

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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4 TRANSCRIPT OF PROCEEDINGS
5
6 PREHEARING CONFERENCE
7
8 February 16, 2005
9 Jefferson City, Missouri
10 Volume 1
11
12 In the Matter of the)
Application of Aquila, Inc.,)
13 for Specific Confirmation or,)
in the Alternative, Issuance)
14 of a Certificate of)
Convenience and Necessity)
15 Authorizing It to Construct,)
Install, Own, Operate,)
16 Control, Manage and Maintain)
a Combustion Turbine Electric) Case No. EA-2005-0248
17 Generating Station and)
Associated Electric)
18 Transmission Substations in)
Unincorporated Areas of Cass)
19 County, Missouri Near the)
Town of Peculiar)
20
21
22 RONALD D. PRIDGIN, Presiding,
REGULATORY LAW JUDGE.
23
24 REPORTED BY:
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1 P R O C E E D I N G S

2 JUDGE PRIDGIN: We are on the record.

3 Good morning. This is the prehearing conference in
4 Case No. EA-2005-0248, In the matter of the application of
5 Aquila, Incorporated for a specific confirmation, or in the
6 alternative, issuance of a certificate of convenience and
7 necessity authorizing it to construct, install, own, operate,
8 control, manage and maintain a combustion turbine electric
9 generating station and associated electric transmission
10 substations in unincorporated areas of Cass County, Missouri
11 near the town of Peculiar.

12 I am Ron Pridgin. I'm the Regulatory Law Judge
13 assigned to preside over this prehearing conference. It's
14 being held at roughly 10:10 a.m., February 16th, 2005, and we
15 are in the Hotel Governor Offices Buildings in Jefferson City,
16 Missouri.

17 I would like to get entries of appearance from
18 counsel at this time, please, beginning with Staff.

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

20 Lera Shemwell and Nathan Williams representing the
21 Staff of the Missouri Public Service Commission, Post Office
22 Box 360, Jefferson City, Missouri 65102.

23 JUDGE PRIDGIN: Ms. Shemwell, thank you.

24 On behalf of Aquila, please?

25 MR. BOUDREAU: Thank you. Let the record reflect

1 the appearance of Paul Boudreau with the firm of Brydon,
2 Swearngen & England, Post Office Box 456, Jefferson City,
3 Missouri, appearing on behalf of Applicant Aquila, Ind.

4 Also with me today is Dale Youngs, with the Kansas
5 City law firm of Blackwell, Sanders, Peper, Martin, 4801 Main,
6 Suite 1000, Kansas City, Missouri, also for Applicant Aquila.

7 JUDGE PRIDGIN: Mr. Boudreau, thank you.

8 On behalf of StopAquila.org, please?

9 MR. EFTINK: This is Gerry Eftink, 704 West Foxwood
10 Drive, Post Office Box 1280, Raymore, Missouri 64083 for
11 StopAquila.org.

12 JUDGE PRIDGIN: Mr. Eftink, thank you.

13 On behalf of Cass County, Missouri, please?

14 MR. COMLEY: Thank you, Judge Pridgin.

15 Let the record reflect the entry of Mark W. Comley,
16 Attorney at Law, on behalf of Cass County, Missouri. My
17 business address is 601 Monroe, Suite 301, Jefferson City,
18 Missouri 65101.

19 Also appearing on behalf of Cass County is Debra
20 Moore. And Debra Moore, would you mind giving your business
21 address?

22 MS. MOORE: No, I'd be happy to.

23 102 East Wall, Harrisonville, Missouri 64701.

24 MR. COMLEY: Thank you.

25 JUDGE PRIDGIN: All right. Ms. Moore, Mr. Comley,

1 thank you.

2 On behalf of the Office of the Public Counsel,
3 please?

4 MR. COFFMAN: Thank you.

5 John B. Coffman, Box 2230, Jefferson City, Missouri
6 65102.

7 JUDGE PRIDGIN: Mr. Coffman, thank you.

8 Let me tell you kind of briefly what I have in mind
9 in this prehearing. And if anybody needs to bring anything to
10 my attention before we proceed, I'll -- I'll be glad to hear
11 that.

12 As of right now what -- from what I can tell, the
13 Commission seems to want to take this case to hearing. The
14 question will be -- or one of the questions will be when that
15 hearing will be.

16 And when I say hearing, I'm talking about perhaps
17 an evidentiary hearing, perhaps strictly an on-the-record
18 presentation where they get questions from counsel, perhaps
19 both. I don't know yet, and I don't think they know yet.

