

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 March 29, 2005

7 Jefferson City, Missouri

8 Volume 6

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10 In the Matter of the Application of)
11 Aquila, Inc., for Specific Confirmation)
 or, in the Alternative, Issuance of a)
12 Certificate of Convenience and) Case No.
 Necessity Authorizing It to Construct,) EA-2005-0248
13 Install, Own, Operate, Control, Manage,)
 and Maintain a Combustion Turbine)
14 Electric Generating Station and)
 Associated Electric Transmission)
15 Substations in Unincorporated Areas of)
 Cass County, Missouri, Near the Town)
16 of Peculiar)

17

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 LEWIS MILLS, Presiding
19 DEPUTY CHIEF REGULATORY LAW JUDGE.
 STEVE GAW
20 CONNIE MURRAY,
 LINWARD "LIN" APPLING,
21 COMMISSIONERS.

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

2 JUDGE MILLS: We're back on the record for the
3 second day in the hearing of EA-2005-0248. We are continuing
4 with direct examination of Mr. Boehm.

5 We had a period yesterday in which we were
6 in-camera doing direct examination, cross-examination and
7 questions from the Bench. I believe we are at least for the
8 time finished with the highly confidential portion and we're
9 back in public session. Mr. Boudreau.

10 MR. BOUDREAU: Thank you. Just a couple of
11 wrap-up questions.

12 JERRY BOEHM, having been previously sworn, testified as
13 follows:

14 REDIRECT EXAMINATION BY MR. BOUDREAU:

15 Q. Mr. Boehm, based on your resource planning
16 expertise and experience in the application of load
17 forecasting, resource screening and production modelling and
18 other analytical tools that you've described yesterday, does
19 Aquila need the 315-megawatts of capacity the South Harper
20 facility will provide as part of its portfolio approach for
21 consistent load growth and to replace capacity being lost due
22 to the expired purchased power agreement with Calpine?

23 A. Yes.

24 Q. And why is that?

25 A. We did our homework, we followed the rules, we

1 did the analysis and that plant is the -- part of the least
2 cost plan.

3 MR. BOUDREAU: Very good. That's all I have
4 for Mr. Boehm.

5 JUDGE MILLS: Thank you.

6 Mr. Appling, do you have any questions?

7 I'm sorry. We're going to do cross-examination
8 first. Thank you. We're going to do cross-examination first
9 and then questions from the Bench. This will cover all of the
10 public testimony, the non-proprietary information.

11 Ms. Shemwell.

12 MS. SHEMWELL: Thank you.

13 CROSS-EXAMINATION BY MS. SHEMWELL:

14 Q. Okay. I'm going to adjust this so -- good
15 morning, Mr. Boehm.

16 A. Good morning.

17 Q. I'm Lera Shemwell.

18 We discussed the Commission's IRP process
19 yesterday. Is Aquila currently following the Commission's IRP
20 rules as they're written?

21 A. Yes.

22 Q. My understanding is you have a waiver. Is that
23 not correct?

24 A. We are, in fact, right now preparing an IRP
25 as -- as designated by us in a stipulation agreement within

1 our last rate case.

2 Q. Do you know if that includes a waiver from the
3 IRP rules as they're written?

4 A. I'm sorry. The technicalities of it, I'm not
5 sure of.

6 Q. Does your current process involve a very
7 detailed review by the Staff?

8 A. We will be providing the integrated resource
9 plan to the Staff for review, yes.

10 Q. In the past, has it involved a very detailed,
11 do you know, review?

12 A. I'm sorry. In the past we have been part of
13 the previous waiver. Every six months or less we've been
14 meeting with the Commission Staff and discussing our progress
15 towards resource planning.

16 Q. So you're currently under a waiver?

17 A. Yes.

18 Q. Is siting part of the Integrated Resource
19 Planning process?

20 A. Yes, it is.

21 Q. Will you site facilities?

22 A. That's not in my respons-- area of
23 responsibility, but it is part of the process.

24 Q. Yesterday you mentioned something called load
25 growth characteristics. Would you tell me what that is,

1 please?

2 A. It's the rate at which the load grows. It's
3 also the -- I guess the format change of load, which is
4 commonly referred to as load factor.

5 Q. Does it include things like residential versus
6 industrial?

7 A. Yes.

8 Q. Let me just ask, residential does it have a
9 fairly set pattern?

10 A. It's not my area of responsibility.

11 Q. Okay.

12 A. But the way I understand it, yes, it does.

13 Q. And industrial might be quite different?

14 A. I would think industrial -- especially with our
15 mix of industrial in Missouri is -- probably is almost a
16 case-by-case type of industrial pattern.

17 Q. In the discussion yesterday, you weren't
18 implying that Staff tells Aquila how to run its business, were
19 you?

20 A. No. Once again, the discussions are informal
21 and are meant to be just a -- an update to the Staff and an
22 open discussion on processes.

23 Q. So Staff might make suggestions, but you're not
24 bound by those suggestions?

25 A. We are not bound by anything that Staff says.

1 Q. We talked about Aries and it's a combined
2 cycle; is that right?

3 A. The plant design is combined cycle.

4 Q. Have you taken from Aries as combined cycle
5 power or that intermediate power?

6 A. You mean like the duty cycles similarities?

7 Q. I guess what I'm talking about is peaking power
8 is a very short time period is my understanding --

9 A. Okay.

10 A. -- while the combined cycle is a longer period
11 above let's say 15 hours or something. Is my understanding
12 right?

13 A. Yes. There are on occasions where we've
14 actually operated as a combined cycle.

15 Q. And was I correct in understanding that if you
16 took a new contract with Aries, there would be big penalties
17 if you used it as a peaking unit?

18 A. There would be --

19 Q. Maybe I should say costs.

20 A. I don't really like to say penalty. I would
21 say the cost structure is that it would be much more costly to
22 operate the unit based on the operating parameters.

23 Q. And is that so because it's a combined cycle so
24 it doesn't reach its most efficient level for a time period or
25 takes longer to gear up?

1 A. I think in a nutshell, as we discussed, the
2 steam section of a combined cycle, it takes a while to get it
3 going and it takes a while to cool it off. And that stresses
4 the equipment. So I think in a nutshell, they're trying to
5 reduce the starts of the unit.

6 Q. So you're saying it's actually hard on the unit
7 to operate as a peaker or shut down and --

8 A. I would -- I would say that it's understood in
9 the industry that it's more -- more wear and tear on the unit
10 goes with the starts. The more starts, the more wear on the
11 unit.

12 Q. Any unit or particularly combined cycle or
13 coal?

14 A. It's just -- yeah, the nature of the -- of the
15 steam train that does that to it or the steam system does that
16 to it.

17 Q. So the peaker unit still has the steam -- are
18 you using the term "train" t-r-a-i-n, steam train?

19 A. That's commonly what is referred to as the
20 combustion turbines, the heat recovery and the turbine that
21 goes with the heat recovery is called one train.

22 Q. And the peaking units don't have that, is what
23 you said?

24 A. Peaking units are just combustion turbines
25 without steam processes.

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

2 JUDGE MILLS: Thank you.

3 Ms. O'Neill.

4 MS. O'NEILL: No questions.

5 JUDGE MILLS: Mr. Comley.

6 MR. COMLEY: No questions. Thank you.

7 JUDGE MILLS: Thank you.

8 Mr. Eftink.

9 MR. EFTINK: Yes, your Honor.

10 CROSS-EXAMINATION BY MR. EFTINK:

11 Q. I want to follow up on some questions and
12 answers regarding whether the siting is part of the integrated
13 resources process. The PSC Staff does not tell Aquila where
14 to build a power plant, does it?

15 A. No.

16 Q. And the PSC doesn't tell you where to not build
17 a power plant?

18 A. No.

19 Q. You calculate the costs and that includes the
20 cost of putting in a plant at a particular site when you
21 present figures to the Public Service Commission Staff.
22 Correct?

23 A. It can. Much the IRP is actually somewhat of a
24 generic cost in site -- generic site costing.

25 Q. Now, if this is approved and you put in the

1 three turbines, after that, Aquila would have 550 megawatts of
2 peaking power. Correct?

3 A. No.

4 Q. How much peaking power would Aquila have at
5 that point?

6 A. If we put in the CTs, I believe we'll have 800
7 megawatts of peaking power.

8 Q. 800 megawatts. Now, Exhibit 104 showed that at
9 about a 10 percent capacity, the total cost, counting
10 everything, to run a combustion turbine exceeds the cost of
11 running a combined cycle. Correct?

12 A. Are we --

13 Q. After 10 percent?

14 A. Could I see Exhibit No. 104 again, please?

15 MR. EFTINK: Do you have a copy?

16 MR. BOUDREAU: He can have my copy.

17 MR. EFTINK: May I, your Honor?

18 JUDGE MILLS: Yes. Go ahead.

19 BY MR. EFTINK:

20 Q. Mr. Boehm, I'm going to hand you what counsel
21 for Aquila has given to me as Exhibit 104. Let me rephrase my
22 question.

23 Based on 104, is it your testimony that at the
24 10 percent capacity mark, the total cost of running a
25 combustion turbine is about equal to the cost of running a

1 combined cycle?

2 A. In this generic example, yes.

3 Q. And if you get over the 10 percent capacity,
4 the total cost of running the turbine exceeds the cost of
5 running the combined cycles?

6 A. Yes. In this generic example it shows that.

7 Q. So based on this 10 percent rule, if Aquila was
8 going to operate that plant at a greater than 10 percent
9 capacity, it would make more sense to have a combined cycle
10 rather than a combustion turbine?

11 A. If I made my decisions based only on this rule,
12 that would be correct.

13 Q. I'm sorry. Could you say that again?

14 A. If I made my decisions based only on this rule,
15 that would be correct.

16 Q. Is it possible that part of the decision of
17 Aquila to put in these combustion turbines was the fact that
18 Aquila had these three combustion turbines on hand?

19 A. From my point of view? No.

20 Q. But they were on hand?

21 A. Yes.

22 Q. And Aquila obviously wanted to use these
23 combustion turbines?

24 A. They didn't express that obvious concern to me.

25 Q. Let me run some numbers. Have you reviewed the

1 permit from the Department of Natural Resources?

2 A. No, I haven't.

3 Q. Well, do you know that under the permit the
4 combustion turbines should not be run at less than a
5 70 percent load when it's operational?

6 A. No, I don't.

7 MR. BOUDREAU: I object. I think the witness
8 has testified he hasn't read the permit.

9 MR. EFTINK: Well, my question is broader than
10 that. My question is, are you aware.

11 MR. BOUDREAU: I renew the objection. I think
12 he said he had not read the permit.

13 JUDGE MILLS: I didn't hear that answer. I'll
14 allow the question. Objection's overrules.

15 BY MR. EFTINK:

16 Q. Do you want me to repeat the question?

17 A. Would you repeat the question, please?

18 Q. Are you aware that under the DNR permit, the
19 combustion turbines should not be operated at less than a
20 70 percent load?

21 A. At less than a 70 percent load?

22 Q. Should not be operated than less than a
23 70 percent load.

24 A. I was not aware of that.

25 Q. So you didn't factor that into your

1 calculations since you weren't aware of that?

2 A. Actually, we operated those turbines at
3 approximately 70 percent of load because that's the design
4 criteria.

5 Q. Well, that's true. They're more efficient if
6 they're operated at greater than 70 percent load. Correct?

7 A. Yes.

8 Q. Okay. So I guess we can assume that when those
9 CTs are operational, when they're operating, they're going to
10 be operated at greater than 70 percent load. Correct?

11 A. I would assume that.

12 Q. I mean, they're not going to be operated at
13 like a 20 percent load, are they?

14 A. I'm not sure they could even do that.

15 Q. Okay. Now, if you have 800 megawatts of
16 peaking power -- I'm trying to calculate the 10 percent
17 capacity. If you've got three turbines and there's 24 hours
18 in a day, 365 days in a year, that comes out to 26,280 hours
19 in a year's time if you run those three CTs at 100 percent?

20 A. There's actually only 8,760 hours in a year.

21 Q. Right. But if you multiply that times three
22 because you've got three combustion turbines, that's 26,280
23 hours?

24 A. Okay.

25 Q. Okay. And at 10 percent capacity at

1 100 percent load would be 2,628 hours. Correct?

2 A. I -- I don't understand the math you're trying
3 to use.

4 Q. Well, I'm trying to figure if you're going to
5 go above that 10 percent figure, the 10 percent rule, and the
6 permit says that the CTs can run 6,000 hours a year, so that's
7 more like a 30 percent capacity, isn't it?

8 A. A 30 percent capacity of the output of the
9 plant is --

10 Q. If you have three combustion turbines, 365 days
11 in a year, 24 hours a day, that's 26,280 hours for those three
12 CTs. And you said you don't want to operate them at more than
13 10 percent. That's only 2,628 hours. Correct?

14 A. I'm not sure. Are you talking about at full
15 load or at --

16 Q. At 100 percent load.

17 A. At 100 percent load?

18 Q. Right.

19 A. At 100 percent load I can operate -- would you
20 repeat the question, please?

21 Q. Right. You've got three CTs, there's 24 hours
22 in a day, 365 days in a year. You multiply that, you come up
23 with 26,280 hours possible those three CTs could be operated.
24 And you said if you operated them at more than 10 percent
25 capacity, then it's more economical to have combustion

1 turbines than CTs?

2 A. I didn't say that about those CTs.

3 Q. You said generally it's more economical, if you
4 get over the 10 percent capacity, to have combustion -- to
5 have combined cycle than to have CTs.

6 A. If you were basing your decisions based on that
7 methodology alone, you would come up with that result.

8 Q. And if you were going to go above 10 percent
9 capacity, it would be better to have combined cycle than to
10 have CTs because it's more economical if you go above the 10
11 percent to have combined cycle?

12 A. In that generic example, you are correct.

13 Q. Right. And I gave you this figure of
14 10 percent being 2,628 hours. If you ran those CTs during
15 that amount of time, that's not enough to meet the
16 requirements, is it?

17 A. I don't have a calculator with me right now and
18 I'm not sure what the answer to your math question is.

19 Q. Okay. Well, we can all take out our
20 calculators and figure this. I just want to ask you some
21 questions so we can get your assistance in figuring this out.

22 A. Okay.

23 Q. If you're running the CTs at 70 percent, of
24 course, you take that 2,628 hours down to 1,800 hours.
25 Correct?

1 A. It could be possible.

2 Q. If you're running the CTs at less than
3 100 percent --

4 A. The CTs are going to operate somewhere between
5 70 and -- 70 percent of their capability and 100 percent of
6 their capability --

7 Q. Okay.

8 A. -- I would assume.

9 Q. Now, if the permit from the DNR says that you
10 can operate those CTs 6,000 hours, that is about three times
11 as much as the number of hours that you have --

12 MR. BOUDREAU: I'm going to object to this line
13 of questions. First of all, he's testified he hasn't read the
14 permit. I'm not sure that the characterization of the
15 operational parameters in the permit is being correctly
16 characterized. And it's pretty clear the witness doesn't even
17 understand the premise -- the mathematical premises of the
18 questions. I'm going to object to this whole line of
19 questioning.

