ms. Dunn, you've  
7 learned of that decision since you started with the  
8 company; is that correct?

9 A. I've learned of the decision.

10 Q. And you've expressed your desire to see  
11 that Aquila acts as a good corporate citizen; is that  
12 correct?

13 A. That is correct.

14 Q. And I'm asking you, Ms. Dunn, on  
15 reflection, do you consider it the act of a good  
16 corporate citizen to proceed with construction of the  
17 South Harper plant without having first secured local  
18 approval for that development?

19 MR. SWEARENGEN: Objection. She  
20 answered the question.

21 MS. MARTIN: I don't believe she did  
22 answer the question.

23 JUDGE PRIDGIN: I don't think she did  
24 either. I'll overrule.

25 THE WITNESS: My understanding is that



1 we --

2 BY MS. MARTIN:

3 Q. Ms. Dunn, I don't mean to interrupt you,  
4 but I know that the judge has admonished that with  
5 respect to questions, if you could simply answer yes  
6 or no: Do you believe it to be the conduct of a good  
7 corporate citizen to have proceeded with construction  
8 of this plant after learning Peculiar would not annex  
9 the site without first securing approval from Cass  
10 County?

11 A. I don't mean to be difficult, but I  
12 can't answer that question with a yes or no. My  
13 understanding is that the company believed that it  
14 had the proper authorities to build the plant.

15 Q. Well, the fact is, Ms. Dunn, you've  
16 since learned that the company intended to comply  
17 with Peculiar's land use regulatory scheme before  
18 building the plant; is that correct?

19 A. My understanding is that the -- what you  
20 need to -- to get approval when you build within a  
21 city is different from certain counties, and that's  
22 the extent of my knowledge about them.

23 Q. And whether or not there may be  
24 differences, you did understand and you have since  
25 learned that Aquila intended to comply with the

1 city's requirements prior to building the plant; is  
2 that correct?

3 A. Yes.

4 Q. And yet you're telling me that it's  
5 appropriate for Aquila to have disregarded whatever  
6 the county's concerns were when it determined to  
7 build the plant in unincorporated Cass County; is  
8 that your testimony?

9 A. I don't believe that the company  
10 disregarded authorities that they believed that they  
11 had. I can't really speak to what the company did or  
12 did not do before I started working there. I  
13 understand that the company did what it believed it  
14 had the authority to do when it built the plant.

15 Q. You understood and you've since learned  
16 that Cass County made it clear to Aquila that the  
17 county did not believe Aquila had the authority to  
18 build the plant without complying with county land  
19 use regulations; you understand that? That's why  
20 we're here; isn't that correct?

21 A. What I understand is that the county and  
22 the company disagreed on what those authorizations  
23 were.

24 Q. And so --

25 A. Beyond that --

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1 Q. -- the answer is yes; is that correct?

2 A. -- I cannot -- I'm not saying yes.

3 Q. Ms. Dunn --

4 A. I'm --

5 Q. -- did the county disagree with Aquila's  
6 position that it could move forward to build this  
7 plant without county approval?

8 A. It's my understanding that the county  
9 disagreed with the company's interpretation.

10 Q. And so my question again is, do you  
11 consider it to be the conduct of a good corporate  
12 citizen to defy the county's disagreement with  
13 respect to the ability to build this plant without  
14 county approval?

15 MR. SWEARENGEN: Objection, that's  
16 argumentative.

17 MS. MARTIN: I think Ms. Dunn is making  
18 an effort not to respond directly to my questions,  
19 and I'm trying to be quite patient with that, your  
20 Honor, but I think I deserve an answer to that  
21 question.

22 MR. SWEARENGEN: Well, I think she is  
23 answering the question, and when she says -- that's  
24 an argumentative question, and I think it's improper  
25 and I object to it.

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1 JUDGE PRIDGIN: I'm going to sustain. I  
2 mean, we're going to go around and around on this if  
3 we don't move on, so...

4 BY MS. MARTIN:

5 Q. Ms. Dunn, with respect to your  
6 surrebuttal testimony, you were in attendance at the  
7 public hearings that were conducted on March the 20th  
8 and again on March the 30th of 2006 in this case; is  
9 that correct?

10 A. Yes.

11 Q. And you heard the testimony of a number  
12 of individuals who spoke both in favor of and in  
13 opposition to the plant; is that correct?

14 A. Yes.

15 Q. And you recall that many of those who  
16 spoke in opposition of the plant were not only upset  
17 with the plant's effect on their neighborhood, but  
18 were also upset with the fact that Aquila had not, in  
19 the words of those citizens, followed the law? You  
20 recall that public testimony; is that correct?

21 A. I do.

22 Q. And you would agree with me that that is  
23 a concern that has been expressed by more than one  
24 citizen in Cass County to this point; is that  
25 correct?

1           A.       Yes.

2           Q.       And you would agree with me that that  
3 would also be a concern that Aquila should be  
4 addressing to be a good corporate citizen; is that  
5 correct?

6           A.       Please repeat your question.

7           Q.       You would agree with me that that is  
8 also a concern that Aquila should be addressing to be  
9 a good corporate citizen; is that correct?

10          A.       I believe that the company has tried to  
11 address them.

12          Q.       Well, we're gonna talk about that in  
13 just a moment. You can understand why citizens would  
14 be concerned that this plant was built without  
15 complying with local land use regulatory processes.  
16 You can understand that, can't you?

17          A.       Yes.

18          Q.       And you can understand why that might  
19 cause some folks to feel that Aquila hasn't been a  
20 good corporate citizen. You can understand that,  
21 can't you?

22          A.       I can understand that they believe that.

23          Q.       And you can appreciate that this is a  
24 problem, or a situation I should say, that Aquila has  
25 created for itself?

1 MR. YOUNGS: Objection, your Honor.

2 That question calls for a legal conclusion on the  
3 part of this witness.

4 JUDGE PRIDGIN: Sustained.

5 BY MS. MARTIN:

6 Q. You would agree with me, Ms. Dunn, that  
7 Aquila's decisions to proceed with the construction  
8 of the plant without first securing county authority  
9 led to that situation? You'd agree with that,  
10 wouldn't you?

11 A. I do not.

12 Q. You don't agree that Aquila was the one  
13 that made the choice to proceed with construction of  
14 this plant without complying with the county zoning  
15 and land use scheme?

16 MR. SWEARENGEN: Objection, your Honor.  
17 Calls for a legal conclusion ultimately.

18 JUDGE PRIDGIN: Overruled.

19 BY MS. MARTIN:

20 Q. That was Aquila's choice, wasn't it?

21 A. Yes.

22 Q. Now, I want to talk if we can about the  
23 subject of your surrebuttal testimony that relates to  
24 an attempt to file a special use permit application.  
25 Could we do that?

1           A.       Yes.

2           Q.       You would agree with me that to your  
3 knowledge, Ms. Dunn, that no attempt whatsoever was  
4 made by Aquila to file either a rezoning application  
5 or a special use permit application with Cass County  
6 before it built the South Harper plant or the  
7 Peculiar substation; would you agree with that?

8           A.       Yes.

9           Q.       And you would agree with me that never  
10 did Aquila submit or present to Cass County a  
11 rezoning application or a special use permit  
12 application for the South Harper plant at any time  
13 before January the 20th of 2006?

14          A.       That's my understanding.

15          Q.       And you've come to learn that, in fact,  
16 with respect to the Peculiar substation before it was  
17 constructed, Aquila actually had submitted a rezoning  
18 application for that substation which it subsequently  
19 withdrew; do you know that to be the case?

20          A.       Vaguely.

21          Q.       Now, with respect to your attempt to  
22 file an SUP, or a special use permit application, on  
23 January the 20th of 2006, I want to get our bearings  
24 as of the date if we can. You'd agree with me that  
25 as of that date, the judgment that had been entered

1 by Judge Dandurand had become final?

2 A. That's my understanding.

3 Q. And that judgment as of that date  
4 ordered the immediate dismantling of the South Harper  
5 plant in the Peculiar substation; you understood  
6 that?

7 MR. SWEARENGEN: Objection, your Honor.  
8 The judgment speaks for itself.

9 MS. MARTIN: I think it goes to this  
10 witness's state of mind and her express determination  
11 or -- excuse me -- opinions with respect to the  
12 county's rejection of the SUP application on the 20th  
13 of January.

14 JUDGE PRIDGIN: I'll overrule. She can  
15 answer what, if anything, she knows about that  
16 judgment.

17 BY MS. MARTIN:

18 Q. Would you like me to repeat the  
19 question?

20 A. Please.

21 Q. You understood on January 20th of 2006  
22 that the trial court's judgment as of that date  
23 ordered the immediate dismantling of the South Harper  
24 plant and the Peculiar substation?

25 A. I had a vague, vague knowledge about



1     what the legal issues were, but I'm not an attorney.

2           Q.       And I understand you're not an attorney,  
3     but Ms. Dunn, you're the vice-president of  
4     communications, and you were speaking with the press  
5     with respect to the South Harper plant issues,  
6     weren't you?

7           A.       Yes.

8           Q.       And so you certainly knew that the  
9     judgment of the trial court that had become final as  
10    of January 20th, 2006, ordered the immediate  
11    dismantling of the plant and the substation; is that  
12    correct?

13          A.       I understood that there was the judgment  
14    there. I really didn't get involved in the legal  
15    side of things as far as when things were final. My  
16    work out there was with the community and then again  
17    talking to the press, but it wasn't based on  
18    decisions that I made and legal issues and timing of  
19    those legal issues.

20          Q.       And though I appreciate that, Ms. Dunn,  
21    again, I'm gonna ask if you could, for you to answer  
22    my direct question: Did you know on January the 20th  
23    of 2006, that Aquila was subject to a judgment which  
24    ordered the immediate dismantling of the plant and  
25    substation?

1           A.       I knew that there had been a judgment  
2 entered, and I also knew that we were able to  
3 continue building the plant and operating the plant,  
4 but I really don't recall knowing exactly when the  
5 dates were due and when the judgment was in effect  
6 and when the ability to continue operating the plant  
7 would be over. I just didn't know that.

8           Q.       Would you have any reason to dispute  
9 that the county was certainly aware on the 20th of  
10 January, 2006?

11                   MR. SWEARENGEN: Objection, your Honor.

12                   MS. MARTIN: I hadn't --

13                   MR. SWEARENGEN: How can she know what  
14 the county knows?

15                   JUDGE PRIDGIN: Sustained. You're  
16 asking her to speculate.

17 BY MS. MARTIN:

18           Q.       Ms. Dunn, you understood that the county  
19 had been required to secure an injunction in order to  
20 get some directive from Judge Dandurand about the  
21 ability to construct the plant and substation?

22                   MR. SWEARENGEN: Objection. Calls for a  
23 legal conclusion.

24                   MS. MARTIN: I'm asking what she  
25 understands, your Honor. And it goes to her state of

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1 mind. I find it ironic that Ms. Dunn has no  
2 knowledge or understanding of certain key principles  
3 in this case, yet she provides testimony in her  
4 direct and surrebuttal that address those very  
5 issues, and I think I'm entitled to test that  
6 knowledge.

7 JUDGE PRIDGIN: I'll overrule and she  
8 can answer to the extent that she knows.

9 MS. MARTIN: Thank you, your Honor.

10 BY MS. MARTIN:

11 Q. Ms. Dunn, you understood that the county  
12 had been required to secure an injunction in order to  
13 prevent Aquila from building the plant and substation  
14 without first complying with the county's land use  
15 regulatory scheme? You understood that?

16 MR. SWEARENGEN: Objection, calls for a  
17 legal conclusion.

18 MS. MARTIN: I'm asking what she  
19 understood.

20 JUDGE PRIDGIN: Overrule it. She can --  
21 if she doesn't know, she can say that she doesn't  
22 know.

23 THE WITNESS: I don't understand what  
24 the county believed it needed to do.

25 BY MS. MARTIN:

1           Q.       Okay.  Let's -- let's just come at this  
2   another way, Ms. Dunn, because you've provided some  
3   pretty specific testimony in your direct and  
4   surrebuttal that is critical of the county's  
5   treatment of your SUP application which was filed on  
6   the 20th of January.  And could I then safely assume  
7   based upon the responses that you're giving me now,  
8   that you did not have a clue or an understanding, a  
9   complete understanding on January the 20th of 2006,  
10  the state of affairs with respect to the trial  
11  court's judgment; would that be a fair statement?

12          A.       What I believe is a fair --

13          Q.       I'm asking you --

14          A.       No.

15          Q.       -- if that is correct.

16          A.       I do not believe that --

17          Q.       You understood some things about the  
18  state of affairs of the judgment; you just don't know  
19  if you understood everything; is that correct?

20          A.       I know I didn't understand everything.

21          Q.       But nonetheless, you have proceeded to  
22  provide testimony in this case criticizing the  
23  county's determination that it could not legally  
24  accept the special use permit application on January  
25  the 20th of 2006; is that correct?

1           A.       I don't believe that's correct.

2           Q.       Now, were you aware -- well, let me back  
3 up just a minute. In your surrebuttal testimony, you  
4 say that before you attempted to file this SUP  
5 application on January the 20th of 2006, you had a  
6 conversation with Gary Mallory on December 29th of  
7 2005. Do you recall that testimony?

8           A.       I do.

9           Q.       And, in fact, I think the circumstances  
10 of that discussion are pretty important for us to  
11 discuss for the record. In November of 2005, you had  
12 been invited by Mr. Mallory to serve as the vice-chair  
13 on Cass County's Economic Development Board; is that  
14 correct?

15          A.       Yes.

16          Q.       And you had been in conversations with  
17 Mr. Mallory of a cooperative nature to that point  
18 leading to his request that you serve in that  
19 capacity; is that correct?

20          A.       Yes.

21          Q.       You would not presume Mr. Mallory's  
22 request of you to be consistent with someone who  
23 bears animosity for Aquila, would you?

24          A.       I've never believed that Mr. Mallory had  
25 animosity towards me or Aquila.

1           Q.       And I would agree with you: The county  
2 does not have animosity towards you or Aquila. And I  
3 guess that was my point. Mr. Mallory developed and had  
4 a business relationship with Aquila that he believed  
5 warranted inviting you to sit as the vice-chair  
6 on the Economic Development Board; is that correct?

7           A.       Yes.

8           Q.       And you happened, then, to be in Cass  
9 County on the 29th of December of 2005, and after an  
10 Economic Development Board meeting, decided to speak  
11 with Mr. Mallory. Do you recall that?

12          A.       I went to his office with him.

13          Q.       And you spoke with Mr. Mallory at that  
14 time about the circumstances between Cass County and  
15 Aquila; is that correct?

16          A.       Yes.

17          Q.       Now, you did know at that time, December  
18 29th of 2005, that nine days earlier the Court of  
19 Appeals had handed down its decision affirming Judge  
20 Dandurand's judgment; you knew that, correct?

21          A.       Yes.

22          Q.       And you talked with Mr. Mallory about  
23 what could be done to resolve this situation. Do you  
24 remember that?

25          A.       Not in exactly those terms.

1           Q.       Generally, would that be a descriptor of  
2   the conversation that you had with Mr. Mallory on  
3   that date?

4           A.       Generally.

5           Q.       During this meeting you discussed with  
6   Mr. Mallory the community efforts that you felt had  
7   been undertaken by Aquila; is that correct?

8           A.       Yes.

9           Q.       And he was complimentary of those  
10  efforts, wasn't he?

11          A.       Yes, he was.

12          Q.       He was pleased to hear about the  
13  outreach to address concerns of citizens with respect  
14  to the plant's presence; is that correct?

15          A.       Yes.

16          Q.       But he also talked with you about the  
17  fact that the county and citizens were concerned that  
18  Aquila had never gone through the county's processes  
19  for land use regulation; is that correct?

20          A.       I don't remember him saying it in those  
21  terms.

22          Q.       But you understood that that was his  
23  concern?

24          A.       I understood that he wanted us to file  
25  for zoning.

1           Q.       And he told you that Aquila should stop  
2 all of its litigation with Cass County and consider  
3 applying through the county's land use process to get  
4 approval to build the plant; is that correct?

5           A.       That is correct.

6           Q.       Now, you've already told me you weren't  
7 that familiar with all the litigation issues involved  
8 between Aquila and Cass County; is that correct?

9           A.       Yes.

10          Q.       So you didn't appreciate when  
11 Mr. Mallory told you "all the litigation", that he  
12 was talking not only about the case with Judge  
13 Dandurand that had led to the Court of Appeals'  
14 decision, but also about a writ case that had been  
15 taken from proceedings before this commission, which  
16 we call the 0248 case. You didn't appreciate that?

17                   MR. SWEARENGEN: Well, objection, your  
18 Honor. How can she put herself in the mind of  
19 Mr. Mallory and know what he was thinking or meaning.

20                   JUDGE PRIDGIN: Sustained. She's asking  
21 her to speculate what Mr. Mallory thought.

22 BY MS. MARTIN:

23          Q.       Well, Ms. Dunn, let me ask the question  
24 this way: As you were having this conversation with  
25 Mr. Mallory on December 29th of 2005, how many pieces



1 of litigation were you aware of that the county had  
2 with Aquila at that moment?

3 A. I understood at that moment that we, the  
4 company, had a choice of trying to continue by going  
5 to the Supreme Court to get decisions made. I also  
6 understood that there was another issue before Judge  
7 Dandurand that involved the Missouri Public Service  
8 Commission that needed to be finalized.

9 Q. So you did know on December 29th, 2005,  
10 that there were two separate litigation matters  
11 between Aquila and Cass County at that time?

12 A. I didn't have specific knowledge of how  
13 we were involved in the writ case. I knew that that  
14 was an issue with the Missouri Public Service  
15 Commission that involved the South Harper plant.

16 Q. And you knew Aquila had joined as a  
17 party in that case, the writ case?

18 A. I didn't have all the details.

19 Q. But nonetheless, when Mr. Mallory said  
20 to you all of the litigation with Aquila needs to  
21 stop, and then you can file an SUP or rezoning  
22 application for the county to consider whether you  
23 can build this plant, you did understand that much?

24 A. What he said was, "We have to stop with  
25 all this litigation." And I said, "We will." And he

1 said, "And you should do the right thing and file for  
2 a zoning application." And I said, "We will. We  
3 want to work with you, and we'll do it."

4 Q. And I appreciate that, Ms. Dunn. And  
5 when Mr. Mallory said to you "You should do the right  
6 thing," you understood what he meant by that, did  
7 you?

8 A. I understood that he believed it was the  
9 right thing to file a zoning application.

10 Q. Because to that point, both the county  
11 and numerous citizens had expressed complaints that  
12 Aquila had never gone through the lawful process of  
13 the county to build this plant or the substation,  
14 correct?

15 A. That's correct.

16 Q. And you told him you agreed that Aquila  
17 should do the right thing; is that correct?

18 A. I didn't tell him that I agreed that  
19 Aquila should do the right thing. I told him, "I  
20 give you my word that we will stop with the litigation,  
21 and we will go through the zoning process."

22 Q. Now, Ms. Dunn, on January the 4th you  
23 went back to see Mr. Mallory a second time; is that  
24 correct?

25 A. Yes.

1           Q.       And at this point were you aware that  
2   the time for Aquila to appeal to the Supreme Court  
3   the determination of the Court of Appeals was set to  
4   expire? Did you understand that?

5           A.       Absolutely.

6           Q.       And you told Mr. Mallory that Aquila had  
7   made the decision that it would not pursue any  
8   further appeal of Judge Dandurand's judgment; is that  
9   correct?

10          A.       The reason that I went to see him on  
11   that day, if I could answer your question, was to  
12   take him a copy of a press release that I was gonna  
13   issue that afternoon.

14          Q.       And we're gonna talk about that press  
15   release, and I appreciate that. But I'm asking, did  
16   you tell him during this meeting that Aquila had  
17   determined it was not going to further appeal the  
18   Court of Appeals' determination affirming Judge  
19   Dandurand's judgment?

20          A.       What I went to tell him and what I told  
21   him was, "Here's this press release that I'm going to  
22   issue later today. I told you that I would give you  
23   my word that we were going to stop with all the  
24   litigation and that we would go through the  
25   application process as you wanted us to."

1           Q.       That's all you remember about your  
2 conversation with him on that date?

3           A.       He looked at the press release and he  
4 said that was fine. We talked about it not being the  
5 preapproved process where I shouldn't believe that  
6 the county had already predetermined our application.

7                   Gary Mallory and I have what I believe  
8 is a good working relationship, and when we talk, we  
9 talk like we're having a conversation. We don't  
10 really talk about very specific legal issues.

11          Q.       Because neither one of you are  
12 attorneys; is that correct?

13          A.       Right.

14          Q.       But you would describe your relationship  
15 with Mr. Mallory, who is the presiding commissioner  
16 of Cass County, as a good working relationship; is  
17 that correct?

18          A.       I do.

19          Q.       And you've never sensed in any of your  
20 discussions with him any animosity toward Aquila  
21 whatsoever; is that correct?

22          A.       No.

23          Q.       You've never sensed any determination  
24 from Mr. Mallory directly to you, Ms. Dunn,  
25 indicating that the county had predisposed whether it

1 would or would not approve a land use application  
2 involving the plant or the substation; is that  
3 correct?

4 A. I didn't have a sense of that from my  
5 discussions with Gary Mallory.

6 Q. Now, you made mention of a press  
7 release. And if we could, I'd like to offer a copy  
8 of that into evidence. Can we do that?

9 A. Yes.

10 MS. MARTIN: And I believe we're up to  
11 No. 86.

12 (EXHIBIT NO. 86 WAS MARKED FOR  
13 IDENTIFICATION BY THE COURT REPORTER.)  
14 BY MS. MARTIN:

15 Q. Before we talk about this press release,  
16 Ms. Dunn, I want to ask you one other question. You  
17 also mentioned in your surrebuttal that in this  
18 conversation with Mr. Mallory, Mr. Mallory told you  
19 he was glad to hear that Aquila was dropping the  
20 litigation involving Judge Dandurand's judgment, and  
21 that the county would do whatever the judge told them  
22 to do. Do you recall him telling you that?

23 A. Yes.

24 Q. And again, did you have an understanding  
25 on January the 4th of 2006, that at that moment in

1 time, what the judge had ordered was the immediate  
2 dismantling of the plant and the substation. Did you  
3 know that?

4 A. Yes.

5 Q. And you understood that that was an  
6 order from a court of law, not from the county; you  
7 understood that?

8 A. Right.

9 Q. And so at that moment in time, what the  
10 judge had ordered be done and for the parties to  
11 follow, was a dismantling of the plant and the  
12 substation; you understood that?

13 A. That wasn't really my understanding in  
14 my conversation with Gary Mallory.

15 Q. Well, Mr. Mallory is not Judge  
16 Dandurand; is that correct?

17 A. That's correct.

18 Q. What Judge Dandurand had said as of that  
19 date you've testified you understood; is that  
20 correct?

21 A. Yes.

22 Q. Now, let's take a look if we could at  
23 this press release which has been marked as Exhibit  
24 86.

25 Has that been handed to the witness,

1 Madam court reporter?

2 What role, Ms. Dunn, did you play in  
3 drafting this press release?

4 A. The way it typically works in the  
5 company is I may start the press release, and then it  
6 goes around for comments, and it involves legal  
7 issues. It's reviewed by our attorneys. If it  
8 involves a particular project within a state, then  
9 the press release goes to the individuals involved in  
10 the projects for comment.

11 Q. And was that the process followed with  
12 respect to the press release marked as Exhibit 86?

13 A. I believe so. I don't know specifically  
14 who would have looked at it, but it would have gone  
15 through a review process.

16 Q. Do you know if it was reviewed by  
17 Aquila's attorneys?

18 A. I believe so, yes.

19 Q. Would that include general counsel for  
20 Aquila, Chris Reitz?

21 A. Yes.

22 Q. And am I pronouncing that correctly?

23 A. Reitz.

24 Q. Reitz. Excuse me. R-e-i-t-z, correct?

25 A. (Nodded head.)

1           Q.       Thank you.  You do recall that Mr. Reitz  
2       would have reviewed this press release prior to it  
3       being provided to Mr. Mallory?

4           A.       Yes.

5           Q.       Now, let's take a look at the first  
6       paragraph if we could.  The press release starts  
7       that, "Aquila announced today that in keeping with a  
8       December 20, 2005 ruling from the Missouri Court of  
9       Appeals, it will file an application for a special  
10      use permit for its South Harper peaking facility in  
11      Cass County, Missouri."  Did I read that correctly?

12          A.       Yes.

13          Q.       The next paragraph actually provides  
14      quotations from you; is that correct, Ms. Dunn?

15          A.       Yes.

16          Q.       And you tell whoever it is that might be  
17      reading this published story, "The Court has defined  
18      paths for us to pursue, and we will comply with its  
19      order."  Did I read your quote correctly?

20          A.       Yes.

21          Q.       You use the word "paths" in the plural;  
22      is that correct?

23          A.       Yes.

24          Q.       And you understood the two paths that  
25      you were referring to, to be a path that would have



1     you applying for land use approval from the county,  
2     and a second path that would have Aquila applying for  
3     a Certificate of Need from the Public Service  
4     Commission; is that correct?

5             A.       Yes.

6             Q.       You go on in paragraph 3, and I presume  
7     this is your quote continuing here?

8             A.       Yes.

9             Q.       And it says, "Having accepted the order,  
10    we will apply to Cass County for approval." Did I  
11    read that complete -- or correctly?

12            A.       Yes.

13                    MS. MARTIN: I move admission of Exhibit  
14    86.

15                    JUDGE PRIDGIN: Any objections?

16                    (NO RESPONSE.)

17                    JUDGE PRIDGIN: Hearing none, Exhibit 86  
18    is admitted.

19                    (EXHIBIT NO. 86 WAS RECEIVED INTO  
20    EVIDENCE AND MADE A PART OF THE RECORD.)

21    BY MS. MARTIN:

22             Q.       Go ahead and hold on to that exhibit for  
23    just a minute, Ms. Dunn. I want to ask you a  
24    question. Can you tell me where, if at all in that  
25    press release, anything is said about getting relief

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1 from Judge Dandurand's order to immediately dismantle  
2 the plant or substation?

3 MR. SWEARENGEN: Your Honor, I'm gonna  
4 object. I think the document speaks for itself, and  
5 I don't even think that question is relevant.

6 MS. MARTIN: I think it's very relevant.  
7 It goes to the issue of what Aquila's intentions were  
8 at that time and what the county's expectations were  
9 at that time. And that's the precise subject matter  
10 of her testimony.

11 JUDGE PRIDGIN: I'll overrule.

12 THE WITNESS: Could you repeat the  
13 question?

14 BY MS. MARTIN:

15 Q. Let me rephrase it for you. Did Aquila  
16 make any statement whatsoever in this press release  
17 about its intentions one way or the other to secure  
18 additional time from Judge Dandurand, given his order  
19 that the plant and substation be immediately  
20 dismantled?

21 A. It's not in the press release.

22 Q. Now, you mentioned that you left this  
23 press release for Mr. Mallory to review; is that  
24 correct?

25 A. I didn't leave it with him. I sat with

1 him as he reviewed it and I took it back.

2 Q. Would it surprise you that Mr. Mallory  
3 recalls that you left a copy of it with him and asked  
4 him to review it and give you comments if he had any?

5 A. That would surprise me. I went over and  
6 I showed it to him. He read it. I sat with him in  
7 his office, and I don't remember leaving it with him.

8 Q. Is it possible that you did as he  
9 recalls and actually has a copy of this press release  
10 that you left with him on that day?

11 A. I -- I don't remember that.

12 Q. In any case, you do recall the next day  
13 that you received a letter from Gary Mallory, is that  
14 correct, and that would have been January the 5th of  
15 2006?

16 A. I recall that.

17 Q. Now, that letter is actually attached to  
18 your surrebuttal testimony as Schedule NFD-2; is that  
19 correct?

20 A. Yes.

21 Q. Do you have that in front of you?

22 MS. MARTIN: And your Honor, this just  
23 shows my ignorance of commission proceedings, but is  
24 that exhibit available for all the commissioners to  
25 contemporaneously review while I'm exploring this

1 with the witness? Because I do have copies if  
2 necessary.

3 JUDGE PRIDGIN: Yes, it is.

4 MS. MARTIN: Okay. Thank you.

5 MR. SWEARENGEN: Excuse me. For  
6 clarification, what schedule are we looking at?

7 MS. MARTIN: NFD-2.

8 MR. SWEARENGEN: NFD-2, Norma Dunn's --

9 MS. MARTIN: -- surrebuttal.

10 BY MS. MARTIN:

11 Q. The letter from Mr. Mallory came to you  
12 with a fax cover sheet; is that correct?

13 A. Yes.

14 Q. And Mr. Mallory says, "Norma, info  
15 regarding discussions we recently had. Any  
16 questions, please call. Gary."

17 A. Correct.

18 Q. And attached, then, to the fax cover  
19 sheet is a letter from Mr. Mallory dated January 5th,  
20 2006, and he has, then, attached to his letter a  
21 letter dated August the 16th, 2005, from me to  
22 Christopher Reitz; is that correct?

23 A. Yes.

24 Q. Now, I want to ask you, if I can, a  
25 question with respect to Mr. Mallory's January 5th,

1 2006 letter. You see in the second paragraph of his  
2 letter that he references the attached August 16th,  
3 2005 letter; is that correct?

4 A. Yes.

5 Q. And in referencing that letter, he  
6 specifically notes -- and I'm looking now, Ms. Dunn,  
7 at the last sentence of the second paragraph of the  
8 January 5th letter. He specifically notes that the  
9 August 16th, 2005 letter, advised of the county's  
10 view with respect to Aquila's obligation to comply  
11 with Judge Dandurand's judgment entered January 11,  
12 2005, if the appeal were dropped or otherwise  
13 completed. You see that?

14 A. I see that.

15 Q. And Mr. Mallory had never said anything  
16 contrary to that in his conversations with you on the  
17 29th of December, 2005, or on January the 4th, 2006;  
18 is that correct?

19 A. Mr. Mallory never discussed this at all.

20 Q. Now, in the August 16th letter, which is  
21 attached as an exhibit, if you could turn to that.

22 A. (Witness complied.)

23 Q. And in particular, Ms. Dunn, I'm looking  
24 at the first paragraph of the August 16th letter,  
25 2005. Do you have that in front of you?

1           A.       I do.

2           Q.       And do you see about halfway down  
3 through that first paragraph a phrase that begins, "I  
4 advised that the county would and could not make  
5 advanced deals with respect to rezoning  
6 applications." Do you see that?

7           A.       I do.

8           Q.       And do you see that the letter goes on  
9 to state that, "Aquila has the right, as would any  
10 applicant, to attempt to secure rezoning for proposed  
11 developments, but my earlier letter referring to one  
12 in July of that same year did not suggest an  
13 agreement to allow Aquila to file a rezoning or  
14 special use permit application while Aquila's appeal  
15 is pending or as a means of remedying Aquila's  
16 current zoning violations, remediation of which is  
17 controlled by the Court's judgment." Do you see that  
18 reference?

19          A.       I see.

20          Q.       Now, Mr. Mallory had never said anything  
21 to you in his meeting on the 29th of December, 2004,  
22 or in the meeting on January the 4th, 2005,  
23 inconsistent with that; is that correct?

24          A.       That's correct.

25          Q.       Now --

1           A.       He never mentioned it either way.

2           Q.       The fact is that the August 16th, 2005  
3 letter goes on on the next page, and in the second  
4 paragraph on page 2, there is specific discussion  
5 about the fact that if Aquila attempts to file for  
6 rezoning or a special use permit while litigation is  
7 still pending, the county will not be able to accept  
8 or entertain the application. Do you see that  
9 discussion?

10          A.       I see it.

11          Q.       And in the fourth paragraph on that same  
12 page, you see in the second sentence of the fourth  
13 paragraph which begins, "The county's position"? The  
14 statement that, "The county's position has throughout  
15 this ordeal remained 100 percent consistent. It has  
16 always expected Aquila to follow the law." Do you  
17 see that reference?

18          A.       I see it.

19          Q.       And the paragraph goes on to describe  
20 how in the first instance, that would have required  
21 Aquila to secure rezoning for the plant and  
22 substation, but having failed to do that, following  
23 the law now means complying with the judgment. Do  
24 you see that discussion?

25          A.       I see it.

1           Q.       Back to Mr. Mallory's letter of January  
2   the 5th, 2006, to which this August 16th, 2005 letter  
3   was attached. Mr. Mallory in the second paragraph on  
4   the first page of his letter discusses and reminds  
5   you, Ms. Dunn, of the writ case that had been taken  
6   from this commission's 0248 proceedings. Do you see  
7   his reference to that there?

8           A.       I see it.

9           Q.       And he tells you that that is also  
10   litigation which challenges the county's land use  
11   regulatory authority which must be resolved before  
12   the county feels it can accept an application to  
13   rezone or to issue a special use permit with respect  
14   to construction of a plant or substation. Do you see  
15   that?

16          A.       I see that that's what it says in this  
17   letter.

18          Q.       Between January the 5th, 2006, when you  
19   received Mr. Mallory's letter, and January the 20th,  
20   2006, when you showed up at the Cass County offices  
21   to file or attempt to file an SUP application for the  
22   plant and substation, did you have any other  
23   conversations with Gary Mallory with respect to these  
24   issues?

25          A.       I don't believe so.



1 Q. Did you receive any other --

2 A. Oh, I'm sorry. I did. I did. I did  
3 have conversations with him. When Gary Mallory and I  
4 had discussions, he did not sound like this letter  
5 sounds that he signed. This sounds like a legal  
6 letter written by attorneys.

7 When I received this letter and his  
8 handwritten note is on the front that says, "Call me  
9 if you have any questions," I did call him, and I  
10 told him that everything that he and I had discussed,  
11 me giving him my word that we were gonna file, that  
12 we were gonna stop all of the litigation, I told him  
13 that I meant that, and he said he appreciated that.

14 So the conversations that Gary Mallory  
15 and I had and this letter do not sound like the same  
16 person.

17 Q. Well, the fact is, Mr. Mallory had told  
18 you that the county would do what the judge directed,  
19 correct?

20 A. Yes.

21 Q. And Mr. Mallory had told you that the  
22 county could not accept an application for SUP or  
23 rezoning until all of the litigation had been  
24 resolved or ended; is that correct?

25 A. Gary Mallory never told me that they

1     could not accept our application. From the summer  
2     when your letter came to Chris Reitz to this letter  
3     here that we're talking about now, I believed that  
4     Gary Mallory and I had a good working relationship  
5     and that we were gonna work through these issues. He  
6     told me he was confident that we could work through  
7     these issues.

8           Q.     In your direct and surrebuttal  
9     testimony -- excuse me, in your surrebuttal  
10    testimony, you attribute to Mr. Mallory the  
11    statement, that "End all the litigation, and then we  
12    can talk about considering an application"; is that  
13    correct?

14          A.     Nope, that is not what he said. He  
15    said, "We have got to stop all this litigation. You  
16    need to do the right thing and file."

17          Q.     All right. And you --

18          A.     He never told me that they would not  
19    accept our application until everything was resolved.

20          Q.     But certainly one could have interpreted  
21    Mr. Mallory's statement to you to be consistent with  
22    the letter, that the litigation had to stop and then  
23    the application could be considered. That's not  
24    inconsistent, is it, Ms. Dunn?

25          A.     That part that you're saying, and then

1 we could proceed with the application is not correct.  
2 We -- we discussed that we still had to go back to  
3 Judge Dandurand, and I agreed with that. That didn't  
4 mean that he would not accept the application.

5 Q. Well, this is the first I've heard that  
6 you talked with Gary Mallory about needing to go back  
7 to Judge Dandurand.

8 A. Right.

9 Q. And now you're telling me that you did  
10 discuss with Mr. Mallory that before anything could  
11 be done with respect to an SUP or a rezoning  
12 application, Aquila would have to get some relief  
13 from Judge Dandurand to the order to immediately  
14 dismantle the plant and the substation.

15 MR. SWEARENGEN: Objection. She's  
16 totally mischaracterized the witness's testimony,  
17 totally mischaracterized it.