20 Also the -- the Commission may be interested in a
21 local public hearing. Again, I don't know when or where.

22 I understand that Aquila has filed a motion for
23 expedited treatment, and I don't think the Commission has
24 decided whether to grant, deny or -- or do something
25 different.

1 And so that's why -- what I'd like to do is to take
2 the parties down two alternative paths. And one would be, if
3 the Commission decides to move with this case on the expedited
4 basis and try to get a report and order out by mid-March,
5 which I understand is Aquila's request, I'd like to look at
6 potential dates if we go down that road.

7 If the Commission decides to go down the other road
8 and -- and perhaps get pre-filed testimony, allow time for
9 discovery, I want to -- to get dates from the parties using
10 that path.

11 And then tomorrow at the Commission's agenda, I
12 plan to discuss alternative dates and to get the Commission's
13 direction on which path we're gonna go.

14 Now, are -- No. 1, are there any questions about
15 that and, No. 2, is there anything anybody wants to bring to
16 my attention before we kind of start discussing things?

17 Mr. Boudreau?

18 MR. BOUDREAU: Maybe just a question in terms of
19 clarification.

20 JUDGE PRIDGIN: Yes, sir.

21 MR. BOUDREAU: As I -- as I understand what you've
22 just said is that we should -- we should discuss among
23 ourselves the different ways that the case can be handled in
24 terms of a more expedited procedure or something that's a
25 little bit more deliberate in terms of pre-filing testimony

1 and -- and the usual sort of procedure that's employed?

2 JUDGE PRIDGIN: That's correct. And -- and also
3 with me as well. And -- and obviously I'm not trying to put
4 you on the spot. If you don't know this very second, that's
5 fine. If you can get me some sort of information today,
6 that's fine.

7 MR. BOUDREAU: Okay.

8 JUDGE PRIDGIN: And if -- if you can't or you
9 simply don't -- don't have a preference. And -- and part of
10 the problem is the calendar -- the -- you know, the
11 Commission, of course, fills up weeks ahead of time --

12 MR. BOUDREAU: Uh-huh.

13 JUDGE PRIDGIN: -- then I'll just go to the
14 Commission and say, you know, here are really just some -- a
15 few available dates don't really begin until this date.

16 MR. BOUDREAU: Right. Very good.

17 JUDGE PRIDGIN: Mr. Coffman?

18 MR. COFFMAN: Yeah, I -- I thought it might be good
19 for me to, first of all, clarify what I see my role --

20 JUDGE PRIDGIN: Okay.

21 MR. COFFMAN: -- is in this case, and there may be
22 some questions.

23 The -- the Public Counsel is tasked with
24 representing the general public. In this case, as in most
25 cases, I understand that to be primarily a concern with the --

1 the regulated ratepayers of Aquila.org to the extent that
2 there are other interests that are being implicated with this,
3 and that would be land-use concerns, concerns about the
4 location, you know, in Cass County for the proposed site here.
5 And this is a certificate that is very geographic specific.

6 My concerns -- I would have some concern for -- for
7 those people and those interests insofar as that they have due
8 process, and would be strongly supportive of a local public
9 hearing no matter how expedited this case is.

10 And I'm somewhat, I think relieved, that to the
11 extent that there may be some tension or any concern about
12 those interests and the interest of -- of ratepayers that they
13 are represented here to some degree by StopAquila.org and --
14 and maybe other -- they have other representation in this
15 case.

16 My second comment I would make is that our office
17 has very serious concerns with the -- the other Aquila case
18 that is on file and hasn't been consolidated with this case
19 that relates to the same project. And that's Case
20 No. EO-2005-0156, which relates to I guess the -- the lease
21 back and trans-- transaction that relates to this.

22 There does seem to be some interrelationship.
23 Although the application in the case we're here today at the
24 prehearing on, Aquila has stated that they are not seeking any
25 ratemaking treatment, they're not seeking any relief that they

1 are seeking in that other application.

2 We're still looking at exactly how these two cases
3 relate, to the extent that nothing is being precluded or
4 predetermined or being decided as it relates to that, my
5 concerns might be less from the -- the ratemaking perspective.

6 And just so it's clear, we have -- we're very
7 likely to have contested issues and very serious concerns in
8 this other case from a ratepayer perspective, and to the
9 extent that the -- that any decision in this case is not
10 precluding arguments or predetermining what will happen in
11 that other case, my concern in this case might be less.

12 JUDGE PRIDGIN: Okay. Mr. Coffman, thank you.

13 And if I recall correctly, that -- that Aquila case
14 is a related case on the financing of the construction of the
15 plant; is that correct?