20 MR. EFTINK: It's simple mathematics, your
21 Honor. We're trying to look at Exhibit 104, which this
22 witness supplied, which says that if you're above the
23 10 percent capacity, it's more economical for the company and
24 for the public to operate combined cycle than to operate CTs.
25 And --

1 MR. BOUDREAU: My objection --

2 MR. EFTINK: -- if the witness has not even
3 contemplated that, how can he come before us and say he's
4 given a great deal of thought to what's better for us?

5 MR. BOUDREAU: I'm going to object. If it's
6 simple math, than everybody can do the simple math. But the
7 point is he keeps talking about a permit limitation of 6,000
8 hours, which is an incorrect statement. It's 5,000. So I'm
9 going to object to this whole line of questioning based on
10 factual statements being made that aren't correct and his
11 unfamiliarity with the permit to which he's referring.

12 BY MR. EFTINK:

13 Q. Are you unfamiliar with the permit?

14 JUDGE MILLS: Hang on. Hang on. Hang on. Let
15 me rule on the objection before you start asking more
16 questions. First of all, if we get to a
17 question in which you believe that a statement of fact is
18 incorrectly characterized in the question, we'll take that up
19 as we go. I'm not going to sustain an objection to this
20 entire line of questioning because some questions within it
21 may have a misstatement of fact.

22 And in terms of your point that the witness
23 doesn't understand the premises of the question, I don't find
24 that a proper basis for an objection. So when we get to
25 specific questions that you find objectionable on the basis

1 that the question itself mischaracterizes the DNR permit, we
2 can take it up then, but I will overrule the objection to the
3 entire line of questioning.

4 BY MR. EFTINK:

5 Q. Mr. Boehm, you just said that after this is all
6 said and done, if every approval is granted Aquila, will have
7 about 800 megawatts --

8 A. Please call me Mr. Boehm.

9 Q. I'm sorry. I didn't mean to disrespect you.

10 A. Thank you.

11 Q. I just didn't know. Mr. Boehm --

12 A. Thank you.

13 Q. -- is that right?

14 You just said today that if all the permits are
15 granted, Aquila will have 800 megawatts of peaking power?

16 A. Yes.

17 Q. Now, have you projected with 800 megawatts of
18 peaking power compared to your base load and your intermediate
19 power, how can Aquila stay below that 10 percent factor?

20 A. It doesn't have to stay below that 10 percent
21 factor.

22 Q. And you have forecasted Aquila will go above
23 that 10 percent capacity factor, haven't you?

24 A. There's a possibility, yes.

25 Q. There's more than a possibility, isn't there?

1 A. Yes.

2 Q. With so much peaking power, it's a fair
3 assumption that Aquila is going to go above that 10 percent
4 capacity factor?

5 A. That's correct.

6 Q. Okay. So that means that would be more
7 economical for Aquila and for the ratepayers if you had more
8 of the combined cycle units and less of the turbines?

9 A. That is incorrect.

10 Q. And why is that incorrect?

11 A. Because our programs which do the analysis,
12 which are much more robust than a simple graphing technique
13 that you were showing in that example, use the principles of
14 economic dispatch as do our operators use the principles of
15 economic dispatch.

16 One consideration is the fact that the load is
17 dynamic, the units have to come on and off in very short duty
18 cycles. And for that, a combine -- a combustion turbine
19 exceeds the quality of a combined cycle. The cost is lower.

20 Q. And where is the breakpoint? On Exhibit 104 it
21 looks like the breaking point is 10 percent.

22 A. Exhibit 104 is a textbook example of how the
23 different costs are associated with different types of power
24 plants. And as I stated in my introduction to that, it
25 represents a generic example and is not the actual operations

1 nor is it the calculation of our system.

2 Q. Have you calculated where the breakpoint is, in
3 fact?

4 A. It's -- I don't think you could do that for our
5 system.

6 Q. You have not projected where that breakpoint is
7 if this --

8 A. In this --

9 Q. -- plan goes through?

10 A. -- simple analytical method I have much better
11 tools which do the actual simulation of the dispatch and do a
12 better job of determining the economic benefits.

13 Q. Have you done a projection to determine if
14 everything is approved as requested by Aquila and you end up
15 with 800 megawatts of peaking power, where the breakpoint is
16 where running a CT is more economical than running a combined
17 cycle?

18 A. By this method, no.

19 Q. And why haven't you done that for the
20 Commission?

21 A. It wasn't necessary since I had the production
22 cost programs to do the process.

23 Q. Is it possible for you or someone at Aquila to
24 take all the numbers and calculate for the Commission where
25 the breakpoint is where it is not more economical to run a

1 combined cycle as compared to running a peaking plant?

2 A. It is possible that it wouldn't be practical
3 and it wouldn't give us any information that was useful.

4 Q. So the only thing we've got to go on at this
5 point is Exhibit 104. Although it is general in nature, it's
6 all we've got to go on. Correct?

7 A. No. The Commission Staff was supplied with --
8 was provided with the production cost results.

9 Q. And do those production cost results enable us
10 to calculate where the breakpoint is where it is not less
11 economical to run a combined cycle as compared to a CT?

12 A. The breakpoint of which you are speaking of is
13 a very simplistic method. And if I had to make economic
14 decisions based on that, I would be very wary of whether or
15 not those decisions were, in fact, the best decisions.

16 Q. Okay. So other than Exhibit 104, what other
17 factors did you use to calculate whether to say that it's
18 better to put in the CTs as opposed to getting more combined
19 cycle?

20 A. We used production costing simulation programs,
21 MIDAS and Real Time.

22 Q. Does that count the cost of the turbines?

23 A. Yes.

24 Q. Okay. So the fact that Aquila had three
25 turbines on hand it wanted to get rid of is a big factor?

1 A. No.

2 Q. It's not. And Aquila had those priced at about
3 \$70 million, didn't they?

4 A. I believe that's what they're priced at.

5 Q. And when you ran the numbers, you put in those
6 CTs at \$70 million, didn't you?

7 A. We had the -- Terry Hedrick's group supplied us
8 with projected self-build cost.

9 Q. And if the Chapter 100 bonds go through, Aquila
10 Merchant gets \$70 million from that bond money to pay for the
11 CTs. Correct?

12 A. That's beyond my area of responsibility.

13 Q. Okay. Now, do you think that Aquila having
14 800 megawatts of peaking power compared to its base load and
15 intermediate loads is too much peaking power?

16 A. No.

17 Q. Have you forecast the load capacity for the
18 peaking power -- and I'm looking at that 10 percent
19 breakpoint, that's what I'm getting at.

20 Have you forecast for 2006 and 2007 years
21 beyond the load capacity for those CTs?

22 A. I'm -- I'm sure it's in the results, yes.

23 Q. Okay. And it went over 10 percent, didn't it?

24 A. I can't state that, but I believe it may have
25 at some times.

1 Q. Did it go up as high as 30 percent?

2 A. Don't know.

3 MR. EFTINK: Thank you.

4 JUDGE MILLS: Now we'll do questions from the
5 Bench.

6 QUESTIONS BY COMMISSIONER APPLING:

7 Q. Mr. Boehm, how are you doing this morning?

8 A. Good morning. I'm fine. Thank you.

9 Q. I've got a couple of just short questions
10 because I'm trying to get my arms around the noise and the
11 health issue that was expressed that the Higginsville hearing.
12 How far is Greenwood away from Harper Road, do you recall?

13 A. I'm sorry. I don't know that.

14 Q. Okay. Do you know how many turbines we have at
15 Greenwood?

16 A. I believe --

17 Q. Is it three to five?

18 A. Four.

19 Q. Four. Okay. And you're going to put in three
20 at South Harper?

21 A. That's the design, yes.

22 Q. Now, at Greenwood, which is up and operating,
23 has been for years, do you have a schedule of -- or do one of
24 those turbines run all the time or is it sometimes they're
25 always shut down?

1 A. Many -- quite often the units are shut down.
2 They are dispatched under economic dispatch conditions. So if
3 the power is needed for the customer load, those units will --
4 there's a choice the operators make of the other sources and
5 those units and the market then decides whether or not they
6 turn on. So they come on and off infrequently.

7 Q. Can someone at Aquila tell me what -- on a
8 weekly or monthly basis how many hours over the past year
9 those have run?

10 A. Yes. I'd like to defer that to Andy Corde.

11 COMMISSIONER APPLING: Okay. I'll ask Andy
12 Corde the rest of the questions if he has the most knowledge
13 about that. Thank you very much.

14 JUDGE MILLS: Thank you.

15 THE WITNESS: Thank you.

16 JUDGE MILLS: Commissioner Gaw?

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. Good morning, Mr. Boehm.

19 A. Good morning.

20 Q. Did you find out any more information since
21 yesterday that I inquired about yesterday?

22 A. I believe they were looking for something for
23 you. Was it --

24 Q. If you don't recall, I'll just wait and ask
25 somebody else.

1 A. Thank you.

2 Q. The MIDAS model documentation, is it in
3 evidence?

4 A. The -- the documentation, which would be the
5 input and output files?

6 Q. The runs that you did on the different --
7 different possibilities that Aquila had.

8 A. Those files are very extensive. I don't -- I'm
9 sure not all of it is in evidence.

10 Q. Is any of it in evidence?

11 A. The results are.

12 Q. The results. Which are in which exhibit, do
13 you know?

14 A. They were supplied with No. 8 -- or I'm sorry,
15 I believe DR No. 6.

16 Q. So we don't know if --

17 COMMISSIONER GAW: Let me ask counsel. Are
18 they in evidence?

19 MR. BOUDREAU: I believe that those were
20 attached. I think it's Exhibit 105-HC is what he's referring
21 to.

22 COMMISSIONER GAW: 105-HC.

23 BY COMMISSIONER GAW:

24 Q. And are you familiar with that exhibit --

25 A. Yes.

1 Q. -- Mr. Boehm?

2 What is in that exhibit, without giving me
3 details that would require us to go into closed? What's in
4 that exhibit generally?

5 A. In presentation to the Staff, we had a -- some
6 slides in the presentations which showed the results of the
7 analysis.

8 Q. Okay. So Staff would be able to give me their
9 feedback on that exhibit and the -- and I assume -- I'm
10 assuming they're prepared to do that when they take the stand.
11 Do you have -- have you had discussions with them about that?

12 A. With Staff?

13 Q. Yes.

14 A. We've -- we've discussed -- as I said before,
15 we've discussed every six months some of the results of those.

16 Q. Did you, yourself --

17 A. Can I point out specifically that the -- the
18 final -- the final analysis for that was done in a production
19 costing program Real Time. And those -- those results are --
20 are probably more relevant.

21 Q. Are they in evidence?

22 A. We -- yes.

23 Q. In that same exhibit?

24 A. Yes.

25 Q. All right. Just the conclusions or all of the

1 work papers behind them and the runs?

2 A. I'm not -- there were some pages missing in
3 the -- in the attachments. And if you look, it's very hard to
4 tell what's -- what the pages are. So that was supplied to
5 Staff in Excel spreadsheet form.

6 Q. Okay.

7 A. And whether or not --

8 Q. It's probably --

9 A. Whether or not it made the printed pages, I'm
10 just not sure. I'm sorry.

11 Q. Okay. Do you want me to ask Staff about that
12 too?

13 A. I guess that's not my decision.

14 Q. No, it's not.

15 All right. And this information would be HC,
16 but I just want to ask again if you've found anything in
17 regard to the cents per kilowatt cost on the proposal from
18 Calpine, without answering me, and the addition of those
19 peakers and any other proposals? Did you get that information
20 overnight?

21 A. I don't have that information, no.

22 Q. Who does?

23 A. Probably Andrew Corde.

24 Q. Okay. So I'll wait to ask him about that.

25 COMMISSIONER GAW: All right. I think that's

1 all I have right now, Judge. I reserve the right to talk to
2 him again at some point.

3 JUDGE MILLS: Sure.

4 Redirect, Mr. Boudreau?

5 MR. BOUDREAU: Yes. Thank you.

6 REDIRECT EXAMINATION BY MR. BOUDREAU:

7 Q. Just a couple of questions.

8 I think you'll recall one of the questions you
9 received from Mr. Eftink, I believe he characterized the
10 10 percent capacity rule. Do you recall that reference?

11 A. Yes.

12 Q. Would you agree with me that the 10 percent
13 that he's referring to is for annual dispatch of the CT and
14 not a capacity rule?

15 A. For annual dispatch of the CT?

16 Q. Yes.

17 A. Yes.

18 Q. There was also some discussion with Mr. Eftink
19 about Exhibit 104, which was the three-page document that you
20 prepared for the Staff --

21 A. Yes.

22 Q. -- and discussed yesterday with the Commission?

23 Is that the modelling tool that you used to
24 actually make the decisions about resource planning and
25 requirements?

1 A. No. Like we said, that's a barometer. It's a
2 very primitive tool.

3 Q. Okay. How would you characterize that
4 three-page document that you discussed?

5 A. It's more of a generic example for probably I
6 guess -- we were calling it a primer that maybe just is -- in
7 simple terms as best we could put the differences between
8 types of power plants.

9 Q. So at best, it's a superficial view of the
10 differences and the parameters for different types of
11 generating units; is that correct?

12 A. Yes. I stated on the stand and in the document
13 that did not represent Aquila's resource planning method --
14 final numbers.

15 Q. You also testified that you had not reviewed
16 the operating permit for the South Harper facility?

17 A. No, I haven't.

18 Q. So any of the assumptions that were given to
19 you are not facts of which you are personally aware; is that
20 correct?

21 A. That's correct.

22 MR. BOUDREAU: I have no further questions.
23 Thank you.

24 JUDGE MILLS: Thank you.

25 Mr. Boehm, you may step down. We may have more

1 questions for you later.

2 Mr. Boudreau, I believe you indicated your next
3 witness is going to be Mr. Hedrick?

4 MR. BOUDREAU: Well, actually there may be a
5 change there.

6 JUDGE MILLS: Okay.

7 MR. BOUDREAU: In order to kind of speed things
8 along, there was some interest I think expressed by at least
9 one of the Commissioners about some of the other issues like
10 the environmental concerns. And we're going to -- I thought
11 we'd move on to Block Andrews if nothing else just to kind of
12 cover some of the major issues that were discussed at the
13 Harrisonville hearing.

14 So at this time I call Block Andrews to the
15 stand.

16 (Witness sworn.)

17 JUDGE MILLS: Mr. Boudreau, whenever you're
18 ready.

19 BLOCK ANDREWS testified as follows:

20 DIRECT EXAMINATION BY MR. BOUDREAU:

21 Q. Would you state your name for the record,
22 please, sir?

23 A. Block McDonald Andrews.

24 Q. By whom are you employed and in what capacity,
25 sir?

1 A. I'm employed by Aquila, and I'm the director of
2 environmental services.

3 Q. Can you give us a brief description of your
4 educational background?

5 A. I have a bachelors of science in mechanical
6 engineering from the University of Denver and I have a masters
7 in science from the University of Illinois Urbana in
8 atmospheric sciences. And I'm a registered professional
9 engineer in mechanical engineering.

10 Q. What kind of work or professional experience do
11 you have that you think qualifies you for your position other
12 than your educational experience?