18 JUDGE PRIDGIN: I'll sustain it. If you  
19 could reask the question.

20 MS. MARTIN: I'll be happy to.

21 BY MS. MARTIN:

22 Q. Now you're telling me that you did have  
23 conversations with Mr. Mallory about needing to go  
24 back to get additional time from Judge Dandurand; is  
25 that correct?

1           A.       We talked about the issue before Judge  
2 Dandurand and that that needed to be resolved. I  
3 said I understood that perfectly, which I did.

4           Q.       And you --

5           A.       We never said before anything could be  
6 done.

7           Q.       Mr. Mallory and you discussed the issue  
8 before Judge Dandurand, and the issue before Judge  
9 Dandurand was an order that at that moment demanded  
10 the immediate dismantling of the plant and the  
11 substation; is that correct?

12                   MR. SWEARENGEN: Objection. That calls  
13 for a legal conclusion.

14                   MS. MARTIN: It calls for her  
15 understanding of the issue that was being discussed,  
16 your Honor. I think it's fair inquiry.

17                   JUDGE PRIDGIN: I'll overrule. And  
18 again, she can answer to the extent that she knows,  
19 and if she doesn't know, she can say so.

20                   THE WITNESS: Please repeat the  
21 question.

22 BY MS. MARTIN:

23           Q.       The issue before Judge Dandurand at this  
24 time that you were discussing with Mr. Mallory was  
25 that the order from Judge Dandurand at that moment

1 demanded the immediate dismantling of the plant and  
2 substation; is that correct?

3 MR. SWEARENGEN: And that mischaracterizes  
4 her testimony. Objection on that basis.

5 MS. MARTIN: I'm asking her if that was  
6 the issue. I'm not characterizing testimony, your  
7 Honor.

8 JUDGE PRIDGIN: I'll overrule.

9 THE WITNESS: Please repeat the  
10 question.

11 BY MS. MARTIN:

12 Q. I will be happy to for the third time.  
13 The issue that you were discussing with Mr. Mallory  
14 that involved Judge Dandurand's judgment was that the  
15 judgment at that moment demanded immediate  
16 dismantling of the plant and substation; is that  
17 correct?

18 A. What we discussed was -- and it was in  
19 very general terms, we have to go back before Judge  
20 Dandurand, and he said yes, we do. I mean, we didn't  
21 discuss specifics. I've already said that the writ  
22 case was with the Missouri Public Service Commission.  
23 I just don't have more information to give you than  
24 that.

25 Q. Ms. Dunn, you said that you said to

1 Mr. Mallory, "We have to go back to Judge Dandurand."

2 A. Yes.

3 Q. And when you said that to Mr. Mallory,  
4 you meant -- or did you mean, we, Aquila, have to go  
5 back and see if the judge will give us more time  
6 before we have to tear down this plant and  
7 substation. Is that what you meant?

8 A. That's my understanding.

9 Q. And Mr. Mallory agreed that Aquila  
10 needed to get that relief before anything further  
11 could be done; is that correct?

12 A. I don't believe that.

13 Q. Mr. Mallory agreed that that relief had  
14 to be secured.

15 A. Mr. Mallory never indicated you, Aquila,  
16 need to go back before Judge Dandurand. When I say  
17 we, it was he and I needed to go back.

18 Q. Ms. Dunn, were there meetings amongst  
19 Aquila representatives between January 5th and  
20 2000 -- excuse me, January 5th, 2006, and the  
21 decision to attempt to file the SUP application on  
22 January the 20th, 2006, relating to that attempted  
23 filing?

24 A. We had meetings and we had teams working  
25 on putting the applications together. We -- when --

1    when Gary Mallory and I talked and I told him that we  
2    would file, we worked on those applications for many,  
3    many hours. A lot of people put a tremendous amount  
4    of effort into them.

5           Q.       And you showed up at the Cass County  
6    offices on January the 20th after receiving this  
7    letter from Mr. Mallory on January the 5th of 2006,  
8    and you didn't call Mr. Mallory first to tell him you  
9    were coming, did you?

10          A.       We called actually --

11          Q.       I asked, did you call Mr. Mallory to let  
12   him know that you were coming?

13          A.       I did not call Gary Mallory.

14          Q.       Do you know if anyone for Aquila called  
15   Debra Moore, Cass County counselor, to let her know  
16   that you were coming?

17          A.       Our zoning counsel went to the zoning  
18   office about a week before we filed. We needed  
19   information on what size the exhibits needed to be,  
20   how many copies of applications we needed, and it's  
21   my understanding that he spoke to Debra Moore.

22          Q.       Is it your testimony, Ms. Dunn -- and  
23   you're talking about Ed Clemmons; is that right?

24          A.       I am.

25          Q.       Is it your testimony that Ed Clemmons

1 called Debra Moore on January the 20th and told her  
2 you were on your way with an application for an SUP  
3 for the plant and substation?

4 A. I'm not saying that at all.

5 Q. And do you know if anyone for Aquila  
6 contacted me to let me know that Aquila was  
7 attempting to file on that date, the 20th of January,  
8 an application for special use permit for the plant  
9 or substation?

10 A. I never believed we had to call you or  
11 Debra Moore about it.

12 Q. And I'm not asking whether you believed  
13 you had to, but given the correspondence that had  
14 changed hands to that point, I'm simply asking if  
15 anyone had to your knowledge?

16 A. I don't believe so.

17 Q. Now, at the time you showed up on  
18 January 20th to file this special use permit  
19 application, or attempt to, you were aware, were you  
20 not, that Aquila had filed a motion with Judge  
21 Dandurand asking for more time before the plant would  
22 have to be dismantled, correct?

23 A. Yes.

24 Q. And you were aware that that motion was  
25 set for hearing on January the 27th of 2006; is that



1 correct?

2 A. I don't believe I knew that part of it  
3 at that time.

4 Q. You did know that as of January 20th,  
5 2006, that motion had not been ruled one way or the  
6 other. You knew that, didn't you?

7 A. I knew we hadn't gone before Judge  
8 Dandurand.

9 Q. And so you knew at that point the judge  
10 had not granted Aquila any relief with respect to the  
11 immediate obligation to tear down the plant and  
12 substation; is that correct?

13 A. That's correct.

14 Q. And didn't it occur to Aquila that it  
15 might make more sense to wait a mere seven days to  
16 attempt to file this special use permit application  
17 for the plant and substation until it knew whether  
18 Judge Dandurand was going to give it additional time  
19 before having to dismantle the plant and substation?

20 A. I had no knowledge that one was  
21 dependent on the other. What I tried to do -- and I  
22 didn't just show up. We actually called the day  
23 before to say that I was on my way and I didn't make  
24 it in time. I was five minutes late. They told me  
25 they would not wait for me, so I went the next

1 morning. And actually the zoning office was waiting  
2 for me. Because when I walked in, the woman that was  
3 there, I asked for Darrell -- I can't remember his  
4 last name. He's the director of zoning. I asked for  
5 him and was told he wasn't in, and then the woman  
6 said, "Are you with Aquila?" And I said, "Yes." And  
7 she said, "Well, just wait a minute because I have to  
8 call Debra Moore."

9 Q. And I understand that. And I understand  
10 that you tried to go out on the 19th. And we're  
11 gonna talk about that in just a moment too. But my  
12 question of you was, did you know of any  
13 conversations with any management at Aquila where the  
14 discussion was that it might make more sense, given  
15 the correspondence that had been presented by the  
16 county to Aquila, to wait to see seven more days  
17 whether Judge Dandurand would be willing to give  
18 Aquila additional time before being required to  
19 dismantle the plant and substation?

20 MR. SWEARENGEN: Objection. She's  
21 already answered she didn't believe in her mind that  
22 one depended on the other.

23 JUDGE PRIDGIN: Sustained.

24 BY MS. MARTIN:

25 Q. Ms. Dunn, you were aware as you

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1 mentioned that Mr. Clemmons had been retained by  
2 Aquila to handle matters involving the SUP and a  
3 rezoning application; is that correct?

4 A. Yes.

5 Q. I'm gonna hand you what is a letter  
6 dated January the 12th of 2006 from Christopher Reitz  
7 to myself and Debra Moore if I can.

8 (EXHIBIT NO. 87 WAS MARKED FOR  
9 IDENTIFICATION BY THE COURT REPORTER.)

10 JUDGE PRIDGIN: For the record, is this  
11 87?

12 MS. MARTIN: Yes, your Honor.

13 JUDGE PRIDGIN: Thank you.

14 BY MS. MARTIN:

15 Q. Do you have Exhibit 87 in front of you,  
16 Ms. Dunn?

17 A. I do.

18 Q. And that is a letter dated January 12th,  
19 2006, from Christopher Reitz to myself and Debra  
20 Moore; is that correct?

21 A. Yes.

22 Q. And Mr. Reitz is the general counsel for  
23 Aquila; is that correct?

24 A. Yes.

25 Q. And if you could turn, please, to the

1 last page -- or excuse me, the second page of this  
2 letter, the final paragraph on that page. And do you  
3 remember in the January 5th letter from Mr. Mallory,  
4 one of the things he had asked of Aquila was to let  
5 the county know who the various lawyers were handling  
6 different matters for Aquila in connection with this  
7 situation; is that correct?

8 A. Yes.

9 Q. And in this paragraph Mr. Reitz is  
10 responding to the request for that information; is  
11 that correct?

12 A. Yes.

13 Q. And do you see that Mr. Reitz advises  
14 the county that Ed Clemmons will handle the special  
15 use permit? Do you see that?

16 A. I do.

17 Q. Your name's not mentioned, is it?

18 A. No.

19 Q. And are you aware, Ms. Moore (sic), that  
20 during the times when Mr. Clemmons was in the Cass  
21 County counselor's office or in the Cass County  
22 offices --

23 A. I'm sorry to interrupt. I stopped  
24 listening because you called me Ms. Moore.

25 Q. Did I really?

1           A.       I didn't hear the rest of it.

2           Q.       I appreciate you correcting me. See,  
3   you're paying good attention, and I appreciate that,  
4   Ms. Dunn. Thank you very much for correcting me.  
5   That was a test and you passed. You did great.

6                   Ms. Dunn, were you aware that during the  
7   times that Mr. Clemmons was actually out at the Cass  
8   County offices in an effort to secure information  
9   about preparing a special use permit application,  
10   that he met with Ms. Moore?

11          A.       It's my understanding.

12          Q.       And you're aware -- or are you aware  
13   that during those times, Ms. Moore specifically  
14   advised Mr. Clemmons that until all the litigation  
15   with Aquila had been resolved or ended, the county  
16   could not process an SUP or rezoning application?  
17   Did you know that?

18          A.       No.

19          Q.       Were you aware that after you, Ms. Dunn,  
20   attempted to submit the SUP application for the plant  
21   and substation on January 20th, that Ms. Moore called  
22   Mr. Clemmons? Were you aware of that?

23          A.       Yes.

24          Q.       And did you know that Mr. Clemmons  
25   advised Ms. Moore that he had no idea that you were

1 going to be showing up on either the 19th or the 20th  
2 of January to present an SUP application for the  
3 plant and substation? Did you know that?

4 A. I recall hearing that.

5 Q. Yet Mr. Clemmons was the lawyer Aquila  
6 had retained to handle these matters; is that  
7 correct?

8 A. That is correct.

9 Q. Now, with respect to this January 12th,  
10 2006 letter from Mr. Reitz, I want to pay attention  
11 if we could to the first paragraph. Mr. Reitz is  
12 enclosing a copy of the motion that was being filed  
13 that same day asking the judge to give Aquila more  
14 time before it would have to tear down the plant and  
15 the substation; is that correct?

16 A. I need to read that.

17 Q. Please do. I'm sorry. You've read the  
18 first paragraph?

19 A. Yes.

20 Q. And you understand Mr. Reitz was  
21 attaching a copy of the motion being filed that day,  
22 January 12th, 2006, requesting Judge Dandurand  
23 provide more time before Aquila would be required to  
24 tear down the plant and substation; is that correct?

25 A. Yes.

1           Q.       And do you see in the second sentence of  
2   the first paragraph that as of January 12th, 2006,  
3   quote, we understand the county has not prejudged  
4   whether it believes the plant should ultimately be  
5   permitted to operate. Do you see that statement?

6           A.       I see it.

7           Q.       Was Mr. Reitz being sincere, to your  
8   knowledge?

9           A.       I believe so.

10          Q.       And Mr. Reitz goes on to say, "Rather,  
11   the county has simply sought from the beginning to  
12   review the matter." Did I quote that correctly?

13          A.       Yes.

14          Q.       To your knowledge, was Mr. Reitz being  
15   sincere?

16          A.       I believe so.

17          Q.       And do you understand, Ms. Dunn, that as  
18   we're here today in these proceedings before the  
19   commission, the county still simply seeks the right  
20   to review the matter with respect to construction of  
21   the South Harper plant and the Peculiar substation?

22          A.       To a certain extent.

23                   MS. MARTIN: I move admission of Exhibit  
24   87.

25                   JUDGE PRIDGIN: Any objections?

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1 (NO RESPONSE.)

2 JUDGE PRIDGIN: Hearing none, Exhibit 87

3 is admitted.

4 (EXHIBIT NO. 87 WAS RECEIVED INTO

5 EVIDENCE AND MADE A PART OF THE RECORD.)

6 BY MS. MARTIN:

7 Q. In that same letter, Ms. Dunn, if you  
8 could turn to line 4 of the same paragraph we were  
9 just referring to. Mr. Reitz tells the county,  
10 "Because the grant of our motion will provide the  
11 county that opportunity, we are hopeful that you will  
12 support this with the judge." Do you see that  
13 sentence?

14 A. I do.

15 Q. And Mr. Reitz, to your knowledge, was  
16 advising that Aquila understood that Aquila first  
17 needed to get time from Judge Dandurand before the  
18 county would really have an opportunity to consider  
19 an SUP for the plant and substation; is that correct?

20 A. I --

21 MR. SWEARENGEN: Your Honor, let me  
22 object to that. I think the letter speaks for  
23 itself, one. And two, I don't know how she can put  
24 herself in the mind of Mr. Reitz when he wrote that  
25 letter and what he intended, other than what he says



1 in the letter itself.

2 MS. MARTIN: I think I'm asking -- and  
3 I'll rephrase if I need to make it clear, her  
4 understanding, your Honor.

5 JUDGE PRIDGIN: Okay. I'll sustain and  
6 you can reask the question.

7 BY MS. MARTIN:

8 Q. Ms. Dunn, did you understand that  
9 general counsel for Aquila believed the motion to get  
10 more time from Judge Dandurand needed to be granted  
11 to provide the county the opportunity to evaluate an  
12 SUP or rezoning application for the plant and  
13 substation?

14 MR. SWEARENGEN: And once again, I don't  
15 know how she could have an understanding of any kind  
16 as to what someone else believed. Objection.

17 MS. MARTIN: I'm just asking what she  
18 understood. It goes to her testimony and the  
19 opinions that she's drawn with respect to the  
20 county's position, your Honor.

21 MR. SWEARENGEN: She asked what she  
22 understood someone else believed, and I think that's  
23 not a proper question, and I object on that basis.

24 JUDGE PRIDGIN: I'll overrule again. If  
25 she knows what somebody else believed, she can answer

1 it, and if she does not, she can say that she doesn't  
2 know.

3 THE WITNESS: I don't know what he  
4 believed.

5 BY MS. MARTIN:

6 Q. Were you, Ms. Dunn, relying on general  
7 counsel for Aquila to provide the legal view with  
8 respect to the timing between granting of the motion  
9 for more time from Judge Dandurand and the county's  
10 ability to have an opportunity to review an SUP  
11 application for the plant and substation?

12 A. I don't think I understand your  
13 question.

14 Q. You did not independently have an  
15 opinion legally about the needed connection between a  
16 grant of more time from Judge Dandurand and the  
17 county having an opportunity to review an SUP for the  
18 plant or substation; is that correct?

19 A. I did not have a legal opinion.

20 Q. And so you would have been relying on  
21 Mr. Reitz who, as general counsel for Aquila,  
22 expressed a view with respect to that subject in this  
23 letter; is that correct?

24 A. I leave legal matters up to Chris Reitz.

25 Q. Now, one interesting thing in

1 Mr. Reitz's letter that I noted, in the last  
2 paragraph on page 3, Mr. Reitz says, "Debbie and  
3 Cindy, Aquila has spent months preparing for the  
4 opportunity to present its case to the County  
5 Commission." And he goes on and he says, "Our  
6 application for a special use permit has been  
7 completed and is ready to be filed." Do you see  
8 that?

9 A. I do.

10 Q. Was Mr. Reitz being sincere?

11 A. I believe he's always sincere.

12 Q. And so as of January the 12th, 2006, the  
13 application was completed and ready to be filed; is  
14 that correct?

15 A. That's what it says.

16 Q. But it wasn't filed on January the 12th;  
17 is that correct?

18 A. That is correct.

19 Q. Or the 13th?

20 A. It was filed on the -- attempted to be  
21 filed on the 20th.

22 Q. It wasn't filed on any of the  
23 intervening days or attempted to be filed on any of  
24 the intervening days until the 19th of January; is  
25 that correct? You already testified you showed up at

1 Cass County's offices at 4:35 on January the 19th in  
2 an attempt to file the SUP application; is that  
3 correct?

4 A. That's correct.

5 Q. And you knew from Mr. Reitz's letter and  
6 from the earlier correspondence that the county had  
7 identified preconditions to its ability to entertain  
8 an SUP application; is that correct?

9 A. I don't know that I knew all of that at  
10 the time.

11 Q. But Mr. Reitz did, didn't he?

12 A. I'm assuming that he did.

13 Q. What happened, Ms. Dunn, on January the  
14 19th, 2005, that prompted Aquila, instead of waiting  
15 until, in fact, it had gotten more time from Judge  
16 Dandurand, to try to file this application at 4:35 in  
17 the afternoon? Do you know?

18 A. We had a team of people working on the  
19 application, different parts of it, and we needed to  
20 submit 15 copies. And there were actually two  
21 applications: One for the substation and one for the  
22 actual plant. And we were making copies and putting  
23 binders together, and we finished that process at  
24 about 3:30 on the 19th.

25 I wanted to get them filed as soon as we

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1     could, and so I had my assistant call and tell them  
2     that I was on my way.

3             Q.       Well, Mr. Reitz said the application was  
4     ready on the 12th of January.

5             A.       Well, the application may have been  
6     ready, but it didn't include 15 sets of two separate  
7     applications with exhibits that are specific sizes  
8     that are required and copies of everything. That  
9     part of it was not ready.

10            Q.       And isn't it true that on January the  
11    19th, the same day that you attempted to file the  
12    application, that's the day the county filed its  
13    opposition to the motion for more time in front of  
14    Judge Dandurand? Are you aware of that?

15            A.       No.

16            Q.       Did you talk with Chris Reitz or anybody  
17    else from a legal perspective on Aquila's behalf  
18    before you attempted to file that SUP application on  
19    January the 19th and then again on the 20th?

20            A.       Um --

21            Q.       It's a simple question, Ms. Dunn. Did  
22    you speak with any counsel on behalf of Aquila before  
23    attempting to file the SUP application on January 19th  
24    or 20th?

25            A.       I may have called them and said, "I'm on

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1 my way." I mean, I didn't sit down to discuss  
2 strategy. My objective was to get the applications  
3 completed, all of the copies made, the binders put  
4 together, boxed up, put in my car to take out to Cass  
5 County.

6 Q. And so it's possible, isn't it, Ms. Dunn,  
7 that you simply hadn't coordinated with counsel for  
8 Aquila, including Mr. Reitz, who had anticipated that  
9 time needed to be secured from Judge Dandurand before  
10 the application was filed? Is that a possibility?

11 MR. SWEARENGEN: Objection, your Honor.  
12 Once again, she can't put herself in the mind of  
13 Mr. Reitz as to what he may or may not have  
14 anticipated, and I object on that basis.

15 JUDGE PRIDGIN: Sustained. She asked if  
16 it's possible and asking the witness to speculate.

17 BY MS. MARTIN:

18 Q. Ms. Dunn, if you didn't coordinate with  
19 Aquila's counsel about the timing of submitting this  
20 application, is it possible that you were off in your  
21 universe preparing this paperwork while different  
22 legal strategies and timing issues were being  
23 discussed amongst Mr. Reitz and Aquila's counsel as  
24 to the timing of filing an SUP? Is that possible?

25 A. Chris Reitz knew that as soon as I had

1 all the copies made and put together, that I was  
2 going to take them to Cass County.

3 Q. Now, you were there on the 27th of  
4 January in front of Judge Dandurand when the Court  
5 entertained Aquila's motion for more time; is that  
6 correct?

7 A. I was there.

8 Q. And you know that Judge Dandurand, as a  
9 result of that hearing, gave Aquila until May 31st of  
10 2006 before it would be obligated to tear down the  
11 plant and the substation; is that correct?

12 A. Yes.

13 Q. And so at that moment, time had been  
14 granted; is that correct?

15 A. Yes.

16 Q. And almost immediately after that, on  
17 February the 1st of 2006, you're aware that Cass  
18 County directed a letter to Aquila advising now the  
19 conditions to submit an SUP or rezoning application  
20 had been satisfied; is that correct?

21 A. Yes.

22 (EXHIBIT NO. 88 WAS MARKED FOR  
23 IDENTIFICATION BY THE COURT REPORTER.)

24 BY MS. MARTIN:

25 Q. Ms. Dunn, you have before you what's

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1    been marked as Exhibit 88, a letter dated February  
2    the 1st, 2006, from myself to Mr. J. Dale Youngs and  
3    Christopher Reitz; is that correct?

4           A.       Yes.

5           Q.       And is this the letter that you  
6    understood Aquila had received very shortly after  
7    Judge Dandurand gave Aquila time before being  
8    required to tear down the plant and substation which  
9    indicated the county could now entertain an  
10   application for SUP or rezoning?

11          A.       I haven't read this letter this morning,  
12   but I have a recollection of it.

13                   MS. MARTIN: Your Honor, I move  
14   admission of Exhibit 88.

15                   JUDGE PRIDGIN: Any objections?

16                   (NO RESPONSE.)

17                   JUDGE PRIDGIN: Hearing none, Exhibit 88  
18   is admitted.

19                   (EXHIBIT NO. 88 WAS RECEIVED INTO  
20   EVIDENCE AND MADE A PART OF THE RECORD.)

21   BY MS. MARTIN:

22          Q.       And you'd agree with me that since Judge  
23   Dandurand gave Aquila time before being required to  
24   dismantle the plant and substation, Aquila has not at  
  
25   any time attempted to or tried to submit an SUP



1 application for the plant or the substation to Cass  
2 County; is that correct?

3 A. We have not attempted to.

4 Q. Now, you heard Gary Mallory's testimony  
5 during the public hearing on March the 20th of 2006;  
6 is that correct?

7 A. Yes.

8 Q. And you heard Mr. Mallory describe the  
9 process that's used in the county to evaluate land  
10 use development requests; is that correct?

11 A. I remember them.

12 Q. And you heard Mr. Mallory testify under  
13 oath in front of representatives of this commission  
14 that the county has not predisposed one way or the  
15 other its views with respect to whether this plant  
16 should be constructed; is that correct? You heard  
17 that testimony?

18 A. I remember he said that.

19 Q. And Mr. Mallory, you heard his testimony  
20 expressed once again the county was simply concerned  
21 about having the opportunity to review the matter; is  
22 that correct?

23 A. I heard him say that.

24 Q. And those same sentiments held by the  
25 county were acknowledged by Aquila in Mr. Reitz's

1 letter of January the 12th of 2006; is that correct?

2 A. I need to reread the letter, and then if  
3 you could please restate the question.

4 Q. Do you have that letter in front of you?

5 A. I do.

6 Q. First paragraph. Once you've taken a  
7 look at it, let me know, Ms. Dunn.

8 A. I've read it.

9 Q. And Mr. Reitz acknowledged on that date  
10 that the county had not predisposed any issue with  
11 respect to whether this plant and substation should  
12 be there; rather, the county has simply always wanted  
13 the opportunity to review the matter; is that  
14 correct?

15 A. Well, it doesn't say whether the plant  
16 should be there or not. It says the plant should  
17 ultimately be permitted to operate.

18 Q. That the county has simply wanted the  
19 opportunity to review the matter; is that correct?

20 A. That's what it says.

21 Q. Now, you talk in terms of your  
22 surrebuttal about a belief that the county has made  
23 up its mind with respect to an SUP or rezoning  
24 application, and you refer to Mr. Empson's testimony  
25 primarily, but also to an incident involving the

1 county sheriff; is that correct?

2 A. Yes.

3 Q. Ms. Dunn, do you have any knowledge as  
4 you sit here today whether the county sheriff in Cass  
5 County is an elected position?

6 A. I do not.

7 Q. Do you have any knowledge as you sit  
8 here today the relationship, if any, between the  
9 County Commission office and the independent  
10 sheriff's office in Cass County?

11 A. I know that the person that we were  
12 speaking to said he needed to check with Cass County  
13 attorneys before he could determine if they could  
14 come out and talk to us or we could come and meet  
15 with them.

16 Q. Ms. Dunn, before you filed your  
17 surrebuttal testimony, did you have an opportunity to  
18 consult with Aquila's counsel about Mr. Mallory's  
19 deposition that had been taken the day prior, on  
20 April the 17th, 2006?

21 A. My testimony and surrebuttal are my  
22 beliefs on what was going on at the time.

23 Q. And so you're not aware that Mr. Mallory  
24 made it clear in his deposition that the Cass County  
25 Commission has no role in directing the activities or

1 conduct of the Cass County sheriff; is that correct?

2 A. I don't have any knowledge of that. All  
3 I'm talking about is what we heard when we called for  
4 help.

5 Q. And with respect to the Cass County  
6 Commission, you don't have any independent knowledge  
7 or information to connect any decision by the sheriff  
8 to attend or not attend Aquila meetings with Cass  
9 County's disposition of a yet to be filed SUP  
10 application; is that correct?

11 A. As I stated before, the information that  
12 I have is what we received from the deputy saying he  
13 needed to check with Cass County legal before they  
14 could determine if they could come speak to our group  
15 about safety issues.

16 Q. I just have two last exhibits to  
17 introduce very shortly, and then we'll be finished  
18 with you if we can. The SUP application that you  
19 attempted to submit for the plant and substation on  
20 January the 20th were sizeable documents I think  
21 you've described; is that correct?

22 A. Yes.

23 Q. And I have both of those original  
24 binders here, Ms. Dunn, because they were previously  
25 admitted into evidence in the proceedings before

1 Judge Dandurand on January the 27th. But with your  
2 permission, I wanted to introduce just a few pages  
3 from each of those binders if we could.

4 A. Okay.

5 MS. MARTIN: May I approach?

6 JUDGE PRIDGIN: You may.

7 MS. MARTIN: And if I could approach the  
8 witness?

9 JUDGE PRIDGIN: You may.

10 (EXHIBIT NO. 89 WAS MARKED FOR  
11 IDENTIFICATION BY THE COURT REPORTER.)

12 BY MS. MARTIN:

13 Q. Ms. Dunn, you've been handed what's  
14 been marked as Exhibit 89, and I've also handed you  
15 independently a three-ring binder which comprised  
16 the attempted submission of an SUP application for  
17 the plant facility on January the 20th of 2006.

18 Can you verify for me that what you've  
19 been handed which is marked as Exhibit 89 represents  
20 a portion of the materials behind tab 1.0 in that  
21 three-ring notebook?

22 A. It appears to be the same.

23 MS. MARTIN: May I move admission of  
24 Exhibit 89, your Honor?

25 JUDGE PRIDGIN: You may. Any

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1 objections?

2 (NO RESPONSE.)

3 JUDGE PRIDGIN: Hearing none, Exhibit 89  
4 is admitted.

5 (EXHIBIT NO. 89 WAS RECEIVED INTO  
6 EVIDENCE AND MADE A PART OF THE RECORD.)

7 BY MS. MARTIN:

8 Q. And very briefly, on page 1 of Exhibit 89  
9 in the first paragraph about two-thirds of the way  
10 down in that first paragraph on the first page.

11 A. I'm sorry.

12 Q. Go ahead.

13 A. This says 88 and you said 89.

14 JUDGE PRIDGIN: We were up to 89.

15 BY MS. MARTIN:

16 Q. Thank you, Ms. Dunn. Okay. We've  
17 corrected the exhibit reference. It is Exhibit 89;  
18 is that correct, Ms. Dunn?

19 A. Yes.

20 Q. And on that first page in the first  
21 paragraph about two-thirds of the way down, do you  
22 see reference in the submission to the fact that,  
23 quote, the subject property is currently zoned as,  
24 quote, A, closed quote, referencing an agricultural  
25 district?

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1           A.       Yes.

2           Q.       And in the second paragraph of this  
3 first page, you describe in this application the  
4 ownership status of the facility; is that correct?

5           A.       Yes.

6           Q.       And, in fact, summarizing, if I could,  
7 please, you report in this application that the  
8 city -- and by that, I presume you mean the City of  
9 Peculiar -- is actually the owner of the facility,  
10 but that its possible ownership could change  
11 depending upon disposition of other litigation  
12 involving Chapter 100 financing; is that correct?

13          A.       Yes.

14                   MR. SWEARENGEN: Your Honor, I'm gonna  
15 object. She's posed these questions as though this  
16 witness prepared this application in general and this  
17 exhibit in particular herself, and I don't think  
18 that's the case. This witness has simply attempted  
19 to file this application with the county, and this  
20 document is just a part of that application.

21                   MS. MARTIN: I can lay a foundation,  
22 your Honor, if you'd like.

23                   JUDGE PRIDGIN: All right. I'll  
24 overrule.

25 BY MS. MARTIN:

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1 Q. Would you turn to the last page of  
2 Exhibit 89? Whose signature appears as the  
3 applicant's signature, Ms. Dunn?

4 A. It is mine.

5 Q. As of January 19th, 2006?

6 A. Yes.

7 Q. And you signed, then, this application;  
8 is that correct?

9 A. Yes.

10 Q. And on the third to the last page of  
11 Exhibit 89, which is -- it bears a page number at the  
12 bottom of 67, which is kind of confusing, but  
13 nonetheless, I want to make sure we're on the same  
14 page. This is a form entitled Cass County Special  
15 Use Permit Application; is that correct?

16 A. Yes.

17 Q. And you identify Aquila, Inc. as the  
18 applicant; is that correct?

19 A. Yes.

20 Q. But you identify the owner of the  
21 facility as the City of Peculiar, Missouri; is that  
22 correct?

23 A. Yes.

24 MS. MARTIN: Now, I'm gonna do the same  
25 thing, if I can, your Honor, with the special use



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1 permit application for the substation. If I could  
2 approach?

3 JUDGE PRIDGIN: You may.

4 (EXHIBIT NO. 90 WAS MARKED FOR  
5 IDENTIFICATION BY THE COURT REPORTER.)

6 MS. MARTIN: And Madam court reporter,  
7 is this Exhibit 90?

8 THE COURT REPORTER: Yes, ma'am.

9 MS. MARTIN: Thank you.

10 BY MS. MARTIN:

11 Q. Ms. Dunn, you've been handed what's been  
12 marked as Exhibit 90; is that correct?

13 A. Yes.

14 Q. And once again, I've also handed for  
15 your ease of reference the actual three-ring binder  
16 which would have comprised all of the materials  
17 submitted in connection with an SUP application for  
18 the substation site; is that correct?

19 A. Yes.

20 Q. And would you confirm for me that the  
21 materials which are marked as Exhibit 90 are the  
22 materials at least in part that appear behind tab 1.0  
23 of that three-ring binder?

24 A. They appear to be.

25 MS. MARTIN: Your Honor, I move

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1 admission of Exhibit 90.

2 JUDGE PRIDGIN: Any objections?

3 (NO RESPONSE.)

4 BY MS. MARTIN:

5 Q. And once again -- oh, excuse me.

6 JUDGE PRIDGIN: That's all right.

7 Hearing none, Exhibit 90 is admitted.

8 (EXHIBIT NO. 90 WAS RECEIVED INTO  
9 EVIDENCE AND MADE A PART OF THE RECORD.)

10 MS. MARTIN: I apologize.

11 JUDGE PRIDGIN: That's all right.

12 MS. MARTIN: Getting ahead of myself.

13 BY MS. MARTIN:

14 Q. If you could turn to the last page of  
15 Exhibit 90, once again, are you the signator as the  
16 applicant, or on behalf of the applicant for this SUP  
17 application?

18 A. Yes.

19 Q. Would you turn to the second to the last  
20 page, which, once again, bears a page number at the  
21 bottom of 67. This is the first page of a form  
22 titled "Cass County Special Use Permit Application";  
23 is that correct?

24 A. Yes.

25 Q. And once again, you identify the

1 applicant as Aquila?

2 A. Yes.

3 Q. And the owner of the facility and land  
4 for which the application is being filed is the City  
5 of Peculiar; is that correct?

6 A. Yes.

7 Q. And under present zoning classification,  
8 you identify agricultural; is that correct?

9 A. Yes.

10 MS. MARTIN: I have nothing further of  
11 this witness, your Honor.

12 JUDGE PRIDGIN: All right, Ms. Martin,  
13 thank you. At this time, even though we're in the  
14 middle a witness, I think I would like to break since  
15 Ms. Dunn's been on the stand for a while.

16 Mr. Eftink, I believe you're up next  
17 with cross; is that correct? All right. I show the  
18 clock at the back to be about ten o'clock. If we  
19 could resume at about ten after. And we are off the  
20 record.

21 (A RECESS WAS TAKEN.)

22 JUDGE PRIDGIN: All right. Back on the  
23 record, please. It looks like counsel have returned  
24 and Ms. Dunn is still on the stand.

25 Mr. Eftink, did you have some

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1 cross-examination?

2 MR. EFTINK: I do.

3 JUDGE PRIDGIN: Whenever you're ready,  
4 sir. And Ms. Dunn, you're still under oath, ma'am.

5 THE WITNESS: Yes.

6 CROSS-EXAMINATION BY MR. EFTINK:

7 Q. Ms. Dunn, I represent StopAquila.org.  
8 In Exhibit 87 which Ms. Martin was asking you  
9 questions about, that's the letter dated January 12th  
10 from counsel for Aquila to Cass County. Where it  
11 said that Aquila would apply for a special use permit  
12 with the county, after that date, January 12th, 2006,  
13 to your knowledge, were there conversations between  
14 Aquila and staff of the Missouri Public Service  
15 Commission about what the staff of the Missouri  
16 Public Service Commission's position would be?

17 A. I don't recall.

18 Q. Do you recall if at any time after  
19 January 12, 2006, staff indicated to Aquila that it  
20 would support the location of the South Harper  
21 peaking facility?

22 A. I don't recall that.

23 Q. Exhibit 89 is the special use  
24 application, special use permit application, and  
25 you've testified that there was a lot of work that

1     went into that. Is it fair to assume that lawyers  
2     worked on that special use permit application for  
3     Aquila?

4           A.       We had a large number of people working  
5     on different sections of it, so I wouldn't -- it  
6     wouldn't surprise me if attorneys either reviewed it  
7     or drafted parts of it. I really don't know.

8           Q.       Well, is it fair to assume that when it  
9     says that the area in question is agricultural, that  
10    someone with Aquila had checked that out?

11          A.       There were a number of reviews that  
12    occurred regarding the application.

13          Q.       Can you tell me why -- let me back up  
14    and start over again. Has anyone with Aquila told  
15    you why Aquila applied in 2004 for a special use  
16    permit for the Camp Branch facility with the county?

17                   MR. SWEARENGEN: Your Honor, I'm gonna  
18    object to that. That may call for a privileged  
19    communication between the lawyer and Ms. Dunn.

20    BY MR. EFTINK:

21          Q.       Well, let me ask you first. Other than  
22    attorneys' conversations, did anyone tell why you  
23    Aquila applied with the county for a special use  
24    permit for Camp Branch?

25          A.       I don't recall conversations to that

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1 effect.

2 Q. Would it be correct you don't recall  
3 conversations with attorneys either?

4 A. The work that I was doing was on --

5 Q. Ms. Dunn, if you could answer yes or no  
6 first.

7 A. I don't remember.

8 Q. Okay. I'll go on to the next question  
9 then. Attorneys for Aquila, did anyone with Aquila  
10 tell you why Aquila applied for a special use permit  
11 in late 2004 for the substation that's connected with  
12 this case?