16 MR. COFFMAN: Yeah, there --

17 JUDGE PRIDGIN: I may be oversimplifying it.

18 MR. COFFMAN: There's -- there's a variety of
19 relief requested --

20 JUDGE PRIDGIN: Okay.

21 MR. COFFMAN: -- and including that, yes.

22 JUDGE PRIDGIN: And if -- if I remember correctly,
23 I've seen in the pleadings some mention of -- of the
24 possibility of those Cass -- those cases being consolidated.

25 If the parties really want that, I mean, I'll need

1 some sort of motion, and you'll need to file a motion as the
2 Commission rules dictate in both cases saying why you want the
3 cases consolidated.

4 Again, in the -- if this case goes on an expedited
5 basis, that's gonna almost moot out any type of -- because I
6 understand you have a case that's going down a -- a -- just a
7 more traditional path of pre-filed and -- is that correct?

8 MR. COFFMAN: I -- that's -- that's my assumption.

9 JUDGE PRIDGIN: Okay.

10 MR. COFFMAN: We've requested a hearing in that
11 case.

12 JUDGE PRIDGIN: Okay.

13 MR. COFFMAN: I have not filed a motion to
14 consolidate. I'm not making that motion at this time.

15 JUDGE PRIDGIN: I understand.

16 MR. COFFMAN: But, you know, after discussions
17 today, I might get a better sense of whether -- to what extent
18 we can keep those issues out of this case.

19 JUDGE PRIDGIN: Right. And I'm not consolidating
20 the cases.

21 MR. COFFMAN: But it's --

22 JUDGE PRIDGIN: I don't have the motion. If and
23 when the motion is filed, the Commission would take that up.

24 MR. COFFMAN: But that was enough of a concern of
25 interrelatedness I thought I should note that up front.

1 JUDGE PRIDGIN: I understand.

2 Anything else that the parties want to bring up
3 before we kind of start looking at potential days?

4 MR. COMLEY: Judge Pridgin, there's a --

5 JUDGE PRIDGIN: Mr. Comley?

6 MR. COMLEY: -- motion to dismiss filed by Cass
7 County. When could we expect a formal ruling on that motion?

8 JUDGE PRIDGIN: I don't -- I -- I know that the
9 Commission, again, is -- is leading towards going to hearing.
10 So I -- I would assume that they would want to deny that
11 motion pretty quickly. But, again, I don't think I have a
12 consensus any -- any of the Commissioners on any issue.

13 You know, I could -- I could take this to the
14 Commission tomorrow or sometime later, and they may say, you
15 know what, let's just dismiss this. And that's why I haven't
16 ruled.

17 I don't -- I don't think they know where they want
18 to go on any issue, or at least I don't -- I don't have a --
19 if they do, they're -- they're -- they're not telling me.
20 I'll put it that way.

21 Okay. Anything else?

22 MR. EFTINK: This is Gerry Eftink.

23 JUDGE PRIDGIN: Mr. Eftink?

24 MR. EFTINK: Can I speak up now?

25 JUDGE PRIDGIN: Yes, sir.

1 MR. EFTINK: I've got a couple of matters that I'd
2 like to talk about. One is on behalf of StopAquila.org, you
3 know, like -- you know, with the -- the complex legal issues,
4 I need to file some kind of a motion. And I've about got that
5 ready.

6 JUDGE PRIDGIN: Okay.

7 MR. EFTINK: But haven't really filed it yet. So
8 as we talk about this, I would hope that we would build in a
9 little bit of time up front for us to file a motion, and for
10 the Commission to look at it.

11 And, second, I understand this order says that the
12 Commission will serve notice to the public in Cass County
13 through the media. And I don't know if that's been done yet.

14 The newspapers in Cass County -- in Peculiar -- not
15 Peculiar, but Harrisonville, Raymore and Belton I think all
16 come out on Thursday --

17 JUDGE PRIDGIN: Okay.

18 MR. EFTINK: -- or Friday.

19 JUDGE PRIDGIN: Okay.

20 MR. EFTINK: So I think what we may see is
21 something in the papers tomorrow or Friday that says people
22 have until February 15th to file their motion to intervene --

23 JUDGE PRIDGIN: Okay.

24 MR. EFTINK: -- which, of course, is a serious
25 problem.

1 JUDGE PRIDGIN: Okay.

2 MR. EFTINK: I think we have to look at that and
3 ask if we're moving too fast. There may be other people or
4 other entities that want to intervene, and I think you've got
5 to give them some time. So I think that's something that we'd
6 like to address today.