13 A. Previous-- previously to joining Aquila, I
14 served 13 years as a consultant. And in that role I did
15 environmental work primarily with power plants. And actually
16 when I left the company, I was the section chief of the air
17 and noise section.

18 Q. Do you have any -- I think I've covered that.
19 What is the purpose of your testimony here
20 today?

21 A. There's three things that I'd like to testify
22 about. First, is the environmental due diligence that we did
23 in regards to this particular project. The second is
24 addressing the specific air issues that were raised at the
25 public hearing in Harrisonville. And the third is addressing

1 noise issues that was also brought up at Harrisonville.

2 Q. Are you familiar with the proposed construction
3 of the South Harper peaking facility?

4 A. Yes, I am.

5 Q. Would you please describe your role in the
6 development and construction of that plant?

7 A. As director of environmental services, it's my
8 responsibility to ensure that the proper permits and
9 environmental studies are performed. And once a permit is
10 obtained, that we ensure that we comply with the requirements
11 of those permits.

12 Q. Can you tell me what governmental agencies,
13 other than the Commission, will or have been contacted for
14 some aspect of permitting or review or oversight of the
15 development of the South Harper facility?

16 A. Some that I have listed and -- and we'll
17 introduce an exhibit here that I think will have a list of
18 those permits or studies that we did. But they would include
19 the Environmental Protection Agency, Missouri Department of
20 Natural Resources, US Army Corps of Engineers, Federal
21 Aviation Administration, US Fish and Wildlife Service,
22 Missouri Department of Conservation.

23 And also included in this book are other
24 permits needed for construction. They may not be
25 environmentally related, but I think there's three or four

1 permits that were obtained for Cass County as part of the
2 construction.

3 Q. Is it true that each of these governmental
4 entities must be contacted, notified, consulted or applied to
5 for a permit or license to develop the South Harper facility?

6 A. Yes, that's correct.

7 Q. As Aquila's director of environmental health
8 and service -- or health and safety, what is your opinion
9 regarding the degree of regulatory scrutiny that plants like
10 South Harper are subjected to?

11 A. These plants are subject to quite a bit of
12 scrutiny by each of those agencies.

13 Q. Have all construction and operating permits
14 pertinent to the South Harper power station been obtained?

15 A. They either have been obtained or are in the
16 process of being obtained. All the construction permits in
17 regards to environmental have been obtained except for a water
18 irrigation permit. Essentially what we're going to do is
19 we're proposing to set up a sprinkler system and that needs to
20 have a construction permit and operating permit associated
21 with that. That's in process right now, but that permit has
22 not been obtained and construction on that will not start
23 until we've obtained that permit.

24 Q. Okay.

25 MR. BOUDREAU: I'd like to probably mark this

1 binder as an exhibit.

2 I'd like to have this binder marked as an
3 exhibit.

4 JUDGE MILLS: We'll mark this -- I assume it's
5 nonproprietary?

6 MR. BOUDREAU: I believe it is, yes.

7 JUDGE MILLS: We'll mark it as Exhibit No. 106.

8 MS. REAMS MARTIN: Wouldn't it be 107, your
9 Honor?

10 MS. SHEMWELL: Yes.

11 MS. REAMS MARTIN: Although there was an offer
12 that was withdrawn and 106 --

13 JUDGE MILLS: Thank you. You're right. 107.

14 (Exhibit No. 107 was marked for
15 identification.)

16 BY MR. BOUDREAU:

17 Q. Mr. Andrews, do you have before you what's been
18 marked as Exhibit No. 107 for identification purposes?

19 A. Yes, I do.

20 Q. Do you recognize that portfolio of documents?

21 A. Yes, I do.

22 Q. And what is that, please?

23 A. What we did here was list the permits or
24 clearances that we've -- environmental and building
25 construction permits as part of this particular project.

1 Q. And could you just quickly direct the
2 Commission's attention to the principal documents?

3 A. Yes. If you look behind tab No. 1 labeled
4 Permit Matrix, the first thing I want to point out is this is
5 a list of the permits, either construction or operational, for
6 clearances or studies that have been performed or are going to
7 be performed as part of this project.

8 And it lists what the permit is, whether it's
9 for construction or operation, when the application was
10 submitted, the acquisition date of that and maybe some
11 comments and responsible parties in getting those permits
12 obtained.

13 Q. Very good.

14 What about the second tab in the booklet?

15 A. The second tab will list a -- some studies that
16 were done. For example, before we were -- we would purchase
17 any property, we would do what's called a phase 1
18 environmental site assessment. That's attached. Essentially
19 what that is is an environmental history of that particular
20 area to identify what, if any, environmental concerns we would
21 have in regards primarily to spills and remediation.

22 Q. Okay. And how about the third tab of the
23 binder?

24 A. The third tab has a list of permits obtained or
25 storm water documents that need to be onsite to ensure that if

1 any environmental incidences happen, that the people at the
2 plant know what to do -- anything about that to take care of
3 that problem.

4 Q. Very good.

5 Were the documents that are contained in this
6 permit book assembled by you or under your supervision?

7 A. Yes, it was.

8 Q. And you're familiar with the contents of the
9 book?

10 A. Yes, I am.

11 Q. And is it a complete -- in your view, complete
12 collection of relevant permits?

13 A. Yes, it is.

14 MR. BOUDREAU: Okay. With that, I'll offer
15 Exhibit 106 -- or 107, excuse me, into the record.

16 JUDGE MILLS: Any objection to the admission of
17 Exhibit 107?

18 MS. O'NEILL: Your Honor, may I voir dire this
19 witness briefly?

20 JUDGE MILLS: Yes.

21 VOIR DIRE EXAMINATION BY MS. O'NEILL:

22 Q. Mr. Andrews, when was this exhibit prepared?

23 A. Last week.

24 Q. How many of the documents contained in this
25 exhibit were provided to the Office of the Public Counsel

1 prior to this hearing?

2 A. I'm -- I'm not aware of any that were
3 specifically given to you all.

4 Q. Are you aware of whether or not notice was
5 given to the Office of Public Counsel that these documents
6 would be sought to be admitted into evidence in this hearing?

7 A. I'm -- I don't know the answer to that.

8 Q. Did you draft any of these documents yourself?

9 A. No, I did not.

10 Q. Have you read every single document that's in
11 this?

12 A. Yes, I have.

13 MS. O'NEILL: Your Honor, I don't know if I
14 can -- I don't know if I'm going to object or not, but my
15 office hasn't had the opportunity to review this 2-inch thick
16 binder full of documentation. And so at this point I think
17 what I need to do is I would ask the Commission not to admit
18 this into evidence until the parties have had a chance to
19 review it and not to elicit testimony about these documents
20 until the parties have a chance to review it because I don't
21 know what's in here.

22 I've heard a general description. I have no
23 way of knowing if that's the case or if there's any other
24 information in here that's objectionable or not properly
25 before the Commission as evidence.

1 JUDGE MILLS: I certainly don't have any
2 problem with allowing you to review it before I rule on its
3 admissibility. I don't really want to hold up the hearing and
4 not allow cross-examination based on it at this point. How
5 long will it take you to review it to determine whether or not
6 you have an objection?

7 MS. O'NEILL: Well, like I say, I don't know
8 how many pages are here, but I know that there's documents
9 here that are in pretty small print with fairly large number
10 of pages. I don't -- I can't cross-examine on this document
11 until we've had a chance to look at it. So I guess we'd need
12 a couple, three days, I guess to read through it.

13 JUDGE MILLS: Well, we're not going to recess
14 for three days so you can read this document.

15 MS. O'NEILL: I would object to its admission
16 then. I'm not really sure why this is relevant, why this
17 exhibit needs to be in the record, why it's relevant. So I'll
18 make that objection as well right now.

19 JUDGE MILLS: I'm going to withhold ruling on
20 the objection for at least a few hours, maybe the end of the
21 day, maybe the end of the next few days to give you a chance
22 to review it. But we're going to go ahead and proceed with
23 cross-examination and direct examination based on it.

24 If the exhibit is ultimately objected to and
25 the objections are sustained, we will strike the

1 cross-examination and direct examination pertaining to the
2 stricken -- the stricken exhibit as well. But that will allow
3 us to move forward and preserve your rights to object after
4 you've had a chance to review it.

5 MS. O'NEILL: Your Honor, also since it appears
6 there are multiple documents prepared by multiple parties, it
7 may be, upon review, that some of these documents would be
8 admissible pursuant to some exception to the hearsay rule, but
9 they're obviously hearsay. Some of them may be double or
10 triple hearsay. I don't know what's in there so there may be
11 specific objections to pieces even if we don't object to the
12 entire exhibit. I just want to put you on notice for that.

13 JUDGE MILLS: Okay. Thank you.

14 Mr. Boudreau, you may go ahead.

15 MR. EFTINK: On behalf of stopaquila, could I
16 also ask a few voir dire questions --

17 JUDGE MILLS: Can you speak into the
18 microphone, please?

19 MR. EFTINK: I'm sorry. On behalf of
20 stopaquila, could I ask a few voir dire questions of the
21 witness?

22 JUDGE MILLS: Yes, you may.

23 VOIR DIRE EXAMINATION BY MR. EFTINK:

24 Q. Mr. Block, in your Exhibit 107 did you include
25 the comments from the Missouri Department of Natural

1 Resources?

2 A. No, I do not. They are available.

3 Q. Okay. Why didn't you include that in your
4 Exhibit 107?

5 A. Primarily because if I included all the
6 documentation associated with all these permits, I would
7 bring -- be bringing in probably four or five notebooks full
8 of stuff.

9 Q. So you decided what to include and what to not
10 include?

11 A. That's correct.

12 Q. Did you include the noise assessment study in
13 Exhibit 107?

14 A. Yes, I did.

15 MR. EFTINK: Your Honor, I know I've seen some
16 of these documents, but this exhibit must be about two and a
17 half inches thick and I can't say that I've reviewed all of
18 these, so I'd like to reserve the right to object after we've
19 had a chance to look at this exhibit.

20 JUDGE MILLS: Okay. We'll offer you that
21 opportunity as well.

22 MR. BOUDREAU: May I continue?

23 JUDGE MILLS: Yes, you may.

24 DIRECT EXAMINATION (CONT'D) BY MR. BOUDREAU:

25 Q. More specifically, has Aquila received a permit

1 associated with air emissions with respect to the South Harper
2 facility?

3 A. Yes, it has.

4 Q. Okay. Can you tell me what is the significance
5 of the NSR, the New Source Review permit?

6 A. This particular permit -- there's different
7 levels of construction permits and scrutiny within the
8 jurisdiction of the Missouri Department of Natural Resources.
9 We went through what is called the Prevention of Significant
10 Deterioration Project, which is -- which is the most stringent
11 review that Missouri DNR can give to an air construction
12 permit.

13 And as part of that process, Missouri DNR looks
14 at the rules and regulations and health-based standards that
15 they and EPA have set and make a determination whether our
16 permit application and with an issuance of a permit will
17 protect the public health and welfare.

18 Q. Okay. Does the permit evidence compliance with
19 all applicable federal and state air emission standards?

20 A. Yes, it does.

21 Q. Was this permit issued after a notice of public
22 hearing?

23 A. Yes, it was.

24 Q. Were you in attendance at the public hearing in
25 Harrisonville on the 15th?

1 A. No, I was not. But I did read the transcript.

2 Q. Okay. Do you recall reading a number of
3 statements addressing concerns about air pollutants and
4 possible adverse health effects?

5 A. Yes, I do. I would --

6 Q. I was going to say, can you give the
7 Commissioners your views regarding the topics that were
8 addressed by the speakers at that meeting?

9 A. Yeah. There's -- when I went back to look at
10 the transcript, there were four particular pollutants that
11 were brought up as part of a concern by the citizens. And
12 what I've done is I've gone to EPA's website and on their
13 particular website they have an estimate of concentrations of
14 these various pollutants on a county level.

15 And so what I did was I've got some charts that
16 will show what EPA has predicted to be the levels of these
17 pollutants currently in the county and the maximum impact from
18 our plant for those particular pollutants.

19 Q. Okay. Do you have an enlargement of that
20 chart --

21 A. I do.

22 Q. -- which you could display?

23 A. Yes, I do.

24 Q. Would you go ahead and do so?

25 A. Actually, I have two charts. It just ended up

1 that I had to divide it up into this way. One of the
2 pollutants of concern that the citizens brought up was
3 benzene.

4 Q. Could you go ahead and put it on the stand?

5 MR. BOUDREAU: I'm going to mark an exhibit so
6 everybody has a document to refer to. I'd like to go ahead
7 and mark another exhibit, please.

8 JUDGE MILLS: Okay. At this point we're at
9 108.

10 (Exhibit No. 108 was marked for
11 identification.)

12 BY MR. BOUDREAU:

13 Q. Sorry for interrupting you, Mr. Andrews. I
14 think you said as a preface that the first pollutant that was
15 mentioned was benzene?

16 A. Right.

17 Q. And have you prepared a bar chart with respect
18 to that topic?

19 A. I have.

20 Q. Okay. Let me ask you this. You're going to be
21 referring to an enlargement of a document. Is that document
22 an enlargement of what's been marked for identification as
23 Exhibit 108?

24 A. Yes, it is.

25 Q. Okay. Please proceed.

1 A. Do I need to talk in the microphone? I
2 probably can talk loud enough that I think that everybody can
3 hear. Is that okay?

4 JUDGE MILLS: That's fine.

5 THE WITNESS: Okay. The EPA website listed
6 Cass County as having a level of benzene of .95 micrograms per
7 meter cube. Essentially this is just a concentration. I
8 wouldn't spend a lot of time on getting caught up in what
9 those units exactly mean.

10 But what we've done is we've modelled what the
11 maximum impact would be from the South Harper facility. And
12 the maximum impact is .0000, four 0s and 2. So you can see
13 that compared to what the most current information that EPA
14 has on Cass County benzene levels, we're a fraction of
15 1 percent of that concentration to that.

16 BY MR. BOUDREAU:

17 Q. And so just for the record, when you pointed to
18 .00002 level, you were indicating a column on the left-hand
19 side of the bar chart over the -- appearing over the word
20 "benzene"?

21 A. That's correct.

22 Q. Okay. And so the left-hand column of that
23 represents what?

24 A. The left-hand column with the blue-colored bar
25 is EPA's estimated concentration of that pollutant.

1 Q. Okay.

2 A. The maroon-colored or on the right-hand side
3 would be the South Harper facility's projected impact.

4 Q. Very good. Thank you.

5 There's also apparently some information
6 related to formaldehyde?

7 A. Correct. We did this for formaldehyde as well.
8 And you can see that again the amount of impact from our plant
9 compared to EPA's latest information would be again a fraction
10 of a percent of that.

11 And furthermore, I -- on that site there is a
12 listing by county of what sources are contributing to those
13 emissions.

14 Q. Yeah. I was going to ask you, are there
15 indications of what the other sources for emissions of benzene
16 and formaldehyde? Can you give us some insight into that?

17 A. Yeah. EPA divided that up into four
18 categories. The first category was what they called major
19 sources; the second area category, area sources; the third
20 category, on-road vehicles; and the fourth category is
21 off-road vehicles.