13 A. I don't recall.

14 Q. Now, you testified in your direct about  
15 land values and efforts to buy some of the houses.

16 MR. EFTINK: Is this going to be 91?

17 JUDGE PRIDGIN: Yes, sir.

18 (EXHIBIT NO. 91 HC WAS MARKED FOR  
19 IDENTIFICATION BY THE COURT REPORTER.)

20 BY MR. EFTINK:

21 Q. Ms. Dunn, do you have Exhibit 91 in  
22 front of you?

23 A. I do.

24 Q. Is this an answer to a data request  
25 which you sponsored?

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1           A.       It appears to be.

2           Q.       Okay. Your name is at the bottom of  
3 Exhibit 91, correct?

4           A.       Yes.

5           Q.       And this answer gives some figures for  
6 the dollar amounts paid by Aquila to purchase houses  
7 and then the dollar amounts for which those houses  
8 were then sold by Aquila; isn't that correct?

9           A.       It's correct.

10           JUDGE PRIDGIN: And if I could just  
11 caution, does this contain any HC material?

12           MR. SWEARENGEN: Not to my knowledge,  
13 your Honor.

14           JUDGE PRIDGIN: All right. I'm sorry.  
15 Please continue.

16           MR. SWEARENGEN: It does. Excuse me.

17           THE WITNESS: Actually, the prices that  
18 we paid for it.

19           MR. EFTINK: Your Honor, if I could  
20 speak to that issue, I don't think that the prices  
21 that Aquila pays for houses is something that should  
22 be confidential.

23           JUDGE PRIDGIN: And I'm not saying it  
24 is. I'm just trying to make sure that Aquila doesn't  
25 think that anything in there is HC.

1                   MR. SWEARENGEN: Well, I'm advised that  
2     there may have been an agreement with the landowners  
3     that the purchase price would remain confidential.

4                   JUDGE PRIDGIN: Oh, then let's not, at  
5     least until I get consent or more concrete evidence  
6     one way or the other. We can certainly talk about  
7     this exhibit, and the numbers are in here, but I'd  
8     rather not actually testify to the numbers. The  
9     Commission and the parties can read those numbers.

10                  MR. EFTINK: Well, your Honor, it's kind  
11     of awkward. I need to ask the numbers, I think, so  
12     if we could go in-camera for just a minute or two.

13                  JUDGE PRIDGIN: All right. We'll go  
14     in-camera. Just bear with me for a moment, please.

15                  (REPORTER'S NOTE: At this point, an  
16     in-camera session was held, which is contained in  
17     Volume 9, pages 1100 through 1103 of the transcript.)

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19

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25



1 JUDGE PRIDGIN: All right. We are back  
2 into a public forum. Mr. Eftink, when you're ready,  
3 sir.

4 MR. EFTINK: I'd like to have these  
5 marked while we're waiting.

6 (EXHIBIT NOS. 93 AND 94 WERE MARKED FOR  
7 IDENTIFICATION BY THE COURT REPORTER.)

8 JUDGE PRIDGIN: Whenever you're ready,  
9 sir.

10 BY MR. EFTINK:

11 Q. I understand we're back in public forum.  
12 Ms. Dunn, I have marked Exhibits 93 and 94, and I  
13 believe they've been placed in front of you.

14 A. They have.

15 Q. Are those fair and accurate photographs  
16 of the South Harper facility?

17 A. That is the South Harper facility. I  
18 don't know when the photographs were taken.

19 Q. Well, let me represent that they were  
20 taken yesterday. Do they appear to be fair and  
21 accurate photographs of the South Harper peaking  
22 facility?

23 A. That is the South Harper peaking  
24 facility.

25 MR. EFTINK: Okay. Move for

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1 introduction into evidence of Exhibits 93 and 94.

2 MR. SWEARENGEN: Could I get a chance to  
3 look at those for a second?

4 JUDGE PRIDGIN: You may.

5 MR. EFTINK: Can I take them to him?

6 JUDGE PRIDGIN: You may.

7 MR. SWEARENGEN: Could you just reserve  
8 ruling on that for a minute, please?

9 JUDGE PRIDGIN: Certainly.

10 MR. EFTINK: Shall I go ahead?

11 JUDGE PRIDGIN: You may.

12 BY MR. EFTINK:

13 Q. Ms. Dunn, in your direct testimony you  
14 talked about the money spent by Aquila to upgrade the  
15 fire hydrants and the waterlines, correct?

16 A. Yes.

17 Q. But isn't it true that that had to be  
18 done for the South Harper facility for the purposes  
19 of Aquila?

20 A. I don't have knowledge of that. There  
21 are actually additional fire hydrants that are going  
22 to be installed in response to a request from  
23 landowners.

24 MR. EFTINK: Your Honor, I pass the  
25 witness.

1 JUDGE PRIDGIN: All right, Mr. Eftink,  
2 thank you. Mr. Coffman?

3 MR. COFFMAN: Thank you.

4 MS. MARTIN: Your Honor, just as a  
5 matter of cleanup, we'll need to at some point make  
6 sure we address those two exhibits.

7 JUDGE PRIDGIN: Certainly. And I think  
8 Aquila is still looking at those. I understand that  
9 we still have Exhibits 93 and 94 that have been  
10 offered and not admitted yet.

11 CROSS-EXAMINATION BY MR. COFFMAN:

12 Q. Good morning.

13 A. Good morning.

14 Q. I just have a couple of questions for  
15 you, Ms. Dunn. My name is John Coffman, and I  
16 represent three of the nearby residents of the  
17 facility. We've already covered the fact that you  
18 are -- that you were not in your current position  
19 when the decision was made by Aquila to proceed  
20 forward with constructing the facility and  
21 contravention of an injunction; is that correct?

22 A. My first week at Aquila was April 25th  
23 of '05.

24 Q. Okay. And would you describe this  
25 public relations assignment that you have to be a

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1     difficult one?

2           A.       It has been difficult.

3           Q.       Did you handle similar public relations  
4     problems when you were at El Paso Corporation?

5           A.       I have in the past, yes.

6           Q.       Were there any such public relations  
7     problems involving the siting of a power plant?

8           A.       No.

9           Q.       I assume in the course of your public  
10    relations duties, you have had the opportunity to  
11    organize several public relations meetings or public  
12    information meetings with stakeholders and the  
13    public; is that correct?

14          A.       Yes.

15          Q.       Would you say that in your experience,  
16    these meetings tend to go better with the public if  
17    they are done before the fact, before the utility  
18    makes a decision that impacts the public?

19          A.       I don't believe that's always the case.

20          Q.       All right.

21          A.       I think that information meetings need  
22    to be held continuously throughout the project and  
23    even afterwards.

24          Q.       In the best case scenario, would you  
25    recommend that a utility hold public meetings with

1 impacted stakeholders before it goes ahead with the  
2 decision that may impact?

3 A. Before, during and after.

4 Q. Okay. Has it been your experience when  
5 you hold these meetings that such public relations  
6 meetings can replace official government hearings?

7 A. It's not my experience.

8 Q. Have you found that the public is often  
9 more accepting of decisions if they have received the  
10 approval or blessing of local governmental  
11 authorities?

12 A. I haven't had any experience with that.

13 Q. Does that mean that you have not had  
14 experience with any public relations assignment  
15 whereby local government authorities have had the  
16 opportunity to review a decision of a company you  
17 work for?

18 A. If it was necessary.

19 Q. Do you believe that a utility should  
20 only submit itself to those approvals that are  
21 absolutely necessary when it sites a power plant?

22 MR. SWEARENGEN: I'm gonna object to  
23 that. That calls for a legal conclusion.

24 MR. COFFMAN: I'm not asking her a legal  
25 conclusion. I'm asking her her opinion as an expert

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1 in public relations.

2 JUDGE PRIDGIN: I'll overrule.

3 THE WITNESS: I believe that neighbors  
4 that are impacted have -- should have an ability to  
5 have input into what is going on in their  
6 neighborhood.

7 BY MR. COFFMAN:

8 Q. And should Aquila or any power plant  
9 address the concerns raised -- brought to it by the  
10 public?

11 A. They should be addressed.

12 Q. Should Aquila be the only judge or jury  
13 as to what issues are addressed and how they're  
14 addressed?

15 A. I don't believe that that's been the  
16 case.

17 Q. Do you believe in your experience  
18 talking with residents in the area of the South  
19 Harper facility that the public would be more  
20 accepting if locally elected officials had an  
21 opportunity to review the siting of this power plant  
22 in an official hearing?

23 A. I don't -- I can't answer that question.  
24 I don't know what they believe. I know that I've  
25 listened to their concerns and have tried to address

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1     their concerns to the best of my ability.

2           Q.       Did you make any recommendation to --  
3     let me start again.  Didn't the residents near the  
4     proposed Camp Branch facility have the opportunity to  
5     have their say before a locally elected zoning body?

6           A.       I wasn't at the company at that time.

7           Q.       But you've studied this case extensively  
8     and its history, have you not?

9           A.       Actually, I've worked on the issues at  
10    hand and all issues going forward.  I mean, I -- I  
11    have some knowledge of what's happened in the past,  
12    but I only went back to try to understand the issues  
13    in order to be able to respond to current concerns,  
14    so I haven't done extensive research on what's  
15    happened in the past.

16          Q.       Are you telling me you're unaware of  
17    what hearings were held with regard to the Camp  
18    Branch facility, you've never heard?

19          A.       I'm not saying I never heard.  I'm  
20    saying I haven't done extensive research.  I mean, I  
21    know there were public hearings that were  
22    contentious.  I don't know who was there.  I don't  
23    know what the outcomes were, and I can't give you  
24    dates on when they occurred.

25          Q.       Do you know if that was a hearing by a

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1 local municipality charged with zoning authority?

2 A. They were public hearings and the one  
3 that I'm thinking about was by the Missouri Public  
4 Service Commission like the ones we had last month.

5 Q. With regard to the Camp Branch facility?

6 A. I'm just thinking about public hearings  
7 before I came on board.

8 Q. Okay. Would not -- wouldn't the  
9 residents in the vicinity of the South Harper  
10 facility have had an opportunity for a hearing by a  
11 local municipality if Peculiar had annexed the area  
12 surrounding South Harper --

13 A. My understanding --

14 Q. -- location?

15 A. -- is that that process would have  
16 included public hearings.

17 Q. And that Peculiar would have had zoning  
18 authority over that location, would it not?

19 A. I'm not an attorney or a zoning counsel.

20 Q. If Aquila's special use permit  
21 application which you carried to Cass County, if it  
22 had been accepted, the residents in the facility of  
23 the South Harper facility would have had an  
24 opportunity to a hearing with local zoning  
25 authorities, would they not?



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1           A.       My understanding is they would have, and  
2     the hearings that the Public Service Commission  
3     conducted last month gave citizens the opportunity to  
4     voice their concerns.

5           Q.       And by voicing their concerns, do you  
6     mean to the Missouri Public Service Commission?

7           A.       And to the public. They had the ability  
8     to -- I have given them the ability to voice their  
9     concerns, and I've tried to work with them to address  
10    those concerns. And they also had an opportunity  
11    before the Public Service Commission during the  
12    public hearings to make their concerns known as well,  
13    and so I believe they have had the opportunity.

14          Q.       And when you say address their concerns,  
15    do you mean that you have made a decision about  
16    whether their concerns were valid and to the extent  
17    they should be addressed?

18          A.       I believe that if -- if neighbors have  
19    had concerns, that to them they're valid. And I have  
20    tried very hard with the team that we have at Aquila  
21    to address those concerns. Their concerns have dealt  
22    with the plant, the visibility, the noise, the  
23    concerns about emission.

24          Q.       I'm gonna ask you now about something  
25    that occurred after you took over in this public

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1 relations problem, and that is the order that was  
2 issued in February of this year by Judge Dandurand  
3 extending the time that Aquila would have before it  
4 had to dismantle the plant. Are you familiar with  
5 that order?

6 A. Yes.

7 Q. Have you read the order that Judge  
8 Dandurand issued?

9 A. Yes.

10 Q. Okay. Do you recall if that order  
11 refers to the Missouri Public Service Commission and  
12 its Certificate of Convenience and Necessity  
13 Procedure?

14 A. I couldn't quote it.

15 MR. COFFMAN: May I approach the  
16 witness?

17 JUDGE PRIDGIN: You may.

18 BY MR. COFFMAN:

19 Q. I've handed you Exhibit 33. And if  
20 you -- it's a very short order. If you would take a  
21 look at that. Is that the order that you were  
22 referring to, the February 15th order of Judge  
23 Dandurand?

24 A. It appears to be.

25 Q. Okay. Does that order not say that

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1     Aquila must dismantle the plant because it does not  
2     comply with local zoning authority?

3                   MR. SWEARENGEN:   Your Honor, I'm gonna  
4     object.   I think the order will speak for itself.   I  
5     think it's in evidence.   And to ask her to try to  
6     interpret it as a non-lawyer or for him to  
7     characterize it in some fashion other than the order  
8     itself, is inappropriate, and I object.

9                   MR. COFFMAN:   I believe it's relevant to  
10    the decisions this company made going forward from  
11    that point.

12                  JUDGE PRIDGIN:   I will overrule and let  
13    her answer questions about what the order itself  
14    says.   But if we start getting into what she thinks  
15    it means and her interpretation of the law, I will  
16    likely sustain an objection.

17                  MR. COFFMAN:   I understand.

18    BY MR. COFFMAN:

19           Q.     My question to you, Ms. Dunn, is, that  
20    order refers to the lack of proper zoning authority  
21    at the local level, not to the lack of a particular  
22    certificate of the Public Service Commission; is that  
23    not correct?

24           A.     I need to read it.

25           Q.     Okay.

1 A. Would you repeat your question, please?

2 Q. My question is, does that order from  
3 Judge Dandurand anywhere mention the Certificate of  
4 Convenience and Necessity from the Missouri Public  
5 Service Commission as a grounds for that order?

6 A. I don't see that wording in here.

7 Q. And Ms. Dunn, was Aquila aware of that  
8 fact when it chose not to resubmit the special use  
9 permit application to Cass County?

10 A. Would you define "that fact"?

11 Q. That the order under which Aquila is  
12 still under mentions only the lack of proper local  
13 zoning. Were you -- did you understand at the point  
14 that that order was issued, that the judge was citing  
15 the lack of local zoning as the reason for that  
16 injunction and not the lack of a Public Service  
17 Commission certificate?

18 A. I can't answer that question.

19 Q. Okay. I'm gonna direct you to your  
20 surrebuttal testimony, Exhibit 11, page 3, towards  
21 the bottom of that, line 24. You state that "Aquila  
22 has made a commitment to those residents living  
23 closest to the plant that we would purchase their  
24 property" -- the word "it" I assume is "if" -- "they  
25 were not satisfied with our efforts to address that

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1 concern."

2 My question to you is, how are you  
3 defining "residents living closest to the plant"?

4 A. We identified an area that would begin  
5 on South Harper Road, the south side of the edge of  
6 our property line up South Harper Road, so it would  
7 be the residents on that street, to the left, turning  
8 on 241st Street, all the way to South Overfelt Road,  
9 and then down south to the end of the southern end of  
10 our property on the west side.

11 Q. Is that which is later described as the  
12 corridor, you described that as -- or how do you  
13 describe this specific area?

14 A. In my own mind, I call that tier 1 just  
15 so that I would know what that meant.

16 Q. Okay. That helps. Thank you. Is there  
17 a tier 2?

18 A. Yes. In my mind, again -- and this is  
19 just so that it makes sense to me -- would be people  
20 that lived near the plant but not in that corridor  
21 that could perhaps see the plant or hear the plant.

22 Q. Okay. Are you saying that people in  
23 tier 2 would include people that could see or hear  
24 the plant?

25 A. Yes.

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1           Q.       Okay.  And does tier 1 include everyone  
2   who has property adjacent to the property on which  
3   the power plant was built?

4           A.       Well, it's as I described.  It would be  
5   South Harper Road, the edge of our southern property  
6   line up to 241st Street, so it would be people that  
7   live to the east of the plant and then going over  
8   241st Street, so it's people that live on the north  
9   side of that street, and then down around South  
10  Overfelt to the southern boundary of our property on  
11  the west side.

12          Q.       So tier 1 includes some properties that  
13  are adjacent but not all properties that are adjacent  
14  to the power plant property; is that correct?

15          A.       I don't know what you mean by "all  
16  properties adjacent to the plant."  For example?

17          Q.       Do you know if your tier 1 corridor  
18  includes all properties that are adjacent to the  
19  property that the power plant is located on?

20          A.       There are homes that are included in  
21  that boundary line, but there are homes -- at least  
22  I'm thinking of one in particular where we chose not  
23  to purchase that property, even though the homeowners  
24  wanted us to purchase it.  And that was because they  
25  moved in after the plant was already there.

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1           Q.       Okay.  So is it -- has Aquila made a  
2   commitment to all residents living within tier 1 that  
3   they would purchase their property except for those  
4   who have moved in subsequent to the power plant's  
5   construction?

6           A.       The discussions that we had with those  
7   homeowners, at least the ones that wanted to talk to  
8   us, because not all of them have.

9           Q.       Excuse me.  Could you answer my  
10   question?  I'm trying to understand exactly what your  
11   criteria is.

12          A.       Well, it's not a yes or no answer.  I'm  
13   sorry.

14          Q.       Okay.  So Aquila has not made an offer  
15   to purchase the homes of anyone living within tier 1;  
16   is that correct?

17          A.       That's correct.

18          Q.       Can you tell me if there is a set  
19   criteria as to what homes Aquila would be willing to  
20   purchase?

21          A.       It would be -- this is not a yes or no  
22   question, right?

23          Q.       Right.

24          A.       It would be people that live on that  
25   boundary line that I just described.  It would be

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1 people that were there before the plant was there.  
2 It would be people that -- that tier 1 includes  
3 people that don't want to sell their homes. And then  
4 what we try to do was work with these families to  
5 allow us time to work on some of the issues that they  
6 had concerns about.

7 Q. Well, this is a yes or no question. Is  
8 there a set criteria that you have and a standing  
9 commitment to purchase homes that meet -- meet those  
10 criteria?

11 A. It is not a policy that I have written  
12 down.

13 Q. Okay. So when you say Aquila has made a  
14 commitment to those residents living closest to the  
15 plant, that is a definition that is rather loose and  
16 subject to some discretion by you or others at  
17 Aquila?

18 A. Well, it's -- we did make a commitment,  
19 but not all of them want to move. So I -- I guess  
20 I'm not understanding your question.

21 Q. Did you make a commitment to Frank and  
22 Carolyn Doll?

23 A. I've never spoken to them.

24 Q. Have you made a commitment to Kimberly  
25 Miller that you would purchase her home?



1           A.       See, I don't believe that those families  
2   are in the corridor that we identified as being  
3   tier 1.

4           Q.       Okay. But if I understand your  
5   testimony here, you weren't -- you haven't  
6   necessarily made a commitment to purchase the homes  
7   of everyone living within tier 1, even tier 1?

8           A.       We made -- we do have a commitment that  
9   if people live in tier 1, we would purchase their  
10  property, unless they moved in after we did, and they  
11  didn't want to work with us. The people that you  
12  have mentioned do not live within tier 1.

13          Q.       Okay. Would you -- are you familiar  
14  with those individuals of those properties?

15          A.       I'm aware that you're representing them.  
16  I don't believe that we've talked.

17          Q.       You couldn't -- you couldn't tell me  
18  exactly how many feet they live away from the power  
19  plant?

20          A.       I could not. The only person that  
21  you're representing that I have had numerous  
22  conversations with is Frank Dillon.

23          Q.       Okay. And he lives directly across the  
24  street from the power plant?

25          A.       No. Actually he lives directly across

1 the street from Southern Star compressor station.

2 Q. Would it be fair to say that he is the  
3 closest resident to the turbines?

4 A. No, that is not correct.

5 Q. Who would that be?

6 A. Darlys Bremer.

7 Q. That's the person who sold the property  
8 to Aquila to build the power plant, right?

9 A. No, that is not correct. You're  
10 thinking of George -- or Mr. Bremer, and he lives  
11 north of the plant, and Darlys Bremer lives directly  
12 across the street from the plant on South Harper Road  
13 on the east side.

14 Q. Okay. All right. In your direct  
15 testimony -- and I'm -- I'm staying with your  
16 understanding of who lives closest and who's most  
17 impacted. On page 5 of your direct testimony, at the  
18 top you state, "Aquila continues to work with the  
19 neighbors who have, quote, a direct view of the  
20 plant." And I want to understand if there you are  
21 distinguishing between those who can see the plant  
22 and those who have a direct view to the plant. Is  
23 there -- if someone can see the plant, is that in  
24 your mind someone who has a direct view of the plant?

25 A. To me they are the same.

1           Q.       Okay. And you would describe those  
2 individuals as being within tier 2?

3           A.       Possibly. They could also be within  
4 tier 1.

5           Q.       Okay. Great. Were you here last week  
6 when Warren Wood testified, or answered questions  
7 regarding a potential condition that this commission  
8 might impose regarding a pool of resources that would  
9 be set aside by Aquila to compensate individuals  
10 detrimentally impacted by the power plant?

11          A.       I was not.

12          Q.       Would you have any opinion about whether  
13 that would be a reasonable condition if this  
14 commission approved the certificate, and that is to  
15 set aside a certain amount of money that would be  
16 available for claims made as a result of detrimental  
17 impacts to property values or to quality of life of  
18 those individuals living closest to the plant?

19          A.       I don't believe that we should do that  
20 because the work that we've been doing out there has  
21 addressed their individual concerns about noise and  
22 concerns about emission and sight of the plant.

23          Q.       Are you stating that it's your opinion  
24 that all of the concerns raised by residents living  
25 near the plant have been addressed?

1           A.       I'm saying that we have attempted to  
2   address their issues about the view of the plant --

3           Q.       And if there are -- if those issues have  
4   been addressed to Aquila's satisfaction, that should  
5   be good enough?

6           A.       I've never used Aquila's satisfaction as  
7   my guiding principle. I've been working with  
8   homeowners on a one-on-one basis to address their  
9   concerns.

10          Q.       Well, who should my clients look to to  
11   have their issues resolved if Aquila does not believe  
12   they should have an opportunity to have the locally  
13   elected zoning authority review this application?

14                 MR. SWEARENGEN: Your Honor, I'm gonna  
15   object. That could call for a legal conclusion.

16                 JUDGE PRIDGIN: I'll sustain.

17                 MR. COFFMAN: That's all I have.

18                 JUDGE PRIDGIN: Mr. Coffman, thank you.  
19   Let me see if we have any questions from the bench.  
20   Commissioner Gaw.

21                 COMMISSIONER GAW: No, not right now,  
22   thank you.

23                 JUDGE PRIDGIN: Commissioner Appling?

24                 COMMISSIONER APPLING: No.

25                 JUDGE PRIDGIN: Any redirect?

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1 Ms. Shemwell?

2 MS. SHEMWELL: Judge, if I recall, at  
3 the public hearings, there was a huge map with the  
4 tiers on it, and Mr. Coffman was referring to those  
5 tiers. I believe that Aquila had indicated they  
6 would try to make that part of the record. I don't  
7 know whether that's available or not.

8 MR. COFFMAN: I don't know -- there were  
9 some concentric rings on a couple of large maps that  
10 referred to radius from -- purporting to be  
11 radius. I think that's something completely  
12 different from what Ms. Dunn is referring to as tier  
13 1 and tier 2.

14 JUDGE PRIDGIN: Okay, counsel, thank  
15 you.

16 I'm sorry. Commissioner Gaw.

17 COMMISSIONER GAW: Actually I do have a  
18 question.

19 QUESTIONS BY COMMISSIONER GAW:

20 Q. Ms. Dunn, when did you join Aquila?

21 A. April 25th, '05.

22 Q. And what is your position again?

23 A. Senior vice-president, communications  
24 stakeholder outreach.

25 Q. Who held that position immediately prior

1 to you?

2 A. There was a woman that worked for Aquila  
3 that had that position, and she retired.

4 Q. When did she retire?

5 A. There was a contract, so she must have  
6 retired a few months before I got there, and then she  
7 was working on contracting until I got there.

8 Q. And what was her name?

9 A. Sally McElry (phonetic spelling).

10 Q. And did you ever meet her?

11 A. I did meet her.

12 Q. Okay. And were her duties and your  
13 duties the same?

14 A. Initially when I started working for the  
15 company, they were. But our philosophies about  
16 public relations were a little bit different.

17 Q. In what way?

18 A. Her view on public relations was more at  
19 the corporate level, and my views on public relations  
20 would be in the various states where we have  
21 operations, so mine would be a more grass roots  
22 effort. And that's my opinion on our differences.

23 Q. And was that a difference that was --  
24 that you noted from your discussions with her or from  
25 other information?

1           A.       Both.

2           Q.       Okay.  Since she retired before you got  
3   there, how did you get in touch with her or how did  
4   the communications occur with her?

5           A.       She was on contract as I mentioned, and  
6   she stayed for a couple of weeks to get me oriented  
7   with the staff and with things that had -- were going  
8   on, where press releases were and philosophy on  
9   different issues.

10          Q.       Okay.  And did you know how long she had  
11   been with the company prior to her leaving?

12          A.       No.

13          Q.       Did you apply for this position that you  
14   have currently or were you approached?

15          A.       I was approached by a recruiter from New  
16   York.

17          Q.       When was that?

18          A.       That would have been probably before  
19   Thanksgiving in '04.

20          Q.       And can you tell me what you were asked  
21   when you were approached?  What was the conversation?

22          A.       That there was a position available with  
23   a midwest utility company that needed a senior  
24   vice-president for corporate communications, and  
25   would I be interested in that.

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1 Q. Okay. And were you seeking employment  
2 at that time?

3 A. Not especially.

4 Q. Okay.

5 A. Certainly not here.

6 Q. Okay. Okay. I won't pursue that very  
7 far. But here, meaning in the area --

8 A. In the midwest.

9 Q. -- or this company?

10 A. In the midwest. I'm from Texas.

11 Q. Okay. Do you like Texas?

12 A. I do.

13 COMMISSIONER APPLING: No, she was  
14 saying the PSC.

15 COMMISSIONER GAW: Sure. I could  
16 understand that.

17 BY COMMISSIONER GAW:

18 Q. When you -- and so you didn't -- you  
19 weren't interested, you didn't apply, if I understood  
20 you correctly. What was it that interested you in  
21 regard to that communication?

22 A. Well, I didn't say I wasn't interested.  
23 Certainly when they called me, I expressed interest.

24 Q. All right.

25 A. And the recruiter said that they were



1 going to be setting up interviews after the first of  
2 the year and that the company was working on  
3 finishing up the year in '04. At the beginning of  
4 the year they would be working on their earnings and  
5 getting, you know, some of the things that were going  
6 on in the company, getting ready for their annual  
7 meeting, and would I be interested in interviewing  
8 after the first of the year.

9                   And I said yes, and frankly, was busy  
10 with other things and other work that I had. And  
11 then after the first of the year, it must have been  
12 in early January, she called me back and said that  
13 she had submitted my resume and the company had other  
14 candidates that they were looking at, and would I  
15 like to come in and interview.

16           Q.       Okay. And you said?

17           A.       I said yes.

18           Q.       Okay. And your interviews were where?

19           A.       In Kansas City.

20           Q.       Okay. And when was that that your  
21 interviews took place?

22           A.       I think probably in February or March.  
23 I had two interviews that I came in for.

24           Q.       For '05 -- in '05? Excuse me.

25           A.       Yes.

1 Q. Okay. Was it the -- was it the title to  
2 the position that interested you or the salary or  
3 some other things?

4 A. Just the work. I worked -- El Paso is a  
5 large interstate pipeline company, and so a utility  
6 was a bit different from that, although still in  
7 energy. At that point in my life, a change was not  
8 unpleasant to think about. And when I came in and  
9 interviewed and the people that I interviewed with  
10 were to me very impressive, and I wanted to work with  
11 them.

12 Q. Okay. What was your title at Texas  
13 El Paso?

14 A. It was senior vice-president, corporate  
15 communications and government affairs.

16 Q. Okay. And was the money better at this  
17 job than your old job?

18 A. No.

19 Q. Worse?

20 A. Yes. The money in Texas was better than  
21 here. I mean, it wasn't for the money.

22 Q. Okay. Let me ask you, earlier you said  
23 something about the families and just -- that live  
24 closest to the plant. Do you recall their names  
25 again?

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1 A. I recall some of them.

2 Q. The one that lived closest to --

3 A. Oh, yes. Darlys Bremer.

4 Q. Yes. And the name of the individual  
5 that sold the property to Aquila, the name of that  
6 individual is?

7 A. Mr. Bremer.

8 Q. Okay. And are they related?

9 A. Darlys Bremer was married to  
10 Mr. Bremer's brother, I believe, and he's passed  
11 away.

12 Q. Okay.

13 A. And so she has a small house right near  
14 the plant.

15 Q. All right. So it's his sister-in-law?

16 A. Yes.

17 COMMISSIONER GAW: All right. Thank  
18 you.

19 THE WITNESS: You're welcome.

20 JUDGE PRIDGIN: Mr. Appling, any  
21 questions?

22 COMMISSIONER APPLING: No.

23 JUDGE PRIDGIN: All right. Any recross?  
24 Mr. Eftink?

25 MR. EFTINK: First of all, I have

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1 Exhibits 93 and 94, and I think Mr. Swearengen may or  
2 may not have objections to that.

3 MR. SWEARENGEN: Oh, no, these are fine.

4 JUDGE PRIDGIN: So no objections to 93  
5 and 94? All right. Exhibits 93 and 94 are admitted.

6 (EXHIBIT NOS. 93 AND 94 WERE RECEIVED  
7 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

8 JUDGE PRIDGIN: Mr. Eftink?

9 RECROSS-EXAMINATION BY MR. EFTINK:

10 Q. And I have just one follow-up question.  
11 I noted that the real estate was sold by the Bremer  
12 trust to Aquila. Do you know how much Aquila paid  
13 for the real estate that's involved in this case?

14 A. No.

15 MR. EFTINK: Thank you. May I approach  
16 to hand this to the reporter?

17 JUDGE PRIDGIN: You may. Any further  
18 questions, Mr. Eftink?

19 MR. EFTINK: No, thank you.

20 JUDGE PRIDGIN: All right. Thank you.  
21 Any further recross? Redirect? Mr. Swearengen?

22 MR. SWEARENGEN: Just a couple, your  
23 Honor, if I may.

24 REDIRECT EXAMINATION BY MR. SWEARENGEN:

25 Q. Ms. Dunn, do you have your surrebuttal

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1 testimony there in front of you?

2 A. I do.

3 Q. If you would turn to your schedule  
4 NFD-2, please. That's the first page which is a  
5 communication from Gary Mallory to you; is that  
6 correct?

7 A. Yes, sir.

8 Q. You were asked a couple of questions  
9 about this schedule by counsel for Cass County. And  
10 my question to you, I believe you said in response to  
11 one of those questions that the tone of the letter  
12 which starts at page 2 of the schedule, a letter  
13 dated January 5, 2006, to you from Mr. Mallory, the  
14 tone of that letter was different than the tone of  
15 the conversations that you had had with Mr. Mallory.  
16 Do you recall saying that?

17 A. Yes.

18 Q. Could you -- could you tell me what you  
19 meant by that?

20 A. The letter dated January 5th, 2006, does  
21 not sound like Gary Mallory, and certainly in our  
22 conversations he didn't talk like this. And my  
23 personal opinion is that this letter --

24 MS. MARTIN: Objection, your Honor.

25 That's not responsive. It also lacks foundation and

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1 calls for speculation.

2 JUDGE PRIDGIN: I'll sustain.

3 MR. SWEARENGEN: That's fine.

4 BY MR. SWEARENGEN:

5 Q. Now, attached -- or excuse me.

6 Referenced in that January 5, 2006 letter from

7 Mr. Mallory, in the second paragraph is an August 16,

8 2005 letter from the county attorneys, from Cass

9 County attorneys to Aquila's general counsel. Do you  
10 see that reference?

11 A. I do.

12 Q. And is that the letter that begins on  
13 page 4 of your schedule NFD-2?

14 A. Yes.

15 Q. And if you would turn to the page 2 of  
16 that letter, which is page 5 of the schedule, do you  
17 recall that the counsel for Cass County asked you a  
18 series of questions about the statements on that  
19 page?

20 A. I do.

21 Q. The third paragraph of that letter, I do  
22 not recall the attorney asking you any questions  
23 about it. Do you recall whether you were asked any  
24 questions about the third paragraph of that letter?

25 A. I was not.

1           Q.       And that paragraph states, "If Aquila  
2   dismisses its appeal, rendering the Court's judgment  
3   final and non-appealable and rendering final the  
4   determination that the county does, in fact, have  
5   proper zoning authority over the South Harper plant  
6   and the Peculiar substation, then any application  
7   Aquila may file for rezoning and/or special use  
8   permit after such dismissal will be considered  
9   consistent with the zoning ordinance and consistent  
10   with the judgment as a request for rezoning or a  
11   special permit for a proposed improvement.

12                    "However, Aquila will remain obligated  
13   to comply with the Court's judgment which requires  
14   remediation of the existing zoning violations by  
15   removal of the illegal improvements." Did I read  
16   those sentences correctly?

17           A.       Yes.

18           Q.       And then, if you would, turn to what was  
19   marked for identification and received as Exhibit 88.  
20   Do you have a copy of that in front of you? That's a  
21   letter dated February 1, 2006, from counsel for Cass  
22   County to counsel for Aquila. Exhibit 88. Do you  
23   have that letter in front of you?

24           A.       I do.

25           Q.       And could you read into the record,

1 please, the third paragraph of that letter?

2 A. "We assume Aquila will be filing an  
3 application for either rezoning or for a special use  
4 permit for the South Harper plant and the Peculiar  
5 substation, as evidence of local consent is required  
6 before the PSC can issue a Certificate of Convenience  
7 and Necessity for the plant and substation."

8 Q. Thank you. One final question. You  
9 were asked about the special use permit application  
10 that you attempted to file with Cass County. Do you  
11 recall those questions?

12 A. I do.

13 Q. And do you recall being asked about the  
14 statement in that application that the site for the  
15 Peculiar substation and the South Harper facility was  
16 zoned agricultural?

17 A. I remember.

18 Q. Was it the company's understanding at  
19 the time that that application was put together that  
20 those properties were, in fact, zoned agricultural?

21 A. I believe so.

22 MR. SWEARENGEN: Thank you. That's all  
23 I have.

24 JUDGE PRIDGIN: All right,  
25 Mr. Swearngen, thank you. Any further questions



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1 from the bench?

2 (NO RESPONSE.)

3 JUDGE PRIDGIN: All right. Seeing none,  
4 Ms. Dunn, thank you very much for your time and  
5 testimony. You may be excused.

6 Do I understand that the next witness  
7 would be Cass County witness Mr. Fisher; is that  
8 correct?

9 MR. DOUGLAS: The City of Peculiar.

10 JUDGE PRIDGIN: City of Peculiar  
11 witness. Pardon me. Mr. Fisher, if you'll come  
12 forward to be sworn, sir.

13 (WITNESS SWORN.)

14 JUDGE PRIDGIN: Thank you very much,  
15 sir. If you would, please have a seat. I don't  
16 believe that Mr. Fisher's rebuttal has been remarked.  
17 Are we up to -- 95. Thank you.

18 (EXHIBIT NO. 95 WAS MARKED FOR  
19 IDENTIFICATION BY THE COURT REPORTER.)

20 MICHAEL FISHER, testified as follows:

21 DIRECT EXAMINATION BY MR. DOUGLAS:

22 Q. Mr. Fisher, state your name for the  
23 record, please.

24 A. Michael John Fisher.

25 Q. And what is your position with the City

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1 of Peculiar?

2 A. City administrator.

3 Q. And how long have you been in that  
4 capacity?

5 A. Five years.

6 Q. You have prepared your prefiled  
7 testimony, rebuttal testimony, which has been marked  
8 as Exhibit 95, and you prepared that yourself without  
9 legal counsel at the time it was prepared; is that  
10 correct?

11 A. That's correct.

12 Q. Do you have any corrections to make in  
13 the prefiled testimony?

14 A. I do. I think I referred to the Eighth  
15 Appeals Court, and actually it should be the Missouri  
16 State Court of Appeals, Western District.