7 JUDGE PRIDGIN: Okay. And -- and, Mr. Eftink, if I
8 understand you, you plan on filing a motion that says
9 something to that effect?

10 MR. EFTINK: I -- yeah, I could -- I was thinking
11 about that. But --

12 JUDGE PRIDGIN: Okay.

13 MR. EFTINK: -- the motion that I was talking about
14 was like a motion to dismiss -- to talk about prior cases in
15 the PSC, which have said that the PSC requires the utility to
16 comply with local zoning. Because I think I need to make a
17 record on that.

18 JUDGE PRIDGIN: Okay. Well, I mean, you're --
19 obviously you're certainly free to -- to file the motion. And
20 depending on -- on when you file it, I can certainly bring
21 that to the Commission's attention if you file that before
22 tomorrow's agenda.

23 I don't know if they will take that up tomorrow or
24 if they'll want to make more time -- you know, discuss it
25 later. I -- I -- I mean, I appreciate you're making clear for

1 the record what you intend to do. And all I can do is alert
2 the Commission as what's being filed, and -- and I believe
3 they understand the potential time crunch. And they're gonna
4 do what they're gonna do.

5 MR. EFTINK: Okay. Right.

6 JUDGE PRIDGIN: Anything else before we kind of
7 start talking about dates?

8 (No response.)

9 JUDGE PRIDGIN: Okay. Now, again, I -- I don't
10 think the Commission has made any type of decision which road
11 they're gonna take -- or, again, they might take a third road
12 that they haven't told me about, which wouldn't shock me in
13 the least.

14 But assuming that we're going down some sort of
15 expedited path to get a report and order out in mid-March,
16 some possible days -- again, some possible days, I -- I have
17 reserved a -- I believe it's in Harrisonville. Some sort of
18 auditorium at a Justice Center, if I believe correctly, for
19 the evening of February 23rd, which I think would be a week
20 from tonight for a local public hearing.

21 I'm not saying it's gonna be set then. I don't
22 know. I've just got that reserved in case. And I'll -- the
23 Commission will direct me tomorrow if they want the local
24 public hearing then and there or not. but that's just to
25 alert you it might happen then and there. Okay. I've got

1 that reserved.

2 I've also blocked off days -- two days for an
3 evidentiary hearing or on-the-record on February 28th, March
4 1st. Again, I don't know if the Commission wants to use them
5 or not. I've simply reserved them on the calendar.

6 And the reason I've grabbed those days is that if
7 the Commission wants to go down that expedited path, those are
8 about the only days that are physically available with the
9 hearing room to meet Aquila's March 15th report and order
10 request. So those are just days you might want to pencil in.

11 If we -- if the Commission decides to go down the
12 other road and get pre-filed testimony, discovery, allow time
13 to entertain motions that might be filed, et cetera, I've
14 looked at the calendar, and a good deal of March is taken up.
15 Virtually all of April is taken up.

16 So at the earliest, I don't reasonably see a
17 hearing -- if it's not gonna be held in the next couple of
18 weeks, I don't see it being held until May at the earliest.

19 Now, that's not to say somebody couldn't change
20 some dates or whatever. But there's just nothing there on the
21 calendar. And I put it -- usually I -- I turn you loose and
22 say, go pick out dates. Go up on nine and look at the
23 calendar, but I've already looked at it.

24 And -- and from May -- on from the middle of May on
25 you're gonna have quite a few days. But until then, you're

1 gonna have virtually none. Okay.

2 Now, what I had planned to do is, of course, try to
3 answer any questions or take up any concerns is I guess get
4 some feedback from you on if you know right now your -- your
5 preferences for times, dates, locations for a local public
6 hearing, for evidentiary hearing.

7 If you -- if you don't know right now, that's fine,
8 and you can come tell me later or you can just not tell me at
9 all. Because I know this is kind of putting you on the spot.

10 And let me just go around, you know, one party at a
11 time and -- if you care to comment on the dates that I
12 suggested.

13 For Staff, Ms. Shemwell?

14 MS. SHEMWELL: Thank you, Judge.

15 I think Staff feels that it's prudent to have a
16 local public hearing.

17 MS. MOORE: Excuse me, but I cannot hardly hear
18 her.

19 JUDGE PRIDGIN: Okay.

20 MS. SHEMWELL: Sorry, Debra.

21 MR. EFTINK: I'm having a hard time hearing her
22 also.

23 JUDGE PRIDGIN: Okay.

24 MS. SHEMWELL: We think it's smart to have a local
25 public hearing.

1 JUDGE PRIDGIN: Is that better?

2 MS. MOORE: Yes. Thank you.

3 JUDGE PRIDGIN: Okay.

4 MS. SHEMWELL: And I don't know that we thought
5 about February 23rd. In terms of getting notice, that may be
6 precluded by the Company's ability to get notice to the
7 people.