22 Major source is essentially defined as -- by
23 EPA rules as a facility that emits 10 tons of any one
24 pollutant or 25 in aggregation. Area sources are sources that
25 don't meet that particular criteria but something's coming out

1 of a stack there. And on-road vehicles I think are fairly
2 explanatory where those are cars, trucks, buses, those type
3 sources.

4 Q. This would be the usual commuter traffic --

5 A. Exactly.

6 Q. -- coming in and out and around town?

7 A. Right.

8 And the off-road vehicles would be tractors,
9 lawn mowers, those type of sources is what they specifically
10 list.

11 Q. Okay.

12 A. So when I looked at each of these particular
13 pollutants to see, well, what is the larger category of
14 sources for that, on-road vehicles and off-road vehicles for
15 these pollutants were the greatest source of these particular
16 constituents.

17 Q. And by comparison, the emissions from South
18 Harper facility?

19 A. Relatively small.

20 Q. Did you have another bar chart, sir?

21 A. I do.

22 MR. BOUDREAU: I'd like to mark another exhibit
23 at this point.

24 (Exhibit No. 109 was marked for
25 identification.)

1 BY MR. BOUDREAU:

2 Q. I see you have another enlarged bar chart next
3 to you. Is that an enlargement of what's been marked for
4 identification as Exhibit 109, I believe?

5 A. Yes, that's correct.

6 Q. And could you please explain what that bar
7 chart is intended to illustrate?

8 A. Structurally this is the same as the previous
9 bar chart we saw where there are two pollutants on here, it's
10 giving the EPA estimated concentration within the county as
11 well as the predicted impacts from our South Harper facility.

12 Q. Okay. What are the two pollutants that are
13 indicated?

14 A. I've got abbreviated PAH, but that is
15 polycyclical aromatic hydrocarbons.

16 Q. Okay.

17 A. And the second constituent is acrolein.

18 Q. Okay.

19 A. And again as we go through this -- I'm sorry.

20 Q. Let me ask you this. What's the significance
21 of picking PAH and acrolein? Were those two that were brought
22 up --

23 A. That's correct.

24 Q. -- at the public hearing?

25 A. When I looked at part of the record, there were

1 four pollutants that were specifically mentioned.

2 Q. We've talked about benzene, formaldehyde and
3 these were the other two?

4 A. That's correct.

5 Q. Okay. Please proceed.

6 A. Anyway, the projected impacts of -- and I'm
7 going to use the acronym PAHs -- for the South Harper facility
8 are .00-- there's five 0s and then there's a 3. And that's
9 the projected impact from our particular project. The county
10 levels are several orders of magnitude higher.

11 I think the story's pretty much the same for
12 acrolein. Acrolein, our projected impact, again five 0s and
13 then a 9. And, again, we're several orders of magnitude lower
14 than what currently exists or the most current data.

15 Q. Was there similar information available as was
16 the case for benzene and formaldehyde of what other sources of
17 emissions result in the PAH and acrolein levels?

18 A. Yes, there was. And, again, it was pretty
19 similar to my previous discussion, that on-road or off-road
20 vehicles were a significant portion of that.

21 Q. Okay. Very good.

22 MR. BOUDREAU: With that, I think I'll offer
23 Exhibits 108 and 109 into the record, please.

24 JUDGE MILLS: Any objection to the admission of
25 Exhibits 108 and 109?

1 Hearing none, they are admitted.

2 (Exhibit Nos. 108 and 109 were received into
3 evidence.)

4 BY MR. BOUDREAU:

5 Q. I believe you said one of the other topics that
6 you're here to address is noise levels?

7 A. That's correct.

8 Q. Okay. Can you tell the Commission what noise
9 standards are applicable to the South Harper facility?

10 A. There are no state or specific county level
11 noises in regards to this.

12 Q. Okay. Has Aquila nevertheless taken steps to
13 mitigate the noise associated with the operation of the
14 combustion turbines at the South Harper facility?

15 A. Yes, we have. What we did was since there were
16 no applicable noise standards, we started to look at the
17 universe of noise standards other facilities, other agencies
18 have set.

19 And, for example, the Federal Highway
20 Department that obviously regulates highways and highway
21 noise, they begin looking at mitigation when noise levels are
22 67 decibels or above. Housing and Urban Development has a
23 65-decibel standard. The Surface Transportation Board, which
24 is railroads, in essence, they don't start noise mitigation
25 until a 70-decibel level. And I believe there was the Federal

1 Aviation Administration, which is aircraft noise, it's
2 65 decibels is what their standard is in regards to
3 residential impacts.

4 Q. And just by way of comparison, are you familiar
5 with what the expected noise levels associated with the
6 operation of the South Harper facility are to be?

7 A. Yes. What we did was we contracted Burns
8 McDonnell to go out and do a noise study. And as part of that
9 noise study, the first step is to go and measure existing
10 background noise levels. And the second step is to project
11 the noise levels using -- in this particular case we used
12 what's called a CADNA model, that's C-A-D-N-A. And that
13 particular model has been used for numerous projects within
14 Burns McDonnell as well as within the electric utility
15 industry and I believe in other Public Service Commission
16 testimonies in regards to power plant noise.

17 And the result of the noise -- essentially the
18 background noise studies were taken at -- near the property,
19 the edges of the property and -- and not on the actual
20 residents' land, but nearby public access to those. And those
21 background levels ranged from 41 to 56. I do have maybe
22 another exhibit at this point to --

23 Q. Please. If you have an illustrative document,
24 why don't you go ahead and put that up.

25 MR. BOUDREAU: And I'd like to mark another

1 exhibit, please.

2 JUDGE MILLS: Okay. We're up to 110.

3 (Exhibit No. 110 was marked for
4 identification.)

5 BY MR. BOUDREAU:

6 Q. All right. I see you have another enlargement
7 standing next to you. Is that an enlargement of a document
8 that's been marked for identification as 110?

9 A. Yes, it is.

10 Q. And if you would, would you please explain what
11 this illustration demonstrates?

12 A. What we tried to do was graphically represent
13 what the results of the studies showed. And since most people
14 are not very familiar with the unit of decibels, we wanted to
15 try to equate it as best we can with some common noise
16 sources. And so the predicted noise level at the closest
17 residence was predicted to be 62 decibels.

18 Q. And when you say "the closest residence," the
19 closest residence to the South Harper facility?

20 A. That's correct. I believe the Bremer -- not
21 George Bremer, but his relative that lives just to the east of
22 the plant is that closest residence. 62 decibels is what the
23 predicted noise levels were. Any other residences would be at
24 or below that level depending on what your location is
25 relative to the plant side.

1 So the monitored ambient noise ranged from
2 41 to 56 decibels and the projected noise level, which
3 includes the background noise level, the monitored level plus
4 your operational noise levels were projected to be 62
5 decibels.

6 Q. Okay. And you are indicating the left-most
7 gradient on the document?

8 A. Right. And I may add that the noise study was
9 performed several months ago before we had actually purchased
10 a stack. And so the purchased stack noise levels would
11 probably lower that level some, because the -- the assumptions
12 that we use for noise as part of the stack in the original
13 study when we actually got the specifications back, are indeed
14 lower than what we used in that model. I have not re-run that
15 model to determine how much lower that would be, but it would
16 be that or a lower number.

17 Q. Okay. Thank you.

18 What is the -- so the second column is just
19 kind of a gradient of decibel levels?

20 A. That's correct.

21 Q. Okay.

22 A. And then if you go over to the next column on
23 common indoor noise levels, again we tried to come up with
24 something that's an approximate level here. Conversational
25 speech -- like with me I probably higher than 65 decibels when

1 I normally talk. That's going to be kind of dependent on the
2 individual person. However, that kind of gives you an
3 approximate range of that particular noise level.

4 Dishwasher in the next room is about 50, so
5 somewhere in there -- 62 is somewhere in between those.
6 Common outdoor noise levels, probably we somewhat equate to
7 maybe an air conditioner at 100 feet would be an approximation
8 of an outdoor noise level equivalent from a total sound level.

9 Q. You mentioned the Burns and McDonnell study
10 that was commissioned by the company; is that correct?

11 A. Yes.

12 Q. And that was part of one of the documents in
13 the permit book which has been marked for identification as
14 107; is that correct?

15 A. Yes. I believe so.

16 Q. Okay. Can you tell us a little bit about
17 the -- you know, you said Burns and McDonnell. Who are Burns
18 and McDonnell?

19 A. Burns McDonnell is an engineering consulting
20 firm based out of Kansas City. They have I believe performed
21 work in regards to the power plants for decades. So that was
22 part of the reasoning for picketing -- picking these folks as
23 part of this study was essentially an extensive background in
24 the power plant industry as well as noise environmental
25 issues.

1 Q. Okay. Are you familiar with any steps that
2 have been taken -- let me ask you a preliminary question.

3 Have you visited or familiar with the South
4 Harper location where this facility is being constructed?

5 A. Yes, I am.

6 Q. Are you aware of any steps that have been taken
7 generally in terms of construction or other techniques or
8 other advantages -- just natural advantages to the site which
9 are being taken to mitigate noise?

10 A. Yes. There are at least two that I can think
11 of that come to mind. One is the stack that was purchased for
12 this particular site is -- has much lower -- or mitigates
13 noise much better than some -- most of the stacks that would
14 typically be provided as part of a combustion turbine package.

15 Secondly, the facility will have berms which
16 essentially would serve as almost a noise wall in a sense.
17 Again, that's going to be very specific to the direction and
18 the residence itself as to which direction the noise are
19 mitigated, but certainly in some directions the noise will be
20 mitigated from the berms that have been planned.

21 And actually, another assumption as part of the
22 study, the noise study that was done in October, we assumed a
23 10-foot reduction in elevation as part of the cut of the
24 plant. However, additional berming has been added that was
25 not included in the noise study. And again, that may be

1 something that could result in a net reduction in noise.

2 Q. You visited the site. Just along South Harper
3 Road how does the land lay to the west of the road where the
4 site -- in other words, does the land slope away from the road
5 I guess is the question I'm asking? Do you know whether or
6 not that was the natural slope of the land?

7 A. I don't know if I could answer that.

8 Q. Well, you mentioned the cut.

9 A. Right.

10 Q. Just to make the record more clear, when you
11 say the cut of the construction, what do you mean by the cut?

12 A. Essentially it's a removal of dirt that was --
13 that was there before the plant was constructed.

14 Q. Okay. So basically the level of the plant has
15 been lowered by cutting the -- or cutting into the earth and
16 lowering the level vis-a-vis the surrounding contour?

17 A. Right. And essentially that dirt that's cut
18 has to be moved to somewhere and essentially that was part of
19 the berming that was done to --

20 Q. Okay.

21 A. -- in part, protect noise.

22 Q. So in addition to cutting the property, there's
23 been earth and berms that have been added to that that lowers
24 the profile of the plant?

25 A. That's correct.

1 Q. Okay. Thank you.

2 MR. BOUDREAU: Could I have just a moment,
3 please?

4 JUDGE MILLS: Certainly.

5 MR. BOUDREAU: With that, I'd like to offer
6 into the record 110.

7 JUDGE MILLS: Are there any objections to the
8 admission of Exhibit 110?

9 Hearing none, it will be admitted.

10 (Exhibit No. 110 was received into evidence.)

11 MR. BOUDREAU: I believe I'm done with my
12 direct examination of this witness.

13 I understand you're reserving ruling on
14 admission of Exhibit 107?

15 JUDGE MILLS: That's correct.

16 MR. BOUDREAU: Very good. With that, I'll
17 tender the gentleman for cross-examination.

18 JUDGE MILLS: Ms. Shemwell.

19 CROSS-EXAMINATION BY MS. SHEMWELL:

20 Q. Mr. Andrews, I'm Lera Shemwell for the Staff.
21 Good morning.

22 A. Good morning.

23 Q. You said that you were going to install a
24 sprinkler system. Is that a lawn or a building sprinkler
25 system?

1 A. It's a building -- I mean, I'm sorry, it's a
2 lawn sprinkler system. Possibly the closest equivalent would
3 be a sprinkler system that you would use for a golf course.

4 Q. Why?

5 A. There's some water usage that -- from --
6 there's a potential that a system called evaporative cooling
7 may be used as part of this plant. And essentially the
8 purpose of evaporative cooling is to cool the air coming into
9 the turbine. And since the turbine is a mass flow device, the
10 cooler air will actually generate more megawatts.

11 So it's an efficiency improvement, but as part
12 of that, it's almost like a swamp cooler. There's water used
13 as part of that process and the water, my understanding, is
14 coming from one of the water districts. I don't remember what
15 the number is, Water District No. 7 I believe is the right
16 water district, but it's essentially drinking water that's
17 concentrated twice.

18 And that water -- there would be some -- what
19 we would call evaporative cooler blow down from that and that
20 particular water would need to be taken somewhere or something
21 needs to be done with it. And so the decision was made to use
22 that as watering our vegetation on the berms.

23 Q. Is that water polluted in any way?

24 A. It's -- the only thing that is done is
25 concentrated twice. So, for example, if you have a

1 constituent that has 5 parts per million of it, after it's
2 concentrated twice, it would now have 10 parts per million of
3 it.

4 Q. On your bar charts you showed for pollutants --

5 A. Yes.

6 Q. -- are these the only ones of concern?

7 A. These were the only ones that were specifically
8 brought up as part of the public testimony. When you go to
9 the EPA website, there's 32 or 33 hazardous air pollutants
10 listed there. So I could do that comparison for any of those.
11 However, you know, Missouri DNR and EPA as part of the
12 approval process for their air permits, would look at
13 everything that's emitted from that plant. So it would
14 include these pollutants that I've addressed as well as many
15 others.

16 Q. Is mercury one of the concerns?

17 A. No.

18 Q. When you listed the limits that you looked at
19 from HUD and FAA, for example, are those impact or constant
20 noise levels?

21 A. They are constant noise levels.

22 Q. When you did your measurement, was it a
23 measurement over a period of time?

24 A. The background measurements were done in the
25 morning, afternoon and evening to try to capture different

1 times of the day activities that may be happening.

2 Q. When you say "evening," is that after rush
3 hour?

4 A. I would have to look to see when that was
5 exactly, but I believe it was -- yes, I believe it was after
6 rush hour.

7 Q. At which time the ambient level would go down.
8 Correct?

9 A. Typically, I think so.

10 Q. So the high that you've shown is probably
11 during the day and the low at night? I'm sorry. I don't have
12 my chart here. Let me get it.

13 A. I'm trying to find the noise study.

14 Q. I think you're showing the monitored ambient
15 noise range Exhibit 110? I'm looking at your Exhibit 110.

16 A. Oh, 110. Yeah, I'm sorry.

17 Q. And monitored ambient noise range, the 56 is
18 probably daytime?

19 A. What I was going back to look at was the first
20 exhibit that I had, the big thick notebook. The noise study
21 is actually part of that. And so I was going to look at that
22 specific study to see what the numbers were.

23 MS. SHEMWELL: Judge, I think that we would
24 like to --

25 THE WITNESS: But I believe that would probably

1 be true.