17 Q. All right. And you're talking about the  
18 December 20th, 1995 decision of the Missouri Court of  
19 Appeals --

20 A. Yes.

21 Q. -- Western District?

22 A. Yes.

23 Q. And that was there on that, and we've  
24 revised the cover sheet --

25 A. Yes.

1 Q. -- of this from the prefiled to reflect  
2 your name?

3 A. Yes.

4 Q. To the best of your knowledge, those are  
5 the only corrections you need to make?

6 A. I believe so, yes.

7 Q. All right. And if I had -- if questions  
8 were addressed to you to address the information,  
9 would your answers be the same as are set forth in  
10 your testimony?

11 A. Yes.

12 Q. And is the evidence, to the best of your  
13 knowledge, based upon your knowledge and information,  
14 true and correct?

15 A. To the best of my knowledge, yes.

16 MR. DOUGLAS: I'd offer the Exhibit 95  
17 and ask that it be received and submit him for  
18 cross-examination.

19 JUDGE PRIDGIN: All right. Thank you.  
20 Any objections to Exhibit 95?

21 MS. MARTIN: Yes, your Honor. Cass  
22 County does have objection. The initial objection is  
23 to the format of the rebuttal testimony, which is  
24 narrative. It is not in question and answer format,  
25 which I believe is improper, and I would object

1 generally to the testimony on that basis.

2 I also have specific objections to  
3 certain lines of the testimony. I didn't know if the  
4 Court would want to rule first on the general  
5 objection.

6 JUDGE PRIDGIN: I will overrule on that.

7 MS. MARTIN: The second objections  
8 relate to testimony on page 10, lines 10 through 23,  
9 which are inappropriate opinion testimony by  
10 Mr. Fisher with respect to the propriety of land use  
11 in Cass County. There's no foundation that's been  
12 laid for that. It's improper opinion, and Mr. Fisher  
13 is not an appropriate expert to provide that opinion.

14 I would also object to page 11, lines 17  
15 through 21 as, again, improper opinion testimony with  
16 respect to regulatory compliance requirements.  
17 Mr. Fisher is purporting to provide testimony without  
18 proper foundation and/or expertise having been  
19 developed about what is required to be in regulatory  
20 compliance with this commission.

21 And finally I would object to page 11,  
22 line 23 through page 13, line 24, as Mr. Fisher's  
23 expressed legal opinions, despite the fact he is not  
24 properly designated as an expert nor as an attorney,  
25 and thus no foundation has been made regarding the

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1 interpretation of the Court of Appeals' opinion and  
2 regarding other matters of a legal nature. None of  
3 that is proper testimony from this lay witness.

4 JUDGE PRIDGIN: Ms. Martin, thank you.  
5 Any further objections?

6 (NO RESPONSE.)

7 JUDGE PRIDGIN: Mr. Douglas?

8 MR. DOUGLAS: I think Mr. Fisher's  
9 entitled to give them based upon the information he's  
10 obtained, and I'll ask him a couple of questions in  
11 that regard.

12 JUDGE PRIDGIN: You may.

13 BY MR. DOUGLAS:

14 Q. Mr. Fisher, have you tried to keep  
15 yourself informed of the process throughout this  
16 process?

17 A. I have.

18 Q. And is it normal that you would rely  
19 upon the information from various sources that you  
20 obtained to formulate your testimony here today?

21 A. That's correct.

22 Q. And was that information that you kept  
23 in the ordinary course of your business for the  
24 purpose of informing the city as the owner of this  
25 project and the sponsor for the financing of the

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1     appropriateness?

2             A.       Yes.  We've obtained information ongoing  
3     and passed that along to the counsel.

4             Q.       And did you obtain that information in  
5     your official capacity as the city manager/  
6     administrator of the City of Peculiar for purposes of  
7     being informed?

8             A.       Yes.

9             Q.       And you typically rely upon that  
10    information in making your decisions in the city?

11            A.       Yes.

12                   MR. DOUGLAS:  I have nothing further in  
13    that regard.

14                   MS. MARTIN:  Well, the foundation that's  
15    been laid has really led to additional objections.  
16    Because Mr. Fisher is now reporting what's been told  
17    to him, we now have hearsay.  In addition, his  
18    opinions with respect to what have been reported to  
19    him is not relevant.  The foundation problem still  
20    remains.

21                   JUDGE PRIDGIN:  All right.  I will  
22    overrule.  Exhibit No. 95 is admitted.

23                             (EXHIBIT NO. 95 WAS RECEIVED INTO  
24    EVIDENCE AND MADE A PART OF THE RECORD.)

25                   JUDGE PRIDGIN:  We will proceed to

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1 cross-examination.

2 MR. DOUGLAS: Thank you, your Honor.

3 JUDGE PRIDGIN: Any questions from  
4 Aquila?

5 MR. YOUNGS: Your Honor, just a point of  
6 clarification from a procedural standpoint, and I  
7 apologize for holding things up.

8 JUDGE PRIDGIN: Yes, sir.

9 MR. YOUNGS: With regard to Mr. Fisher,  
10 he's not only a sponsored witness by the City of  
11 Peculiar, but he's also been subpoenaed by Cass  
12 County to testify. Does that alter the order of  
13 questioning in your view? It doesn't necessarily to  
14 me. I just wanted to be clear on where we were.

15 JUDGE PRIDGIN: Because the city called  
16 him, I was simply proceeding, you know, in the  
17 proposed list of cross-examination as Aquila gave to  
18 me as if this were a City of Peculiar witness. If  
19 counsel would like to proceed in another direction,  
20 we can certainly do that.

21 MR. YOUNGS: That's fine with me. I  
22 just want to make sure that I wasn't --

23 MS. MARTIN: Well, and just so there  
24 isn't any confusion, of course we had subpoenaed  
25 Mr. Fisher and Mr. Lewis. I believe that was prior

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1 to the time that testimony was sponsored. We have  
2 since, of course, cooperated with Mr. Douglas to make  
3 it clear that Mr. Fisher doesn't need to be here  
4 twice, both for his sponsored testimony and for what  
5 would have otherwise been our cross-examination of  
6 him as a non -- don't take this personally,  
7 Mr. Fisher -- a non-friendly witness for Cass County.  
8 So we're collapsing essentially that process.

9 JUDGE PRIDGIN: In your cross-examination.

10 All right. Thank you, Ms. Martin.

11 MR. YOUNGS: That's fine. I'll just  
12 have a few questions.

13 JUDGE THOMPSON: Yes, sir, when you're  
14 ready.

15 CROSS-EXAMINATION BY MR. YOUNGS:

16 Q. Mr. Fisher, good morning.

17 A. Good morning.

18 Q. I just have a few questions for you.

19 With regard to your direct testimony and the  
20 communications that you had between the City of  
21 Peculiar, your capacity as the city administrator and  
22 Aquila, which I expect not only as a part of your  
23 direct testimony, but will be a substantial part of  
24 your cross-examination by other parties. What was  
25 your understanding of the agreement between the City



1 of Peculiar and Aquila with regard to the South  
2 Harper site vis-a-vis zoning issues?

3 A. Well, we started talking to Aquila  
4 initially, especially when this site was focused on  
5 as an appropriate site. We had initially looked at  
6 annexing down South Harper Road to be able to be  
7 contiguous with the Bremer property, to then annex  
8 this property into the city.

9 We looked at the city's normal zoning  
10 process to do that, and we also looked at the state  
11 statutes which allowed cities to follow, I think it  
12 was 89.340, which allowed a development plan to be  
13 submitted to planning and zoning and then approved by  
14 the city council, which would designate that property  
15 for utilities but not relieve the underlying zoning  
16 that was going to...

17 Q. Fair to say that it was your  
18 understanding from your conversations with Aquila  
19 that whatever site was ultimately agreed upon as a  
20 part of your conversations back and forth and  
21 discussions with Mr. Hedrick and others, that Aquila  
22 wanted a site that was ready to build upon; is that  
23 correct?

24 A. That's correct.

25 Q. Without regard to zoning obligations

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1     that might have to be undertaken by the city,  
2     correct?

3             A.       Yes.  I mean, the issues of the  
4     utilities on-site as far as gas and electric lines  
5     were looked at.

6             Q.       And that it was Peculiar's obligation to  
7     provide Aquila with a site upon which the plant would  
8     be ready to build?

9             A.       In cooperation, yes.

10            Q.       All right.  And with regard to the  
11    zoning issues that you did discuss, do you have  
12    Exhibit No. 55 in front of you?

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

14                    MR. YOUNGS:  May I approach?

15                    JUDGE PRIDGIN:  You may.

16    BY MR. YOUNGS:

17            Q.       I'll just give you my copy of it.

18            A.       Okay.

19            Q.       And Mr. Fisher, that's a letter that you  
20    forwarded to Mark Dawson at Aquila, and the letter  
21    itself is a letter from your attorney, the city's  
22    attorneys at Gilmore & Bell; is that correct?

23            A.       That's correct.

24            Q.       Could you just remind us what the date  
25    of that letter is, please?

1           A.       September 14th, 2004, the one from  
2   Gilmore & Bell.

3           Q.       Okay. And to the extent there were  
4   zoning issues to address, and you referenced Chapter  
5   89, does the Gilmore & Bell letter that you have in  
6   front of you as Exhibit 55 represent the means by  
7   which Peculiar anticipated dealing with those zoning  
8   issues?

9           A.       Yes, it does.

10          Q.       And did that process involve public  
11   input?

12          A.       Yes, it did. I think on page 2 of  
13   Gilmore & Bell's letter, in two different places it  
14   indicates a public hearing would be held.

15          Q.       Okay. And just so we're clear, you're  
16   not -- with regard to the differences in the  
17   authority that cities have from a zoning perspective  
18   versus the authority that counties have over public  
19   utilities from a zoning perspective, do you purport  
20   to have any expertise in figuring out or describing  
21   to this commission what those differences are?

22          A.       No, I don't.

23          Q.       Would it be fair to say that at all  
24   times -- let me back up. While this process was  
25   going on, you were having conversations with

1 Mr. Mallory, the presiding commissioner of Cass  
2 County; is that correct?

3 A. We had a couple conversations, that's  
4 correct.

5 Q. And at all times did you have an  
6 understanding that Mr. Mallory knew the purpose of  
7 Peculiar's proposed annexation, not only of that  
8 stretch of road from Peculiar to the site, the South  
9 Harper Road site, but also the parcel itself and what  
10 the purpose for that annexation was?

11 A. Yes, I did.

12 Q. And what was that understanding?

13 A. That the city was seeking to work with  
14 Aquila to locate their peaking facility at the South  
15 Harper site.

16 Q. Was there any question in your mind that  
17 during those early conversations that you had with  
18 Mr. Mallory in the late summer and early fall of  
19 2004, that he understood, as presiding commissioner  
20 of Cass County, that the purpose of your proposed  
21 annexation was so that Aquila might be able to build  
22 a power plant at that site?

23 MS. MARTIN: Objection. That lacks  
24 foundation, calls for speculation about what was in  
25 the mind of another individual.

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1 JUDGE PRIDGIN: Mr. Youngs?

2 MR. YOUNGS: I'll rephrase the question.

3 JUDGE PRIDGIN: I'll sustain that.

4 BY MR. YOUNGS:

5 Q. Did you have conversations about the  
6 purpose of the annexation with Mr. Mallory?

7 A. Yes.

8 Q. And what did those conversations entail?

9 A. They were centered around basically that  
10 the city was looking to work with Aquila, to bring  
11 them into the city and that we were looking at  
12 annexing the site on the South Harper...

13 Q. For the purpose of building a power  
14 plant?

15 A. That's correct.

16 Q. All right. At any time during the  
17 conversations -- let's -- first of all, let's set  
18 aside the issue of what legal authority Cass County  
19 might have to get in the way, if that's the proper  
20 phrase, of Peculiar's annexation of that site for  
21 that purpose. Set that aside.

22 At any time during these conversations,  
23 did Mr. Mallory express any concern to you with  
24 regard to land use issues associated with Peculiar's  
25 annexation of that site for that purpose?

1           A.       Not to my recollection.

2           Q.       I want to show you what's previously in  
3 evidence as -- I think it's TSH-1, appendix to  
4 Mr. Hedrick's testimony. I'll try to speak up so I'm  
5 heard. This is a photograph of the South Harper  
6 site; is that correct, Mr. Fisher?

7           A.       It appears to be, yes.

8           Q.       All right. Assuming that the annexation  
9 had gone forward, could you just describe using  
10 TSH-1, which is this photograph, generally what would  
11 be the area that would have been annexed into the  
12 City of Peculiar?

13          A.       It appears that this stretch of road  
14 here is South Harper Road, and it would have been  
15 annexed to the south boundary of the property,  
16 which is approximately in here. And then from  
17 there, the entire Bremer site, which would fall along  
18 here, cut around the Southern Star compressor  
19 facility down and follow the property back up.  
20 Approximately 70 acres.

21          Q.       Okay. So in addition to the road from  
22 Peculiar to the South Harper site, that portion of  
23 South Harper Road, the annexation would have taken  
24 into the city limits of Peculiar the entirety of this  
25 74-acre parcel, which obviously carves out the

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1 Southern Star gas compressor station?

2 A. That's correct.

3 Q. With regard to the other area that  
4 surrounds the plant site that was subject to the  
5 proposed annexation that doesn't already include the  
6 city limits of Peculiar, what would have happened to  
7 that area?

8 A. It would have remained in the county.

9 Q. At any point during your conversations  
10 with Mr. Mallory as the presiding commissioner of  
11 Cass County, and keeping in mind what the results of  
12 the annexation would have been, did Mr. Mallory ever  
13 express any concern to you about what land use issues  
14 might be associated or what impacts might be felt by  
15 those residents who would remain in unincorporated  
16 Cass County after the annexation?

17 A. To the best of my knowledge, we never  
18 discussed that.

19 MR. YOUNGS: I think those are all the  
20 questions I have of this witness at this time. Thank  
21 you, Judge.

22 JUDGE PRIDGIN: Mr. Youngs, thank you.  
23 On behalf of staff?

24 MS. SHEMWELL: No questions, thank you.

25 JUDGE PRIDGIN: All right. Thank you.

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1 StopAquila?

2 MR. EFTINK: Yes.

3 CROSS-EXAMINATION BY MR. EFTINK:

4 Q. Mr. Fisher, if you would look at your  
5 prefiled testimony, page 6, lines 7 through 9, you  
6 say that, "To purchase power from another source  
7 would mean higher costs for the customers." Now, you  
8 don't know that to be a fact, do you?

9 A. No. I'm basing it on my supposition  
10 that the understanding that I have, that purchased  
11 power at any utility that purchases that is  
12 purchasing that at a premium because they're  
13 purchasing more than they need, and that those are  
14 the long-term contracts to do that.

15 Q. Did you have any conversations with  
16 representatives of Aquila where they told you what  
17 Calpine offered to sell them energy for?

18 A. No, I do not.

19 Q. Now, you said on page 7, line 1, that  
20 two annexations would be necessary.

21 A. That's correct.

22 Q. That's correct. Now, the way I recall,  
23 the first proposal was to annex just the roadway for  
24 two and a half -- or two miles, correct?

25 A. That's correct.



1 Q. And that would go out to touch the  
2 boundary of the Bremer property but not bring it in?

3 A. That's correct. That's necessary for  
4 the city to be contiguous with the properties to be  
5 annexed. So the road being annexed to the south  
6 boundary of the property would provide that 15  
7 percent contiguity requirement.

8 Q. And it also has to be compact, correct?

9 A. Yes.

10 Q. And a vote would have been required to  
11 bring that property in through annexation, correct?

12 A. That's incorrect. If it was a voluntary  
13 annexation, it would not have required a vote.

14 Q. Well, at that time we had a meeting  
15 October 19th, 2004, at city hall about the  
16 annexation. You remember that, don't you?

17 A. Uh-huh.

18 Q. And isn't it correct that I appeared  
19 along with many people at that time?

20 A. Yes, you did.

21 Q. And, in fact, it was on two or three  
22 channels of the Kansas City news that night, wasn't  
23 it?

24 A. You made the news, yes.

25 Q. Yes, I did. And we were discussing at

1     that time that you had to have a vote to annex the  
2     roadway to go down to touch the boundary of the  
3     Bremer property.  You recall that, don't you?

4           A.       I think there was some discussion about  
5     the city's ability to annex that road, and I think  
6     the discussion was that certain landowners along that  
7     stretch of South Harper believed that their property  
8     lines continue to go to the middle of the road, and  
9     therefore the city would be annexing property that  
10    did not belong to the county but belonged to the  
11    individual property owners.

12          Q.       And, in fact, you saw plats that showed  
13    that many of my clients owned real estate to the  
14    center of Harper Road, and you didn't feel like you  
15    could get their consent?

16          A.       Actually we found on plats subsequent to  
17    that, that when those newer subdivisions had been  
18    platted, that the roadway had been dedicated to the  
19    county, so the county did actually have control over  
20    significant portions of that road.

21          Q.       Right.  But you understand that  
22    dedication of an easement and ownership of real  
23    estate are two distinct things?

24          A.       I'm not an attorney but I do understand  
25    that.

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1 Q. Okay. But assuming that a vote was  
2 required to annex properties, the next available  
3 election would have been February of 2005, correct?

4 A. Yeah. If we'd -- yeah, because we'd  
5 have missed the October.

6 Q. Or November.

7 A. Or November. I'm sorry.

8 Q. Yeah. Because this was on October 19th  
9 that the first reading of the annexation occurred,  
10 2004 --

11 A. Correct.

12 Q. -- correct? And if you took this in two  
13 steps and first annexed the roadway, that would have  
14 been two miles of about a 20-foot strip of roadway to  
15 go out to the Bremer property. You couldn't have  
16 started the second annexation until after you got  
17 approval in a February 2005 vote.

18 And I've asked you to assume that a vote  
19 is necessary. So that would be correct as far as  
20 timing, correct?

21 A. Depending on the lead time you need to  
22 get it on the February ballot. It may have been --

23 Q. It may have been April?

24 A. It may have been April.

25 Q. Okay. So after February or April, then

1 you would start the second step, which would be to  
2 annex the Bremer property, assuming that you have  
3 annexed the roadway out there.

4 A. You would need the roadway first, that's  
5 correct.

6 Q. Now, on page 7, line 9 of your prefiled  
7 testimony, you say that the County Commission  
8 approved the annexation petition. But you don't have  
9 any documents that show that this is true, do you?

10 A. We have their signed petition, yes.

11 Q. That is to allow the city to maintain  
12 the roadway?

13 A. To allow the city to annex that stretch  
14 of Harper Road that we requested.

15 Q. But that was just to maintain the road,  
16 correct?

17 A. No. That was to take it over from Cass  
18 County.

19 Q. But you understood that the county  
20 cannot give you property that it doesn't own?

21 A. I understand that no one can give me  
22 property that they don't own.

23 Q. And what you talked to the County  
24 Commission about was, the county wanted to maintain  
25 that roadway; isn't that correct?

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1           A.       Physically maintain it?

2           Q.       Yes.

3           A.       No.  It was my understanding that that  
4   annexation would, and that county giving it to the  
5   city, that all rights and responsibilities to that  
6   road would fall on the city, including maintenance.

7           Q.       When you found out that you had to get  
8   approval of the people that owned the real estate,  
9   that's when the annexation was stopped; isn't that  
10   correct?

11          A.       On advice of counsel, yes.

12          Q.       All right.  Now, there was a meeting  
13   that occurred on November 5, 2004, between county  
14   officials and representatives of Aquila.  Were you in  
15   that meeting?

16          A.       I believe so.

17          Q.       Now, that was after the annexation  
18   proposal was dropped by the city, correct?

19          A.       Uh-huh.

20          Q.       And so the purpose of the November 5,  
21   2004 meeting with county officials was to see what  
22   kind of zoning requirements would be required by the  
23   county?

24          A.       That's my understanding, yes.

25          Q.       Yeah.  And you know shortly after that,

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1 the county filed suit to stop Aquila because Aquila  
2 proceeded to try to build the South Harper peaking  
3 facility?

4 A. That's my understanding.

5 Q. Okay. Now, on page 8, line 22 of your  
6 prefiled testimony, you said one of the reasons for  
7 doing a Chapter 100 was the potential financial  
8 benefit to the taxing jurisdiction, correct?

9 A. That's correct.

10 Q. And the Chapter 100 bonds were proposed  
11 by Aquila, correct?

12 A. It's something the city and Aquila  
13 mutually discussed.

14 Q. Well, you contacted Aquila first, but  
15 isn't it true that Aquila proposed to you that they  
16 do Chapter 100 financing?

17 A. We were aware of the nature of Chapter  
18 100 bonds and the benefit they would bring to the  
19 community, so we saw no reason not to discuss it with  
20 them.

21 Q. And Aquila told you that it ran the  
22 numbers, and it would save over 17 million dollars if  
23 the Chapter 100 bonds were issued; isn't that  
24 correct?

25 A. It's somewhere in that neighborhood. It

1 would save that being passed on to the rate payers as  
2 a tax, yes.

3 Q. Okay. Let's break that down. Aquila  
4 told you that it would save a net of over 17 million  
5 dollars if the Chapter 100 bonds were issued?

6 A. If the Chapter 100 bonds are issued,  
7 then it saves -- the total taxes that would be  
8 assessed against the plant and the substation, and  
9 the resulting pilot payments or payment in lieu of  
10 taxes focuses those payments in lieu of on the local  
11 taxing jurisdiction, our school district, our fire  
12 district and so on.

13 Q. So the city would get more of the money,  
14 and everybody else would get less?

15 A. Everybody else in Aquila's territory  
16 would get less, that's correct.

17 Q. All right. And to make sure we  
18 understand, if you considered all the money that  
19 would have been paid by Aquila without Chapter 100  
20 financing, and all the money that would be paid by  
21 Aquila if it had Chapter 100 financing, by having the  
22 Chapter 100, it would have a net saving of over 17  
23 million dollars?

24 A. The deal that we structured with Aquila  
25 for the South Harper plant was very similar to the

1 deal that Cass County struck on --

2 Q. Mr. Fisher.

3 A. -- the --

4 Q. Mr. Fisher.

5 A. Yes, it focused the taxes just like it  
6 did over there.

7 Q. But my question was, they would save a  
8 net -- when you consider all the pilot placements and  
9 all the taxes, compared with Chapter 100 and without  
10 Chapter 100, Aquila's numbers showed that they would  
11 save over 17 million if they want to Chapter 100  
12 route?

13 A. There would be a net savings, yes.

14 Q. Now, on page 9 at line 11, you say that  
15 the Chapter 100 was structured that there would be no  
16 financial risk to the city.

17 A. That's correct.

18 Q. But you're not an attorney you said, so  
19 you don't know if that's true or not, do you?

20 A. I relied on the advice of my counsel.

21 Q. Okay. Do you understand the financial  
22 exposure that the City of Peculiar has in pushing  
23 this through without having the requisite public  
24 vote?

25 A. I believe I do, financially, yes.



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1 Q. So the city does have a financial risk  
2 because it violated the law in pushing it through  
3 without having the requisite vote, correct?

4 A. On the --

5 MR. DOUGLAS: I object to that as a  
6 requisite, because it's not been determined if there  
7 was a vote required.

8 MR. EFTINK: It's been determined by the  
9 Missouri Court of Appeals Western District of  
10 Missouri.

11 MR. DOUGLAS: No, not once the Supreme  
12 Court took transfer. That decision is gone.

13 JUDGE PRIDGIN: I'll sustain.

14 BY MR. EFTINK:

15 Q. On page 13 at line 14 of your prefiled  
16 testimony, you say that, "The commission has agreed  
17 that Aquila has a need for the additional generation  
18 capacity." When did the commission determine that?

19 A. I believe in hearings in the fall of  
20 2005 that I attended here, representing for the  
21 commission indicated that they agreed with Aquila's  
22 need for the generation capacity.

23 Q. Was that a commissioner or was that some  
24 member of staff?

25 A. It was a member of staff.

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1           Q.       Okay. Do you know who it was that said  
2 that?

3           A.       No, I don't recall.

4           Q.       Do you recall if they were talking about  
5 the difference between base load, intermediate load  
6 and peaking services?

7           A.       To the best of my recollection, they did  
8 not make a distinction.

9           Q.       On that same page, which is page 13 at  
10 line 18, you claim that the commission has stated  
11 that Aquila should have built more capacity, in  
12 parentheses 500 plus megawatts, closed parentheses,  
13 at the South Harper peaking facility. When did the  
14 commission say that?

15          A.       To my understanding, it was a staff  
16 member that had made that comment. I did not hear it  
17 directly. I heard it from someone else.

18          Q.       When did you hear this?

19          A.       It was probably a month and a half, two  
20 months ago.

21          Q.       On page 13 at line 20, you say that the  
22 commission has indicated the South Harper location is  
23 a good site. Now, when did the commission determine  
24 that?

25          A.       It's my understanding that's been stated

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1 before in testimony.

2 Q. Was that stated by the commission or by  
3 the staff or by someone else?

4 A. I think it was by the staff.

5 Q. When was that stated?

6 A. I can't recall the date.

7 Q. Was it stated in these hearings or in  
8 some other hearings?

9 A. Some other hearings.

10 Q. If you will look at schedule 1 to your  
11 prefiled testimony, it's in very small print at the  
12 top. But it says, "Annexation completed December  
13 2003." Are you looking at your schedule?

14 A. No. What page are you on?

15 Q. It's a table at the end of your prefiled  
16 testimony.

17 A. Oh, okay. I'm with you.

18 Q. At the very top of the first page of  
19 schedule 1, it says, "Note: Annexation completed  
20 December '03."

21 A. This schedule refers to the payments,  
22 the pilot payments for the Aries plant in Pleasant  
23 Hill. Any annexation referral there is referring to  
24 that plant.

25 Q. Now, I'm going to try to find Exhibit 45

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1 and ask you about that. May I approach, your Honor?

2 JUDGE PRIDGIN: You may.

3 BY MR. EFTINK:

4 Q. Exhibit 45 is an e-mail from Terry  
5 Hedrick, and a copy went to you, correct?

6 A. No. It's from Terry Hedrick and it says  
7 Glen Keith and Dennis -- Bruce Hammer, Dave Crimer  
8 and Rick Crups (phonetic spellings).

9 Q. No, this was produced by you when a  
10 Sunshine Act request was made to you in late 2004.  
11 Do you recall that?

12 A. I don't know if I sent this in because  
13 it's from Terry Hedrick to, it appears to be Aquila  
14 staff.

15 Q. But do you recall that this was produced  
16 by you to Della January in late 2004 when she made a  
17 Sunshine request?

18 A. It might have been. I don't recall the  
19 documents.

20 Q. Now, at the top where it says subject,  
21 it says, "Peculiar site offering, confidential."

22 A. Yes, it does.

23 Q. Now, were you involved in confidential  
24 conversations with representatives of Aquila on  
25 July 15th, 2004?

1           A.       I don't recall if we met on that date.  
2   I know I had various meetings with them at that time.

3           Q.       Okay. But my question now is, did you  
4   receive a confidential e-mail from Aquila on  
5   July 15th, 2004?

6                   MR. YOUNGS: Judge, I'll have to object.  
7   I mean, the exhibit itself indicates that he hasn't  
8   seen this, and so the designation of confidential --  
9   it's an internal e-mail. Asking this witness to  
10  comment on that designation and somehow implies some  
11  kind of surreptitious conspiracy, I just object to  
12  it. It's argumentative and without foundation.

13                  MR. EFTINK: But as I said, this was  
14  produced by Mr. Fisher to us when a Sunshine Act  
15  request was made in November of 2004.

16                  MR. YOUNGS: That's what Mr. Eftink  
17  says. Mr. Fisher said he has no recollection of  
18  that. Same objection.

19                  JUDGE PRIDGIN: Okay. I'll overrule.  
20  Again, if the witness doesn't know the answer to the  
21  question, he can simply say that he doesn't know.

22                  THE WITNESS: I don't recall receiving  
23  this.

24                  MR. EFTINK: Okay. May I approach  
25  again?

1 JUDGE PRIDGIN: You may.

2 BY MR. EFTINK:

3 Q. Now, I'm placing in front of you  
4 Exhibit 55. Is that a fax from you to Aquila?

5 A. Yes, it is.

6 Q. And it's dated September 15th, 2004?

7 A. Yes, it is.

8 Q. And this is the one that attaches the  
9 letter from the attorneys about zoning, correct?

10 A. That's correct.

11 Q. So you sent the letter from the attorneys  
12 about zoning on to Aquila on September 15th, 2004?

13 A. That's correct.

14 Q. And in your e-mail you state that, "We  
15 are looking at scheduling a joint planning and zoning  
16 commission and board of aldermen meeting for Tuesday,  
17 October 26th."

18 A. That's correct.

19 Q. And it also says, "As David indicates,  
20 only the P&Z," which is planning and zoning, "approval  
21 is required for state law," correct?

22 A. That's correct.

23 Q. And in the last paragraph or the next to  
24 the last paragraph, you say, "I think we are in the  
25 same mode of thinking regarding the land being the

1   lynchpin." Did I read that correctly?

2           A.       You did.

3           Q.       Now, at that time, September 15, 2004,  
4   the land had not been acquired yet, correct?

5           A.       I can't answer to the date that it was  
6   actually acquired.

7           Q.       Well, I think the record will reflect in  
8   one of the exhibits that the land was acquired on  
9   October 7, 2004.

10          A.       If that's the date. I was not -- the  
11   city was not party to the land acquisition.

12          Q.       But prior to the time that Aquila  
13   acquired the Bremer property, you were already  
14   scheduling planning and zoning meetings?

15          A.       Certainly you look down the road to see  
16   when things can be scheduled and when they cannot.

17          Q.       And you were planning a meeting that  
18   would be a joint meeting between the planning and  
19   zoning and the board of aldermen, correct?

20          A.       Yes.

21          Q.       Why was there such a rush to get this  
22   through planning and zoning when they hadn't even  
23   acquired the land yet?

24          A.       Number one, until they acquired the  
25   land, we couldn't move forward with the -- any kind

1 of process on it.

2 Q. Now, just to try to put this in the  
3 proper frame of reference, if you were looking at a  
4 planning and zoning meeting in late October, by  
5 October 23, the city decided to not do the  
6 annexations, correct?

7 A. That's -- yeah. Checking the dates, but  
8 yes.

9 Q. Now, when you were having these  
10 conversations with Aquila about setting up planning  
11 and zoning meetings before the land was even  
12 acquired, did Aquila indicate to you that they wanted  
13 assurances that their proposal would be approved by  
14 the city as far as zoning is concerned?

15 A. No. They knew it was subject to  
16 approval.

17 Q. But it's clear that you were requiring  
18 that Aquila go through zoning?

19 A. We had agreed together, Aquila and the  
20 city, to pursue the redesignation of that property  
21 according to Section 89. I think it was 380 and 340.

22 Q. Now, you had been working with Aquila to  
23 acquire this property since sometime in July,  
24 correct?

25 A. I don't recall the date that I called



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1 Mr. Bremer.

2 MR. EFTINK: May I approach the witness,  
3 your Honor?

4 JUDGE PRIDGIN: You may.

5 BY MR. EFTINK:

6 Q. Going to hand you what's been marked as  
7 Exhibit 51. Now, is that an e-mail between --

8 A. That's from Mark Dawson to Terry  
9 Hedrick, Judy Ness, L. Butkus and Jan Zimmer  
10 (phonetic spellings), who I presume are all Aquila  
11 staff.

12 Q. Dated August 11th, 2004?

13 A. Yes.

14 MR. DOUGLAS: I object to any questioning  
15 about this. It doesn't show any information or that  
16 it was copied to Mr. Fisher and it's between  
17 representatives of Aquila.

18 MR. EFTINK: Well, I want to ask him a  
19 question that involves him.

20 JUDGE PRIDGIN: I'll overrule at least  
21 for now.

22 BY MR. EFTINK:

23 Q. On this August 11th, 2004 e-mail, it  
24 said, "At last night's council meeting, they went  
25 into closed session and discussed the project with

1 the entire council." Is that a correct recitation of  
2 the facts?

3 A. That's what it states.

4 Q. Well, my question to you is, did the  
5 city council go into a closed session to discuss the  
6 Aquila project?

7 A. It appears that we did on that day.

8 Q. Did the board of aldermen go into other  
9 closed sessions to talk about the Aquila project?

10 A. We had a couple of closed sessions that  
11 talk about the legal documents involved and those  
12 negotiations.

13 MR. EFTINK: May I approach the witness?

14 JUDGE PRIDGIN: You may.

15 BY MR. EFTINK:

16 Q. On Exhibit 66, which is an e-mail inside  
17 of Aquila, it says, "Subject: Peculiar City Council  
18 holds special session and agrees to not proceed with  
19 annexation." And it's dated October 23, 2004, at  
20 12:17 p.m. Is that correct, that the city council  
21 went into a special session?

22 A. They posted a special session. I  
23 believe it was on a Saturday and had a meeting,  
24 that's correct.

25 Q. And it was Saturday morning, October 23,

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1 correct?

2 A. To the best of my recollection, that's  
3 the date.

4 Q. And on that day, by 12:17 p.m., you had  
5 already informed Aquila that the annexation was not  
6 going to go through; isn't that correct?

7 A. That's correct.

8 Q. Now, I started asking about closed  
9 sessions. When it says special session, that meeting  
10 of the board of aldermen of the City of Peculiar that  
11 occurred on October 23 was closed to the public,  
12 wasn't it?

13 A. No. It was first opened, and then they  
14 closed it to discuss with counsel, legal counsel.

15 Q. And on that day during that board of  
16 aldermen meeting when you went into a closed session,  
17 you talked about the annexation?

18 A. They did talk about the annexation.

19 Q. Right. So we've got closed meetings,  
20 we've got e-mails that suggest confidentiality. Were  
21 you trying to keep secrets from the general public?

22 A. Absolutely not. At that October 23rd  
23 meeting, they went into a closed session. This is  
24 allowed under the Sunshine Law. Discussed it with  
25 counsel, came out of that meeting and had a public

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1 vote not to proceed with the annexation.

2 Q. So you think it's proper to have closed  
3 sessions from the public to talk about annexations?

4 A. In this case it was a legal matter also,  
5 and it was. It was advertised and it was done  
6 properly. There was legal counsel at the meeting the  
7 entire time.

8 Q. You said in your affidavit that some of  
9 these meetings were noticed to the public. How do  
10 you notice them to the public at that time? How were  
11 you noticing them to the public?

12 A. They were posted on the bulletin board,  
13 they were posted on the website, and they're usually  
14 posted on Channel 7.

15 Q. They're posted on the bulletin board at  
16 Peculiar City Hall --

17 A. Uh-huh.

18 Q. -- they're posted on Channel 7 --

19 A. The access channel, and they're posted  
20 on our website.

21 Q. Now, this Channel 7 only goes to people  
22 within the city limits of Peculiar, correct?

23 A. That's correct, yes.

24 Q. So people who live around the South  
25 Harper peaking facility don't have access to Channel

1 7, do they?

2 A. No, they don't. But also those notices  
3 on public hearings on annexations and rezonings are  
4 also posted in the newspaper.

5 Q. Now, what newspaper in Cass County come  
6 out more often than once a week?

7 A. To my understanding they all come out  
8 once a week.

9 Q. They all come out once a week?

10 A. Uh-huh.

11 Q. Okay. So for example, on the October 23  
12 meeting which I remember well, you posted notice one  
13 day before the meeting. Do you recall that?

14 A. I can't recall when it was posted.

15 Q. Okay. Well, I do. Now, this Channel 7,  
16 like I said, doesn't go out to the people who live  
17 out near the site because they don't have cable that  
18 goes out there.

19 A. None of us who live outside the city  
20 have cable.

21 Q. Right. Now, if the city had proceeded  
22 and had a zoning hearing, the people who were  
23 affected would have the right to come in and speak  
24 their piece, correct?

25 A. As they do at any public meeting.

1 Q. Right. And if Aquila had submitted to a  
2 county zoning hearing, the people who are affected  
3 would have the right to come in and speak their  
4 piece, correct?