8 Staff thinks that what Aquila filed in terms of --

9 MS. MOORE: I'm not hearing anything at all.

10 JUDGE PRIDGIN: Okay.

11 MS. SHEMWELL: Staff thinks that --

12 MR. EFTINK: I'm not hearing anything.

13 JUDGE PRIDGIN: Okay.

14 MS. SHEMWELL: Sorry, Gerry and Debra.

15 Staff thinks that the procedural schedule proposed
16 by Aquila is perhaps a little aggressive to fully flesh out
17 all of the issues.

18 And we feel that an -- a hearing without pre-filed
19 testimony is likely to take longer than two days. We haven't
20 considered an on -- just an on-the-record presentation.

21 We do think if we could find dates in April,
22 though, that is probably doable. But if the Commission
23 doesn't have dates, then that's the issue.

24 JUDGE PRIDGIN: Again, I don't -- I see virtually
25 none. I mean, there might be one here or there. But, I mean,

1 April is -- is virtually taken up --

2 MS. SHEMWELL: Okay.

3 JUDGE PRIDGIN: -- by other hearings. And I think
4 Aquila might be -- be one of those hearings, and -- and Aquila
5 may be otherwise busy anyway.

6 MS. SHEMWELL: Staff has discussed filing written
7 testimony. We have not reached a conclusion about that.
8 We've just discussed it at this point.

9 JUDGE PRIDGIN: Okay.

10 MS. SHEMWELL: Thank you.

11 JUDGE PRIDGIN: All right. Ms. Shemwell, thank
12 you.

13 On behalf of Aquila, please?

14 MR. BOUDREAU: Yeah. Just for clarity, I'll move
15 up here. Can you hear my -- hear me on the phone?

16 MR. EFTINK: Yes.

17 MR. BOUDREAU: Okay.

18 MS. MOORE: Yes.

19 MR. BOUDREAU: I won't -- given the unavailability
20 of dates later on in -- in March and April, obviously the
21 Company is more interested in a more expedited procedure, and
22 the -- and the two dates that -- that you have, at least
23 tentatively marked -- or the three days, I guess is what --
24 the three dates that the -- that the hearing examiner has
25 tentatively reserved.

1 And one of the things that we want to talk about a
2 little bit more in -- in the prehearing later on is the idea
3 of presenting the -- the issue to the Commission in the
4 context of an on-the-record presentation, rather than
5 necessarily a -- an evidentiary hearing in the formal sense.

6 But having said that, I think -- I think the
7 earlier dates are dates that -- that we fee-- that we think
8 are feasible, depending on how the -- the case is postured
9 procedurally.

10 JUDGE PRIDGIN: Okay.

11 MR. EFTINK: I can't hear anything.

12 MS. MOORE: I can't hear anything either.

13 JUDGE PRIDGIN: I'm sorry. Are -- are you able to
14 hear me all right?

15 MR. EFTINK: I heard that.

16 JUDGE PRIDGIN: I'm -- I'm trying to project pretty
17 loudly. Mr. Eftink, are you getting me okay?

18 MR. EFTINK: Yes.

19 JUDGE PRIDGIN: Okay. Ms. Moore?

20 MS. MOORE: Yes.

21 JUDGE PRIDGIN: Okay.

22 MS. MOORE: Of all days, there's some kind of
23 construction going on outside my office, so --

24 MR. YOUNGS: It's not us.

25 JUDGE PRIDGIN: Let me -- and -- and March does

1 have a handful of days. And I'm glad -- I mean, I can go
2 through and read the conflicts if you want to grab the days.

3 The reason I didn't do it is that it -- it -- I
4 don't know that that's gonna meet Aquila's March 15th
5 deadline. And if we don't meet that March 15th deadline, I
6 don't know that the Commission would be interested in -- in
7 expediting it just for the sake of expediting it.

8 I mean, I think they'd either want to try to meet
9 the March 15th deadline, or slow down and take this down and
10 try to take this more down a traditional -- a more traditional
11 path.

12 Now, I can give you those days, and you can -- you
13 can discuss them. I see conflicts -- and this is easier. I
14 see conflicts in March for March 2nd, 3rd.

15 Mr. Eftink and Ms. Moore, can you hear me?

16 MR. EFTINK: Yes.

17 MS. MOORE: Yes.

18 JUDGE PRIDGIN: Okay. March 2rd and March 3rd,
19 8th, 9th, 16th, and 22nd through the 24th. I see as -- those
20 are all conflicts. So that does leave a few days, but not
21 many. Okay.