2 Oh, there it is.

3 BY MS. SHEMWELL:

4 Q. Mr. Andrews, would you give me just a moment to
5 speak to the Judge before you answer anymore?

6 MS. SHEMWELL: I'd like to reserve our ability
7 to cross on the exhibit -- is that --

8 JUDGE MILLS: 107.

9 MS. SHEMWELL: -- 107. And perhaps we can look
10 at that over lunch. I'll let you know what progress we make.

11 JUDGE MILLS: Okay.

12 MS. SHEMWELL: Thank you.

13 BY MS. SHEMWELL:

14 Q. So did you say -- can you say from your noise
15 study that it was daytime?

16 A. I have found the page.

17 Q. Okay.

18 A. The -- actually, the 56 reading was in the
19 evening. And the extraneous noise source listed in the
20 comments were insect and bird noise.

21 Q. Do you know what level noise is considered to
22 actually cause damage to the human ear?

23 A. The OSHA standards, which typically regulate
24 the hearing protection -- it's a total sound level but it's
25 also an exposure time to those noise levels, but it starts

1 over 80 decibels. I can't remember where it starts exactly,
2 but it's significantly higher than what we're talking about
3 here.

4 Q. You have been referring to these berms. They
5 don't go all the way around the plant, do they?

6 A. I believe the north side and the east side have
7 the berms as planned right now.

8 Q. And is that because that's where the closest
9 homes are?

10 A. I think part of the basis of where to move the
11 dirt would be better addressed by -- I'm sorry to --

12 Q. That's okay.

13 A. -- seem to always defer things, but Chris
14 Rogers with SEGA is the engineer that would have made that
15 determination.

16 Q. Thank you.

17 You said that your model -- sound modelling
18 used a different stack than was used in the Burns and
19 McDonnell modelling. Can you tell me if the stack used in the
20 Burns and McDonnell modelling included sound attenuation
21 measures?

22 A. The package that was -- the combustion turbine
23 manufacturer can supply the stack as part of its combustion
24 turbine or you could choose to go and buy a stack from
25 somebody else. In our particular case, we chose not to accept

1 the stack from the turbine manufacturer, Siemens-Westinghouse,
2 and instead went out to get our own stack from -- I believe it
3 was Higgett Cane was the name of the company.

4 And that -- there would be some sound
5 attenuation as part of the packaged stack that
6 Siemens-Westinghouse would give us. However, the particular
7 stack we bought has significantly more noise mitigation in it.
8 And part of that is noise baffling. And also if you look at
9 the -- the actual metal thickness of the stack, it's a much
10 thicker stack than what you would typically get as part of a
11 package from Siemens-Westinghouse.

12 Q. Is that analysis in the exhibit that you gave
13 us that we're going to review later?

14 A. The Burns and McDonnell study is, right.

15 Q. You mentioned 10-foot cuts at the site as part
16 of the sound modelling or sound analysis. Do you know what
17 actual site cuts and berming have been done to the site right
18 now?

19 A. I believe that berming is now probably 14 to 18
20 feet -- it's the 10 feet, plus there's an additional 4 to 8
21 feet I believe of berming now.

22 Q. And was that considered in the Burns and
23 McDonnell study?

24 A. The additional 4 to 8 feet was not. The
25 original 10 feet was.

1 Q. My understanding is as part of this, you're
2 going to plant some sort of tree or vegetation. How will that
3 impact sound levels?

4 A. From a physical standpoint, it will not. There
5 is an actual noise field called psycho-acoustics. And the
6 basic premises of it is if you can't see it, you can't hear
7 it. But from an actual physical measurement standpoint, the
8 trees and vegetation would be from a visual standpoint only.

9 MS. SHEMWELL: That's all I have. Thank you.
10 Again, with that reservation.

11 JUDGE MILLS: Right.

12 Ms. O'Neill.

13 MS. O'NEILL: Thank you.

14 Your Honor, I'd also like to reserve the right
15 to cross-examine this witness further based on the contents of
16 the book and we will try to review it --

17 JUDGE MILLS: Okay. That's fine.

18 MS. O'NEILL: -- if that's all right.

19 CROSS-EXAMINATION BY MS. O'NEILL:

20 Q. Mr. Andrews, that's right. Right?

21 A. I have all last names so people can get
22 confused.

23 Q. I'm so sorry.

24 On your bar charts that are Exhibit 108 and
25 109, I kind of have the same question for both of these. You

1 have the incremental amount of emissions that you expect from
2 your plants in like the pink-colored bar; is that right --

3 A. Yes, it is.

4 Q. -- on all those?

5 For demonstrative purposes, it's next to the
6 existing bar level -- yeah, if you want to bring -- that might
7 help. You have them next to each other on your charts.
8 Right?

9 A. That's correct.

10 Q. But it would be in addition to the existing
11 level as a practical matter once it's in operation?

12 A. Right. That's correct.

13 Q. That's just so we can see it to demonstrate
14 where it is already?

15 A. Right.

16 Q. Okay. And as far as Exhibit 110 with your
17 projected noise levels, you did make an attempt to show that
18 as an addition as opposed to separating it out like you did on
19 bar chart; is that right?

20 A. When -- when the operational -- when the plant
21 is operating, the 62 decibels that we listed there, that would
22 include the existing noise sources as well as this particular
23 plant running.

24 Q. When those projections were run, were they run
25 with the assumption that one, two or all three of those plants

1 would be in effect -- in operation at the same time?

2 A. This study assumes worse case conditions, which
3 is everything's running, all the noise sources are going at
4 the same time.

5 Q. Okay. Exhibit 107, this big book, when you --
6 you said you prepared this? Just --

7 A. It was under my direction.

8 Q. Okay. And was it prepared for purposes of this
9 hearing?

10 A. Yes, it was.

11 Q. So it's not something that you would have
12 prepared without being requested to do so in this format?

13 A. I still probably would have prepared something
14 like this. It's a good useful document for reference in
15 putting everything in one place. So I probably would have
16 prepared something like this despite this.

17 Q. But you don't have a policy of always doing it
18 for situations like this construction?

19 A. Well, this is the first time the regulated side
20 of Aquila's constructed something in 20-something years, so I
21 think it's kind of hard to define any history behind that, but
22 I personally would always do this.

23 Q. And I think you also said earlier, but just to
24 clarify, you didn't personally prepare -- you didn't
25 personally draft any of these documents?

1 A. That's correct, I did not.

2 Q. They were drafted by outside -- some of them
3 were drafted by outside consultants --

4 A. That's correct.

5 Q. -- hired by Aquila. Right?

6 A. That's correct. That's correct.

7 Q. And some of them were drafted by governmental
8 agencies?

9 A. Yes. The permits that are part of this book
10 were -- are from whatever the indicated agency is. And
11 several of those are from Missouri Department of Natural
12 Resources, so yes.

13 Q. And what other entities or persons prepared
14 documents that are included in this book other than those
15 agencies that you have testified to previously and the
16 consulting firm Burns and McDonnell?

17 A. That would be it on the environmental permits.
18 Now, there are some permits included here from Cass County or
19 clearances. And that would be under SEGA's direction.
20 Mr. Chris Rogers is here from SEGA.

21 Q. Okay. Is there anybody here from Burns and
22 McDonnell?

23 A. Yes, Mr. John Stower (ph.).

24 Q. Okay. Any other consultants that were retained
25 to prepare any of these documents?

1 A. No.

2 Q. Any other non-governmental entities that
3 contributed documents to this -- or prepared documents that
4 are included in this compilation?

5 A. No, there's not.

6 MS. O'NEILL: Subject to possible later
7 questioning, I have no further questions at this time.

8 JUDGE MILLS: Okay. I think at this point it's
9 ten o'clock, we're going to take a 15-minute recess. We will
10 back and continue with cross-examination of this witness.

11 (A recess was taken.)

12 JUDGE MILLS: Okay. We're back on the record.
13 We're going to continue with cross-examination of Aquila
14 Witness Andrews. Mr. Comley.

15 MR. COMLEY: Yes, Judge Mills. First, Judge
16 Mills, I'd like to join the other parties who have voiced
17 objection to Exhibit 107. It is a bulky document and we do
18 have -- we have not have an opportunity to fully review it and
19 we reserve the right to continue cross-examination of
20 Mr. Andrews later, so same objection.

21 JUDGE MILLS: Thank you.

22 CROSS-EXAMINATION BY MR. COMLEY:

23 Q. Mr. Andrews, let me talk to you a little bit
24 about your background. You mentioned you received your
25 masters degree from the University of Illinois?

1 A. That's correct.

2 Q. Where were you -- what University in Illinois
3 were you educated in?

4 A. Champaign-Urbana.

5 Q. What year was that?

6 A. 1989, I believe.

7 Q. 1989. And after graduation with your masters,
8 where did you go then?

9 A. Burns McDonnell.

10 Q. How long were you with Burns and McDonnell?

11 A. 13 years.

12 Q. So that takes us up to 1992, is that right,
13 1993?

14 A. 2002.

15 Q. Excuse me. 2002. And at 2002, where did
16 you --

17 A. I joined Aquila Merchant Services at that time.

18 Q. In 2002?

19 A. Right.

20 Q. All right. In connection with your duties,
21 have you worked on other plants owned by the merchant side of
22 Aquila in connection with noise control or pollution control?

23 A. Yes, I have.

24 Q. Can you tell us what you did?

25 A. On the air quality side, the merchant side

1 owned plants -- used to be the GPU international portfolio and
2 it was in New Jersey, New York, Florida, Georgia. And some of
3 those facilities were my responsibility from an environmental
4 standpoint. Also, with Aries, did some studies associated
5 with that particular plant.

6 Q. When did you start your studies with Aries?

7 A. I don't recall the date.

8 Q. Can you recall when Aries was constructed?

9 A. Late '90s, first of 2000, somewhere in that
10 time frame.

11 Q. So your duties commenced with Aries somewhat
12 after you joined Aquila, 2002, 2003?

13 A. At that particular time, Calpine was the --
14 what would you call -- operating partner. So the folks at
15 Calpine were responsible for the environmental portions of
16 their particular plant.

17 Q. How did you fit your duties in with Calpine?

18 A. When Calpine was going through the permitting
19 process, there were some environmental studies that my group
20 was part of.

21 Q. And these were permits that followed the
22 initial startup of the plant or --

23 A. Very similar permits to what's in this
24 particular exhibit, I believe 107.

25 Q. Were they re-issuances of permits or the

1 startup permits?

2 A. The startup permits. They would need to obtain
3 construction and operating permits for that particular
4 facility.

5 Q. Now, respecting the study that you reported in
6 Exhibit 107, can you tell the Commission when you were first
7 asked to start this study?

8 A. Which particular study? I'm sorry.

9 Q. The one that you have in 107 and --

10 A. You mean the whole permit book?

11 Q. Yes. Can you explain -- can you chronicle the
12 events that led up to the preparation of this exhibit and when
13 things started?

14 A. Sure. The -- when Aquila was looking at
15 constructing a plant even as far back as Harrisonville, I was
16 immediately brought into that process to try to obtain the
17 necessary permits and approvals that we need to construct and
18 operate that permit from an environmental perspective.

19 Q. So --

20 A. Parts of these were started several months ago.
21 The actual assembly of this book was maybe a week or two ago
22 where we're just putting all the permits, clearances, etc.
23 into one location.

24 Q. Maybe I should ask the question a little
25 differently. When did Aquila first ask you to start the

1 process of acquiring the permits or rather studying the noise
2 and the pollution issue?

3 A. For the South Harper site. Right?

4 Q. For any site related to these turbines.

5 A. I couldn't give you an approximate date. It
6 was summer of '04.

7 Q. Were you first asked to review the
8 Harrisonville site, which I think has been referred to as the
9 Camp Branch?

10 A. Yes. And that would have started previous to
11 the summer. 2004 is in reference to the South Harper
12 facility. The Camp Branch was spring of '04.

13 Q. Was much of what you did for the Harrisonville
14 site worked into your report that we're seeing today?

15 A. There's some similarities there, yes.

16 Q. Did you work with Burns McDonnell in connection
17 with the preparation of their report?

18 A. Yes, I did.

19 Q. Were you working in connection with people that
20 you had been associated with while you had been there?

21 A. Yes, I was.

22 Q. Do you recall when your focus turned to the
23 South Harper plant?

24 A. I don't remember an exact date.

25 Q. Is there any way that we could look at the

1 materials you have here and see which may have started or
2 originated with the Harrisonville site and then was hybridized
3 to the Harper plant?

4 A. This is unique for South Harper, so there's --
5 there should not be anything related to the Camp Branch,
6 slash, Harrisonville site related with this.

7 Q. Very well.

8 I'm going to try to direct your attention to
9 one of the pages in this large compilation of pages. I'm
10 looking at page 5-1. And it is located behind the tab phase 1
11 environmental site assessment 2.1, phase 1 environmental
12 assessment.

13 A. Okay.

14 Q. And I'm going to look first at Section 5.2.1.
15 And it's entitled Current Use of the Property and Adjoining
16 Properties.

17 A. Okay.

18 Q. And under that it says, Refer to Sections 2.3
19 and 2.5 for a description of the current use of the properties
20 and adjoining properties.

21 A. Okay.

22 Q. So I'm going to go back a little bit to page
23 2.1 on the site description section.

24 A. Okay.

25 Q. Now, under Section 2.3, confirm with me, the

1 analysis of Burns and McDonnell was that the property is
2 currently occupied By George Bremer and his wife, that the
3 Bremers' residence is located on the northeast side of the
4 property, Mr. Bremer leases the remainder of the property to
5 the third-party individuals for agricultural use.

6 Am I reading that correctly?

7 A. That's correct.

8 Q. And the finding at the base of that paragraph,
9 Burns and McDonnell found no information in the government
10 lists and records reviewed to contradict the summary of
11 property use in this section.

12 So I'm gathering that they confirmed that the
13 property was being used for agricultural purposes?

14 A. Yes.

15 Q. Just momentarily, Section 5.2.2 on page 5-1
16 talks about current property zoning. And then it refers us to
17 Section 2.3.

18 A. Okay.

19 Q. Now, would you have expected Burns and
20 McDonnell to have included specifically the district
21 classification for this area if it was zoned under Cass County
22 zoning?

23 A. I can't answer that. I don't know.

24 Q. In your experience then as a Burns and McDonald
25 consultant, you would not have explained to the client that it

1 is zoned A1, for instance, for agricultural purposes?

2 A. I think this is pretty consistent with Burns
3 and McDonnell phase 1 reports of how they would describe
4 property as what its use is.

5 Q. So would that be considered the standard of the
6 engineering firm to simply not put in the classifications or
7 districts for the current zoning?

8 A. I can't speak to what they currently do, but at
9 the time I was there, that would be consistent with it.

10 Q. Do you recall ever looking at this and
11 challenging that this was a sufficient description of the
12 zoning in the area?

13 A. I did not challenge that.

14 Q. Section 2.5, current uses of the adjoining
15 properties. Confirm with me, if you will, it's described
16 in -- and this is an excerpt -- I'm looking at the third
17 sentence of this paragraph, The properties north of 241st
18 Street are residential. The properties east of South Harper
19 Road are residential and agricultural. The properties south
20 and west of the property are also agricultural and
21 residential.