5 A. I assume they would.

6 Q. And you know that neither of those  
7 things happened for the South Harper peaking  
8 facility, correct?

9 A. Excuse me?

10 Q. You know that neither of those things  
11 happened for the South Harper peaking facility?

12 A. Public hearing?

13 Q. Right.

14 A. I believe the city had one at the Lions  
15 Club to accommodate the additional people because  
16 city hall wouldn't hold as many people that attended.

17 Q. That was not a zoning hearing, was it?

18 A. It was an annexation hearing.

19 Q. Annexation hearing, and then the  
20 annexation was dropped. And then after that, the  
21 city went ahead with the Chapter 100 financing?

22 A. That's correct.

23 Q. And didn't have a public vote?

24 A. Public vote was not required based on  
25 advice of counsel.

1 Q. Well, we're not gonna argue legal things  
2 right here. But of course the Court of Appeals --

3 A. Would you ask me the question?

4 Q. Do you agree that the Court of Appeals  
5 said that a vote was required?

6 MR. DOUGLAS: I object to this, because  
7 once the Supreme Court took transfer, that decision  
8 was out.

9 JUDGE PRIDGIN: I'll sustain.

10 MR. EFTINK: But your Honor, he has  
11 given his opinion, and I'm entitled to come back and  
12 ask him if he's aware that the Court of Appeals has  
13 overturned and has said that a vote of the people is  
14 required.

15 JUDGE PRIDGIN: That opinion no longer  
16 exists in the eyes of the law because the Supreme  
17 Court took transfer.

18 BY MR. EFTINK:

19 Q. And then the city, on its proposal to  
20 annex, had the first and second reading the same  
21 night; isn't that correct?

22 A. Of the annexation?

23 Q. Yes.

24 A. No, we did not. We had a public hearing  
25 and had the first reading, and I believe the meeting

1 on October 23rd, that a special meeting was to have  
2 the second reading.

3 Q. On October 23?

4 A. I believe so.

5 Q. That's where you went into closed  
6 session?

7 A. Uh-huh, and then came out.

8 Q. And then on the Chapter 100, the city  
9 had the first and second reading on the same night;  
10 isn't that correct?

11 A. I believe they did on that.

12 Q. Yeah. You're familiar with the lease  
13 agreement that the city entered into with Aquila  
14 regarding the South Harper peaking facility, aren't  
15 you?

16 A. Yes.

17 MR. EFTINK: May I approach, your Honor?

18 JUDGE PRIDGIN: You may.

19 (EXHIBIT NO. 96 WAS MARKED FOR  
20 IDENTIFICATION BY THE COURT REPORTER.)

21 BY MR. EFTINK:

22 Q. Okay. Mr. Fisher, do you have Exhibit 96  
23 in front of you?

24 A. Yes, I do.

25 Q. And I believe you'll agree that the



1 lease agreement entered into between the City of  
2 Peculiar and Aquila was given to me or to my clients  
3 in one of these legal proceedings, correct?

4 A. I'm not aware of how you got it. I'm  
5 sure it was requested and provided to you.

6 Q. And are you sure that this is a copy of  
7 the lease agreement that was supplied to me or to my  
8 clients, right?

9 A. It looks like the lease agreement that  
10 would have been provided to you, yes.

11 Q. Okay. If you would turn to page 5 of  
12 the lease agreement.

13 A. Okay.

14 Q. Under Section 2.2, subpart E, I want to  
15 draw your attention to that. Now, this lease  
16 agreement was entered into between the City of  
17 Peculiar and Aquila in December of 2004 or perhaps  
18 before that, correct?

19 A. Yes, December of '04.

20 Q. And that subsection E, doesn't it say,  
21 "To the company's knowledge, the project as currently  
22 designed and planned will comply in all material  
23 respects with all presently applicable building and  
24 zoning, health, environmental and safety ordinances  
25 and laws and all other applicable laws, rules and

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1 regulations"?

2 A. That's what it states.

3 MR. EFTINK: Move for introduction into  
4 evidence of Exhibit 96.

5 JUDGE REED: Any objections?

6 (NO RESPONSE.)

7 JUDGE PRIDGIN: Hearing none, 96 is  
8 admitted.

9 (EXHIBIT NO. 96 WAS RECEIVED INTO  
10 EVIDENCE AND MADE A PART OF THE RECORD.)

11 BY MR. EFTINK:

12 Q. It would be correct to say, wouldn't it,  
13 Mr. Fisher, that the city didn't do any kind of a  
14 land use study prior to endorsing the South Harper  
15 project?

16 A. We did not do a formal land use study.

17 Q. Okay. And it would be correct also to  
18 say that the City of Peculiar did not do a need study  
19 before endorsing the South Harper project?

20 A. We did not do an electrical need study,  
21 no.

22 MR. EFTINK: I pass the witness.

23 JUDGE PRIDGIN: All right, Mr. Eftink,  
24 thank you. I realize we're in the middle of a  
25 witness, but seeings how we're approaching noon, and

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1 I expect, Cass County, will you have quite a few  
2 questions?

3 MS. MARTIN: I'll probably have 20 to 30  
4 minutes.

5 JUDGE PRIDGIN: Okay. This looks to be  
6 a convenient time to break for lunch. I do show the  
7 clock at the back of the room to be right around  
8 noon. Let's plan to resume at 1:15. If I  
9 understand, after Mr. Fisher, we'll have Mr. Lewis?

10 MS. MARTIN: That's correct.

11 JUDGE PRIDGIN: Anything else from  
12 counsel before we adjourn?

13 (NO RESPONSE.)

14 JUDGE PRIDGIN: All right. Hearing  
15 nothing, we are off the record. We'll resume at  
16 1:15.

17 (THE LUNCH RECESS WAS TAKEN.)

18 JUDGE PRIDGIN: All right. We'll be  
19 back on the record. We'll resume the hearing in Case  
20 No. EA-2006-0309. I believe when we adjourned for  
21 lunch that Mr. Fisher was on the stand. And  
22 Mr. Fisher, if you'll come back to the stand. I'll  
23 remind you that you're still under oath.

24 And if I'm not mistaken, it's Cass  
25 County's turn to cross-examine. Ms. Martin, are you

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1 going to question Mr. Fisher?

2 MS. MARTIN: I am. Thank you.

3 JUDGE PRIDGIN: All right. Whenever  
4 you're ready, ma'am.

5 MS. MARTIN: Thank you.

6 CROSS-EXAMINATION BY MS. MARTIN:

7 Q. Good afternoon, Mr. Fisher.

8 A. Good afternoon.

9 Q. To move things along a bit, I'm going to  
10 bring up a copy of certain exhibits that have been  
11 previously admitted that I'm gonna have you take a  
12 look at during your testimony. If I could approach?

13 JUDGE PRIDGIN: You may.

14 BY MS. MARTIN:

15 Q. And I'll just set these here. And I  
16 think I have them in the order that we're gonna go  
17 through them. Hopefully I haven't disorganized them.

18 Mr. Fisher, I think we've already  
19 established that it was the City of Peculiar that  
20 actually approached Aquila with respect to certain  
21 sites near the city that could serve as sites for the  
22 power plant; is that correct?

23 A. That's correct.

24 Q. And when you were talking with Aquila  
25 about those sites, you understood Aquila's time

1 schedule with respect to its need to bring a plant on  
2 line by June 1st of 2005?

3 A. Yes.

4 Q. And you appreciated that finding a site  
5 that could be annexed into the City of Peculiar was  
6 critical to the discussion of sites that you were  
7 having with Aquila; is that correct?

8 A. It was one of the prime considerations,  
9 yes.

10 Q. One of the other considerations was the  
11 ability to secure Chapter 100 financing; is that  
12 correct?

13 A. That was one, along with gas lines and  
14 power lines close by.

15 Q. Now, the -- ultimately the Bremer site  
16 as it's been called was settled upon as a site. That  
17 was not the first site that had been explored, or  
18 offered, I should say, by the City of Peculiar to  
19 Aquila; is that correct?

20 A. That's correct.

21 Q. The initial site was a 160-acre site  
22 that the owner wasn't interested in selling; is that  
23 correct?

24 A. That's correct.

25 Q. And you're aware that, in fact, there

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1     were at least three other sites that were at one  
2     point explored; is that correct?

3             A.       Yes.

4             Q.       If you'd look at Exhibit 50, which is  
5     the first in that stack in front of you, Mr. Fisher.

6             A.       Uh-huh.

7             Q.       You see in the lower part of that  
8     exhibit, this is an e-mail exchange between yourself  
9     and Mr. Hedrick in the August 5th, 2004 time frame;  
10    is that correct?

11            A.       Yes.

12            Q.       And at this point, the 160-acre tract,  
13    was that the tract owned by Steve Sparling?

14            A.       That's correct.

15            Q.       And he had determined -- in fact, I  
16    think the e-mail says he had made it very clear that  
17    he would not sell his property; is that correct?

18            A.       That's correct.

19            Q.       Mr. Hedrick is advising you on August  
20    the 5th, 2004, that to stay on this aggressive  
21    schedule, an alternative -- or an alternate property  
22    needs to be identified as soon as possible; is that  
23    correct?

24            A.       That's correct.

25            Q.       The aggressive schedule that Mr. Hedrick

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1 was referring to, did you understand that to mean the  
2 schedule that required a plant to be on line by June 1  
3 of 2005?

4 A. That was my understanding.

5 Q. There are three other sites, then,  
6 identified on this e-mail: The Jay Wilson site, the  
7 Efran brothers site, and another site to the east  
8 adjacent to 71 Highway; is that correct?

9 A. Yes.

10 Q. None of those are the Bremer site; is  
11 that correct?

12 A. That's correct.

13 Q. So, in fact, there were at least four  
14 different sites that had been explored or discussed  
15 between the City of Peculiar and Aquila before the  
16 Bremer site came into the picture; is that correct?

17 A. Yes.

18 Q. Now, at the time the Bremer site was  
19 first identified, which I believe the testimony  
20 indicates was maybe in early August of 2004, you're  
21 aware that despite that fact, Aquila didn't acquire  
22 the property until sometime in early October of 2004;  
23 is that correct?

24 A. I know it was later. I'm not sure of  
25 the exact date.

1           Q.       And by this time, you had already had  
2 preliminary discussions with the representatives of  
3 the city council and the planning and zoning board in  
4 the City of Peculiar about approvals for both the  
5 annexation and any development review that needed to  
6 occur; is that correct?

7           A.       That's correct.

8           Q.       If you'd turn, please, to Exhibit 51,  
9 which is the next in that stack, I hope. Is it?

10          A.       Yes.

11          Q.       Good. So far, so good, Mr. Fisher. You  
12 agree with me that you reported to Aquila that city  
13 regulatory and political bodies must authorize the  
14 project; is that correct?

15                   MR. YOUNGS: I'm gonna object to the  
16 question, Judge. In looking at Exhibit No. 51, it  
17 doesn't appear that Mr. Fisher's name appears  
18 anywhere on this exhibit, so if she's asking him if  
19 he said that, then that's one thing, but the  
20 question, I think, as phrased, is objectionable.

21                   MS. MARTIN: I did ask him if he said  
22 that.

23 BY MS. MARTIN:

24          Q.       I'm well aware, Mr. Fisher, just as a  
25 matter of foundation, if I could, your Honor, this



1 particular e-mail, 51, does not show you as either a  
2 recipient or as the person who generated the e-mail;  
3 is that correct?

4 A. That's correct.

5 Q. But it does attribute certain statements  
6 to you, and I want to determine if those statements  
7 were made by you. Can we do that?

8 A. We can do that.

9 JUDGE PRIDGIN: I'll overrule the  
10 objection.

11 BY MS. MARTIN:

12 Q. Mr. Fisher, in this e-mail, Mr. Dawson,  
13 Mark Dawson with Aquila, is reporting to others with  
14 Aquila that you have told him that city regulatory  
15 political bodies must authorize this project; is that  
16 correct?

17 MR. DOUGLAS: Well, I object to the form  
18 of the question, not as to whether it's correct, but  
19 as to whether he said that.

20 JUDGE PRIDGIN: Ask your question again,  
21 please, Ms. Martin. I think I understood the  
22 question.

23 BY MS. MARTIN:

24 Q. Did you advise Mr. Dawson or any other  
25 representative of Aquila that city regulatory and

1 political bodies would have to authorize this  
2 project?

3 A. That was the process we were going  
4 through with the annexation of the South Harper site.

5 Q. And did you tell Mr. Dawson that it was  
6 important to you that this process not look like a,  
7 quote, slam dunk?

8 A. Yes. That everything had to go through  
9 the council for approval.

10 Q. And you did not want it to look like a  
11 slam dunk, correct?

12 A. Correct.

13 Q. And you told Mr. Dawson as well that at  
14 a council meeting held at the previous evening, which  
15 would have been August the 10th, 2004, that your read  
16 of the council was a six-oh or a five-one vote; is  
17 that correct?

18 A. That's correct.

19 Q. And you also felt you had the same  
20 margin with planning and zoning; is that correct?

21 A. That's correct.

22 Q. Now, with regard to city approvals, you  
23 recall that you provided testimony at a public  
24 hearing on March the 20th, 2006, and you spoke in  
25 favor of the South Harper plant; is that correct?

1 A. Yes.

2 Q. And you recall that I asked you a  
3 question or two during those proceedings; is that  
4 correct?

5 A. Yes, you did.

6 Q. And do you recall I asked you if the  
7 City of Peculiar intended that Aquila would procure  
8 appropriate zoning for the plant. Do you recall that  
9 question?

10 A. Yes, you did.

11 Q. And you responded to that question,  
12 didn't you?

13 A. Yes, I did.

14 Q. And do you recall testifying that the  
15 city's intent was to go through with all the state  
16 statutes which required that Aquila submit a  
17 development plan to the city which would be approved  
18 by the planning and zoning commission. Do you recall  
19 providing that testimony?

20 A. Yes.

21 Q. And that's your same testimony today,  
22 isn't it?

23 A. That was our intent at the time, yes.

24 Q. And at that time, you did not believe  
25 that Aquila was exempt from the obligation to comply

1 with these city requirements; is that correct?

2 A. At the time we were going down the path  
3 to annex the property and then use 89.380 and 340 to  
4 designate that property for utility use.

5 Q. You did not believe Aquila was exempt  
6 from the obligation to designate the property for  
7 that use under your development plan; is that  
8 correct?

9 A. I don't --

10 MR. YOUNGS: Excuse me. I'm just gonna  
11 object to the form of the question and this line of  
12 questioning with regard to exemptions from city  
13 zoning and exemptions from county zoning. I believe  
14 the evidence is that they're both very different,  
15 and, in fact, there's been no evidence to the  
16 contrary that they're the same.

17 So I think asking this witness what, if  
18 any, exemptions applied under city zoning regulations  
19 is irrelevant to the issues in this case. And that's  
20 my objection.

21 JUDGE PRIDGIN: Okay. How is this  
22 relevant?

23 MS. MARTIN: It's relevant to the issue  
24 of the city requiring whatever the differences may or  
25 may not be between the regulatory schemes. The city

1 had regulatory schemes set by statute it expected  
2 Aquila to follow, and it seems to be holding the  
3 county to a different standard.

4 I think it's entirely relevant given  
5 this gentleman's rebuttal testimony.

6 MR. YOUNGS: I think there's no similar  
7 statute or regulation or ordinance or any other law  
8 to 64.235 that applies to cities. And so for that  
9 reason, I think that the questions regarding the  
10 city's exemptions to the zoning ordinances are  
11 just -- they don't have anything to do with this  
12 proceeding.

13 MR. DOUGLAS: I'll join in that  
14 objection.

15 MS. MARTIN: Well, your Honor, that's  
16 not the point of the question, and no one is  
17 suggesting there's identity in the statutes. It's  
18 the concept of complying with whatever state  
19 statutory scheme would allow the City of Peculiar to  
20 regulate land use that is relevant, and it goes to  
21 Mr. Fisher's testimony and criticism that the county  
22 would similarly require compliance with whatever its  
23 state statutory scheme is. I think it's completely  
24 relevant to this testimony.

25 JUDGE PRIDGIN: I will overrule, but I

1 don't -- I don't want counsel to spend a whole lot  
2 more time on the city's requirements when what is at  
3 issue here is Cass County's requirements.

4 BY MS. MARTIN:

5 Q. Well, the bottom line is, Mr. Fisher, of  
6 most import is of course the City of Peculiar  
7 expected those requirements, whatever they were, to  
8 be complied with; is that correct?

9 A. We expected at that time that we would  
10 have a cooperative relationship with Aquila, which we  
11 still do, that would follow that procedure.

12 Q. And so is that a yes, Mr. Fisher? You  
13 expected those requirements to be complied with?

14 A. At that time we expected that they would  
15 be followed because we'd be annexing the property  
16 unless they were exempt from that.

17 Q. Now, and as a part of those  
18 expectations, you had several communications with  
19 Aquila representatives about what those requirements  
20 were; is that correct?

21 A. That's right.

22 Q. If you'd look at Exhibit 48, which I  
23 hope is the next one in your stack?

24 A. It is.

25 Q. If you could turn to the second page of

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1     that exhibit? And you see this is a string of  
2     e-mails that involves you particularly with respect  
3     to this second e-mail dated July 28th, 2004; is that  
4     correct?

5           A.       It's dated July 29th, yes. Oh, I'm  
6     sorry. The other one is July 28th, yes.

7           Q.       Thank you. And that's an e-mail from  
8     Terry Hedrick to yourself on a variety of subjects,  
9     correct?

10          A.       That's correct.

11          Q.       The very last subject on the second page  
12     is Mr. Hedrick's request that you provide information  
13     on the rezone application requirements; is that  
14     correct?

15          A.       Yes.

16          Q.       Exhibit 49, which is the next exhibit in  
17     your stack, this is also an e-mail from Mr. Hedrick,  
18     and it shows that you received a cc of this e-mail;  
19     is that correct?

20          A.       That's correct.

21          Q.       And it's dated August the 4th, 2004?

22          A.       Yes.

23          Q.       And you see toward the bottom of this  
24     e-mail three little stars or asterisks?

25          A.       Uh-huh.

1 Q. The first of those is rezoning details;  
2 is that correct?

3 A. That's correct.

4 Q. And there's discussion in this e-mail  
5 about what the rezoning details would be with the  
6 City of Peculiar; is that correct?

7 A. Yes.

8 Q. The next document in the stack I hope is  
9 Exhibit 55; is that correct, Mr. Fisher?

10 A. Yes, it is.

11 Q. And this document's actually already  
12 been discussed in connection with your testimony both  
13 with Mr. Youngs and Mr. Eftink. But as has been  
14 established, it's a copy of a letter to the City of  
15 Peculiar back to you from Gilmore & Bell. Were they  
16 counsel to the City of Peculiar?

17 A. Yes.

18 Q. And you have then forwarded a copy of  
19 that letter to Mark Dawson with Aquila; is that  
20 correct?

21 A. That's correct.

22 Q. And on the cover sheet, the fax cover  
23 sheet where you have forwarded this letter, you are  
24 advising Mark that the attached letter regards the  
25 approval process required for the peaking facility;



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1 is that correct?

2 A. Yes.

3 Q. And we're gonna come back to that in a  
4 moment, but if you could set that aside and turn to  
5 the next document, which is Exhibit 59; is that  
6 correct?

7 A. Yes, it is.

8 Q. And this was a checklist that you sent  
9 to Terry Hedrick on September the 29th, 2004,  
10 specifically a checklist for the concept plan and the  
11 petition for annexation for the Bremer property; is  
12 that correct?

13 A. Actually, it has the concept plan  
14 requirements, but I don't believe the annexation is  
15 attached.

16 Q. Well, nonetheless, what is attached is  
17 the checklist for the concept plan, which is really  
18 what I'm more interested in anyway, Mr. Fisher.

19 A. Okay.

20 Q. And you'd agree with me it's a  
21 several-page list of requirements associated with the  
22 application for and the submission of a concept plan  
23 for city approval; is that correct?

24 A. Yes. It's two and a quarter pages.

25 Q. And you were providing this information

1 to Mr. Hedrick with the expectation that Aquila would  
2 comply with those procedures; is that correct?

3 A. If that was the path that was chosen to  
4 go, but this was the city's requirements at the time,  
5 yes.

6 Q. Exhibit 60 is the next in your stack; is  
7 that correct?

8 A. Yes.

9 Q. We are doing so well in our  
10 organization. I'm appreciative of that, Mr. Fisher.  
11 This is an e-mail from you to various folks,  
12 including certain Aquila representatives, dated  
13 October the 4th, 2004; is that correct?

14 A. Yes, it is.

15 Q. And it's directed to the Harper peaking  
16 facility team; is that correct?

17 A. Yes.

18 Q. And it attaches a revised schedule for  
19 the annexation and approval of the development plan;  
20 is that correct?

21 A. Yes.

22 Q. And on this e-mail is a two-page  
23 document that includes a calendaring or scheduling of  
24 when various meetings would be held before the board  
25 of aldermen and/or planning and zoning to approve the

1 amendment to the comprehensive plan you felt was  
2 required for this plant to be constructed in the City  
3 of Peculiar; is that correct?

4 A. Yes.

5 Q. Now, I note this particular e-mail,  
6 Exhibit 60, is October the 4th, 2004. Would you say  
7 by this time, given that you were able to calendar  
8 out these specific dates, that the City of Peculiar  
9 was feeling pretty comfortable about the timeline it  
10 was going to be able to employ to not only annex the  
11 property for the plant, but also to provide the  
12 necessary approval to the comprehensive plan for the  
13 plant?

14 A. Well, comfortable in the sense that we  
15 had scheduled these different meetings and public  
16 hearings and so on, based on counsel and planning and  
17 zoning's scheduled meetings.

18 Q. And as of October the 4th, 2004, was  
19 there anything occurring that gave you pause about  
20 the City of Peculiar's ability to proceed with its  
21 plans to annex South Harper Road and the Bremer site?

22 A. I don't believe at the time, no.

23 Q. And so three days later you're aware  
24 Aquila acquired the Bremer site; is that correct?

25 A. I know that's the relative time frame.

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1 I couldn't speak to the date they closed, no.

2 Q. And once again, this schedule on  
3 Exhibit 60 that would have approvals completed to the  
4 point where a building permit could be issued on  
5 November the 9th, you knew that was important timing  
6 because of the construction schedule expected for  
7 this plant; is that correct?

8 A. Yes.

9 Q. Not only did you know that this plant  
10 needed to come on line by June 1st of 2005, you also  
11 knew that the plant had about a six-month  
12 construction schedule?

13 A. Roughly.

14 Q. So with a building permit November 19th,  
15 you had about two weeks of float built -- or six  
16 weeks of float built in; is that correct?

17 MR. DOUGLAS: November 9th.

18 BY MS. MARTIN:

19 Q. November 9th. Excuse me. Thank you.

20 A. There was some float built in, yes.

21 Q. Now, if you could, please, go back to  
22 Exhibit 55. And in particular, could you go to the  
23 Gilmore & Bell letter that's attached to your  
24 facsimile cover sheet.

25 A. Okay.

1           Q.       And I understand that you're not a  
2   lawyer, Mr. Fisher, but you did receive this letter,  
3   and then you summarized this letter in your fax cover  
4   sheet before sending it to Mr. Dawson; is that  
5   correct?

6           A.       Yes.

7           Q.       In particular, on page 1 in the third  
8   paragraph, you see reference to the statute 89.380  
9   that you've been talking about is applicable to the  
10   City of Peculiar; is that correct?

11          A.       Yes.

12          Q.       And the only thing I want to focus on,  
13   Mr. Fisher, is in the last sentence of that  
14   paragraph, Gilmore & Bell advised that that was the  
15   statute that would allow the city to approve the  
16   proper location, extent and character of these public  
17   facilities; is that correct?

18          A.       To consider and approve the proper  
19   location, extent and character of public facilities  
20   and public utilities in the public forum while  
21   granting final authority to the board that made such  
22   a request.

23          Q.       So that's a correct statement?

24          A.       Yes.

25          Q.       So your attorneys felt it appropriate

1     that at least from the City of Peculiar's standpoint,  
2     the city be involved in determining the proper  
3     location, extent and character of public facilities;  
4     is that correct?

5                     MR. YOUNGS:  Objection.  Again,  
6     relevance.

7                     MS. MARTIN:  I'll move on, your Honor.

8                     JUDGE PRIDGIN:  Thank you.  Sustained.

9     BY MS. MARTIN:

10            Q.       On the second page --

11            A.       Yes.

12            Q.       -- in the second -- well, the first  
13     complete paragraph under Section 89.380.

14            A.       Yes.

15            Q.       You would agree with me that there are a  
16     variety of steps set forth there; is that correct?

17            A.       Yes.

18            Q.       And those were the steps that you  
19     modeled the schedule that we just looked at on  
20     Exhibit 60 after; is that correct?

21            A.       Yes, pretty much.

22            Q.       And finally, I wanted to ask you about  
23     the signator on this letter from Gilmore & Bell.  If  
24     you could turn to the last page?

25            A.       Yes.

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1 Q. David W. Bushek; is that correct?

2 A. Bushek, yes.

3 Q. B-u-s-h-e-k; is that correct?

4 A. Yes.

5 Q. And I note Mr. Bushek has after his name  
6 a designation: AICP. Do you note that?

7 A. Yes, I do.

8 Q. Do you understand what that designation  
9 means?

10 A. No, I sure don't.

11 Q. Do you understand whether that is the  
12 American Institute of Certified Planners?

13 A. Makes sense but I -- thank you.

14 Q. Have you seen the testimony of Mark  
15 White that has been propounded on Aquila's behalf in  
16 this litigation?

17 A. I have not.

18 Q. Do you know whether Mr. White is an AICP  
19 member?

20 A. No, I don't.

21 Q. The annexation that you were discussing,  
22 I think you used this photograph here, and if I could  
23 use this photograph as well, Mr. Fisher?

24 A. Sure.

25 MS. MARTIN: Your Honor, may I?

1 JUDGE PRIDGIN: You may.

2 BY MS. MARTIN:

3 Q. And if I stand here, can you see this  
4 sufficiently, Mr. Fisher?

5 A. Yeah. I've got new glasses.

6 Q. I have a quick question. If I  
7 understood what you were talking about, you were  
8 talking about annexing South Harper Road, coming up  
9 around the plant, carving out the Southern Star  
10 station --

11 A. That's correct.

12 Q. -- and, in effect, forming almost a  
13 lollipop look with respect to annexation; is that  
14 correct?

15 A. Yeah, if you want to use that  
16 designation.

17 Q. Or a flag?

18 A. A flag.

19 Q. A pole with something sticking out at  
20 the top; is that correct?

21 A. There you go. That works.

22 Q. That annexation, however, fell through.  
23 And I think we've already established on Exhibit 66,  
24 which is the next in your stack, that as of the 23rd  
25 of October, 2004, the City of Peculiar reported to



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1     Aquila that it would not annex the Bremer site; is  
2     that correct?

3             A.       That's correct.

4             Q.       Despite that fact, however, the City of  
5     Peculiar wanted to continue with Chapter 100  
6     financing for the plant and the substation; is that  
7     correct?

8             A.       That's correct.

9             Q.       Even though it knew at that point that  
10    the plant site would be located in unincorporated  
11    Cass and not within the city limits of Peculiar; is  
12    that correct?

13            A.       That's correct.

14            Q.       And you're supporting that plant even  
15    through your testimony today as you have since that  
16    time; is that correct?

17            A.       That's correct.

18            Q.       Despite the fact that Aquila has not  
19    complied with the county's land use regulatory  
20    scheme; is that correct?

21            A.       We've continued to support the facility.

22            Q.       And so the answer is yes, that you have  
23    continued to do so despite the fact that Aquila has  
24    not complied with the county's land use regulatory  
25    scheme?

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1                   MR. DOUGLAS: I object to that, assuming  
2 that it's required that they do so.

3 BY MS. MARTIN:

4           Q.       That is not assumed in the question.  
5 It's asking whether he's done so despite the fact.

6                   JUDGE PRIDGIN: I'll overrule.

7                   THE WITNESS: Yes.

8 BY MS. MARTIN:

9           Q.       Do you think that zoning is important,  
10 Mr. Fisher?

11                   MR. YOUNGS: You know, your Honor, just  
12 before we get down this path, and I don't want to  
13 take too much time doing it, but I'm gonna object to  
14 this line of questioning with this witness who's  
15 speaking here on behalf of the City of Peculiar,  
16 which has a different statutory scheme for zoning,  
17 different statutory and ordinance requirements for  
18 zoning, and trying to parlay that into some kind of a  
19 theory of the case that because Aquila was willing  
20 to, to some degree, subject itself to city zoning,  
21 that there should be some finding on the part of this  
22 commission that it should do the same with county  
23 zoning. It's apples and oranges and I object to it.  
24 It's irrelevant.

25                   MR. DOUGLAS: I'll join in that

1 objection.

2 JUDGE PRIDGIN: I'll sustain.

3 MS. MARTIN: With respect, your Honor,  
4 the question had nothing to do with the City of  
5 Peculiar zoning. It's generally a question of  
6 whether he believes zoning is important.

7 MR. YOUNGS: And my questioning assumes  
8 that at some point we're gonna have this comparison  
9 between his view on whether or not zoning is  
10 important to the issues in this case, and they don't  
11 match up. It's irrelevant and I object.

12 MS. MARTIN: Well, then, let me just  
13 point out, then, if that's the case, your Honor, then  
14 the testimony Mr. Fisher has provided in his  
15 surrebuttal where he draws conclusions with respect  
16 to the propriety of this site under Cass County's  
17 comprehensive scheme is absolutely inappropriate and  
18 should be stricken. It can't be both ways.

19 Either he can testify with respect to  
20 the importance of zoning and land use regulatory  
21 scheme or he can't. But he can't carve out what he  
22 wants to testify about and not allow me to inquire on  
23 other matters related to the same subject.

24 JUDGE PRIDGIN: Okay. If it's in his  
25 prefiled testimony, I'll let you cross-examine him.

1 But if we start getting into -- if we start, again,  
2 getting into differences between the City of Peculiar  
3 and Cass County, I may sustain an objection. But if  
4 it's in the prefiled testimony, you can cross-examine  
5 on it.

6 BY MS. MARTIN:

7 Q. And my question was a general question,  
8 Mr. Fisher. Do you think zoning is important?

9 A. Yes, I do.

10 Q. And do you think it's appropriate for  
11 local governments to be diligent in enforcing their  
12 zoning?

13 A. Certainly.

14 Q. And do you think it's appropriate if  
15 someone is in violation of zoning, to take action to  
16 enforce zoning?

17 A. If they are truly in violation, yes.

18 Q. And you understand that taking action to  
19 enforce zoning is distinguishable from being opposed  
20 to the proposed use whether one is simply asking that  
21 one's laws be complied with; is that correct?

22 A. There would be a distinction between  
23 supporting a use -- a proposed use and supporting the  
24 zoning.

25 Q. And there's a distinction between

1 opposing a use and requiring compliance with zoning,  
2 isn't there?

3 A. Yes.

4 Q. Now, in fact, before the annexation fell  
5 through, you knew Aquila also needed to acquire a  
6 second tract for a substation, which we've called in  
7 this case the Peculiar substation. You're aware of  
8 that?

9 A. Yes.

10 Q. And you, in fact, intended -- and by  
11 you, by the way, I mean the City of Peculiar --  
12 intended to provide Chapter 100 financing for the  
13 Peculiar substation site, but you weren't intending  
14 in the city to annex that site; is that correct?

15 A. That's not entirely true. That entire  
16 parcel -- I think it's 285 acres that the Efran  
17 brothers own, the 320 acres to the south and 320  
18 acres to the south of that and approximately 550  
19 acres has been under an involuntary annexation effort  
20 by the city for approximately three years.

21 So the city is in the process of  
22 annexing that entire parcel and sub-parcel that  
23 Aquila has.

24 Q. Okay. And given that -- it sounds like  
25 that may be a little bit different situation if it's

1 involving an involuntary annexation. Would it be  
2 fair to say that at least in the context of voluntary  
3 annexation, that that site was not gonna be the  
4 subject of a voluntary annexation discussion during  
5 the time frame that you were talking about the plant  
6 site, for example?

7 A. That's probably correct.

8 Q. Okay. Now -- and, in fact, Aquila -- or  
9 Peculiar worked with the city --

10 A. Peculiar always worked with the city.

11 Q. Peculiar -- yeah, it's a good thing when  
12 that happens, isn't it? Peculiar worked with Aquila to  
13 help to locate a site for the substation, didn't it?

14 A. To some degree, but not as much as we  
15 did with the peaking facility.

16 Q. Would you turn to Exhibit 54, which I'm  
17 hoping is the next in your stack.

18 A. You've done a good job.

19 Q. So far, so good. Just trying to move  
20 this along. And this is an e-mail from Mr. Hedrick  
21 to several folks, yourself included, dated September  
22 the 2nd, 2004?

23 A. September 2nd, yes.

24 Q. And that is correct?

25 A. Uh-huh.

1 Q. The e-mail from Mr. Hedrick indicates  
2 there's an attached draft agenda for a meeting that's  
3 going to be had that day with the primary discussion  
4 being the transmission issue; is that correct?

5 A. Yes.

6 Q. The transmission issue was the  
7 substation issue; is that correct?

8 A. Primarily because they already owned the  
9 right-of-way where the line would go.

10 Q. Okay. The transmission lines, they  
11 already had the right-of-way, but they needed a site  
12 to build a separate substation; is that correct?

13 A. That's correct.

14 Q. And on the agenda itself which is  
15 attached, the first category of issues relate to the  
16 transmission issues; is that correct?

17 A. Yes.

18 Q. And, in fact, there are various sites or  
19 locations that are identified there that the City of  
20 Peculiar had helped to locate as possible sites for  
21 the Peculiar substation; is that correct?

22 A. Actually, I just see the one at Grand Oaks.

23 Q. So the one -- that's not a separate one  
24 at the beginning? These are all the same site?

25 A. Well, the two substations -- I mean the

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1 161KB is at --

2 Q. The Bremer site?

3 A. And the other one is the one up near  
4 Grand Oaks.

5 Q. But that's the site that Peculiar  
6 located for Aquila; is that correct?

7 A. I think jointly we looked at areas to  
8 be -- I think that they were primarily responsible  
9 for locating that site and based on whether the  
10 transmission lines intersected.

11 Q. Now, you indicated in your prefiled  
12 testimony that you met with Gary Mallory once a  
13 substation site had been settled on to discuss the  
14 county's requirements with respect to that site. Do  
15 you recall that testimony?

16 A. Yes.

17 Q. Would you turn to Exhibit 56? Is that  
18 the next one in your stack?

19 A. We're narrowing it down.

20 Q. We're getting there.

21 A. Yes.

22 Q. Now, I realize again that this e-mail  
23 does not show that you generated the e-mail or that  
24 you are a recipient of the e-mail, but it summarizes  
25 a conversation that occurred with you that day, and



1 so I want to ask you about the conversation if I can.

2 Would that be fair, Mr. Fisher?

3 A. That would be fair.

4 Q. Do you recall having a conversation with  
5 Mr. Hedrick on the 24th of September, 2004, where you  
6 advised Mr. Hedrick that you had met with Gary  
7 Mallory that same morning?

8 A. Roughly, yeah. It's been a while.

9 Q. And do you recall advising Mr. Hedrick  
10 that Gary Mallory told you that with respect to the  
11 substation site, that site would need to be rezoned  
12 1 -- or excuse me -- I1, or industrial 1?

13 A. Yes.

14 Q. And that Mr. Mallory told you this was  
15 consistent with other Cass County substations?

16 A. Yes, that's what he told me.

17 Q. And did you tell Mr. Hedrick that  
18 Mr. Mallory had also told you the application would  
19 go before the planning and zoning, and that the  
20 county did not anticipate any issues?

21 A. That's what I relayed, yes.

22 Q. And did you tell Mr. Hedrick that  
23 Mr. Mallory had reported to you that the application  
24 would require a public hearing?

25 A. I don't see that in here. Oh, I do,

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1     yes.

2           Q.       Do you recall telling Mr. Hedrick that?

3           A.       I believe so.  If it's in here, I told  
4     him that.

5           Q.       And finally, do you recall telling  
6     Mr. Hedrick as is reported in this e-mail that  
7     Mr. Mallory requested that an application be filed  
8     today or Monday?