22 MR. COFFMAN: Judge?

23 JUDGE PRIDGIN: I'm sorry. Mr. Coffman?

24 MR. COFFMAN: Can I -- talking about dates. I --
25 unfortunately my -- my calendar currently has conflicts on

1 both the 23rd, the 28th and the 1st.

2 There is a hearing -- a -- a Commission hearing on
3 the 23rd that would probably make it difficult for me to make
4 a local public hearing. The 28th and -- and the 1st I have
5 other conflicts.

6 It's possible that I could find other counsel. But
7 it is awfully -- it would be at least, as far as I can tell
8 now, a hardship and something I'd really have to work to -- to
9 try to overcome.

10 So those dates would not be my preference. And
11 I'm -- I'm assuming in -- in -- in your list of conflicts that
12 it's the Commission's preference not to have two hearings
13 going on simultaneously in two different hearing rooms?

14 JUDGE PRIDGIN: I would certainly think so. And --

15 MR. COFFMAN: Okay.

16 JUDGE PRIDGIN: Especially -- I -- I could be
17 wrong. I think in April, I think one of those hearings is
18 Aquila, if I'm not mistaken.

19 MR. COFFMAN: Okay.

20 JUDGE PRIDGIN: I don't know if Mr. Boudreau is
21 involved with that or not. But it -- it may just be
22 physically impossible, even in the Commission wanted to be
23 two places at once, to do it.

24 MR. BOUDREAU: I -- I can -- I can tell you that
25 I'm -- I'm not conflicted by that.

1 JUDGE PRIDGIN: Okay. Okay.

2 MR. COFFMAN: Okay. You know, if -- if this -- I
3 mean, if this is being taken in extraordinary manner, I don't
4 know if that would necessary be a problem for me.

5 The -- and am I to understand that those -- that
6 with those conflicts, perhaps other days could be -- I mean,
7 would it be possible perhaps to -- to break up the hearing,
8 you know, a day or two here and then a day or two a week
9 later?

10 JUDGE PRIDGIN: It's possible. I -- yeah, any --
11 anything's possible. Anything's possible.

12 MR. COFFMAN: Okay.

13 JUDGE PRIDGIN: And I understand your conflict on
14 the 23rd. I have the same one.

15 MR. COFFMAN: Yeah, and I --

16 JUDGE PRIDGIN: It's my hearing.

17 MR. COFFMAN: I also have some -- I have to think
18 about it and maybe talk to some of the others in Cass County
19 or StopAquila.org, but might be some concern about whether
20 there's adequate time to get public notice prior to that.

21 JUDGE PRIDGIN: I understand.

22 MR. COFFMAN: So I --

23 JUDGE PRIDGIN: And -- and I've talked with -- with
24 our public information officer and told him as much as I know
25 that -- that this might go to public hering as early as next

1 week, but I don't know.

2 And the Commission may know something tomorrow.

3 And I would give them as much notice as I could. Again, the
4 Commission's agenda isn't until tomorrow, so I won't know
5 anything until tomorrow at the earliest.

6 Going back to the parties. Mr. Comley, did you
7 want to speak for -- for Cass County --

8 MR. COMLEY: Sure.

9 JUDGE PRIDGIN: -- or Ms. Moore?

10 MR. COMLEY: Sure.

11 JUDGE PRIDGIN: Okay.

12 MR. COMLEY: I -- I think we've already gone on
13 record as opposing any expedited treatment of the application.
14 Cass County has a particular interest. It may differ somewhat
15 from StopAquila's, but we -- we do have a joint constituency
16 that we need to address.

17 We had given serious thought to extending the
18 intervention period. We felt like because of the notice that
19 was issued and the fact that it won't be in the paper until
20 this -- tomorrow probably, there hasn't been a meaningful
21 opportunity for other interested parties to know about this
22 case and represent -- or appear for their interests.

23 So we were considering that the date you have for
24 the public hearing would be the end date for the deadline for
25 future interventions. We would propose that very strongly.

1 Our idea was to use a more conventional approach
2 for this case. We feel like expediting it would run fairly
3 rough shot over some due process rights that Cass County would
4 have and also its -- its citizens.

5 So our preference would be to make use of pre-filed
6 testimony, a local public hearing in Cass County. The -- the
7 Justice Center in Harrisonville, I -- there was another
8 location that Ms. Moore and I had visited about that may be
9 just as useful. We could talk about that. But an evidentiary
10 hearing in which these issues are addressed specifically to
11 the Commission.