22 A. Yes.

23 Q. And I'll read -- is that correct?

24 A. Yes.

25 Q. And I'll read the next line. The compressor

1 station operated by Southern Star Pipeline is located south of
2 the Bremer residence and east of the southeast corner of the
3 northern half of the property west of South Harper road; is
4 that correct?

5 A. That's correct.

6 Q. In connection with your study, Mr. Andrews, did
7 you determine the history of that compressor station?

8 A. Yes. That was part of this study. Part of a
9 phase 1 is essentially to try to determine what, if any,
10 contaminations have occurred on that particular property. So
11 adjacent usages of those properties and what records are on
12 that are part of this.

13 Q. Did you examine any accidents or incidences
14 involving the compressor station?

15 A. I believe there was.

16 Q. Do you recall the history of that incident?

17 A. I believe it was some type of spill there. I
18 think it was associated with PCBs.

19 Q. A PCB spill. Did you have any incidences
20 reported about any explosions or any ruptures of the line?

21 A. I don't recall. I'd have to look at that
22 again.

23 Q. Thank you.

24 Do you know when the compressor station was
25 installed on the property?

1 A. Don't know the exact date, but it was many
2 years ago.

3 Q. Would it be fair to say it predated 1970?

4 A. I believe that's true.

5 Q. My next series of questions concern another
6 section of the report. It's taking me a moment to find it.

7 The next page I'd like for you to look at with
8 me is behind your tab labeled 3.1.2, National Pollution
9 Discharge Elimination System, Missouri Construction Permit and
10 Storm Water Pollution Prevention Plan.

11 A. It's tab 3?

12 Q. I think it's -- what I'm showing is --

13 MR. COMLEY: May I approach Mr. Andrews?

14 JUDGE MILLS: Yes, you may.

15 BY MR. COMLEY:

16 Q. I think we're close.

17 A. Yeah, it's tab 3. Yeah, is that it?

18 Q. I'm looking at this page.

19 A. Okay.

20 Q. Mr. Andrews, behind the tab we just mentioned,
21 I'm going to point your direction to a map purportedly
22 prepared at the request of SEGA Engineers, Architects and
23 Technicians. I'm looking at the date. It was dated
24 September 1st, 2004. Do you have that handy?

25 A. Yes, I do.

1 Q. I want you to look with me on some of the
2 left-hand side of that drawing there. And can you tell me --
3 can you discern from the drawing there what part of the site
4 will be devoted to the three combustion turbines we're talking
5 about in this matter?

6 A. Well, the parcel itself is approximately
7 74 acres and we're building on the south side of that
8 property. The combustion -- of that south side of the
9 property the combustion turbines are stationed I guess on the
10 northern part of the south side.

11 Q. So the drawing that we have on Exhibit 107 is
12 not reflective of the anticipated construction as you
13 understand it? In fact, it's flipped?

14 A. I don't believe that to be the case.

15 Q. I'm sorry. Maybe I misunderstood your
16 testimony. I'm looking at the north side of this map and I'm
17 seeing what appears to be construction turbines are
18 anticipated to be constructed on the north side of the tract.

19 A. No. If you look in the top right-hand corner,
20 there's a number 981. If you look under that, it has listed
21 compressor station. It's pretty faint. That's the Southern
22 Star compressor station.

23 Q. I see it.

24 A. And so -- and I believe the road coming in
25 there is 243rd Street. So that probably is an approximate

1 location. Anything with site layout I would defer to SEGA as
2 part of that. But I believe this to be fairly close to what
3 I've seen.

4 Q. All right. So let me get this straight. I'm
5 looking at the compass rose at the bottom. It says, Bremer
6 site plan?

7 A. Yes.

8 Q. And what I'm seeing in the map here, the
9 picture, is construction of the turbines would be in the
10 northern section of the footprint?

11 A. That's correct.

12 Q. Okay. What is designated by the southern
13 section of the footprint? Can you tell me why that is there?

14 A. I cannot.

15 Q. Did your study in any way anticipate that there
16 may be six combustion turbines on this site?

17 A. None of the studies were performed for six
18 combustion turbines.

19 Q. Did you anticipate that there would be 181 kV
20 substation in addition to the 345 kV substation?

21 A. I believe that's 161 kV substation. And,
22 again, that would be out of my area of expertise.

23 Q. Excuse me. Let me do something. You are
24 right.

25 But as far as you know, there is no anticipated

1 use of this site except for the three combustion turbines that
2 are being applied for now?

3 A. That's all I've done studies and permitted on.

4 Q. Let me go then to the permit section of your
5 exhibit. I am looking at the tab that has been labeled 3.1.6,
6 Cass County building permits. The intention of your
7 exhibit -- were you intending to put in all the Cass County
8 construction permits that had been obtained?

9 A. It was.

10 Q. All right.

11 A. Uh-huh.

12 Q. I want to bring to your attention something.
13 Let's look at one page. You have a permit application toward
14 the close, I guess it's the third -- second to the last page
15 of this tab. It refers to application control No. 241206. Do
16 you see that?

17 A. Yes, I do.

18 Q. Do you have the construction permit in your
19 exhibit for that particular application?

20 A. I couldn't answer that question. The materials
21 on Cass County were provided to me by SEGA Engineering.

22 Q. Have you had any chance to review the other
23 construction permits that have been obtained?

24 A. If it does not relate to environmental, that
25 would be out of my area.

1 Q. Is the application that you have here, the
2 permit application that you have in your exhibit, does it
3 relate to your environmental responsibilities?

4 A. Not directly, no.

5 Q. Do you know why you put it in there?

6 A. It was trying to get the construction -- all
7 the construction permits that were obtained for the site in
8 one book. That's all. But it -- it also includes
9 environmental -- most of this is environmental permits with
10 some permits from the county.

11 Q. Have you seen any of the other construction
12 permits issued by Cass County?

13 A. Outside of this book, no.

14 Q. All right. So you would admit there are other
15 construction permits that have been granted by the county that
16 aren't in your book?

17 A. I'm -- I don't know the answer to that.

18 Q. You don't know.

19 MR. COMLEY: Subject to the objection, I think
20 we can close cross at this time. Thank you.

21 JUDGE MILLS: Thank you.

22 Mr. Eftink.

23 MR. EFTINK: Yes, your Honor.

24 CROSS-EXAMINATION BY MR. EFTINK:

25 Q. Mr. Andrews, you testified about this noise

1 assessment study and the background noise that was measured.
2 Were those readings for the background noise done during a
3 period in time when there was construction going on at the
4 South Harper facility?

5 A. There were two noise studies done. The noise
6 study that is listed in this particular book, it was before
7 any construction was started on this site. The second study
8 that was performed -- at a public meeting we asked if anybody
9 wanted a noise study performed. And Mr. Mike Tunicliff did
10 volunteer that he wanted that done.

11 By the time we were at the -- we -- well, Burns
12 McDonnell was hired for it. By the time Burns McDonnell was
13 hired for that site, there was indeed construction occurring.

14 Q. When the first noise assessment study was done,
15 there were pieces of equipment out there working at the site?

16 A. That's incorrect.

17 Q. There was no backhoe operating out at the site?

18 A. No, there was not.

19 Let me clarify that. There was no -- there
20 could have been a backhoe, but it was nothing associated with
21 Aquila's -- that Aquila was doing.

22 Q. Do you know the date that the noise assessment
23 study was done, the first one?

24 A. Sorry. It may take me a little time to look
25 that up.

1 September 7th and 8th of 2004.

2 Q. Were background noise readings done after
3 September 7 and 8, 2004?

4 A. Yes, there was, for the second study of
5 Mr. Tunicliff's house.

6 Q. Now, the noise assessment study, which is
7 included in Exhibit 107, does that include the readings that
8 were taken at Mr. Tunicliff's house when you calculate the
9 background noise?

10 A. There's two separate noise studies in here.
11 The first one is the original noise study performed at the
12 site on September 7th and 8th. The second is a memorandum
13 dated March 22nd to Terry Hedrick and myself from Burns
14 McDonnell. And in that particular memorandum it does
15 reference Mr. Tunicliff's study.

16 Q. Do you know the date that the noise reading was
17 taken at Mr. Tunicliff's house?

18 A. It's not listed in here. I don't know the
19 exact date.

20 Q. Would that have been in September 2004?

21 A. Probably would have been later.

22 Q. October 2004?

23 A. Probably.

24 Q. Is that your best guess, it was October?

25 A. That's my best guess.

1 Q. I want to draw your attention to Exhibits 108
2 and 109. They're pretty much the same except they deal with
3 different chemicals. Correct?

4 A. That's true.

5 Q. Now, to determine the amount of these chemicals
6 in the air, you have to have receptors?

7 A. That's true.

8 Q. And it does make a difference where you place
9 those receptors? You'll get different readings --

10 A. It could.

11 Q. -- at different sites?

12 A. That's true, you could.

13 Q. For example, if you put a receptor right next
14 to a truck stop, you're going to get a higher reading for
15 benzene then if it's next to someone's house?

16 A. That's a possibility.

17 Q. Now, for the information you have put on
18 Exhibits 108 and 109, can you tell us where the receptors were
19 located?

20 A. The EPA study has the estimated levels by
21 county. There's no further information in regards to that. I
22 think that would be something that EPA would probably have to
23 address.

24 Q. Okay. But you didn't go out and verify this
25 information yourself?

1 A. No, I did not.

2 Q. Now, what's the source of this information? Is
3 it in a document that you can give us information about?

4 A. Sure. It's -- it's on the US Environmental
5 Protection Agency's site. And it's listed Technology Transfer
6 Network, National Air Toxics Assessment.

7 Q. Can you give that to me one more time?

8 A. The Technology Transfer Network, National Air
9 Toxics Assessment.

10 Q. Do you have that in book form or did you just
11 look at the website?

12 A. I looked at the website. I do have a copy of
13 the printout from that. I don't have 20-odd copies of -- or
14 whatever I need here, but I do have that in front of me.

15 Q. Well, if we would like a copy, we can get a
16 copy of that later on?

17 A. Absolutely.

18 Q. That's titled Technology Transfer Network?

19 A. National Air Toxics Assessment.

20 Q. Now, on Exhibit 108 for formaldehyde you have a
21 number. Did you get that number out of the Missouri
22 Department of Natural Resources permit document?

23 A. Yes, that's correct.

24 Q. Okay. And the Missouri Department of Natural
25 Resources permit document is included in Exhibit 107, isn't

1 it?

2 A. The permit is in there.

3 Q. Okay. And if you look at page 22 of that
4 permit, which is behind tab 3.0 of Exhibit 107, it lists a
5 figure for formaldehyde?

6 A. Yes, it does, uh-huh.

7 Q. And on page 22 of the materials from the
8 Missouri Department of Natural Resources it's got the number
9 for formaldehyde in micrograms per cubic meter. Correct?

10 A. That's correct.

11 Q. And on your chart 108 you've got figures for
12 micrograms per cubic meter. Correct?

13 A. That's true.

14 Q. On your Exhibit 108 for formaldehyde you put
15 .001 micrograms per cubic meter. But in the Missouri
16 Department of Natural Resources document it's got a figure
17 that's 24 times higher than that.

18 A. That's incorrect.

19 Q. Well, in the Missouri Department of Natural
20 Resources document for formaldehyde, maximum modelled impact
21 on page 22 it says .024, but you've put down .001 for
22 formaldehyde.

23 A. The clarification here is the time period. If
24 you look under the particular number you're referencing, the
25 .024, that's based on a 24-hour concentration. The .0005 is

1 based on an annual time period. The EPA document that I've
2 referenced here, to my understanding, is based on an annual
3 concentration. So I'm comparing the same time periods.

4 Q. So I guess when we look at Exhibits 108 and
5 109, probably the most important thing is where those
6 receptors are located?

7 A. Important, you probably need to define that for
8 me, but --

9 Q. Right. For example, you're going to get a much
10 higher concentration of benzene close to a truck stop than you
11 are next to somebody's house. You'd have to agree with that,
12 wouldn't you?

13 A. That's likely.

14 Q. Now, in Exhibit 107 Mr. Comley was asking you
15 about this information after tab 2. I'd like to draw your
16 attention behind tab 2 to page 2-1. And this is apparently a
17 Burns and McDonald study --

18 A. That's correct.

19 Q. -- correct?

20 A. That's correct.

21 Q. Now, did you supply information to Burns and
22 McDonald for them to use in their study?

23 A. I did not personally provide any information to
24 them.

25 Q. Okay. And if you would look at page 2-1,

1 paragraph 2.2, I want to see if I understand this. Talking
2 about the site for the South Harper power plant, it says, The
3 area of the property is mostly rural and agricultural with
4 some residences.

5 That's what it says. Right?

6 A. That is what it says.

7 Q. Okay. Now, the number of residences within a
8 close proximity to the power plant would be significant,
9 wouldn't it?

10 A. Define "significant."

11 Q. Well, you know, if you've got a power plant
12 that's emitting pollutants, if you have a choice, you don't
13 want to put that next to a crowded neighborhood, do you?

14 A. I -- I can't make that determination.

15 Q. Okay. So did you determine how many residences
16 were within, say, a two-mile area of this site for the power
17 plant?

18 A. As part of the air quality modelling, there is
19 two choices in the model that we used, either a rural or urban
20 option. And under that, it's -- they either have you look at
21 land use in the general vicinity of the plant, which they
22 classify as an auer land classification scheme -- and I'll
23 spell that, that's a-u-e-r. And you also look at the
24 population density within that area to make that
25 determination.

1 And the Missouri DNR did rule -- did look at
2 this and agree with us on the rural classification of that.
3 The land use there, with it being residential or agricultural
4 would certainly fall into the rural category. The population
5 density I believe to be -- even considered urban has to be 750
6 people per square kilometer. I could look that up exactly,
7 but I think that's approximately right.

8 Q. So what you're saying is that in this site, you
9 believe there to be less than 750 people per square kilometer?

10 A. I -- I believe that's true.

11 Q. Now, the Missouri Department of Natural
12 Resources in its comments indicated that it doesn't tell
13 people, you know, where to build their power plant. It
14 doesn't dictate location. Correct?

15 A. That's true.

16 Q. You still have Exhibit 107 in front of you.
17 I'd like you to turn to the DNR materials, which are behind
18 3.0.

19 A. Okay.

20 Q. The first document behind 3.0 on Exhibit 107 is
21 called the Permit to Construct?

22 A. Yes. I see it.

23 Q. And if you will turn to page 7 of the Permit to
24 Construct -- it's got the page numbers at the top.

25 A. Yes.

1 Q. The first full paragraph says that, The
2 permitee is authorized to construct and operate subject to the
3 following special conditions. And I'll try to shorten it up.
4 After the end of the month, show the source -- whether the
5 source exceeded the limitation of 6,000 hours of operation.

6 A. Okay.

7 Q. Okay. The next document behind tab 3 is called
8 a Review Summary issued by the Department of Natural
9 Resources. That's correct, isn't it?

10 A. Okay. Yes.

11 Q. And if you would turn to page 20 of that
12 document, it's got a heading for PM-10 Control Technology.
13 I'd like you to ask -- I'd like to ask you a question about
14 that.

15 A. Okay.

16 Q. Now, on page 20 referring to PM-10, which is
17 particulate matter 10, Missouri Department of Natural
18 Resources says the conditioned potential emissions of PM-10
19 resulting from the project permitted herein are significant,
20 i.e., greater than 15 tons per year so BAC analysis is
21 required. That's what that says. Right?