9           A.       I probably did if it's in here, which  
10    would be following their schedule.

11          Q.       And so this meeting with Mr. Mallory  
12    occurred on September the 24th of 2004; is that  
13    correct?

14          A.       It appears that way.

15          Q.       And on that date the county told you  
16    that with respect to any facility that Aquila  
17    intended to build in unincorporated Cass, that the  
18    county would expect its zoning to be complied with?

19          A.       That's the gist of this e-mail.

20          Q.       Would you agree that as of September the  
21    24th, 2004, there was no discussion taking place with  
22    respect to the South Harper plant being in  
23    unincorporated Cass County?

24          A.       Best of my recollection, yeah.

25          Q.       That you and Aquila both expected, at

1    least as of September 24th, the South Harper tract  
2    would be annexed into the City of Peculiar?

3           A.       At that time, yes.

4           Q.       And Gary Mallory, to your knowledge, had  
5    no reason to feel differently or think differently?

6           A.       Counsel had not taken any action, so no.

7           Q.       Mr. Mallory would have had no reason to  
8    think that the annexation was not going to occur,  
9    would he, to your knowledge?

10          A.       No.

11          Q.       And so Aquila did, in fact, file a  
12    rezoning application for the Peculiar substation  
13    within a few days; is that correct?

14          A.       My understanding is they did, yes.

15          Q.       And for the record, we won't look at the  
16    exhibit, but that's Exhibit 57, which has been  
17    previously marked and introduced into evidence.

18                   And you were asked by Aquila to write a  
19    letter of support for that rezone application; is  
20    that correct?

21          A.       Yes, we were.

22          Q.       And if you'll take a look at Exhibit 63,  
23    which is an e-mail dated October the 19th, 2004, from  
24    Terry Hedrick to you, he is soliciting that letter of  
25    support for the rezone application; is that correct?

1211

1 A. That's correct.

2 Q. And, in fact, he provides you with some  
3 model language on the second page of this exhibit,  
4 doesn't he?

5 A. Yes, he did.

6 Q. And a few days later, on October the  
7 25th, 2004, you actually prepared a proposed letter  
8 and sent it through to Terry Hedrick for his approval  
9 before sending it to the county; is that correct?

10 A. That's correct.

11 Q. And that's Exhibit 67; is that correct?

12 A. Yes.

13 Q. The second page of Exhibit 67, is this,  
14 in fact, the letter that you sent to Cass County  
15 Planning and Zoning on October 25th, 2004?

16 A. Appears that it is, yes.

17 Q. And you start the letter off by saying,  
18 "I'm sure you may be aware the City of Peculiar has  
19 been working cooperatively with Aquila to locate  
20 their proposed gas turbine peaking facility in  
21 Peculiar"; is that correct?

22 A. Yes, it is.

23 Q. Now, sometime -- well, in fact, by the  
24 time you sent this letter on October the 25th, 2004,  
25 two days prior is when Peculiar had determined it

1 would not annex the South Harper site; is that  
2 correct?

3 A. That's correct.

4 Q. So as soon as that became evident, by  
5 late October, early November of 2004, as soon as it  
6 became evident that the South Harper plant was going  
7 to be built in Cass County unincorporated and not in  
8 the City of Peculiar, given Mr. Mallory's statements  
9 to you in September about the substation site, it  
10 didn't surprise you that Cass County was also going  
11 to require zoning be complied with for the South  
12 Harper site, did it?

13 A. No, probably not.

14 Q. You have testified in your prefiled  
15 testimony -- you've criticized, actually, the county  
16 by saying that somehow or another, they should have  
17 objected sooner to this proposed land use, given that  
18 they knew what the City of Peculiar intended to do  
19 with this land; is that correct?

20 A. Yes.

21 Q. And you'd agree with me, as you stated  
22 earlier in your testimony, Mr. Fisher, there is a  
23 distinction between insisting on one's zoning being  
24 followed and either expressing support or opposition  
25 for a proposed use; is that correct?

1213

1           A.       That's correct.

2           Q.       You talked in terms of the annexation of  
3 the road. Do you recall that testimony?

4           A.       Yes.

5                   MS. MARTIN: If I could approach, your  
6 Honor?

7                   JUDGE PRIDGIN: You may.

8                   (EXHIBIT NO. 97 WAS MARKED FOR  
9 IDENTIFICATION BY THE COURT REPORTER.)

10 BY MS. MARTIN:

11          Q.       Mr. Fisher, the court reporter has  
12 handed you what's been marked as Exhibit 97; is that  
13 correct?

14          A.       Yes.

15          Q.       This is a letter from you to Gary  
16 Mallory, dated August the 20th, 2004; is that  
17 correct?

18          A.       Uh-huh, yes.

19          Q.       And it discusses annexation of a portion  
20 of Harper Road; is that correct?

21          A.       Yes, it does.

22          Q.       Would you take a moment and look at this  
23 letter? It's not very long. I want you to read it  
24 and make sure you've refreshed your memory about its  
25 contents. Let me know when you're finished,

1214

1 Mr. Fisher.

2 A. I'm ready.

3 Q. There is no reference in Exhibit 97  
4 whatsoever to Aquila, is there?

5 A. No, there's not.

6 Q. There's no reference in Exhibit 97 to  
7 any intention of the City of Peculiar to annex land  
8 in association with the construction of a power  
9 plant, is there?

10 A. Not in this letter, no.

11 Q. And from the county's perspective, this  
12 letter represented a city wanting to annex a road,  
13 which meant the county would no longer be paying to  
14 maintain that road; is that correct?

15 MR. YOUNGS: I'm just gonna object to  
16 the form of the question as calling for speculation  
17 on what the county's perspective would be. I don't  
18 think this witness is --

19 MS. MARTIN: Let me rephrase.

20 BY MS. MARTIN:

21 Q. You were, as a representative of the  
22 City of Peculiar in asking to annex this road, also  
23 acknowledging that you would be accepting maintenance  
24 responsibility for the road; is that correct?

25 A. The city would, yes.

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1 MS. MARTIN: Move admission of Exhibit 97.

2 JUDGE PRIDGIN: Any objections?

3 (NO RESPONSE.)

4 JUDGE PRIDGIN: Hearing none, Exhibit 97  
5 is admitted.

6 (EXHIBIT NO. 97 WAS RECEIVED INTO  
7 EVIDENCE AND MADE A PART OF THE RECORD.)

8 BY MS. MARTIN:

9 Q. Mr. Fisher, on page 7 and 8 of your  
10 prefiled testimony, you have discussion with respect  
11 to two permits that were issued by the county. One  
12 was a grading permit and one was a driveway entry  
13 permit; is that correct?

14 A. Yes.

15 Q. And you use those two permits to draw  
16 the conclusion that in your view, the issuance of  
17 those permits strongly reinforce that Cass County  
18 knew of Aquila and the city's intent but did not  
19 request land use compliance; is that correct?

20 A. Yes.

21 Q. Now, let's talk about the grading permit  
22 for just a moment. Do you have any personal  
23 knowledge of the county grading permit requirements?

24 A. No, I don't. I've never obtained one  
25 from the county.



1 Q. And so if I told you that the county  
2 doesn't require grading permits, do you have any  
3 reason to dispute that?

4 A. No, I don't.

5 Q. And so if I told you that the county  
6 didn't require a grading permit of Aquila because it  
7 wouldn't require it of anyone, do you have any reason  
8 to dispute that?

9 A. No, I don't.

10 Q. And with respect to the driveway and  
11 entry permit, as you sit here today, Mr. Fisher, do  
12 you have any knowledge when that permit was issued?

13 A. No, I don't. I don't know the date.

14 Q. If I told you it was issued on or about  
15 December 2nd of 2004, would you have any reason to  
16 dispute that?

17 A. I have no reason to dispute your date.

18 Q. And are you aware that Cass County, on  
19 December 1st, filed suit of 2004 against Aquila  
20 seeking an injunction to prevent the plant from being  
21 constructed?

22 A. I have no reason to doubt your dates.

23 Q. And so if the injunction action was  
24 filed on the same day or the day before the entry  
25 permit, that would indicate to you, would it not,

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1     that the county was certainly expressing its view  
2     with respect to land use compliance, wouldn't it?

3           A.       Could be taken as such an expression,  
4     yes.

5           Q.       Now, with respect to the Chapter 100  
6     financing, as we mentioned, you went -- the city went  
7     forward with that financing even though the  
8     annexation had gone through; is that correct -- or  
9     had not gone through?

10          A.       Yes, we did.

11          Q.       And, in fact, it began working  
12     cooperatively with Aquila in connection with the  
13     public relations issues that were being generated by  
14     virtue of Aquila's decision to build this plant in  
15     any event, correct?

16          A.       We worked cooperatively with Aquila  
17     through the entire process, yes.

18                   (EXHIBIT NO. 98 WAS MARKED FOR  
19     IDENTIFICATION BY THE COURT REPORTER.)

20     BY MS. MARTIN:

21          Q.       Mr. Fisher, you've been handed what's  
22     been marked as Exhibit 98. Do you recognize this to  
23     be an e-mail from you to Mark Dawson dated November  
24     the 3rd, 2004?

25          A.       That's what it says on the cover, yes.

1218

1           Q.       And it attaches a variety of other  
2 e-mails and some frequently asked questions, as well  
3 as revisions to those proposed questions; is that  
4 correct?

5           A.       Yes.

6           Q.       And without going into great detail  
7 about this, would you summarize Exhibit 98 as an  
8 indication that the City of Peculiar was working  
9 directly with Aquila on the public relations campaign  
10 associated with construction of the South Harper  
11 plant?

12          A.       Yes.

13          Q.       And this was at a point in time when you  
14 knew the plant was not going to be built in the City  
15 of Peculiar but in unincorporated Cass; is that  
16 correct?

17          A.       Based on the dating, it appears so, yes.

18          Q.       The Chapter 100 financing that was  
19 issued required title to the real estate both at the  
20 plant location and at the substation location to be  
21 transferred to the City of Peculiar; is that correct?

22          A.       That's correct.

23          Q.       And the facilities at both of those  
24 locations are actually owned by the City of Peculiar;  
25 is that correct?

1           A.       They are titled to the City of Peculiar.

2           Q.       And the effect of that by virtue of this  
3 Chapter 100 financing is that no real estate taxes  
4 are paid to Cass County on either the substation site  
5 or the plant site; is that correct?

6           A.       Not real estate taxes as you and I might  
7 interpret from our homes, but a pilot payment in lieu  
8 of taxes is paid, and that is distributed within  
9 Peculiar's taxing jurisdiction, and a part of that  
10 does go to Cass County for their various functions.

11          Q.       But you'd agree with me that the tax  
12 revenue that Cass County receives from these  
13 facilities located within unincorporated Cass is  
14 significantly different, meaning less, than it is --  
15 or than it would be without Chapter 100 financing?

16          A.       Not necessarily. I'd have to look back  
17 at the numbers. But, I mean, it would be less than  
18 is paid overall, but that's then allocated across the  
19 line.

20          Q.       Well, let's come at it a different way.  
21 From the City of Peculiar's standpoint -- and I'm  
22 talking about the city as well as the Raymore/Peculiar  
23 school district -- you would agree that there's  
24 certain taxing jurisdictions within the City of  
25 Peculiar that receive more money because of the

1 Chapter 100 financing than they would if standard  
2 real estate taxes were being paid to Cass County on  
3 these two sites?

4 A. That's correct.

5 Q. Now, has the City of Peculiar, the owner  
6 of the South Harper plant and substation, made  
7 application to the county for rezoning?

8 A. Not to my knowledge, no.

9 Q. Or for a special use permit application  
10 for either site?

11 A. Not to my knowledge, no.

12 Q. And the City of Peculiar is not a  
13 regulated utility obviously; is that correct?

14 A. We are not.

15 Q. So they have not made application to  
16 this commission -- and by that, I mean the Public  
17 Service Commission -- for a specific Certificate of  
18 Convenience and Necessity for the South Harper site  
19 or the substation; is that correct?

20 MR. YOUNGS: Let me just object. The  
21 question assumes that that's an obligation, which I  
22 think is a question of law, and I think that it's  
23 beyond this witness's purview.

24 MS. MARTIN: I haven't asked the witness  
25 if it's an obligation, which would be a question of

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1 law. I've asked the witness if the application has  
2 been made, and I think I'm entitled from a factual  
3 standpoint to make that record, your Honor.

4 MR. YOUNGS: The only relevance would be  
5 if Ms. Martin's conclusion of law is correct, so I  
6 object to it. It's irrelevant.

7 MS. MARTIN: Well, I think the  
8 conclusion of law is one that's fairly debatable that  
9 we're probably not going to get resolved today. I'm  
10 simply asking for an opportunity to make my factual  
11 record, your Honor.

12 JUDGE PRIDGIN: I'll overruled. Let him  
13 answer if he knows.

14 BY MS. MARTIN:

15 Q. Do you recall the question, Mr. Fisher?

16 A. If you would restate, please.

17 Q. The City of Peculiar as the owner of the  
18 plant and the owner of the substation has not made  
19 application to the Public Service Commission for a  
20 specific Certificate of Convenience and Necessity for  
21 either facility?

22 A. To my knowledge, we have not.

23 Q. And it has not secured a permit of any  
24 kind from the county for either facility under  
25 Section 64.231, to your knowledge; is that correct?

1222

1           A.       No, it's not.

2                   MR. YOUNGS:  I'll just object to the  
3 line of questioning.

4                   JUDGE PRIDGIN:  I understand you've got  
5 a standing objection.  Thank you.  Overruled.

6 BY MS. MARTIN:

7           Q.       Did you answer the question, "Not to my  
8 knowledge"; is that correct?

9           A.       Yes.

10                   (EXHIBIT NO. 99 WAS MARKED FOR  
11 IDENTIFICATION BY THE COURT REPORTER.)

12 BY MS. MARTIN:

13           Q.       Now, I want to ask you a question, if I  
14 can, about what the plans were with respect to this  
15 plant's site, if I could, Mr. Fisher.

16                   While that's being distributed, your  
17 Honor, may I move admission of 98?

18                   JUDGE PRIDGIN:  You may.  Any objections?

19                   (NO RESPONSE.)

20                   JUDGE PRIDGIN:  Hearing none, 98 is  
21 admitted.

22                   (EXHIBIT NO. 98 WAS RECEIVED INTO  
23 EVIDENCE AND MADE A PART OF THE RECORD.)

24 BY MS. MARTIN:

25           Q.       Mr. Fisher, do you see Exhibit 99?

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1 A. Yes.

2 Q. And is this a portion --- and I'm gonna  
3 represent it's not the complete document that would  
4 have been prepared by Sega, but is this a portion of  
5 a concept and design plan for the South Harper plant  
6 presented on October 21st, 2004, by Sega?

7 A. It appears it is, yes.

8 Q. And October 21st, 2004, that was the  
9 public hearing before the city governmental  
10 authorities with respect to the annexation; is that  
11 correct?

12 A. The 21st?

13 Q. Yes, sir. I believe that was a Thursday  
14 night, and it preceded your October 23rd Saturday  
15 meeting where you determined not to annex, as I  
16 recall?

17 A. I think that's correct.

18 Q. Okay. And do you see reference in this  
19 plan -- and I particularly want to turn you to the  
20 back page.

21 A. Okay.

22 Q. Which I'm gonna tell you right now that  
23 the map that you got was much bigger than this, but I  
24 have shrunk it down for purposes of these  
25 proceedings, so you'll have to maybe get your



1 cheaters out to take a look at it.

2 But what I really want to talk with you  
3 about, is this the layout, so to speak, for the plant  
4 that was presented to folks at this meeting on the  
5 21st of October in 2004?

6 A. It appears it is, yeah.

7 Q. And do you see where the three turbines  
8 are located on the top half of the plant area?

9 A. Yeah. They're in the darker shaded area  
10 in the middle.

11 Q. Correct. And you see immediately below  
12 that an equivalently side (sic) white area -- an  
13 equivalently sized white area?

14 A. Yes.

15 Q. There had been discussion, had there  
16 not, between the City of Peculiar and Aquila about  
17 the fact that Aquila intended to put six turbines on  
18 this site; isn't that correct?

19 A. There was discussion that if they did  
20 expand on this site, that -- with us to do the  
21 Chapter 100 because of the infrastructure that would  
22 already be in place.

23 Q. And so there were discussions that  
24 Aquila expected it might expand this site to include  
25 not just the three CTs, but eventually six; is that

1 correct?

2 A. There was discussion but there was never  
3 any time frame discussed as far as when.

4 Q. Oh, and I understand there might not  
5 have been a time frame as far as when, but it was not  
6 news to you that Aquila had plans or designs to use  
7 this site for a total of six CTs at some point; is  
8 that correct?

9 A. They cited it and we had discussed doing  
10 the financing if it was appropriate for them to cite  
11 additional turbines at this site.

12 Q. Okay. So is that a yes to my question?

13 MR. DOUGLAS: Well, he's answered the  
14 question. And according to his answer, I don't think  
15 he should be required to make a yes or no.

16 MS. MARTIN: I'm just trying to make  
17 sure I've gotten my question answered, your Honor.  
18 And I don't mean to quibble, but my question is very  
19 simple. There had been discussion with Aquila that  
20 it intended to expand this site at some point to  
21 include six CTs; is that correct?

22 MR. DOUGLAS: I object to that as  
23 misstating what he said. He didn't say anything  
24 about what they intended. It was they were reviewing  
25 the availability of the plan for that, should the

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1     need arise.

2                   JUDGE PRIDGIN:  I mean, I'll overrule,  
3     and if the answer to that question is that's not  
4     correct, he can say no.

5                   THE WITNESS:  We discussed the  
6     possibility that if Aquila decided that they needed  
7     more generation capacity in Cass County, that  
8     additional turbines, up to three, could be placed at  
9     this site.

10  BY MS. MARTIN:

11           Q.     And so in anticipation of that, you  
12     actually discussed your Chapter 100 financing,  
13     including a component that would allow for the  
14     issuance of additional bonds in the future; is that  
15     correct?

16           A.     Yes.

17                   MS. MARTIN:  I move admission of  
18     Exhibit 99.

19                   JUDGE PRIDGIN:  Any objections?

20                   (NO RESPONSE.)

21                   JUDGE PRIDGIN:  Hearing none, Exhibit 99  
22     is admitted.

23                   (EXHIBIT NO. 99 WAS RECEIVED INTO  
24     EVIDENCE AND MADE A PART OF THE RECORD.)

25  BY MS. MARTIN:

1           Q.       And I know Mr. Eftink has already  
2     introduced the actual lease between the city and  
3     Aquila, but if I could, Mr. Fisher, I'd like to  
4     introduce a summary of the Economic Development  
5     agreement if I could.

6                   (EXHIBIT NO. 100 WAS MARKED FOR  
7     IDENTIFICATION BY THE COURT REPORTER.)  
8     BY MS. MARTIN:

9           Q.       Mr. Fisher, you have in front of you a  
10    summary of the Economic Development agreement between  
11    Aquila and the City of Peculiar; is that correct?

12          A.       Yes.

13          Q.       Now, the actual Economic Development  
14    agreement itself is a pretty lengthy document; is  
15    that correct?

16          A.       That is correct.

17          Q.       And so this summary doesn't cover every  
18    provision, but it is intended, I assume, to summarize  
19    the high points; is that correct?

20          A.       Yes.

21          Q.       And this particular document on the  
22    bottom of page 1 talks about project expansion,  
23    doesn't it?

24          A.       Yes. It says, "If the project is  
25    expanded."

1           Q.       "And financed with additional revenue  
2   bonds, Aquila will make additional pilot payments  
3   equal to," and then it goes on and talks about the  
4   amount; is that correct?

5           A.       That's correct.

6           Q.       And so because expansion of the plant  
7   had been discussed, the Chapter 100 financing took  
8   that into consideration; is that correct?

9           A.       The current bonds or future bonds?

10          Q.       The Chapter 100 financing current bonds  
11   anticipated future bonds might be issued to address  
12   the expansion of the plant.

13          A.       The development agreement took that into  
14   account, yes.

15          Q.       Okay. If I'm using the wrong lingo, I  
16   appreciate the correction.

17                   I move admission of Exhibit 100.

18                   JUDGE PRIDGIN: Objections?

19                   (NO RESPONSE.)

20                   JUDGE PRIDGIN: Hearing none, Exhibit 100  
21   is admitted.

22                   (EXHIBIT NO. 100 WAS RECEIVED INTO  
23   EVIDENCE AND MADE A PART OF THE RECORD.)

24   BY MS. MARTIN:

25          Q.       One last thing I want to cover with you,

1 Mr. Fisher. You stated on several occasions during  
2 your testimony that the City of Peculiar has been  
3 working cooperatively with Aquila for some time; is  
4 that correct?

5 A. Yes.

6 Q. And in connection with the preparation  
7 of your testimony today, did you have representatives  
8 of Aquila or Aquila's counsel review your testimony  
9 before it was filed?

10 A. To my knowledge -- well, let's see. I  
11 prepared it, I sent it to Gilmore & Bell for  
12 submission to the commission.

13 Q. And did anyone from Aquila ever provide  
14 you or your counsel with proposed testimony that you  
15 should incorporate into your prefiled testimony?

16 A. I was provided an example, which  
17 obviously I didn't follow.

18 (EXHIBIT NO. 101 WAS MARKED FOR  
19 IDENTIFICATION BY THE COURT REPORTER.)

20 BY MS. MARTIN:

21 Q. Mr. Fisher, you've been handed what's  
22 been marked as Exhibit 101; is that correct?

23 A. Yes.

24 Q. And is this a proposed draft of  
25 testimony that Aquila prepared for you to consider

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1 presenting to the Public Service Commission?

2 A. It looks like the same, yes.

3 Q. And I will -- well, you'll note that on  
4 the second page, the header actually indicates  
5 "Rebuttal Testimony, Jon R. Empson"; is that correct?

6 A. Yes, it does.

7 Q. And you understand him to be a  
8 management representative for Aquila; is that  
9 correct?

10 A. That's my understanding.

11 Q. But this represents the testimony that  
12 Aquila would like to have seen you submit in this  
13 case; is that correct?

14 A. I think it was to be used as a guide.

15 Q. Well, you'd agree with me that the  
16 subject matter of this guide is very specific to your  
17 testimony; is that correct?

18 A. That's correct.

19 MS. MARTIN: I move admission of  
20 Exhibit 101.

21 JUDGE PRIDGIN: Objections?

22 (NO RESPONSE.)

23 JUDGE PRIDGIN: Hearing none, Exhibit 101  
24 is admitted.

25 (EXHIBIT NO. 101 WAS RECEIVED INTO

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1 EVIDENCE AND MADE A PART OF THE RECORD.)

2 MS. MARTIN: Your Honor, that's all I  
3 have of this witness at this time.

4 JUDGE PRIDGIN: Ms. Martin, thank you  
5 very much. Mr. Uhrig, any cross?

6 MR. UHRIG: Just a few.

7 JUDGE PRIDGIN: Yes, sir.

8 CROSS-EXAMINATION BY MR. UHRIG:

9 Q. Mr. Fisher?

10 A. Yes.

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. My name is Mat Uhrig. I represent Frank  
14 Dillon and some other nearby residents of the South  
15 Harper plant. And my clients, Frank included, live  
16 on South Harper Road directly across from the plant.

17 It's true that in the late summer, fall  
18 of 2004 time frame, they did not live within the city  
19 limits of the City of Peculiar.

20 A. My understanding is they still do not.

21 Q. That was my next question. They didn't  
22 then and they don't now?

23 A. That's correct.

24 Q. And I know that you've been asked a lot  
25 of questions, but on October 19th in I believe 2004,



1     there was a meeting held by the City of Peculiar  
2     regarding annexation of this area; is that correct?

3             A.       They attempted to hold a meeting, yes.

4             Q.       And you were in attendance?

5             A.       Yes.

6             Q.       And so was Mayor Lewis?

7             A.       Yes.

8             Q.       And it's true that Mayor Lewis said that  
9     people who lived around the South Harper peaking  
10    facility, mainly people who live in the same area as  
11    my clients, did not have a right to basically  
12    participate in that annexation discussion?

13            A.       I can't recall the mayor's exact  
14    comments. I know that we held a meeting and  
15    everybody that wanted to speak I think was provided  
16    an opportunity.

17            Q.       But it's true that at that meeting that  
18    Mayor Lewis said that people who did not live within  
19    the city limits of Peculiar could not speak at the  
20    hearing?

21            A.       I don't recall his comments. I don't  
22    have a transcript on it, so I can't verify it or not.

23            Q.       Fair enough. I want to reference the  
24    exhibit that Ms. Martin talked to you about,  
25    Exhibit 55. And that's the letter from Gilmore &

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1 Bell.

2 Aquila paid the city's attorney's fees  
3 for the work that Gilmore & Bell did; isn't that  
4 correct

5 A. That's correct.

6 Q. And are they paying for your legal --  
7 your legal fees that the city is incurring here  
8 today?

9 A. Yes, they are.

10 MR. UHRIG: Thanks. No further  
11 questions.

12 JUDGE PRIDGIN: Thank you, Mr. Uhrig.  
13 Thank you. Let me see if we have any questions from  
14 the bench. Commissioner Gaw?

15 COMMISSIONER GAW: I don't think so,  
16 thank you.

17 JUDGE PRIDGIN: Commissioner, thank you.  
18 Commissioner Appling?

19 COMMISSIONER APPLING: No questions.

20 JUDGE PRIDGIN: Anything else from  
21 counsel? Redirect?

22 MR. DOUGLAS: Yes, sir.

23 REDIRECT EXAMINATION BY MR. DOUGLAS:

24 Q. Mr. Fisher, with reference to the  
25 question of the pilot payments, you were asked about

1 the fact that there was a 17 million dollar savings  
2 to Aquila that would be passed on to rate holders.  
3 So far as the community, the school district, the  
4 fire district, the water district and things of that  
5 nature, were they to derive more money from the  
6 Chapter 100 financing than they would have had it not  
7 been Chapter 100 financing?

8 A. Roughly recalling, I think each of them  
9 received approximately ten times the amount that they  
10 would have received if it had not been done by the  
11 Chapter 100.

12 Q. So it was beneficial to your community  
13 interest?

14 A. Yes.

15 Q. All right. Now, with reference to the  
16 need -- the awareness of the city concerning the need  
17 for being in operation by June 1 of 2005, did they  
18 make you aware of that at the very beginning when you  
19 first contacted them about considering the Peculiar  
20 area as opposed to the north Harrisonville area?

21 A. I don't know if it was in our first  
22 meeting, but I know that very early in our  
23 discussions I was made aware that they had a time  
24 frame that they were up against.

25 Q. And some of these sites that you had

1 examined earlier were discarded because landowners  
2 were either not willing to sell voluntarily or priced  
3 it out of reach?

4 A. Primarily the first one was because it  
5 was priced out of reach. The other one was because  
6 both utilities were not available. The site that was  
7 chosen was a voluntary sale by the owners.

8 Q. All right. And the one that was priced  
9 out of reach, condemnation would have prevented them  
10 from maintaining the time frame?

11 A. My speculation would be yes, it would.

12 Q. All right. Now, with reference to the  
13 various hearings you've held, zoning -- or the plan  
14 to designate a utility area, the rezoning discussions  
15 that you had, the annexation, all those things, have  
16 you always complied with every notice requirement of  
17 the statutes governing your city?

18 A. To the best of my knowledge, we complied  
19 with all the public notice requirements.

20 Q. Including there was discussion about the  
21 October 23rd meeting. That also was complied with  
22 insofar as notice is concerned?

23 A. As far as I know, they were complied  
24 with, and there was members of the public at that  
25 meeting so...

1 Q. And in addition to the notice required,  
2 you also had it on your city website.

3 A. I can't totally attest to the web site.  
4 I know it was posted at city hall as required.

5 Q. All right. Your plan for the peaking  
6 station was not rezoning but rather simply leaving  
7 the zoning intact and designating it for a public  
8 utility use?

9 A. That's correct.

10 Q. And that is a unique designation  
11 available to the city as opposed to the county?

12 A. My understanding --

13 MS. MARTIN: Objection, your Honor.  
14 When I asked questions with respect to the comparison  
15 between the two, Mr. Fisher was not allowed to  
16 testify about that and purported no knowledge. I'll  
17 object on the same basis, that he lacks foundation  
18 and it calls for a legal conclusion.

19 MR. DOUGLAS: Well, I think he knows  
20 that that is unique to the city, and that's the  
21 only -- I'll just ask him limited to that.

22 JUDGE PRIDGIN: All right.

23 BY MR. DOUGLAS:

24 Q. You have a unique ability to designate a  
25 parcel for public utility use without causing it to

1 be rezoned?

2 A. My understanding is the city's the only  
3 one that can do that.

4 Q. And that was the plan that you had, to  
5 use it and leave the zoning intact?

6 A. That's correct.

7 Q. Your testimony on the last exhibit that  
8 was given to you was more for format as to how you  
9 should put together your testimony with the numbered  
10 lines and things of that nature; is that correct?

11 A. Format, and obviously there was some  
12 suggestions about items to cover.

13 Q. All right. But, in fact, it wasn't  
14 totally followed by you?

15 A. No, it wasn't.

16 Q. And at that point you were not  
17 consulting legal counsel?

18 A. That's correct.

19 Q. And you furnished it to Gilmore & Bell  
20 for filing, which was your bond counsel, and at a  
21 later date, then our office became involved and our  
22 office represents the city and city attorneys?

23 A. That's correct.

24 MR. DOUGLAS: I have nothing further.

25 Thank you.

1 JUDGE PRIDGIN: If there's nothing  
2 further, may this witness be excused?

3 (NO RESPONSE.)

4 JUDGE PRIDGIN: Mr. Fisher, thank you.  
5 I understand that Mr. Lewis will be the next witness,  
6 and he has not prefiled testimony; is that correct?

7 MR. DOUGLAS: He has not filed any  
8 prefiled.

9 JUDGE PRIDGIN: All right. Thank you.

10 MR. DOUGLAS: They designated him for  
11 cross-examination, but I don't know that it would  
12 be -- I assume it would be direct examination by the  
13 county.

14 JUDGE PRIDGIN: This is your witness,  
15 Cass County's witness?

16 MS. MARTIN: We had called him as a  
17 witness. We don't anticipate -- I mean, we'd treat  
18 him as a hostile witness under the rules, your Honor.

19 JUDGE PRIDGIN: All right. And  
20 Mr. Lewis, if you would raise your right hand to be  
21 sworn, please.

22 (WITNESS SWORN.)

23 JUDGE PRIDGIN: Thank you very much,  
24 sir. If you would, please, have a seat. Ms. Martin,  
25 when you're ready.

1 MS. MARTIN: Thank you, your Honor.

2 GEORGE LEWIS, testified as follows:

3 DIRECT EXAMINATION BY MS. MARTIN:

4 Q. Good afternoon, Mr. Lewis. Would you  
5 state your name and address for the record.

6 A. George Gregory Lewis, Jr. I live at 812  
7 South Peculiar Drive, Peculiar, Missouri 64078.

8 Q. What is your current affiliation with  
9 the City of Peculiar?

10 A. I am not affiliated with the city now.  
11 I'm the ex-mayor.

12 Q. And you served as the mayor until when?

13 A. I've been involved with the city since  
14 1981 as a board of aldermen. I was mayor '88/'89 and  
15 I've been the mayor the last four years.

16 Q. And the recent election resulted in your  
17 being removed from office; is that correct?

18 A. I was defeated, yes, I was.

19 Q. It happens to the best of us, Mr. Lewis.

20 A. It happens, yes, it does.

21 Q. I do want to speak with you very  
22 briefly. You've been here, of course, during the  
23 testimony of Mr. Fisher, who you understand to be the  
24 city administrator for the City of Peculiar; is that  
25 correct?



1           A.       Yes, ma'am.

2           Q.       And I want to talk with you briefly  
3 about just a couple of points that I visited with him  
4 about. You've supported this power plant from the  
5 day -- from day one; is that correct?

6           A.       That is correct.

7           Q.       And your support of the plant continued  
8 even after the City of Peculiar determined it would  
9 not annex the land where this plant would be located;  
10 is that correct?

11          A.       That's correct.

12          Q.       Prior to the point in time when the City  
13 of Peculiar determined it would not annex this land,  
14 it did expect Aquila to comply with the city's land  
15 use regulatory scheme, whatever that was, the  
16 requirements?

17          A.       Well, since we invited them up there,  
18 I'm sure we would have worked very very closely with  
19 them, and we told them upfront what they had to do,  
20 and I'm sure they would have done it, so the answer  
21 is yes.

22          Q.       And when you learned that this land was  
23 not going to be annexed into the city but, rather,  
24 that the plant would be developed in unincorporated  
25 Cass County, it didn't surprise you that Cass County

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1 had the same expectation of Aquila; that its land use  
2 regulatory --

3 MR. YOUNGS: I --

4 MR. DOUGLAS: I'll object to that.

5 MR. YOUNGS: Excuse me. I got in the  
6 way of that. I was trying to get my objection in  
7 before the witness tried to answer, and I --

8 MS. MARTIN: Before I even finished my  
9 question.

10 MR. YOUNGS: I'm sorry. I cut off  
11 counsel, and I apologize for that.

12 MS. MARTIN: That's okay, Dale. We're  
13 friends.

14 BY MS. MARTIN:

15 Q. Let me start the question over again.  
16 You knew that after this site was not going to be  
17 annexed, that the plant was going to be built in  
18 unincorporated Cass, correct?

19 A. Correct.

20 Q. And it didn't surprise you that Cass  
21 County had its own expectation that Aquila would  
22 comply with its land use regulatory scheme; is that  
23 correct?

24 A. Ma'am, I can't speak for county, what  
25 their expectations are. I'm only responsible for the

1 City of Peculiar, and I'm really not that concerned  
2 with what the county does.

3 Q. Well, when I asked you a similar  
4 question -- let me ask you this question: You  
5 testified at the public hearing that was conducted in  
6 these proceedings on March the 20th, 2006; is that  
7 correct?

8 A. I did.

9 Q. And do you recall that I asked you a few  
10 questions on that --

11 A. Well, you asked me a few questions, and  
12 I didn't have time to really think about them, but  
13 since those questions were asked, I've had time to  
14 think about them, and so therefore, I'm going to give  
15 you what I consider is my most truthful answer at  
16 this time.

17 Q. Okay. And that may well be, Mr. Lewis,  
18 but the fact is, at that time you were under oath,  
19 weren't you?

20 A. And I answered to the best of my  
21 knowledge based on the facts that I had at the time.

22 Q. And at that time I asked you the  
23 question, "And so with respect to the status of  
24 affairs now when the annexation fell through and the  
25 South Harper plant and substation remained on county

1 property, it doesn't surprise you, does it, that the  
2 County of Cass would similarly act to protect its  
3 land use regulatory authority and have the right to  
4 exercise zoning control over this land; is that  
5 correct?" Do you recall that question?

6 A. I'm sure you asked it, but I don't  
7 recall it. I have not seen the testimony. I do not  
8 have a copy.

9 Q. Mr. Lewis, you provided a response under  
10 oath that night, didn't you?

11 A. I did.

12 Q. And you said, "That is correct."

13 A. If you say that's what I said, that's  
14 what I said. I do not have a copy to look and see.

15 Q. Well, Mr. Douglas is free to secure that  
16 testimony online through EFIS if you'd like to  
17 double-check, but I can assure you that that is what  
18 the official transcript reflects, Mr. Lewis.

19 I want to talk with you about the title  
20 issue, if we can, with respect to the plant and the  
21 substation. You mentioned this in your public  
22 hearing testimony, and I want to ask you about it  
23 today.

24 The plant and the substation apparently  
25 are titled in the name of the City of Peculiar; is

1     that correct?

2           A.       I'm really only aware that the plant is  
3     titled, and now that you mention it, yes, I believe  
4     the substation is too.

5           Q.       And apparently that transaction or the  
6     transaction with title moving from Aquila to the City  
7     of Peculiar occurred on December the 28th of 2004; is  
8     that correct?

9           A.       Yes, ma'am, in an open meeting, it did.

10          Q.       And so at this point in time, and  
11     actually since December the 28th, 2004, the City of  
12     Peculiar has actually owned the land and the  
13     facilities where the South Harper plant and the  
14     Peculiar substation are located; is that correct?