12 As far as the time, I acknowledge that the
13 Commission is interested in trying to find a way to
14 accommodate Aquila as best it can. And we are not going to
15 try to -- to engage in any delay.

16 It's just that we want to make sure that there is a
17 meaningful opportunity to address these issues, and make sure
18 that they're properly presented to the Commission.

19 We were thinking about hearing dates perhaps in
20 late April. So that's -- that's what we were thinking about.

21 Debra, is there anything else on that?

22 MS. MOORE: No. I -- I do think the Justice Cis is
23 probably a fine location also. It's very easy to find, and
24 everyone would know where it is.

25 JUDGE PRIDGIN: Okay. Mr. Comley, thank you, and,

1 Ms. Moore, thank you.

2 Mr. Eftink, any comments?

3 MR. EFTINK: Yes. I would support the comments
4 made by Cass County. StopAquila.org also opposes expediting
5 this matter. We feel like Aquila has caused the problems and
6 is trying to get the Commission to save it from its own
7 actions.

8 If there is a public hearing, I think you're gonna
9 have to have a room big enough to accommodate over 200 people.
10 So that's something I think we have to look at. We do want a
11 local public hearing if the Commission decides to go down this
12 route.

13 As for those dates, I echo the comments of the
14 county that I think you have to give at least another week for
15 people to intervene. And I don't think you'd be giving people
16 enough notice if you decided to have a public hearing on the
17 23rd. I think you have to move it back at least a week.

18 And as for the dates that you mentioned, on
19 March 1st, I'm supposed to be in court. So that's a conflict
20 for me.

21 That's about all of the comments I have at this
22 moment.

23 JUDGE PRIDGIN: All right. What -- what might be
24 good -- I mean, I have heard some conflicts -- if the
25 Commission decides to -- to grab those dates, it sounds like

1 that we have got some conflicts.

2 What I would like, if the parties have any
3 conflicts on those days that I grabbed, that February 28th,
4 March 1st, if you would please file those so I can -- so I can
5 tell the Commission, you know, no. 1, in case I forget or,
6 No. 2, so it's on the record to protect you.

7 Look if you -- if you want to go down this
8 expedited road, there are only -- there really aren't any days
9 available, and it looks like we've got counsel who are
10 conflicted out. Do you still want to do this? And that may
11 sway their decision.

12 Now, again, I understand that we've got this port
13 until 11. And Ms. Shemwell, I think, had -- had talked to me
14 about continuing this conference call so parties can talk.

15 I don't know that I have anything further to
16 address with the parties. I just wanted to get some -- I just
17 wanted to get comments from counsel to take to agenda tomorrow
18 to try -- try to get their terms on what they want to do.

19 Ms. Shemwell?

20 MS. SHEMWELL: Thank you, Judge.

21 The general counsel has suggested that if we can't
22 agree today, that perhaps an on-the-record presentation by the
23 parties as -- in terms of the procedure necessary might be
24 useful.

25 And I understand from Mr. Dottheim that probably

1 next Thursday and Friday will be available -- that the matter
2 currently scheduled will be unlikely to require those days.
3 So I just wanted to throw that out as an option in case we
4 can't reach agreement today.

5 The motions could be discussed at that time, and
6 the parties could answer Commission questions as to procedure
7 if we can't agree today.

8 JUDGE PRIDGIN: Okay. Ms. Shemwell, if I
9 understand correctly, you're suggesting if the parties can't
10 agree or at least -- or at least come up with alternative, you
11 know, either/or-type scenarios on how to proceed, that you
12 want the Commission to consider setting aside February 24th
13 and 25th for an on-the-record from counsel to discuss how to
14 procedurally attack this matter; is that correct?

15 MS. SHEMWELL: That is correct.

16 JUDGE PRIDGIN: All right.

17 MS. SHEMWELL: And -- and my best guess is a single
18 day would do it. But since we have the two days, that
19 probably is not a bad idea.

20 Thank you.

21 JUDGE PRIDGIN: Thank you.

22 All right. Anything further from counsel?

23 MR. COFFMAN: I --

24 MR. BOUDREAU: If I -- if I might address that
25 point.

1 JUDGE PRIDGIN: Sure.

2 Mr. Boudreau?

3 MR. BOUDREAU: I thought this -- that Staff's
4 suggestion about maybe an opportunity to visit with the
5 Commission to talk about some of the procedural issues and how
6 the case is postured and routes that we may take as early as
7 next week may be a helpful item to all parties. So I -- I
8 just -- I'd just like to -- to weigh in and say that that may
9 be a good idea.