22 A. Yes, it is.

23 Q. Okay. So the condition potential of this plant
24 is to emit over 15 tons per year of what they call PM-10?

25 A. It has a potential to emit greater than 15 tons

1 of PM-10.

2 Q. And the conditioned figure is based on the
3 limitation of hours?

4 A. That's correct.

5 Q. Other places in this permit document we will
6 see the potential tonnage if there is no limitation in the
7 number of hours of operation, and that figure would be more
8 tons than the conditioned figure. Right?

9 A. That's true.

10 Q. On page 18 of this same document, there's a
11 paragraph where the Department of Natural Resources talks
12 about carbon monoxide control technology?

13 A. Yes. I see that.

14 Q. Okay. You're there. And if you'll read with
15 me the DNR says, The conditioned potential emissions of carbon
16 monoxide resulting from the plant are significant, i.e.,
17 greater than 100 tons per year --

18 A. Yes.

19 Q. -- and the BAC analysis is required --

20 A. Yes.

21 Q. -- correct?

22 And again, that's based on limitation of hours?

23 A. That's correct.

24 Q. The potential is 100 tons of carbon monoxide
25 will be emitted?

1 A. Well, the -- it's greater than 100 tons.

2 Q. It is greater than 100 tons?

3 A. Right.

4 Q. Okay. Thank you.

5 If we turn to page 15 of that document --

6 A. Yes.

7 Q. -- there's a discussion there about nitrous
8 oxide control technologies?

9 A. Yes. I see that.

10 Q. Okay. Now, in this section DNR says that, The
11 conditioned potential emissions of nitric -- or nitrous oxide
12 resulting from the project permitted herein are significant,
13 i.e., greater than 40 tons per year and a BACT analysis is
14 required?

15 A. Yes. That's true.

16 Q. Okay. That's true.

17 If we turn to page 13 of that same document --

18 MR. BOUDREAU: You know, I think I'm going to
19 object to this line of questioning unless there's a point
20 here. The fact that the permit's been issued has been
21 stipulated to. The accuracy of the document that's been
22 attached to the application has been stipulated to. The
23 document speaks for itself.

24 And I'm not sure -- if there's a purpose to
25 this line of cross-examination, I'm willing to hear it, but

1 basically all we're doing is we're having him read or
2 acknowledge what the permit says, a document that everybody's
3 already agreed to. So I'm going to object to this just as
4 basically eating up time where anybody can read the document
5 and point to it.

6 MR. EFTINK: If I may respond, this witness has
7 testified, in effect, that there's no pollution, which is not
8 true.

9 MR. BOUDREAU: That is not -- that is not what
10 the witness has testified to. I'm going to object to this
11 line of questioning on the grounds that all it is doing at
12 this point is just having him acknowledge what the permit that
13 everybody stimulated to says. It's just a waste of time.

14 JUDGE MILLS: Okay. Mr. Eftink, I tend to
15 agree with Mr. Boudreau on this one. The last few questions
16 have just been reading from this document and having him agree
17 to what you're reading. Certainly you're allowed to do some
18 of that, but I really don't want to go through this whole book
19 and have you read excerpts and have him agree or disagree with
20 them. If you could wrap it up and get to a point, that would
21 be great.

22 MR. EFTINK: I've got just a little bit more of
23 that, and I think it is highly relevant.

24 JUDGE MILLS: It's already in the record. It
25 is relevant, I agree with that. It's in the record already.

1 And I think Mr. Boudreau is right, we're using up a lot of
2 time going over stuff that's already in the record.

3 BY MR. EFTINK:

4 Q. Okay. If you'll turn to page 13 of the
5 document.

6 A. Yes.

7 Q. It's got the actual amounts of tons of PM-10,
8 nitrous oxide, formaldehyde and these other pollutants coming
9 out of the power plant?

10 A. Yes, I see that.

11 Q. And, for example, the conditioned potential of
12 PM-10 is 35 tons a year. Correct?

13 A. Yes. That's correct.

14 Q. And nitrous oxide conditioned potential is
15 247 tons?

16 A. Yes.

17 Q. And the de minimis level is only 40 tons for
18 nitrous oxide. Correct?

19 A. That's true.

20 Q. So it's way above the de minimis level?

21 A. That's correct.

22 Q. And formaldehyde is also above that de minimis
23 level?

24 A. Yes, it is.

25 Q. Carbon monoxide is above that de minimis level?

1 A. Yes.

2 Q. When all of the turbines are operating and the
3 gas-fired heater and the diesel-fired pump, how many BTUs do
4 we have?

5 A. Just looking at the combustion turbines at a
6 maximum design rate is 1,455 million BTUs per hour per
7 turbine. I imagine those other sources are a bit less than
8 that. 9.8 million BTUs per hour for the gas heater and the
9 emergency fire pump is 0.466 million BTUs per hour.

10 Q. When you add all those together, when it's
11 fully operational, how many BTUs do you have?

12 A. I -- I don't know.

13 Q. You don't know?

14 A. I can't -- I don't have a calculator.

15 Q. Now, these studies do not even address PM-2.5,
16 do they?

17 A. That's correct, they do not address PM-2.5.

18 Q. And there have been considerable studies in
19 recent years about the effects on human health of PM-2.5?

20 A. That's true.

21 Q. You heard witnesses at the public hearing
22 testify that the effects of PM-2.5 is worse than some of these
23 others because it consists of these very fine particles that
24 get into the lungs?

25 A. I don't know if -- I wasn't at the public -- I

1 mean, hearing, but I -- are you referring to the Harrisonville
2 public hearing or --

3 Q. Yes.

4 A. -- the air permit public hearing?

5 Q. You said you read the transcript.

6 A. Yeah. I did read the transcript, and I did
7 read that.

8 Q. Okay. Now, I'd like to get Exhibit 101. Is it
9 up here somewhere?

10 MR. BOUDREAU: I think the court reporter has
11 the exhibits

12 MR. EFTINK: May I approach?

13 JUDGE MILLS: You may.

14 BY MR. EFTINK:

15 Q. Now, Mr. Andrews, I'm handing you what's been
16 marked as and which is in evidence as Exhibit 101. And I
17 opened Exhibit 101 to Exhibit 1 attached to it.

18 A. I have it.

19 Q. That's a press release issued by Aquila,
20 October 6th, 2004?

21 A. Yes.

22 Q. Did you have any involvement in the preparation
23 of this press release?

24 A. I did see it.

25 Q. Okay. Did you see it before it was issued?

1 A. Yes, I did.

2 Q. Now, on page 2 of Exhibit 1 to Exhibit 101,
3 we've talked about this already, but in the next to the last
4 paragraph in this press release, it says, referring to the
5 power plant, Similar facilities emit no more pollution than a
6 diesel-powered pickup truck traveling 35 to 50 miles per hour?

7 A. Yes. I see that statement.

8 Q. Now, we've gone through all the tons of
9 pollutants that will come out of this power plant?

10 A. Uh-huh.

11 Q. Do you think that statement is a true
12 statement?

13 A. The statement was based on these factors. If
14 you go to 40 CFR, I believe it's part 86, if you look at
15 mobile 6, it's an EPA model, mobile is m-o-b-i-l-e 6, the
16 emissions for trucks are set at a grams per brake horsepower
17 hour. And when you compare our plant to a diesel truck on a
18 grams per brake horsepower hour basis, our plant is much
19 cleaner.

20 Q. Okay. For the three turbines when they're
21 operational, can you tell us the grams per brake horsepower
22 emission?

23 A. I don't have those numbers exactly in front of
24 me. If I -- I have some recollection on the NOx number that I
25 think the federal regs are .5 grams per brake horsepower hour

1 and our plant is on the order of .02, something like that. I
2 don't have them for all the pollutants, but that's what comes
3 to mind.

4 So, in other words, a -- on a grams per brake
5 horsepower hour basis, a power plant, at least in that
6 particular pollutant NOx, would be approximately 20 times
7 cleaner.

8 Q. What about the other pollutants that we've
9 discussed?

10 A. I don't recall what those numbers are. I'm
11 sorry.

12 Q. Now, do you know what the load in brake
13 horsepower is for the power plant when all three turbines are
14 operational?

15 A. I don't remember that number.

16 Q. Okay. Referring to the total emissions that
17 are set out in the Missouri Department of Natural Resources
18 document, can you tell us how many pounds per hour of those
19 will come from one turbine?

20 A. Well, just looking at the first pollutant here,
21 NOx is 18.6 pounds per hour, CO is 82.7, particulate matter --
22 well, it's 10 or 15.25 depending on whether we inject water
23 into the turbine, and formaldehyde is just a touch over
24 1 pound, 1.03.

25 Q. Let me see if I understand this. For the power

1 plant, it's rated as producing 18.6 pounds per hour of nitrous
2 oxide?

3 A. Nitrogen oxide, that's right.

4 Q. And 8.2 pounds per hour of carbon monoxide?

5 A. 82.

6 Q. Oh, I'm sorry. 82 pounds per hour. And either
7 10 or 15 pounds -- let me rephrase that.

8 Did you say 15 pounds per hour of particulate
9 matter 10?

10 A. It's -- it's 10 pounds from the turbine. If we
11 choose to inject wastewater from the evaporative cooler blow
12 down, it could be 15. There's actually total dissolved solids
13 and total suspended solids in water that's actually considered
14 a particulate by EPA.

15 Q. And formaldehyde, 1 pound per hour from the
16 plant?

17 A. Yeah. 1.03.

18 Q. Okay. Now, for a truck, how many pounds per
19 hour of nitrous oxide?

20 A. I have no idea.

21 Q. No idea.

22 A. And the basis of this was on a grams per brake
23 horsepower hour.

24 Q. And for carbon monoxide, how many pounds per
25 hour will be produced by a truck?

1 A. I have no idea.

2 Q. No idea. For particulate matter 10, how many
3 pounds per hour will be produced by a truck?

4 A. Again, I couldn't respond to that.

5 Q. Okay. For formaldehyde, how many pounds per
6 hour will be produced by a truck?

7 A. I don't know.

8 Q. You still think this statement contained in
9 Exhibit 1 to 101 is an accurate statement?

10 A. I do. EPA has listed those units of control as
11 grams per brake horsepower hour. We were using EPA's units to
12 compare our plant to theirs. It's right in 40 CFR. And like
13 I say, I believe it's part 86, but it's in the Code of Federal
14 Regulations.

15 Q. So the biggest factor is the number of brake
16 horsepower per hour?

17 A. I don't know biggest -- what you define by
18 "biggest."

19 Q. If we're comparing apples to apples here,
20 you've got a truck which has maybe how many brake horsepower?

21 A. I don't know.

22 Q. You don't know. Can you give us a guess?

23 A. 400 maybe.

24 Q. 400. Okay. And for a power plant if one
25 turbine is operating, how many brake horsepower should we

1 have?

2 A. I don't know.

3 Q. You don't know. Give us a guess.

4 MR. BOUDREAU: I'm going to object. I mean,
5 having the witness guess as to what the numbers are is -- I'm
6 just going to object it calls for speculation. There's my
7 objection

8 JUDGE MILLS: I think it does call for
9 speculation. If he doesn't know -- I certainly don't want to
10 have a record in which a critical question like this is
11 characterized as a guess. I mean, a guess is worse than
12 useless in terms of a finding of fact. So I'll sustain that
13 objection.

14 BY MR. EFTINK:

15 Q. Does formaldehyde even come out of a truck?

16 A. I don't know --

17 Q. You don't know.

18 A. -- if it does.

19 Q. Okay. In that Exhibit 1 to Exhibit 101, that
20 same paragraph also says that noise level during operation
21 will be minimal. You consider 62 decibels to be minimal?

22 A. Actually, if I may, one thing I talked about
23 earlier in my Direct Testimony was that a noise study had been
24 performed by Burns McDonnell that's included as part of this
25 package, but it did not include the new stack that we have

1 that has better noise characteristics than what was modelled.
2 Actually, the noise levels at the closest house are now
3 projected to be 59.

4 Q. And why don't you have that stack of stuff for
5 us today?

6 A. That model was run today.

7 Q. Do you know where that model is?

8 A. It's in Burns McDonnell's office in Kansas
9 City.

10 Q. Do you consider 59 decibels to be minimal?

11 A. Depends what the background noise levels are in
12 relationship to it.

13 Q. The statement in this press release which is
14 marked as Exhibit 1 to Exhibit 101 then says, The noise levels
15 will meet all requirements?

16 A. That's true.

17 Q. Do you know what requirements they're talking
18 about?

19 A. The requirements that Aquila has estimated
20 based on experience with previous combustion turbine projects.

21 Q. So what the press release is saying is that
22 noise levels will meet Aquila's requirements. Correct?

23 A. And also it meets several federal agency levels
24 that I previously described.

25 Q. What federal agencies are those? FAA --

1 A. FAA, Federal Highway Department --

2 Q. -- Highway Department --

3 THE COURT REPORTER: I can only write one of
4 you at a time.

5 THE WITNESS: Did you want me to answer that
6 question or were you?

7 BY MR. EFTINK:

8 Q. Sorry. I got carried away.

9 Go ahead. You said FAA and then Highway
10 Transportation Department?

11 A. Well, yeah. Federal Aviation Administration.

12 Q. Okay.

13 A. Federal Highway Department, Surface
14 Transportation Board and Housing and Urban Development I
15 believe were the agencies that were referred to previously.

16 Q. You heard Mr. Harold Stanley, an engineer,
17 testify at the public hearing -- well, you didn't hear it.
18 Did you read his testimony at the public hearing?

19 A. Yes, I did.

20 Q. And he talked about noise levels for
21 residential areas set out in some document he had from the
22 World Health Organization and also from I think it was City of
23 St. Louis?

24 A. Yes. I did see reference to that.

25 Q. Okay. And do you have any reason to disagree

1 with him and what he said about that?

2 A. Actually, I could not find the -- I could not
3 find the documents. I looked on the St. Louis County website
4 and was unable to read the documentation in regards to what
5 those stipulations were in assigning those levels.

6 Q. Now, in this modelling of the noise, do the
7 engineers or somebody actually make a sound clip of a turbine
8 in operation?

9 A. What we would do is the -- in lieu of having
10 the actual noise sources there, there's a noise projection
11 done by a model that's pretty widely used in the industry.
12 After the combustion turbines are placed on the site, we will
13 go back and perform noise studies while the turbine is
14 running, while the turbine is off to see if indeed the noise
15 meets what the model says.

16 And in addition to that, noise guarantees have
17 been given to us by the stack manufacturer as well as the
18 combustion turbine manufacturer, so contractually they're
19 required to meet those noise levels.

20 Q. Did that noise assessment include the
21 substation or switching station next to the turbines?

22 A. Yes, it did. Actually, that's that pretty
23 minimal amount compared to the turbines.

24 Q. In your studies did you determine the number of
25 people that live within any distance, like 1 mile or 2 mile of

1 this plant site?

2 A. No. Typically when we would go out to do a
3 noise study, it's going to be the closest residence because as
4 you get further away from the plant, the noise will decrease.