15          A.       Yes, ma'am, that's my understanding.  
16     Yes, ma'am.

17          Q.       And I take it you don't have an  
18     explanation for why Aquila would, in January of 2005,  
19     have stipulated to Judge Dandurand that Aquila owned  
20     both of those parcels?

21          A.       I can't answer for Aquila.

22          Q.       And you don't know why Aquila would have  
23     stipulated before this commission in the 0248 case  
24     that was during the spring of last year why -- what a  
25     dreadful question. Let me start all over.

1                   Do you have any reason to know why  
2   Aquila would have stipulated in a case before this  
3   commission last spring, the 0248 case, that it,  
4   Aquila, owned those two parcels?

5           A.       Well, I know they owned the bonds, and  
6   when the bonds are paid in 25 years, I think for a  
7   buck or a thousand dollars, they get the whole  
8   shebang.

9           Q.       But to date, you own the property and  
10   the facilities?

11          A.       Well, to the best of my knowledge, we  
12   do. I don't know. I've not been in the city now for  
13   two weeks, so I don't know. But up to the time that  
14   I was voted out, yes, we were still considered to be  
15   the owners of the plants and the generators.

16          Q.       And the city has never taken any action  
17   to apply for zoning or a special use permit for  
18   either the plant or the facilities with the county;  
19   is that correct?

20          A.       No, ma'am, we haven't --

21                   MR. DOUGLAS: Just a minute, George.

22                   MR. YOUNGS: We need to make an  
23   objection.

24                   MR. DOUGLAS: I object to the form of  
25   this question. The city isn't the operator of those

1 facilities and is not engaged in the operations and  
2 so it would never be subject to that.

3 MR. YOUNGS: My objection is similar.  
4 It assumes that such an obligation exists, and under  
5 the terms and provisions of Exhibit 96, actually the  
6 contrary is true. So the question is misleading, and  
7 I object to it on those grounds.

8 MS. MARTIN: Well, again, the question  
9 doesn't assume any legal issue at all. It simply  
10 asks for a factual statement: Has the city made  
11 application for rezoning or an SUP as the owner of  
12 either of these tracts.

13 MR. YOUNGS: And once again, the only  
14 relevance of that question, Judge, is if that  
15 obligation exists, and so I do object.

16 JUDGE PRIDGIN: And I understand actually  
17 that the obligation may not exist, but because I let  
18 her get into similar questioning with the previous  
19 witness, I will let her ask that, and I'll let  
20 Mr. Lewis answer to the extent that he knows. And if  
21 he doesn't know, he can simply say, "I don't know."

22 BY MS. MARTIN:

23 Q. Do you recall the question, sir?

24 A. Please repeat it.

25 Q. I'd be very happy to do so. Has the

1 City of Peculiar, to your knowledge, ever made  
2 application for rezoning or a special use permit with  
3 the county for either the South Harper facility or  
4 the Peculiar substation?

5 A. No, ma'am, we have not. And the reason  
6 we haven't is because it's my understanding --

7 MS. MARTIN: Mr. Lewis, I think you  
8 answered my question. Thank you. That's all I have  
9 of this witness.

10 JUDGE PRIDGIN: All right. Thank you.  
11 Let me see if we have any cross-examination. City of  
12 Peculiar?

13 MR. DOUGLAS: None.

14 JUDGE PRIDGIN: StopAquila.org?

15 MR. EFTINK: Yes, your Honor.

16 CROSS-EXAMINATION BY MR. EFTINK:

17 Q. Good afternoon, Mr. Lewis.

18 A. Good afternoon, sir.

19 Q. Now, you heard the testimony of  
20 Mr. Fisher today, correct?

21 A. I wasn't paying that close attention. I  
22 was reading the paper.

23 Q. Well, there was mention of an October 19th,  
24 2004 meeting of the board of aldermen, and you  
25 attended that meeting where it had a first reading of



1 the proposed annexation of South Harper Road,  
2 correct?

3 A. I don't have my -- my city notes in  
4 front of me. The transcript of that meeting, if you  
5 say it happened, I guess it happened.

6 Q. Well, that was the meeting where the big  
7 crowd showed up and it was on television?

8 A. That was when we were over at the Lions  
9 Club.

10 Q. Yes, at the Lions Club.

11 A. Okay. Sure, I remember that. That was  
12 an exciting evening.

13 Q. And isn't it correct that at that  
14 meeting, you announced that only people who lived in  
15 the city could speak on the annexation issue?

16 A. Well, I don't know whether I said that  
17 or not. I know that about the only people there were  
18 people who lived outside in the county. There were  
19 not many of our local citizens there, and we talked  
20 for three hours. So it looks to me like if I did say  
21 that, we still let them talk.

22 Q. Well, but in the meeting you had a part  
23 of the meeting where you talked about annexation, and  
24 during the part that you talked about annexation, you  
25 announced that people who did not live in the city

1     could not speak to that issue.  You recall that,  
2     don't you?

3             A.       No, sir, I don't recall that.

4             Q.       Now, Exhibit 51 and Exhibit 66 refer to  
5     either a closed meeting of the board of aldermen or a  
6     special meeting.  I want to ask you first about  
7     Exhibit 51.  There was a closed meeting --

8             A.       I have no exhibit.

9             Q.       Well, let me see if we can recall that  
10    before we pull it out.  There was a reference to a  
11    board of aldermen meeting in August of 2004 about the  
12    Aquila project where it was said to be a closed  
13    meeting.  Is that correct, that the city board of  
14    aldermen had a closed meeting about the concept of  
15    putting in -- the South Harper facility in?

16            A.       We might have had a closed meeting.  
17    I -- you know, we're -- we have a lot of meetings,  
18    and I don't -- I don't recall specifically that we  
19    had.  I know we had very few closed meetings over  
20    this.  There might have been one or two, but that's  
21    all that I remember.  I can't remember dates or  
22    times.

23            Q.       Now, after the meeting where annexation  
24    was discussed and the television cameras came, you  
25    guys had a Saturday morning meeting subsequent to

1     that where the annexation was dropped; is that  
2     correct?

3             A.       That's correct.

4             Q.       And that was called a special meeting,  
5     correct?

6             A.       It is a special meeting, yes, sir.

7             Q.       And the notice was put on the bulletin  
8     board the day before the special meeting?

9             A.       I think it has to be posted so many  
10    hours prior, and it was posted in that time.

11            Q.       But it was posted on the bulletin board  
12    in city hall?

13            A.       That is correct.

14            Q.       And it doesn't go out to the people that  
15    live out around South Harper.

16            A.       Well, they don't live in my city.

17            Q.       Right.

18            A.       I wouldn't be trying to notify them. I  
19    notify my city residents, and if they see it, they  
20    can come.

21            Q.       Okay. So if somebody that lives out  
22    close to the South Harper facility happens to drop by  
23    city hall on a Friday afternoon, they may see that  
24    there's a meeting planned for Saturday morning?

25            A.       Yeah. The meeting is posted for our

1 citizens of our town and the public, and if they want  
2 to come by and look at it, I guess they can. But I'm  
3 more concerned about our citizens in our community.  
4 That's who I'm obligated to, and that's who elected  
5 me and who put me in office, and that's who I have an  
6 obligation to, sir.

7 Q. Now, that Saturday morning meeting, the  
8 board of aldermen went into a closed session to talk  
9 about the annexation issue. That's correct?

10 A. I don't recall that, sir. But we  
11 possibly did. I don't recall.

12 Q. Now, let me get my hands on Exhibit 55.  
13 I think I'll have to get a copy from my desk. I  
14 seemed to have misplaced my copy of 55.

15 May I approach the witness, your Honor?

16 JUDGE PRIDGIN: You may.

17 BY MR. EFTINK:

18 Q. I have a copy of Exhibit 55, and I'm  
19 going to ask you to look at that, and I'd like to ask  
20 you a few questions. Mr. Lewis, are you ready?

21 A. I guess I'm as ready as I'll ever be.  
22 Yeah, go ahead.

23 Q. Now, Exhibit 55 refers to getting  
24 planning and zoning and board of aldermen together  
25 for a joint meeting to consider zoning or land use

1 for this power plant. Is that a fair recitation of  
2 what that shows?

3 A. Well, it looks pretty legal to me, and  
4 being a layman, it's kinda hard to decipher all that.

5 Q. Well, let me ask you, what's the date on  
6 that letter?

7 A. September the 14th, 2004.

8 Q. Okay. Now, we have an exhibit that  
9 shows that Aquila acquired the Bremer property on  
10 October 7, 2004. My question is, why was the city  
11 scheduling planning and zoning meetings on this  
12 property before it was even acquired by Aquila?

13 A. I don't know whether it says that's what  
14 it is. Is it?

15 Q. Well, it says a meeting was going to be  
16 scheduled for late October 2004.

17 A. Where is that, exactly?

18 Q. I think it's on the first page.

19 A. I need some help. I don't see it.

20 MR. EFTINK: May I approach?

21 JUDGE PRIDGIN: You may.

22 BY MR. EFTINK:

23 Q. If you would look at the --

24 A. I was looking at the letter. I thought  
25 you wanted me to look at the letter. If you say look

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1 at the fax, I'll look at the fax. Let me see what it  
2 says. Okay.

3 Q. In the second sentence does it say that  
4 a joint meeting of planning and zoning and the board  
5 of aldermen is going to be scheduled for, I think it  
6 says October 26th, 2004.

7 A. Okay.

8 Q. And the letter is dated September 15th,  
9 2004.

10 A. Okay.

11 Q. And it's correct to say that the Bremer  
12 property was acquired by Aquila after September 15th,  
13 2004, correct?

14 A. Well, sir, I don't know. All I know is  
15 that I think we were planning to annex the road prior  
16 to this, weren't we?

17 Q. You began talking about annexation I  
18 think before September --

19 A. Yeah, but when did we have the meeting  
20 that we dropped it?

21 Q. The meeting where you dropped annexation  
22 was October 23, 2004.

23 A. Okay. Well, this is dated September 15th,  
24 so they might be talking about a meeting for that. I  
25 don't know. It says nothing here about the Bremer

1 property, so I don't think they were planning to deal  
2 with that. I think they were dealing with whatever  
3 was at hand at the time. And we hadn't dropped it  
4 yet, so they assumed we were still going to annex the  
5 road and then annex the land, I assume.

6 Q. On September 15th, 2004, had the city  
7 looked at several pieces of property that could be  
8 acquired by Aquila?

9 A. I know absolutely nothing about that.  
10 Only property I know was the property west of town  
11 and the Bremer property. Those are the only two,  
12 sir, I'm familiar with. That was news to me when I  
13 heard that today.

14 Q. I guess my question is -- and maybe you  
15 weren't involved in this -- but why would the city  
16 schedule planning and zoning meetings on property  
17 that had not yet been acquired by Aquila?

18 A. Well, I think when this was sent on  
19 September, I still think they were under the  
20 impression that we were going to annex the property,  
21 the road and then the property.

22 Q. Did you have conversations with  
23 representatives of Aquila?

24 A. At what time, sir?

25 Q. Prior to September 15th --

1           A.       Yeah.  There were some -- I think Mark  
2   Dawson one time came in the office and we visited  
3   with him.

4           Q.       Now, did Aquila ask for assurances from  
5   you that this would slide on through planning and  
6   zoning with no trouble?

7           A.       Not to my knowledge.  We told him it was  
8   a procedure to go through and we had to go through  
9   our counsel, and I have yet to this day ever try to  
10  predict what our counsel would do, especially the  
11  couple of members that we had on it at that time.

12                   JUDGE PRIDGIN:  And Mr. Lewis, if I  
13  could get you to do your best to try to answer the  
14  question as briefly as possible.

15  BY MR. EFTINK:

16           Q.       And as you said, at that time, September  
17  2004, you were looking at annexation, but it was  
18  going to be a two-step annexation, correct?

19           A.       Well, we have to get the property, the  
20  road and then -- yes.

21           Q.       So the first step would have been to  
22  annex just the road, two miles of Harper Road,  
23  correct?

24           A.       That would be correct.

25           Q.       And it was your plan that that would get



1 up to the property line but not take in any of the  
2 Bremer property, right?

3 A. That is correct.

4 Q. And how long -- if we assume that no  
5 vote was required, which turned out to be a bad  
6 assumption, how long would it take to get that  
7 annexation done before you could go on to the second  
8 annexation?

9 A. Before we go on to the Bremer property?

10 Q. Yes.

11 A. I have no idea, sir.

12 Q. And if a vote is required, the next time  
13 to have a city vote would have been, what, February  
14 2005?

15 A. I believe that's the -- probably  
16 February would be the earliest, yes.

17 Q. Now, for the annexation, the city had  
18 scheduled two readings of the annexation proposal for  
19 the same night; isn't that correct?

20 A. Yeah, we do that sometimes, yes, sir.

21 Q. And for the Chapter 100 bonds, the city  
22 had scheduled two readings of the proposal for the  
23 same night?

24 A. Yes, sir, we have that procedure.

25 Q. Now, Mr. Lewis, when you ran for

1 reelection, you got about 21 percent of the vote,  
2 didn't you?

3 A. I got about 94 votes out of about 460.

4 Q. 94 votes out of 460?

5 A. Yes, sir.

6 JUDGE PRIDGIN: And if counsel won't  
7 object, can you -- where are we going with this?

8 MR. EFTINK: Let me check my notes. I  
9 don't think I have much more.

10 JUDGE PRIDGIN: All right.

11 THE WITNESS: Why don't you ask me why I  
12 only got 94 votes?

13 BY MR. EFTINK:

14 Q. Mr. Lewis, do you have an opinion as to  
15 why you only got 94 votes?

16 A. Yes, sir, I do. I didn't put out sign  
17 one, I didn't advertise sign one, I didn't ask one  
18 person to vote for me, and I even voted for  
19 Mr. Turner.

20 Q. Well, I wish Mr. Turner luck, and I  
21 assure you --

22 A. And he's now our mayor, so I voted for a  
23 winner.

24 Q. Now, since the annexation was dropped,  
25 the Bremer property has never been part of the City

1 of Peculiar?

2 A. No, sir.

3 Q. And the substation property has never  
4 been a part of the -- it's never been inside the City  
5 of Peculiar?

6 A. No, sir.

7 Q. Now, the city was receiving advice from  
8 some attorneys who were paid for by Aquila; isn't  
9 that correct?

10 A. Very possible, sir. We have a limited  
11 budget in our city.

12 Q. When the idea of putting the peaking  
13 facility around Peculiar first came up, do you know  
14 who made the first contact? Was it somebody that  
15 contacted you? Or tell us what you know about that.

16 A. Well, I went into Mike Fisher's office  
17 one day, and I said, "Hey, Mike, I understand that  
18 Aquila's having a hard time getting approval down  
19 there in Cass County north of Harrisonville. Do we  
20 have anything we can do up here to help them? If so,  
21 what would our advantage be and would it be good for  
22 the city?"

23 And we talked about the 100. And he  
24 said if it came up here and it's in our city, we  
25 could get pilot payments which any city like ours

1 where we don't have a lot of revenue, it would be a  
2 plus for us. And so that's why I said, "Well, why  
3 don't you approach them and see if we can work  
4 something out." And we had that property west of  
5 town which we thought would be ideal for that.

6 Q. The property that was looked at was all  
7 outside of the City of Peculiar?

8 A. No. I think the Sparling property, to  
9 my knowledge, I think was already in the city.

10 Q. Okay. Well, I don't know.

11 A. Yeah, the 160 acres that we looked at  
12 originally was already in the city.

13 Q. And there's never been a public vote of  
14 the citizens inside Peculiar, or elsewhere for that  
15 matter, on either the annexation or on the Chapter  
16 100 bonds?

17 A. No, sir.

18 MR. YOUNGS: Excuse me. I just need to  
19 object as to the relevance of this line of  
20 questionings as to what the public vote of the  
21 citizens of the City of Peculiar has to do with the  
22 issues that are before the commission now. It's  
23 irrelevant.

24 MR. EFTINK: Well, your Honor, there has  
25 been testimony from some witnesses who say that my

1 people have had due process, that the people had a  
2 say, and I think it's certainly relevant as to  
3 whether people have had a say or not.

4 MR. DOUGLAS: I'd join in that  
5 objection. Due process doesn't necessarily require  
6 public votes.

7 JUDGE PRIDGIN: All right. Again, I  
8 will overrule and let him answer to the extent that  
9 he knows the answer.

10 BY MR. EFTINK:

11 Q. Has there ever been a public vote?

12 A. On?

13 Q. Let me break it down.

14 A. No. Tell me what. We have public votes  
15 all the time in our town. Tell me what -- the public  
16 votes on what?

17 Q. Well, the question was compound. I'm  
18 gonna break it down.

19 A. Okay.

20 Q. First, on annexation of this property  
21 that we're talking about.

22 A. No, sir.

23 Q. Or on the Chapter 100 bond issue.

24 A. No. And we indicated we don't have to  
25 have that on 100. That's what's in litigation right

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1 now, as you well know.

2 Q. And of course the Court of Appeals at  
3 least disagrees with you on that?

4 MR. DOUGLAS: Well --

5 THE WITNESS: Well, the Cass County  
6 Circuit Court agreed with us.

7 MR. EFTINK: Okay. Thank you.

8 THE WITNESS: Thank you.

9 JUDGE PRIDGIN: Mr. Eftink, thank you.

10 Let me see if we have any further cross-examination.  
11 Mr. Uhrig?

12 CROSS-EXAMINATION BY MR. UHRIG:

13 Q. Good afternoon, Mr. Lewis.

14 A. Good afternoon, sir.

15 Q. I represent Frank Dillon and some others  
16 who live across from the plant. Now, as I understand  
17 it, the annexation plan would not have annexed those  
18 properties east of South Harper Road across from the  
19 plant; is that correct?

20 A. You mean right across from the gas  
21 plant.

22 Q. From the South Harper peaking facility.

23 A. Well, he's not across from that. He's  
24 across from the gas plant.

25 Q. Well, across from the gas plant then.

1 A. No.

2 Q. Those houses on that street.

3 A. No, it would not be in there.

4 Q. So they wouldn't have received notice of  
5 any sort of rezoning application, or they wouldn't  
6 have received notice of any sort of annexation plan;  
7 is that correct?

8 A. They -- no.

9 Q. And they wouldn't have been able to vote  
10 on the annexation proposal; is that correct?

11 A. No. They're not in the city, no.

12 Q. The answer is no?

13 A. No.

14 Q. And they would not have been able to  
15 comment at any sort of planning and zoning board  
16 hearing; is that correct?

17 A. Well, yeah, we had a public meeting they  
18 all came and got up and complained and -- or  
19 expressed their concerns and everything.

20 Q. But that wasn't an actual hearing  
21 regarding rezoning of the peaking facility, correct?

22 A. No.

23 MR. DOUGLAS: I object to the line of  
24 questioning as to what kind of notices they would  
25 receive as a question of law, as they would have been

1 entitled to whatever they're entitled to. And in  
2 case of zoning, they would have gotten notice.

3 MR. UHRIG: He's already answered no,  
4 Judge.

5 JUDGE PRIDGIN: He has already answered.  
6 I'll overrule.

7 BY MR. UHRIG:

8 Q. I just have one more question. You said  
9 you voted for Mr. Turner for mayor?

10 A. That's correct.

11 Q. And is it because of this whole South  
12 Harper --

13 A. Absolutely has nothing to do with it. I  
14 think he's a good man, he'll do a great job, and I'm  
15 65 and ready to get out.

16 MR. UHRIG: Okay. No further questions.

17 JUDGE PRIDGIN: Mr. Uhrig, thank you.

18 Mr. Williams?

19 MR. WILLIAMS: No questions.

20 JUDGE PRIDGIN: Mr. Youngs?

21 MR. YOUNGS: Just a couple of questions.

22 And may I do it from here?

23 JUDGE PRIDGIN: Yes, sir.

24 CROSS-EXAMINATION BY MR. YOUNGS:

25 Q. Mr. Lewis, there were quite a few



1 questions of you and Mr. Fisher with regard to why  
2 the city has not applied for zoning authority or any  
3 other kinds of environmental permits or approval from  
4 this commission for the operation of the South Harper  
5 plant. Do you recall hearing that testimony?

6 A. Yes, sir.

7 Q. With regard to the reason why that  
8 hasn't happened, are you familiar with the lease  
9 agreement that was executed between the city and  
10 Aquila back in December of '04?

11 A. I'm aware there is one. I'm just not  
12 familiar with it.

13 Q. All right. Would it be possible that  
14 Section 3.3, which deals with possession and use of  
15 the project, specifically subsection B, deals with  
16 the answer to why the City of Peculiar hasn't filed  
17 those applications?

18 MS. MARTIN: Objection. Lacks  
19 foundation given the witness's prior answer. He has  
20 no knowledge of the contents of the lease.

21 JUDGE PRIDGIN: Mr. Youngs?

22 MR. YOUNGS: I'll restate the question.

23 JUDGE PRIDGIN: Thank you.

24 BY MR. YOUNGS:

25 Q. Would it be fair to say that in terms of

1 the obligations of the City of Peculiar to do  
2 anything with regard to the South Harper facility  
3 that it owns in title, your position as the former  
4 mayor, at least the mayor when this document was  
5 executed, would be that you would look to the lease  
6 agreement to determine what those obligations were;  
7 is that correct?

8 A. Yeah. But can I add something?

9 Q. Sure. If it's okay with the judge.

10 JUDGE PRIDGIN: I was gonna say, I don't  
11 really want a narrative --

12 MS. MARTIN: If it's not responsive,  
13 I'll object to the nonresponsive portion of the  
14 answer. He's answered the question.

15 JUDGE PRIDGIN: He has answered the  
16 question. And Mr. Youngs, if you have further  
17 questions, you can inquire.

18 MR. YOUNGS: All right. The only reason  
19 that I asked the question was because I think you  
20 started to answer that question and to provide  
21 additional information when Ms. Martin was examining  
22 you, and I wanted you to be able to finish, so that's  
23 why I asked.

24 THE WITNESS: Well, I'd like to finish,  
25 but they won't let me.

1                   MR. YOUNGS: I don't have any other  
2 questions for this witness with regard to further  
3 questions from counsel.

4                   JUDGE PRIDGIN: Yes, sir, thank you. I  
5 think -- yes, sir, Mr. Douglas.

6                   MR. DOUGLAS: I just have one.

7                   JUDGE PRIDGIN: Yes, sir.

8 REDIRECT EXAMINATION BY MR. DOUGLAS:

9           Q.       Is it unusual for cities to work with  
10 developers who are under contract to buy land or  
11 under contingencies and work through some of the  
12 processes before they ever acquire title to the  
13 property?

14          A.       Yes, probably as long as they've already  
15 made -- started to purchase the property. It just  
16 hasn't closed yet. Yeah, we try to work as closely  
17 with them as we can.

18          Q.       So it wouldn't be unusual that you might  
19 plan a meeting for a date after they're gonna acquire  
20 the property even before they've acquired?

21          A.       Yes, sir. We can always cancel the  
22 meeting.

23                   MR. DOUGLAS: Thank you. I have nothing  
24 further.

25                   JUDGE PRIDGIN: All right. Thank you.

1 Let me see if we have any questions from the bench.

2 Commissioner Appling, any questions of this witness?

3 QUESTIONS BY COMMISSIONER APPLING:

4 Q. Mr. Lewis, how you doing?

5 A. Very good, sir, thank you.

6 Q. I've been setting here for the last two  
7 or three days and promised myself I wasn't gonna ask  
8 many questions, but you're the only guy probably  
9 gonna give me the answer to this one yet. So what  
10 happened up there in Peculiar and Cass County in your  
11 own words? What went wrong here?

12 A. Well, I think that the city saw an  
13 opportunity to get some revenue, we saw an  
14 opportunity to help a company out who has the  
15 franchise in our city, who supplies us with  
16 electricity, who was gonna build a peaking plant that  
17 would be beneficial to the citizens of Peculiar, and  
18 we supported that.

19 And we were gonna annex the road and  
20 the -- they got a petition to get a vote. And it's  
21 not that I'm afraid we couldn't get a vote and it  
22 wouldn't have passed in the city, but because of the  
23 timeline -- and Aquila was on a pretty tight time  
24 line -- remember, I'm a customer of theirs.  
25 Therefore, if they don't have the adequate power, I'm

1 the one that's gonna suffer.

2 And so therefore, we tried to work with  
3 them as they expedited the building of that plant.  
4 When it dropped through and we didn't get to do it,  
5 we went on with the 100.

6 Now, the question that they didn't want  
7 to let me answer was, yes, the city did not go out  
8 and try and get permits from the county because, in  
9 my understanding, the county has never required a  
10 city in Cass County that's built outside their entity  
11 to get permits or approval or zoning.

12 And if and when this plant is ever  
13 determined that we do have the 100 and we are the  
14 owners, I hope that the next day that we hear that,  
15 assuming that the Supreme Court up -- holds up for  
16 us, that we go right down to the county and say,  
17 "We're here to make application for this plant."  
18 Because we need it in our community, and we need it  
19 for our utility customers in Cass County.

20 Q. In the near vicinity, or the vicinity of  
21 the plant there to include the City of Peculiar --  
22 now, I was at most of the public hearing that was  
23 conducted at -- by the PSC. What percentage, in your  
24 own estimation -- I know you didn't count them and  
25 nobody else has. You probably can go back to the

1 record and count them.

2 But it seem to me it was pretty evenly  
3 between the people that supported this plant and the  
4 one that was against it. Is that your feeling?

5 A. Yes, sir. The way I look at it out  
6 there, that there is approximately 12 homes that are  
7 in direct sight line along Harper Road or 41st Street  
8 or on the corner of Lucille that are directly  
9 involved, and I think those are the people that they  
10 could -- you know, it could bother them, I'm sure,  
11 just looking at it.

12 But on the other hand, I think a lot of  
13 people got all upset over this. And I would also  
14 venture to say half the people didn't even know the  
15 gas plant was there when all this started. Now they  
16 all know it's out there. Yet a gas plant's been  
17 there for years and those people built out there.  
18 And it bangs and pops and hisses and cracks and even  
19 been known to blow up and catch on fire.

20 Q. What do we do with the voice of the  
21 people that support this plant? Do we just disregard  
22 them, wipe them off the blackboard?

23 A. That support the plant?

24 Q. Yeah.

25 A. No, sir. I think that by the silent

1 majority out there is not saying anything, and I that  
2 they -- they -- we as customers -- and I'm talking as  
3 a consumer of electricity in Peculiar, in northern  
4 Cass County, I think we need these peak facilities.

5 COMMISSIONER APPLING: Thank you,  
6 Mr. Lewis. And I wish you all the luck in your  
7 political future.

8 THE WITNESS: I am now ex-mayor, never  
9 to run again probably.

10 COMMISSIONER APPLING: Thank you.

11 JUDGE PRIDGIN: Commissioner Appling,  
12 thank you. I don't have any questions. Any recross?  
13 Mr. Williams?

14 MR. WILLIAMS: I do have one question.

15 RECROSS-EXAMINATION BY MR. WILLIAMS:

16 Q. You use the terminology direct sight  
17 line. Will you explain exactly what you meant?

18 A. If I walk out on my front porch and I  
19 look right out there and I see the plant, that's a  
20 direct sight line for me.

21 MR. WILLIAMS: No further questions.

22 JUDGE PRIDGIN: All right, Mr. Williams,  
23 thank you. Any further recross?

24 (NO RESPONSE.)

25 JUDGE PRIDGIN: Redirect?

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1 (NO RESPONSE.)

2 JUDGE PRIDGIN: No redirect? And no  
3 further questions for this witness. All right. This  
4 witness may be excused. Mr. Lewis, thank you very  
5 much for your testimony and your time, sir.

6 THE WITNESS: Thank you, Judge.

7 MR. DOUGLAS: May Mr. Lewis and  
8 Mr. Fisher be excused?

9 JUDGE PRIDGIN: If there's nothing  
10 further from counsel, they may be released.

11 MR. DOUGLAS: I would ask to be excused.

12 JUDGE PRIDGIN: Absolutely. Thank you  
13 very much. And this looks to be a convenient time  
14 for a break. I show the clock on the back of the  
15 wall to show about ten after (sic) three. Let's  
16 resume about 3:05. Thank you. We're off the record.

17 (A RECESS WAS TAKEN.)

18 JUDGE PRIDGIN: All right. We're back  
19 on the record. I think we have all counsel back, or  
20 at least all interested counsel. I believe Mr. Douglas  
21 asked to be excused. Do I understand correctly that  
22 we are going to have some witnesses from  
23 StopAquila.org and then the Cass County witnesses  
24 will not be available until Wednesday; is that  
25 correct? I'm seeing some nods. All right.



1                   And is there any particular order,  
2   Mr. Eftink, in which you want to call your witnesses?

3                   MR. EFTINK:   Well, I've got some  
4   documents to get into the record, and I thought I  
5   would get up and do that --

6                   JUDGE PRIDGIN:   All right.

7                   MR. EFTINK:   -- and then call a few  
8   witnesses.

9                   JUDGE PRIDGIN:   Certainly.

10                  MR. EFTINK:   First we have premarked as  
11   Exhibit 25 the deposition transcript of Harold  
12   Stanley, and as Exhibit 26, the prefiled testimony of  
13   Harold Stanley.

14                  We may have some discussion with you  
15   about that.   Mr. Stanley, of course, is the  
16   individual who's in New Mexico and we talked about  
17   having him on the telephone.   His deposition was  
18   taken on April 24, and there were some attorneys in  
19   attendance.

20                  There was an attorney for Aquila and  
21   there was an attorney for the staff in attendance.  
22   And in the transcript that I got, there should have  
23   been his prefiled statement attached as Exhibit 1.  
24   Maybe it's attached to the copy you got.

25                  MR. YOUNGS:   (Shook head.)

1 MR. EFTINK: It should have been.

2 Anyway, the statement of Harold Stanley is marked as  
3 Exhibit 26, and I'd like to offer both Exhibit 25 and  
4 Exhibit 26 at this time.

5 JUDGE PRIDGIN: Exhibits 25 and 26 have  
6 been offered. Any objections?

7 MR. YOUNGS: Judge Pridgin, with regard  
8 to the admission of these exhibits, and it's part of  
9 the conversations that we've had off the record that  
10 have led to our meeting and Aquila's agreement not to  
11 require Mr. Stanley to appear personally or by  
12 telephone for purposes of cross-examination.

13 Aquila just wishes to make note of its  
14 objection to the consideration of this testimony by  
15 the commission. I think as the Court -- excuse me,  
16 the commission will see in a review of the deposition  
17 transcript, which we would ask that the commission  
18 perform, Mr. Stanley admits that he's not qualified  
19 to do evaluations with regard to noise, emissions or  
20 to give opinions with regard to land use planning.

21 I think that testimony is undisputed.  
22 Basically his testimony that's been submitted to the  
23 commission in the form of the exhibit that Mr. Eftink  
24 has marked and is now offering does little more than  
25 to do that which the commission can do by itself,

1    which is to look at figures specifically with regard  
2    to emissions figures, to look at our operating  
3    emissions as reported to MDNR and to look at our  
4    permit and to put those numbers side by side.

5               He's done the same thing with the noise  
6    issues, and again, admits that he doesn't have any  
7    specific expertise with regard to land use planning.

8               So in lieu of burdening the record with  
9    lengthy cross-examination of Mr. Stanley, we're  
10   content to make that record and to ask the commission  
11   to take that into account when considering the weight  
12   of this evidence. But subject to that, that's the  
13   only record I wanted to make with regard to those  
14   exhibits.

15              MR. EFTINK: Well, your Honor,  
16   Mr. Stanley is an engineer who works at power plants,  
17   and he's been working around power plants for 31  
18   years and does have some qualifications to speak  
19   about power plants and emissions.

20              JUDGE PRIDGIN: And I recall reading his  
21   testimony as an engineer, and I'll overrule the  
22   objection. Then Exhibits 25 and 26 are admitted.

23              (EXHIBIT NOS. 25 AND 26 WERE RECEIVED  
24   INTO EVIDENCE AND MADE A PART OF THE RECORD.)

25              MR. EFTINK: Your Honor, I've got one

1 copy of the transcript of the deposition here today.  
2 That's Exhibit 25 for the commission. And in light  
3 of the fact that the other parties had the  
4 opportunity to get a copy of the transcript, I didn't  
5 make a bunch of copies. Now do you think I should  
6 make -- or do you request that I make several more  
7 copies of the transcript of the deposition of  
8 Mr. Stanley?

9 MR. YOUNGS: Aquila does not require  
10 one, Judge, if that helps. We'll use the copy that  
11 we have, but I won't speak for everybody else.

12 JUDGE PRIDGIN: The commissioners may  
13 very well want their own copy, so you don't have  
14 to -- you don't have to do it -- like drop everything  
15 and do it now, but perhaps later, like even after the  
16 hearing is over, you might want to mail those. That  
17 would be great.

18 MR. EFTINK: Then I'll hand to you one  
19 copy of Exhibit 25. Or should I give it to the court  
20 reporter?

21 JUDGE PRIDGIN: I'll take it.

22 MS. SHEMWELL: I'm not certain that  
23 staff has a copy, but I will let Mr. Eftink know.

24 JUDGE PRIDGIN: All right. Thank you.

25 MR. EFTINK: Then the next exhibit is

1 Exhibit 26, and I don't think you ruled on that. We  
2 talked about Exhibit 25.

3 JUDGE PRIDGIN: I thought that I  
4 admitted it. I could have been mistaken. Just in  
5 case, Exhibit 26 is admitted.

6 MR. EFTINK: I've got six copies for you.

7 MR. SWEARENGEN: That's testimony?

8 MR. EFTINK: Yes, it is the testimony.  
9 And I've got a few more to go back to my desk to get.

10 Your Honor, Exhibit 30 is an excerpt  
11 from the Federal Register. It's a report filed in  
12 the Federal Register by the Environmental Protection  
13 Agency. And I talked to counsel for Aquila about  
14 this. This is 100 pages long, and I thought it was  
15 best to copy the entire document, but there's only a  
16 few pages out of that that we'll talk about.

17 And under the federal law, we're  
18 supposed to take notice of this and I have to bring  
19 in a custodian of records and it's also been filed in  
20 EFIS so everybody has access to a copy. But because  
21 of the volume of this, I would request permission to  
22 just file the one copy, and if the commissioners want  
23 one later on, we can do that, but they probably  
24 won't.

25 JUDGE PRIDGIN: And that's fine. And

1 describe for me again what it is you're --

2 MR. EFTINK: It is a report from the  
3 Federal Register. The citation is Volume 69, No. 20,  
4 published on January 30th, 2004.

5 JUDGE PRIDGIN: And these are Federal  
6 Regulations?

7 MR. EFTINK: No. It's a report of the  
8 Environmental Protection Agency.

9 JUDGE PRIDGIN: Okay.

10 MR. EFTINK: It's relating to a rule to  
11 reduce interstate transport of fine particulate  
12 matter and ozone, and there is a proposed rule, but  
13 most of it is comments as to why the proposed rule  
14 might be appropriate. If there are no objections, I  
15 would tender Exhibit 30.

16 MS. SHEMWELL: Perhaps it would be  
17 helpful to the commission for Mr. Eftink to point out  
18 the exact portions that he believes are relevant to  
19 this, rather than just, for want of a better word,  
20 dumping the entire thing into the record, so that the  
21 commission can know specifically the parts to which  
22 he's referring.

23 MR. EFTINK: I would read the excerpts.  
24 It may take about two minutes, if that's okay.

25 JUDGE PRIDGIN: That's fine.

1                   MR. EFTINK: Beginning on page 4571,  
2 column 1, the report says -- and this is talking  
3 about particulate matter 2.5. "Fine particles are  
4 associated with a number of serious health effects,  
5 including premature mortality, aggravation of  
6 respiratory and cardiovascular disease as indicated  
7 by increased hospital admissions, emergency room  
8 visits, absences from school or work and restricted  
9 activity days, lung disease, decreased lung function,  
10 asthma attacks and certain cardiovascular problems  
11 such as heart attacks and cardiac arrhythmia.

12                   "The EPA has estimated that attainment  
13 of the PM 2.5 standards would prolong tens of  
14 thousands of lives and prevent tens of thousands of  
15 hospital emissions -- or admissions each year, as  
16 well as hundreds of thousands of doctor visits,  
17 absences from work and school and respiratory  
18 illnesses of children.