10 The second thing is the concerns about public
11 notice may be a little overst-- overstated in the sense that
12 we've already had some localized litigation, as the Commission
13 is well aware, about the construction of this plant.

14 And all of the parties that were involved in that
15 process were notified about this proceeding. And the
16 likelihood of additional interventions, I would suggest, is
17 probably not high, given -- given that scenario.

18 Now, having said that, if there's some late-filed
19 requests for intervention, I'm willing to address those on a
20 case-by-case basis.

21 But I would just say the concerns about lack of
22 public involvement and lack of public notice, at least those
23 parties who were interested or have an evidence interest in
24 this case are likely a little bit over blown. And that ought
25 to be kept in line in terms of those -- the comments from

1 other counsel.

2 Thank you.

3 JUDGE PRIDGIN: Mr. Boudreau, thank you.

4 Mr. Coffman, did you have something?

5 MR. COFFMAN: I -- I think I could support the
6 Staff's suggestion of a -- perhaps a -- a brief on-the-record
7 presentation next week.

8 The -- the matter that's going -- that's been set
9 for hearing all of next week is the Aquila -- or I'm sorry --
10 the -- the Ameren Noranda case. And -- and it would be my
11 expectation that it wouldn't go the whole week. Perhaps
12 Friday would be a somewhat safe bet that -- that Friday might
13 be free.

14 And I guess it would be my -- in supporting this
15 motion, the idea that there wouldn't be, you know, a full
16 presentation of evidence or -- or -- or even a -- the
17 requirement that all legal arguments would need to be made
18 necessarily at that time, but just kind of address --
19 addressing the schedule and -- and, you know, manner in which
20 this case would be proceeded, assuming we can't reach some
21 kind of agreement, which is very possible.

22 And so I -- I think that would be preferable
23 obviously. And I will file something today regarding your
24 request for conflicts.

25 JUDGE PRIDGIN: All right. Mr. Coffman, thank you.

1 And again, I understood Staff's suggestion and that
2 Aquila and OPC don't con-- don't object in any way is some
3 sort of on-the-record for a possible discussion with the
4 Commissioners on procedurally where the parties want the case
5 to go and why, and -- okay.

6 Any comments from StopAquila.org?

7 MR. EFTINK: No comments.

8 JUDGE PRIDGIN: Cass County?

9 MR. COMLEY: I think the idea of that on-the-record
10 presentation is -- is something we could go along with.

11 JUDGE PRIDGIN: Okay.

12 MR. COMLEY: And that's provided that the U--
13 UE case is going to be as abbreviated as what we are
14 anticipating.

15 JUDGE PRIDGIN: I understand. All right.

16 Anything else the parties would like to bring to my
17 attention before we go off the record?

18 Okay. Mr. Boudreau?

19 MR. BOUDREAU: I -- I'm not sure that I need to --
20 to elaborate on the details. We have some additional
21 information about this. There have been some -- let me set
22 the table here.

23 We filed some requests for expedited consideration,
24 set out some dates. We have some updated information about
25 the status of the construction at the site.

1 The -- without getting into too much detail,
2 weather conditions have slowed down the process of
3 construction there. So the -- the dates have moved out a
4 little bit. Not dramatically so.

5 JUDGE PRIDGIN: Okay.

6 MR. BOUDREAU: But we'll visit with the parties
7 about that, because that plays into some of the timing
8 considerations.

9 JUDGE PRIDGIN: Okay. All right.

10 MR. BOUDREAU: So we have some additional
11 information.

12 JUDGE PRIDGIN: Okay. All right.

13 Anything else from the parties?

14 (No response.)

15 JUDGE PRIDGIN: All right. Hearing nothing, what
16 I'd like to do is wrap up the prehearing conference, go off
17 the record, continue -- Mr. Eftink and Ms. Moore, please stay
18 on the line after I go off the record and give the parties a
19 chance -- again, I think this port is open until
20 eleven o'clock.

21 If you need other arrangements, you can either call
22 the State operator or get ahold of me. I'll be glad to try to
23 help. But certainly want to let you continue. You can use
24 this room the rest of the day, and obviously you can talk all
25 you want.

1 I will take this information to the Commission
2 tomorrow, and hopefully get some guidance.

3 All right. Hearing nothing further from counsel,
4 this prehearing conference in Case No. EA-2005-0248 is
5 concluded. We are off the record. Thank you.

6 MR. BOUDREAU: Thank you.

7 MS. SHEMWELL: Thank you.

8 WHEREUPON, the on-the-record portion of the
9 prehearing conference was concluded.

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