19                   "Individuals particularly sensitive to  
20 fine particulate exposure include older adults,  
21 people with heart disease and children. Health  
22 studies have shown that there are no clear threshold  
23 below which adverse effects are not experienced by at  
24 least certain segments of the population. Thus, some  
25 individuals particularly sensitive to fine particle

1 exposure may be adversely affected by fine particle  
2 concentrations below those for the annual and 24-hour  
3 standards.

4 "As discussed in other sections of this  
5 preamble, EGUs," which stands for electric generating  
6 units, "are a major source of SO<sub>2</sub> and NO<sub>x</sub> emissions,  
7 both of which contribute to fine particle  
8 concentrations. In addition EGU NO<sub>x</sub> emissions  
9 contribute to ozone problems described in the next  
10 section."

11 Same page, that's page 4571, column 3.

12 "Short term exposure to ozone can irritate the  
13 respiratory system, causing coughing, throat  
14 irritation and chest pain. Ozone can reduce lung  
15 function and make it more difficult to breathe  
16 deeply.

17 "Breathing may become more rapid and  
18 shallow than normal, thereby limiting a person's  
19 normal activity. Ozone can also aggravate asthma,  
20 leading to more asthma attacks that require a  
21 doctor's attention and the use of additional  
22 medication.

23 "Increased hospital admissions and  
24 emergency room visits for respiratory problems have  
25 been associated with ambient ozone exposures.



1 long-term ozone exposure can inflame and damage the  
2 lining of the lungs which might lead to permanent  
3 changes in lung tissue and irreversible reductions in  
4 lung function.

5 "A lower quality of life may result if  
6 the inflammation occurs repeatedly over a long time,  
7 such as months, years or lifetime. People who are  
8 particularly susceptible to the effects of ozone  
9 include children and adults who are active outdoors,  
10 people with respiratory diseases such as asthma and  
11 people with unusual sensitivity to ozone."

12 Starting on page 4575 --

13 MR. YOUNGS: Before you begin, may I  
14 just -- I don't know if I'm interposing an objection  
15 at this point or I just want the judge to be clear.  
16 By stipulating to Mr. Eftink's ability to read -- I'm  
17 assuming he's not gonna read the entire Federal  
18 Register into the record. But with regard to that, I  
19 don't want it to be conceived of as being some kind  
20 of an admission by Aquila that the South Harper  
21 plant, that there's a link between what he's reading,  
22 which are apparently general statements of effect of  
23 various emissions and the specific facts that are set  
24 forward with regard to the South Harper facility.

25 With that stipulation, I'm fine with

1 this. But if there's some attempt to do a cause and  
2 effect here, I'll object to Mr. Eftink's reading of  
3 this Federal Register.

4 JUDGE PRIDGIN: And I understand. I  
5 didn't think for one minute that Aquila was admitting  
6 that South Harper caused any of these. But I mean, I  
7 understand that's not Aquila's position. Or it may  
8 be. And I'm sorry, Mr. Eftink. You may continue.

9 MR. EFTINK: Thank you. Page 4575,  
10 column 1, the heading is, "Ozone, the Formation."  
11 "The term VOX includes many classes of components" --  
12 I should say -- "compounds that possess a wide range  
13 of chemical properties and atmospheric lifetimes  
14 which helps determine the relative importance in  
15 forming ozone.

16 Sources of VOCs include manmade sources  
17 such as motor vehicles, chemical plants, refineries  
18 and many consumer products now, but also natural  
19 emissions from vegetation. Nitrogen oxides are  
20 emitted by motor vehicles, power plants and other  
21 combustion sources. The formation of ozone increases  
22 with temperature and sunlight, which is one reason  
23 ozone levels are higher during the summer.

24 "Increased temperature increases  
25 emissions of volatile manmade and biogenetic organics

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1 and can indirectly increase NOX as well.

2 "Example: Increased electricity  
3 Generation For Air Conditioning. Summertime  
4 conditions also bring increased episodes of large  
5 scale stagnation, which promote the buildup of direct  
6 emissions and pollutants formed through atmospheric  
7 reactions over large regions."

8 Those are the only excerpts that I would  
9 like to read at this time. And as I said, I've got  
10 one copy of this voluminous document for the  
11 commission. And certainly if you want more, I would  
12 be glad to make more, although they're 100 pages a  
13 piece.

14 JUDGE PRIDGIN: Unless you hear  
15 otherwise, I don't think you need to worry about  
16 making copies.

17 MR. EFTINK: Thank you.

18 JUDGE PRIDGIN: And that's No. 30?

19 MR. EFTINK: That is No. 30.

20 MS. MARTIN: I thought that was 29. Is  
21 that the Federal Register or is No. 30 the Clean Air  
22 Task Force?

23 JUDGE PRIDGIN: Mr. Eftink, I understood  
24 this was No. 30.

25 MR. EFTINK: Well, I've got them

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1 backwards. On day one we said that that would be  
2 No. 29. So just to be straight, we could change the  
3 number on it to 29 or we could renumber the other  
4 one.

5 JUDGE PRIDGIN: Okay. I had the Federal  
6 Register as No. 29 and the Clean Air Task Force as  
7 No. 30. So is what you handed me the Clean Air Task  
8 Force report?

9 MR. EFTINK: That's supposed to be  
10 No. 29 according to our original numbering.

11 JUDGE PRIDGIN: All right. Then let's  
12 change it back to 29. Is everybody clear on what  
13 we've got?

14 MR. EFTINK: Yeah. Sorry about that.

15 JUDGE PRIDGIN: That's all right.

16 MS. SHEMWELL: I'm not clear. I'm  
17 sorry.

18 JUDGE PRIDGIN: That's all right,  
19 Ms. Shemwell. What -- is that correct, Mr. Eftink?  
20 What you've been reading from is Exhibit 29; is that  
21 correct?

22 MR. EFTINK: Yeah, we misnumbered it.  
23 We're gonna call it Exhibit 29. And now I'm going  
24 to --

25 MS. SHEMWELL: Which is what? Is that

1 the Clean Air Task Force?

2 MR. EFTINK: No. Exhibit 29 is from the  
3 Federal Register. And so Exhibit 30 is a business  
4 records affidavit with a report issued by an  
5 organization called the Clean Air Task Force.

6 MS. SHEMWELL: Did we show 29 admitted?

7 THE COURT: I don't know that it was  
8 offered.

9 MR. EFTINK: I thought it was offered  
10 and admitted, although we called it 30 at that time.

11 JUDGE PRIDGIN: I don't think it's been  
12 offered. I'll show that it's been offered now. Any  
13 objections?

14 (NO RESPONSE.)

15 JUDGE PRIDGIN: Hearing none, 29 is  
16 admitted.

17 (EXHIBIT NO. 29 WAS RECEIVED INTO  
18 EVIDENCE AND MADE A PART OF THE RECORD.)

19 MR. EFTINK: StopAquila offers Exhibit 30,  
20 which is the Clean Air Task Force report with the  
21 business records affidavit.

22 JUDGE PRIDGIN: Any objection?

23 (NO RESPONSE.)

24 JUDGE PRIDGIN: Okay. Hearing none, 30  
25 is admitted.

1                   (EXHIBIT NO. 30 WAS RECEIVED INTO  
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3                   MR. EFTINK: I think Della January is  
4 next on our list of witnesses, and we're ready for  
5 her.

6                   JUDGE PRIDGIN: Okay. If she's ready,  
7 if she'll come forward to be sworn.

8                   MR. YOUNGS: As she's coming up, Judge,  
9 we have four additional copies of the Stanley  
10 deposition that we'd be happy to use so Mr. Eftink  
11 doesn't have to make too many more copies for the  
12 bench.

13                  MR. EFTINK: I accept.

14                  JUDGE PRIDGIN: That's fine.  
15 Ms. January, if you'll raise your right hand to be  
16 sworn, please.

17                  (WITNESS SWORN.)

18                  JUDGE PRIDGIN: Thank you very much.  
19 And Mr. Eftink, if you would lay a foundation and  
20 tender her for cross, please.

21                  MR. EFTINK: I'd like to hand Exhibit 27  
22 to the court reporter -- or to the commission. May I  
23 approach the witness?

24                  JUDGE PRIDGIN: You may.

25 DELLA JANUARY, testified as follows:

1 DIRECT EXAMINATION BY MR. EFTINK:

2 Q. Please state your name for the record.

3 A. Della Ralene January.

4 Q. Now, Della, you have in front of you  
5 what's been marked for identification as Exhibit 27?

6 A. I do.

7 Q. Is that your written testimony offered  
8 in this case?

9 A. Yes, it is.

10 Q. And this was taken under oath; is that  
11 correct?

12 A. Yes.

13 Q. Do you have any corrections to what is  
14 written in Exhibit 27?

15 A. I have no corrections.

16 Q. Do you have any additions?

17 A. I would -- there's several things that  
18 I'd like to add after listening to the proceedings  
19 here today. I don't know if that's permissible.

20 Q. What are those topics that you would  
21 like to add?

22 A. Most notably, I would like to talk about  
23 the lack of due process here that I'm not sure that  
24 the commission might be aware of. That those of us  
25 opposed to the plant have gone through, and you've

1 heard the mayor and his testimony indicated that he  
2 wasn't concerned with the people that lived outside  
3 of the city, and I'd like to discuss the fact that  
4 initially I did live within the city limits when this  
5 began, and I was afforded certain rights that the  
6 people near the plant were not.

7 JUDGE PRIDGIN: If I could interject.  
8 And I don't really want the witnesses to go on to a  
9 narrative, and I know, Ms. January, you did testify  
10 in a public hearing, so I guess I'm wondering where  
11 this is going.

12 BY MR. EFTINK:

13 Q. Well, are you addressing the comment  
14 made by someone today?

15 A. Yes. Commissioner Appling's closing  
16 comment was concerning to me when he asked what about  
17 the people who are in support of the plant. And what  
18 I wanted to make sure that the commissioner was aware  
19 of, is that for those of us in opposition to the  
20 plant, we live in a area that we don't receive Aquila  
21 electricity. We don't necessarily receive the  
22 benefits of these pilot payments.

23 The decisions that were made to bring  
24 this plant to our neighborhood were made by people  
25 for whom we don't have the opportunity to vote for,



1 that we weren't given any hearings and oftentimes not  
2 allowed to speak or have our concerns addressed. And  
3 we, at great personal sacrifice, have spent the past  
4 year and a half of our lives to fight this fight in  
5 search of some form of due process.

6 And at this juncture we're being told  
7 that it's here today, which, for me personally, is a  
8 vacation day. I had to hire an overnight babysitter  
9 for my children. I'm here today and there's two  
10 commissioners present.

11 And I just want you to understand that  
12 not only have -- has this been a great expense as far  
13 as the cost, our legal cost and our time, but the  
14 sacrifices that we've made for our family and our  
15 children.

16 I have a son with asthma that breaths  
17 the pollution from this plant that is brought to me  
18 by people who are in no way accountable to me and at  
19 no point at this time do I feel like I've been given  
20 my due process as a property owner to be heard in a  
21 forum that can really consider and make a decision  
22 based on my needs and my rights under the  
23 constitution.

24 I just wanted to make sure that you were  
25 clear how little input we've had and how little help

1 we've had. At every juncture we've tried to go to  
2 this regulatory agency or that regulatory agency, the  
3 county, the city, anyone to say -- to ask them to  
4 please listen and give, you know, true consideration  
5 to our concerns.

6 And I realize that at the hearings there  
7 were people that were there in support of the plant.  
8 However, by far, the majority of them live nowhere  
9 near the plant.

10 JUDGE PRIDGIN: Okay. Mr. Eftink, do  
11 you have any further questions?

12 BY MR. EFTINK:

13 Q. Yes. Over lunch you were making  
14 comments about what Mike Fisher said about notice of  
15 meetings and the ability to speak. What kind of  
16 notice was given to people who lived outside of the  
17 city?

18 A. There was no -- there was no notice  
19 given in any form of a Peculiar meeting.

20 JUDGE PRIDGIN: I'm sorry. If I could  
21 get you to speak closer into the microphone.

22 THE WITNESS: Oh, I'm sorry.

23 JUDGE PRIDGIN: That's all right.

24 THE WITNESS: There's no notice of any  
25 form given to anyone who lives outside the city

1 limits or near the plant of any activities or  
2 meetings between the city and Aquila or over the city  
3 and its own planning and zoning or aldermen board.

4           As a matter of fact, the meeting -- the  
5 Saturday morning special session that was discussed  
6 in which they decided to drop the annexation, I  
7 became aware of that meeting because I received an  
8 anonymous call about 4:30 in the afternoon on a  
9 Thursday, telling me that they were scheduling a  
10 secret meeting and that I better get up to city hall  
11 as fast as I could.

12           And I walked through the door about five  
13 until five to see them posting the notice on the  
14 bulletin board within the entryway hall of city hall.  
15 And that would have been our only notice. In fact,  
16 the next morning I ran into an alderman at a coffee  
17 shop and asked, "So you're having a secret meeting on  
18 Saturday?" And the aldermen weren't even made aware  
19 of it at that juncture.

20           So had it not been for someone who just  
21 happened to be aware of what's going on in the city,  
22 picking up the phone and calling me -- I'd never  
23 spoken to this person before, I did not know them. I  
24 actually got an anonymous call. So we did attend  
25 that Saturday morning meeting.

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1                   We were allowed in. Then we were told  
2   to leave; it was a special session, but to wait. So  
3   we waited. It didn't take long at all for them to  
4   call us back into the meeting, and very proudly  
5   announce that they'd decided to drop the annexation.

6                   And we --

7                   JUDGE PRIDGIN: I'm sorry. What --  
8   what's the question? We're just going into narrative  
9   here.

10   BY MR. EFTINK:

11           Q.       My question was about responding to the  
12   testimony today that you heard from Mike Fisher about  
13   giving notice to everyone. Let me try to redirect.

14           A.       I'm sorry.

15           Q.       Regarding notice, you said you went by  
16   on an afternoon. What afternoon was that, during the  
17   week?

18           A.       That was a Thursday afternoon.

19           Q.       That was for a Saturday morning meeting?

20           A.       Yes. And it was just before -- it was  
21   just before five and they locked the door, and the  
22   city clerk was posting the notice at that time. I  
23   watched her post it.

24           Q.       Now, you also had something you wanted  
25   to say about what you heard today from Mr. Fisher

1 about the ability of people who lived outside of the  
2 city, that is, the people who lived around South  
3 Harper, to speak at the city meetings about these  
4 matters.

5 A. They were at all times discouraged or  
6 not allowed to speak. In fact, my involvement first  
7 came in this because at the time, my house was under  
8 construction and I was a city resident, and I was the  
9 only person to be allowed to ask to be added to the  
10 agenda.

11 In fact, at the initial meeting, I had  
12 to be asked to be added to the agenda to introduce  
13 Mr. Eftink to speak on behalf of the group. And in  
14 some occasions, there was actually no public comment  
15 from anyone allowed during the city meetings, and the  
16 example would be the late December meeting where they  
17 passed the economic development agreement by holding  
18 both a first and second reading during the same  
19 meeting and allowed no public comment from no one,  
20 although the meeting room was packed with people that  
21 were there as concerned.

22 Q. Any other responses to matters that you  
23 heard today?

24 A. It's hard to recall. I've heard so much  
25 today. I know it's in my testimony as far as, you

1 know, that our concerns haven't been addressed. I  
2 know that Mike Fisher says that he -- that it was --  
3 there was publicly notice of the Grant summit  
4 meeting, which is not true.

5 I know that I feel that when I first  
6 became made aware of this, I lived in the city, and  
7 that wasn't until the press release was issued on  
8 October 4th, that even though the city had been in  
9 negotiations with Aquila since June, that was the  
10 first notice to anyone living near the plant was  
11 given.

12 And when I contacted Mr. Fisher -- well,  
13 when I first contacted the city and asked -- stated I  
14 was against it and asked as a resident what I could  
15 do to stop it, I was told there was nothing I could  
16 do. And when the --

17 JUDGE PRIDGIN: Okay. I think that  
18 answers the question, to the extent that that was a  
19 question.

20 THE WITNESS: Okay.

21 BY MR. EFTINK:

22 Q. Now, other than those comments, is there  
23 anything else -- well, let me back up. If I asked  
24 you the same questions today that are found in  
25 Exhibit 27, would you give the same answers except

1 for those additions that you just told us about?

2 A. I don't think Grand summit was publicly  
3 held and --

4 Q. Well, that's in your affidavit.

5 A. Yeah.

6 Q. Okay.

7 A. I'm sorry, Jerry. It's not coming to me  
8 if I can think of anything else that would be in  
9 addition to that.

10 Q. Okay.

11 A. I did want to talk about, you know, I  
12 think it's very important that this commission  
13 understand. As you --

14 JUDGE PRIDGIN: Whoa, whoa, whoa. What  
15 was the answer to his question?

16 THE WITNESS: I'm sorry. I did it  
17 again.

18 JUDGE PRIDGIN: That's all right.  
19 Because we've heard a lot of narrative. I'm trying  
20 to get you to answer questions.

21 BY MR. EFTINK:

22 Q. My question is, is your Exhibit 27 true  
23 and correct?

24 A. Yes, it is.

25 Q. And if I asked you the same questions

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1     that are in Exhibit 27, you'd give me the same  
2     answers?

3             A.       Yes.

4             MR. EFTINK: All right. I pass the  
5     witness.

6             JUDGE PRIDGIN: All right. Thank you.  
7     Let me see what kind of questions we have from  
8     counsel. City of Peculiar has, well, asked to be  
9     excused. Cass County? I'm sorry, Mr. Eftink, did  
10    you have anything else?

11            MR. EFTINK: I don't know if I offered  
12    Exhibit 27 into evidence, but I intended to. It's  
13    the prefiled statement.

14            JUDGE PRIDGIN: I don't think you did.  
15    Any objection to Exhibit 27?

16                    (NO RESPONSE.)

17            JUDGE PRIDGIN: Okay. Hearing none,  
18    Exhibit 27 is admitted.

19                    (EXHIBIT NO. 27 WAS RECEIVED INTO  
20    EVIDENCE AND MADE A PART OF THE RECORD.)

21            JUDGE PRIDGIN: Any questions from Cass  
22    County?

23            MS. MARTIN: No questions.

24            JUDGE PRIDGIN: All right. Thank you.  
25    I don't see anybody here for Dillon, Miller and Doll.



1 Any questions from staff?

2 MS. SHEMWELL: Yes, thank you.

3 JUDGE PRIDGIN: Ms. Shemwell.

4 CROSS-EXAMINATION BY MS. SHEMWELL:

5 Q. Ms. January, I'm Lera Shemwell. I  
6 represent the staff of the Missouri Public Service  
7 Commission in this case. I wanted to ask how many  
8 times have you testified to the commission?

9 A. I've testified in this case in three  
10 public hearings and also in the rate case.

11 Q. And how many e-mails have you sent to  
12 the commission?

13 A. I'm not sure. I haven't ex parted them  
14 in this case yet.

15 Q. You haven't?

16 A. No.

17 Q. Do you know who in Cass County regulates  
18 air pollution?

19 A. No, I don't. I -- no, I don't.

20 Q. If I were to tell you that it's the  
21 county, would you accept that?

22 A. I would probably go -- be more -- ask  
23 more questions about what the role of the DNR, since  
24 we did participate.

25 Q. Actually I asked -- my question was, do

1 you know who regulates air pollution in Cass County?

2 A. The answer is, I don't know. I would  
3 assume that the DNR also has something to do with it  
4 since we had a DNR hearing about air for this plant.

5 Q. And did you attend that hearing?

6 A. I did.

7 Q. And have you complained directly to DNR  
8 about any of your concerns, environmental concerns?

9 A. Yes, we have.

10 MS. SHEMWELL: Thank you. That's all I  
11 have.

12 JUDGE PRIDGIN: All right. Thank you.  
13 Any questions from Aquila?

14 MR. YOUNGS: Aquila has no questions.  
15 Thank you.

16 JUDGE PRIDGIN: All right. Thank you.  
17 Let me see if we have any questions from the bench.  
18 Commissioner Clayton?

19 COMMISSIONER CLAYTON: I don't have any  
20 questions for Ms. January. I want to thank you for  
21 coming down again. I know you've testified on a  
22 number of different occasions, and you made a  
23 statement right when I walked in about waiting to  
24 testify here today, and I can assure you that  
25 computers are on throughout the building and people are

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1 monitoring this hearing as it's going forward. So  
2 thank you for coming again and your testimony here  
3 today.

4 JUDGE PRIDGIN: That's why I asked you  
5 to speak into the microphone because we get reminders  
6 that people are listening.

7 Commissioner Appling, any questions? I  
8 don't believe I have any questions.

9 Any recross or redirect?

10 (NO RESPONSE.)

11 JUDGE PRIDGIN: All right. Hearing  
12 none, Ms. January, thank you very much for your time  
13 and your testimony.

14 Mr. Eftink.

15 MR. EFTINK: Yes. I've got Julie  
16 Noonan.

17 JUDGE PRIDGIN: She also prefiled  
18 testimony; is that correct?

19 MR. EFTINK: That's correct.

20 JUDGE PRIDGIN: Ms. Noonan, if you'd  
21 come forward and be sworn, please.

22 (WITNESS SWORN.)

23 JUDGE PRIDGIN: Thank you very much.  
24 Mr. Eftink, when you're ready.

25 MR. EFTINK: You were -- you talked to

1 counsel for Aquila about this, and there's two  
2 aspects of this that I want to talk about. One is  
3 attached to Ms. Noonan's prefiled testimony, so it's  
4 therefore filed in EFIS, was a copy of the membership  
5 form signed by numerous people, and we blacked out  
6 the e-mail and the addresses because I didn't have  
7 permission of those people to publish that  
8 information.

9 I do have a copy, and because it's like  
10 200-something pages, I would propose that we file one  
11 copy of this with the commission instead of, you  
12 know, more than that, and designate it as HC, just  
13 because I don't want to be accused of disseminating  
14 people's e-mail addresses and telephone numbers and  
15 things like that.

16 JUDGE PRIDGIN: Okay. And has that  
17 already been prelabeled or do you need to...

18 MR. EFTINK: I would just like to put  
19 28 HC on it.

20 JUDGE PRIDGIN: All right. All right.

21 MR. EFTINK: And give you the one  
22 version, and then we've got several -- I don't know  
23 if you want to do it this way, but I've got several  
24 copies of her prefiled testimony without the exhibit  
25 attached to it.

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1 JUDGE PRIDGIN: Okay. That's fine.

2 MS. SHEMWELL: So just the attachment is

3 HC?

4 JUDGE PRIDGIN: That's what I understood,

5 yes.

6 MR. EFTINK: Right.

7 JULIE NOONAN, testified as follows:

8 DIRECT EXAMINATION BY MR. EFTINK:

9 Q. Please state your name for the record.

10 A. Julie Noonan.

11 Q. And you have in front of you what's been  
12 marked as Exhibit 28?

13 A. Yes.

14 Q. Is that your prefiled written testimony?

15 A. Yes, it is.

16 Q. Okay. And if I asked you the same  
17 questions that are contained in 28, would you give us  
18 the same answers under oath today?

19 A. I would. The only correction I would  
20 make is in the second sentence, I did -- I have  
21 recently found out that I do live within one-half  
22 mile of South Harper.

23 Q. Okay. On page -- it's not numbered. On  
24 the second page of the exhibit, line 18, it says, "I  
25 live within about one and a half miles," you're

1301

1 saying that should be changed to say you live within  
2 a half a mile?

3 A. Yes.

4 Q. Any other corrections to be made?

5 A. No.

6 Q. Now, sitting here today, I know that you  
7 had a couple of things that you wanted to comment  
8 upon, but just based on what you've heard today, and  
9 what would the topics of that be?

10 A. Well, it would go to not only the  
11 membership that was started and presented into  
12 evidence, but other similar efforts that citizens  
13 living near the power plant who were originally known  
14 as Neighbors of Annexation and now StopAquila.org,  
15 have gone through, and our awareness through those  
16 efforts of the percentage of folks to our knowledge  
17 who support -- who have supported Aquila and/or the  
18 City of Peculiar in moving forward with the power  
19 plant.

20 Q. Are you wanting to speak to a comment  
21 that one of the commissioners may have made --

22 A. Yes, I am.

23 Q. -- about what percentage of people are  
24 actually supporting and what percentage are against  
25 it?

1           A.       Well, yeah. Basically when Mr. Appling  
2   was talking to Mr. Lewis at the end of the first  
3   session, or earlier session, his comments concern me  
4   greatly in that he seemed to reference in the public  
5   hearing that no one made any count or knew what  
6   percentage of folks were opposed to the power plant  
7   versus supportive of the power plant, but it was his  
8   perception that it was basically a wash.

9                   And so should all of the people that  
10   care -- that support the power plant, should their  
11   decisions be set aside. And so I think that that  
12   goes -- that I'd like to speak to commission's  
13   perception of our understanding, at least.

14          Q.       Well, did you do some kind of breakdown  
15   from going around and gathering petitions and talking  
16   to people?

17          A.       Yes.

18          Q.       Okay. And what's your estimate of the  
19   breakdown, for example of the people that live within  
20   one mile?

21          A.       Of the people that live within one mile,  
22   the people that I am aware of -- I am not aware of  
23   more than potentially two households, maybe three  
24   households within one mile, that have filed testimony  
25   and/or written documentation produced by Jenny Bailey

1 supporting the power plant, I'm not aware of more  
2 than that many that would -- that have not received  
3 some type of compensation from Aquila, been employees  
4 of Aquila and/or stand to receive some type of goods  
5 and services from Aquila or believe that they have  
6 been in possession or will be in possession.

7                   And so from my perception, one of our  
8 earlier petitions before we were quite as tired as we  
9 are now after 18 months of this, one of our earlier  
10 petitions for the MDNR, we mapped out only within two  
11 miles to get petitions for, a, we don't want this  
12 power plant here and we don't want the pollution, we  
13 don't want the health concerns.

14                   And there were 269 individuals that  
15 signed that and 178 different addresses, and there  
16 were 545 people in the households, so for me to say  
17 that a maximum of three, to my knowledge, households  
18 within two miles that I'm aware of that haven't  
19 either directly received or believed that they have  
20 reason -- you know, some type of compensation, some  
21 type of benefit from Aquila, I would say a very small  
22 percentage of folks that actually support it.

23           Q.       Now, did you also want to comment about  
24 what you heard from George Lewis and Mike Fisher  
25 about whether people were permitted to speak at the



1 annexation session of the city board of aldermen?

2 A. Yes.

3 Q. Do you recall what the mayor said about  
4 whether people that lived outside of the city could  
5 do?

6 A. I don't recall his exact verbiage during  
7 that session or other sessions. However, I remember  
8 his intent was to let people know that anyone who is  
9 not a citizen of the City of Peculiar within its  
10 boundaries had no right to speak or any type of input  
11 into decisions that the city would make.

12 MR. EFTINK: Okay. Thank you. I offer  
13 Exhibit 28.

14 JUDGE PRIDGIN: Any objections?

15 (NO RESPONSE.)

16 JUDGE PRIDGIN: Hearing none, Exhibit 28  
17 is admitted.

18 (EXHIBIT NO. 28 WAS RECEIVED INTO  
19 EVIDENCE AND MADE A PART OF THE RECORD.)

20 MR. EFTINK: Let me see if I have  
21 anything else. I don't think I've got anything else.  
22 Oh, of course you have to open it up for  
23 cross-examination.

24 JUDGE PRIDGIN: Yes, thank you. Cass  
25 County?

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1 MS. MARTIN: No questions.

2 JUDGE PRIDGIN: All right. Thank you.

3 Staff?

4 MS. SHEMWELL: No questions. Thank you.

5 JUDGE PRIDGIN: I'm sorry. Mr. Coffman  
6 for intervenors.

7 MR. COFFMAN: Yes, maybe a couple.

8 JUDGE PRIDGIN: Thank you.

9 CROSS-EXAMINATION BY MR. COFFMAN:

10 Q. Good afternoon, Ms. Noonan.

11 A. Good afternoon.

12 Q. Just to follow up on the last couple of  
13 questions with your attorney, you said that at the  
14 hearing regarding the annexation, Chapter 100  
15 financing in Peculiar, that you were told that  
16 individuals who do not live in the City of Peculiar  
17 had no right to speak; is that correct?

18 A. At the annexation, during the part of  
19 agenda that was specifically set apart for annexation  
20 or any other topic, we were not allowed to speak, and  
21 during the meeting where they -- a separate meeting  
22 where they considered the bonds, no one was allowed,  
23 whether they lived inside or outside of the city,  
24 during that part of the agenda to speak to it.

25 Q. And could you tell me about the notice

1 of that hearing regarding the annexation? What type  
2 of notice went out for that hearing in Peculiar?

3 A. Well, the only notice I received was  
4 some type of notification from members of  
5 StopAquila.org.

6 Q. Okay.

7 A. I don't have Channel 7, the cable  
8 channel. I don't make it a practice to drive by the  
9 city hall and look to see if they've posted anything  
10 that might impact my life on a regular basis.

11 Q. And there was no individual notice that  
12 you were aware of that went to adjacent landowners or  
13 nearby landowners?

14 A. Correct.

15 Q. You were asked some questions about who  
16 was for and against the plant and how far they were,  
17 and did I hear you say that with few exceptions you  
18 would say that individuals within a one-mile radius  
19 or one-mile diameter, which was it, that you thought  
20 were almost completely in opposition to the plant?

21 A. To my knowledge, within one mile of the  
22 plant, I am only aware of perhaps three people who  
23 may or may not have, but I don't have knowledge that  
24 they have received anything directly from Aquila or  
25 that they have an exception of receiving anything

1 directly from Aquila.

2 I am aware of other individuals that  
3 live within a mile that have received and/or will  
4 receive or perceive that they've received  
5 compensation or other consideration from Aquila who,  
6 in turn, support the power plant.

7 Q. Okay. Do you believe it would be fair  
8 for this commission to consider public input in a  
9 weighted fashion? That is, those individuals who are  
10 closer to the plant and more detrimentally impacted,  
11 to have their testimony considered more heavily than  
12 those who live further away?

13 A. Not only do I think that it would be  
14 okay for the commission to do that, I think that if  
15 they are going to take it upon themselves to rest  
16 from local control concerns that the citizens have  
17 that are valid relative to their rights under the  
18 Constitution of the United States and the State of  
19 Missouri relative to due process and property,  
20 representatives that take their concerns into  
21 consideration, I think it's their duty to do so.

22 Q. Are you familiar with my clients, Frank  
23 Dillon, the Dolls and Ms. Kimberly Miller?

24 A. Yes.

25 Q. And are you familiar with where their

1 homes are in relationship to the South Harper  
2 facility?

3 A. I'm familiar with where Frank Dillon's  
4 home is and where the Dolls' home is.

5 Q. Would you agree with me that Mr. Dillon  
6 perhaps is one of the most detrimentally impacted of  
7 any of the residents?

8 A. As far as proximity --

9 Q. Yes.

10 A. -- yes, I would. And noise and possibly  
11 pollution. Only I'm not a scientist. And I have  
12 heard some discussions that those of us that are  
13 about a half a mile away may get the lion's share of  
14 the pollution.

15 Q. Have you had the opportunity to be as  
16 close as one of these individual's homes are to hear  
17 the power plant when it's operating at full capacity?

18 A. I haven't personally. I've been in my  
19 own yard a half a mile away, and I really wouldn't  
20 want to think about having my yard as close as  
21 Frank's or the Dolls.

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

24 JUDGE PRIDGIN: Mr. Coffman, thank you.  
25 Aquila?

1 MR. YOUNGS: Aquila has no questions.

2 Thank you.

3 JUDGE PRIDGIN: Thank you. Let me see  
4 if we have any questions from the bench.  
5 Commissioner Clayton?

6 COMMISSIONER CLAYTON: Ma'am, I have no  
7 questions. I'll just say the same thing I said to  
8 Ms. January. Thank you for coming down and taking  
9 the time out of your schedule to testify here today.  
10 And I can assure you that there are many computers  
11 on, and people are paying attention upstairs. Thank  
12 you.

13 THE WITNESS: Appreciate it.

14 JUDGE PRIDGIN: Thank you. Commissioner  
15 Applling, any questions?

16 COMMISSIONER APPLING: I have no  
17 questions.

18 JUDGE PRIDGIN: Thank you. I don't  
19 believe I have any. Redirect?

20 MR. EFTINK: No, your Honor.

21 THE COURT: May this witness be excused?

22 MR. EFTINK: Yes.

23 JUDGE PRIDGIN: Ms. Noonan, thank you  
24 very much for your time and your testimony.

25 If I'm not mistaken, are we out of

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1 witnesses for the day? If I understand counsel  
2 correctly, we have no witnesses available for  
3 tomorrow, and we would have witnesses for Cass County  
4 Wednesday?

5 MR. COMLEY: Yes, that's correct.

6 JUDGE PRIDGIN: The only witnesses that  
7 I show remaining would be Mr. Peshoff (phonetic  
8 spelling) and Mr. Mallory; is that correct?

9 MR. COMLEY: That's correct.

10 JUDGE PRIDGIN: All right. If -- unless  
11 I hear otherwise from counsel, if we can get started  
12 with those two witnesses at 8:30 Wednesday morning.  
13 Is there anything else from counsel before we  
14 conclude for the day?

15 COMMISSIONER CLAYTON: So just on the  
16 matter of scheduling, Judge, the next time this  
17 hearing will reconvene will be Wednesday at 8:30 --

18 JUDGE PRIDGIN: Correct.

19 COMMISSIONER CLAYTON: -- with the two  
20 witnesses that you referenced?

21 JUDGE PRIDGIN: Correct.

22 COMMISSIONER CLAYTON: And then I was  
23 wondering if in the event of the conclusion of those  
24 witnesses, commissioners have questions for staff  
25 members, are they still subject to recall or did you

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1 release them?

2 JUDGE PRIDGIN: They are. I did not  
3 release them. They are.

4 COMMISSIONER CLAYTON: Okay.

5 MS. MARTIN: And Judge, perhaps the  
6 parties might benefit from some guidance with respect  
7 to whether the commission will be anticipating  
8 closing remarks from counsel or what the practice  
9 would be as well?

10 JUDGE PRIDGIN: I would rather not have  
11 closings simply because we've had prehearing briefs,  
12 we've had several days of hearing, and then we'll be  
13 expecting post-hearing proposed reports and order,  
14 so, no.

15 MS. MARTIN: Just wanting to know. I  
16 appreciate it. Thank you.

17 JUDGE PRIDGIN: I understand. Thank  
18 you. Anything else from counsel? Commissioner?

19 COMMISSIONER CLAYTON: Judge, just for  
20 clarification on that, generally closing statements  
21 are replaced occasionally by post-hearing briefs, and  
22 I know that there have been prehearing briefs filed  
23 in the case where the parties have the opportunity to  
24 supplement with the evidence that's derived from  
25 the -- I guess from my standpoint, are we gonna get



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1 more -- more pieces of paper --

2 JUDGE PRIDGIN: Yes, yes. They have  
3 proposed reports and orders that they're supposed to  
4 file after the hearing.

5 COMMISSIONER CLAYTON: So there is an  
6 opportunity for those concluding remarks for all the  
7 parties.

8 JUDGE PRIDGIN: Yes.

9 COMMISSIONER CLAYTON: It's more than  
10 just having the proposed reports and order.

11 JUDGE PRIDGIN: I mean, certainly. I  
12 mean, that's certainly something that they can  
13 certainly put in in any type of discussion or  
14 anything.

15 And, you know, if parties want to file  
16 briefs that want to supplement those proposed reports  
17 and order or suggestions in support, that's certainly  
18 fine.

19 Anything else from counsel?

20 (NO RESPONSE.)

21 JUDGE PRIDGIN: All right. Hearing  
22 nothing else, that will conclude today's hearing. We  
23 will resume with this on Wednesday at 8:30 in the  
24 morning. Thank you very much. We are off the  
25 record.

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1                   (WHEREUPON, the proceedings were  
2 adjourned until Wednesday, May 3, 2006, at 8:30 a.m.)

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