5 Q. And for the studies regarding the pollutants,
6 did you determine how many people live within a particular
7 distance of that site?

8 A. Just an estimate to ensure that we met the
9 rural classification.

10 Q. Does Aquila meet what they call MACT, maximum
11 control technology?

12 A. The conditions of maximum available control
13 technology applies to what they consider major sources. Major
14 sources are defined as a facility that is permitted to emit
15 10 tons of any individual pollutant or 25 tons of aggregate
16 hazardous air pollutants. Our facility does not meet that
17 criteria so we were -- we are not subject to the MACT
18 standards.

19 Q. Let's see if I understand this. If the source
20 emits 100 tons of what?

21 A. The criteria to have the MACT applicable to
22 your facility is that the -- you meet one of two conditions,
23 either 10 tons of any individual hazardous air pollutant or
24 when you add all the hazardous air pollutants up, it adds to
25 greater than 25 tons.

1 Q. Okay. And on page 13 of the Missouri
2 Department of Natural Resources documents behind tab 3 of
3 Exhibit 107 it tells us the conditioned potential based on
4 hours limitation. And it's got four different pollutants over
5 10 tons per year.

6 A. That is the criteria that I just described as
7 part of the MACT standard. If you -- it's asking what is the
8 regulatory de minimis levels. EPA or Missouri DNR apparently
9 is putting the 10 tons of individual hazardous air pollutant
10 that are referred to.

11 Q. Well, PM-10 is over 10 tons. Right?

12 A. That's correct. Its regulatory limit is 15.
13 PM-10 is not considered a hazardous air pollutant.

14 Q. Well, it says, Conditioned potential based on
15 hours limitation for PM-10, 35.47 tons. So you're over for
16 that, aren't you?

17 A. Yes.

18 Q. Yes, you are over.

19 And for sodium oxide?

20 A. Sulfur dioxide.

21 Q. Sulfur dioxide. The potential is over but the
22 conditioned potential is not over 10?

23 A. That's incorrect. Actually, the sulfur dioxide
24 regulatory limit is 40 tons. Our conditioned limit is 2.86
25 tons.

1 Q. My eyes must have been playing tricks on me.

2 For the next entry, nitrous oxide --

3 A. Nitrogen oxide. The regulatory limit de
4 minimis levels is 40, the conditioned limit is 247.

5 Q. And Aquila's also over for carbon monoxide.
6 Correct?

7 A. That's correct.

8 Q. And so why didn't Aquila use MACT?

9 A. There are at least two control standards that
10 apply to a facility. Best available control technology refers
11 to -- is a control that you have to look at if you're greater
12 than de minimis levels. BACT is for what they consider the
13 criteria pollutant which is particulate, sulfur dioxide,
14 nitrogen dioxide, VOCs and carbon monoxide in our particular
15 case.

16 Maximum achievable control technologies only
17 applies to hazardous pollutants. So in our particular case if
18 it were applicable to the facility, they would be looking
19 specifically at hazardous air pollutants only.

20 Q. Uh-huh. So did Aquila comply with MACT?

21 A. We did not have to.

22 Q. Didn't have to. Because you're saying that all
23 the pollutants are below the de minimis level?

24 A. That's correct.

25 Q. But several of those pollutants are above the

1 de minimis level according to the Department of Natural
2 Resources?

3 A. And best available control technology review
4 was performed for those pollutants.

5 Q. And you think that Aquila beats BACT?

6 A. Missouri DNR and EPA agree with that.

7 Q. Now, I want to see if you agree with me that
8 the standards of the EPA and the Missouri Department of
9 Natural Resources do not differentiate between a residential
10 area and an industrial park?

11 A. That's true.

12 Q. Okay. So there is no standard issued by these
13 government agencies that says if it's a residential area or
14 close to a residential area, the standards are lower? There
15 is no
16 such --

17 A. Nothing can come to my mind at this point.

18 Q. Mine either.

19 So that makes it more important that we use
20 some judgment in deciding whether to put a power plant next to
21 where people live or put it into an industrial park?

22 MR. BOUDREAU: Well, I object to the question
23 on the grounds that it's argumentative. I'm also going to
24 object to this continued line of questions on the grounds I'm
25 not sure what relevance it has to the proceeding before us.

1 These are matters -- it's permitted for operation. These are
2 matters reserved to the Air Pollution Control Program of MDNR.

3 I'm just beginning to wonder what the relevance
4 of these questions is for the proceeding that's before the
5 Commission. This facility has been permitted by the state
6 agency with authority other air emissions.

7 MR. EFTINK: No. As the witness just said, on
8 the question of the location, which is what we are dealing
9 with here, the Department of Natural Resources says it doesn't
10 deal with location. It doesn't tell them where to put it.
11 That is the big issue in this case. That's why this line of
12 questioning is relevant.

13 MR. BOUDREAU: We'll stipulate to the fact that
14 the air permitting authority doesn't determine siting
15 situations. I don't know that that's ever been in dispute.

16 JUDGE MILLS: Okay. Well, with regard to this
17 particular question, I don't believe it was argumentative so
18 I'm going to overrule that objection. I so far have not found
19 this line of questioning to be irrelevant so I'm going to
20 overrule that one as well for now, but I mean, certainly you
21 can raise that again as we go along.

22 BY MR. EFTINK:

23 Q. Do you remember the question or do you want
24 me --

25 A. I'm sorry. Could you restate it?

1 Q. Yes.

2 As you said, you're not aware of any difference
3 in the EPA standards or the Missouri Department of Natural
4 Resources standards between whether you put a power plant in a
5 residential area or close to a residential area or in an
6 industrial park. And my question is, doesn't that mean that
7 we need to use our judgment as to whether to put a power plant
8 in a residential area or in an industrial park because the
9 government doesn't tell us?

10 MR. BOUDREAU: I've already lodged an objection
11 to that question on the grounds that it's argumentative. I
12 don't know if we received a ruling on that objection.

13 JUDGE MILLS: Yes, you have. I have ruled that
14 it's not argumentative and I overruled the objection.

15 THE WITNESS: Let me clarify a point here in
16 regards to this. The EPA, or in our particular case, the
17 Missouri Department of Natural Resources, their mission is to
18 protect human health and welfare throughout the state of
19 Missouri. And as part of the permitting process, they're
20 looking at the air quality and, you know, essentially all
21 areas to ensure that they meet the ambient air quality
22 standards, which are essentially the health-based standard.

23 So it could conceivably be that you could
24 locate a power plant at a location or any -- or any source of
25 pollution that you could locate it in an area that is -- that

1 the air is so dirty already that you couldn't -- you would be
2 exasperating the situation by building there.

3 So even though technically speaking, no, they
4 do not have control over that particular site and whether you
5 build there or not, if the air quality is already near a
6 health standard and you build -- and you -- the air quality
7 goes unhealthy because of the construction of your industrial
8 source, then it could be in a sense that you would not be able
9 to locate at a particular location. That's not the case in
10 this particular South Harper situation, however.

11 Q. Let me ask you just one final question. When I
12 look at Exhibit 107, which you put together, you've got your
13 list of all the government permits that you've applied for,
14 but absent from that is any application for zoning from Cass
15 County. Correct?

16 A. Yes.

17 MR. EFTINK: Pass the witness.

18 QUESTIONS BY JUDGE MILLS:

19 Q. I've just got a couple of questions from the
20 Bench.

21 And going back to Exhibit 1 to Exhibit 101, the
22 diesel-powered pickup truck, is this statement intended to
23 convey that if the combustion turbines at issue here were the
24 same size as a diesel-powered pickup truck, that they -- for
25 the same amount of power generated, they would emit less

1 pollutants?

2 A. That's correct. It's kind of difficult to say
3 in a public statement.

4 Q. Okay. So it's not directly comparing 315
5 megawatts of combustion turbine to one particular pickup
6 truck?

7 A. No, it's not. Your understanding is correct.

8 Q. Okay. And then you've got one of your charts
9 up and I'll just use that one. For the purposes of my
10 question, they're both the same.

11 The scale on the left-hand side on that one
12 goes up to .005, but the purple bars, were they shown in their
13 full height, would go several stories above this ceiling; is
14 that correct?

15 A. Yes, sir.

16 Q. You've cut them off simply so you could show
17 that the -- so the smaller bars, the maroon bars will actually
18 show up?

19 A. That's right. You wouldn't see it otherwise,
20 that's correct.

21 JUDGE MILLS: That's all the questions I have
22 from the Bench.

23 Any cross-examination based on those questions?

24 Okay. Then we will go to redirect,

25 Mr. Boudreau.

1 MR. BOUDREAU: Thank you. Just a few
2 questions.

3 REDIRECT EXAMINATION BY MR. BOUDREAU:

4 Q. You received a number of questions, sir, about
5 the operating permit issued by the Missouri Department of
6 Natural Resources?

7 A. Yes. Technically speaking it's actually a
8 construction -- air construction permit. There will be an
9 operating permit required, but that's not until -- within a
10 year after the facility begins operation.

11 Q. Thank you. Thank you for the correction.

12 As far as the construction permit, is there an
13 annual limit on the hours the CTs may operate annually?

14 A. Yes, there is.

15 Q. And do you know what that number of hours is?

16 A. Actually there's two. Condition 1B that's on
17 page 2 of their page numbering system, Aquila shall be
18 limited -- shall limit the total hours of operation of the
19 three Siemens-Westinghouse model 501 D5A turbines to less than
20 5,000 hours in any consecutive 12-month period. There's an
21 additional --

22 Q. So as far as the turbine operation, it's 5,000
23 hours?

24 A. Correct. There's an additional 1C that's right
25 below that, Aquila shall limit the total hours of operation of

1 each of the three Siemens-Westinghouse model 501 D5A turbines
2 to less than 2,000 hours in any consecutive 12-month period.

3 Q. What section were you referring to again?

4 A. It's special condition 1B and 1C.

5 Q. Okay. 1B and 1C. I want to direct your
6 attention to 1D. There's a reference to 6,000 hours. What is
7 that in reference to?

8 A. The permit addresses three emission -- well,
9 three -- well, actually five emission sources, our three
10 turbines, a gas heater and a diesel fire pump.

11 Q. Okay.

12 A. That is specific to the gas heater.

13 Q. That's the point I wanted to make. Thank you.

14 There were some questions I believe you
15 received from Mr. Eftink about the term "significant" as it
16 appears in the permit. And the question I have for you, does
17 the term "significant" have a defined meaning in terms of air
18 permitting?

19 A. It does. As I mentioned earlier in my
20 testimony, there are different levels of permit review
21 required depending on what your emissions are. That
22 significance level essentially -- if you exceed that, it puts
23 you into the most stringent permitting review that Missouri
24 DNR and EPA have, which is prevention of significant
25 deterioration that we went through which essentially requires

1 that the best available control technology is done and air
2 dispersion modelling and those other requirements that we had
3 associated with that.

4 Q. So the term "significant" is a defined
5 technical term for air permitting purposes?

6 A. That's correct.

7 Q. And it's not just a dictionary use of the term
8 "significant"?

9 A. That's correct.

10 Q. Okay. Thank you.

11 Now, there's been quite a few questions about
12 the amount of emissions of this facility. And my question is,
13 is the South -- is the South Harper facility considered to be
14 a major source of air pollution by either EPA or MDNR?

15 A. Yes, it is.

16 Q. I think there was some questions you received
17 about PM-2.5 --

18 A. Yes.

19 Q. -- do you recall that?

20 Is PM-2.5 a regulated pollutant, to your
21 knowledge?

22 A. Not at this time.

23 Q. If PM-2.5 were to become a regulated pollutant,
24 would South Harper be subject to those regulations?

25 A. Yes, they would.

1 Q. I want to turn to some questions I think you
2 received about phase 1 site assessment.

3 A. Yes.

4 Q. Do you know whether phase 1 environmental site
5 assessments are conducted according to an established
6 standard?

7 A. Yes. There is an ASTM standard.

8 Q. Do you know what that standard is, by any
9 chance?

10 A. I don't remember the number. I'm sorry.

11 Q. We'll leave it at that. Thank you.

12 And what is ASTM. You used an acronym. Do you
13 happen to know what that is?

14 A. No. I probably do. It's blanking out here.
15 I'm sorry.

16 Q. I hate to put my own witness on the spot.

17 A. Okay. American Society of Testing and
18 Materials.

19 Q. Okay. To your knowledge, does this standard
20 that we just talked about include current zoning of a
21 property?

22 A. I think -- I don't remember what the exact
23 requirements are in that, but a description of the property is
24 required of the use around it.

25 Q. Do you know whether it includes population

1 density, by any chance?

2 A. No.

3 Q. Okay. We've had a lot of testimony about air
4 emissions and permitting. And the question I have for you is,
5 does South Harper have all the air permits it needs to go into
6 operation?

7 A. The construction permit has been obtained, so
8 that allows us to construct the facility. An operating permit
9 is not required immediately. It's required within 12 months
10 of the operation of the unit.

11 We've applied for what's referred to as an acid
12 rain permit. We have not received that yet. That was --
13 that's in our matrix of when we applied for that, but that's
14 been months and months. That doesn't necessarily prohibit you
15 from operation. It's just a permit that we need in regards to
16 the air quality.

17 Q. But that's the customary practice in terms of
18 permitting a facility of this type?

19 A. Absolutely.

20 Q. Okay. Is there a significant -- to your
21 knowledge, is there a significant difference between the sound
22 emitted from a combustion turbine and, for instance, a jet
23 engine?

24 A. Yes, there can be. Noise is -- there's --
25 noise is defined by frequencies much like light is defined by

1 blue light, red light, etc., and by total noise. And the
2 frequencies can be different.

3 Also, a jet engine the intent, of that is to
4 lighten your load when you fly so noise abatement equipment is
5 not on their top priorities to do. It's to safely fly your
6 plane to a location. However, a combustion turbine like ours
7 is -- is on extensive foundations, etc., where we don't care
8 about how much necessarily it weighs and so we can put quite a
9 bit of noise abatement equipment in it.

10 Q. And with respect to that, could you please
11 recount the noise mitigation equipment steps Aquila has taken
12 at the South Harper facility?

13 A. Yes. Again, we -- we researched and specified
14 a stack that is much quieter than the modelled stack that we
15 had projected based on a package that Siemens-Westinghouse
16 provides. In addition to that, the cut and berming around the
17 plant will provide some noise mitigation as well.

18 MR. BOUDREAU: Very good. That's all the
19 questions I have for this witness. Thank you.

20 JUDGE MILLS: Thank you. Mr. Andrews, you may
21 step down. We'll probably want to recall you, there may be
22 additional questions.

23 Before we move on to our next witness, I
24 mentioned this first thing this morning, I don't see any way
25 we're going to finish today so we're going to have to

1 schedule, at the rate we're going, I would say several more
2 days, perhaps even as much as a week.

3 Just to sort of start the conversation, how
4 about tomorrow? I mean, there's no Commission -- I see
5 several people shaking their heads. Okay.

6 MR. BOUDREAU: I take it tomorrow is available?

7 JUDGE MILLS: Tomorrow there is a prehearing
8 conference scheduled, there is no hearing scheduled. So it
9 could be done tomorrow. Theoretically could be tomorrow,
10 Thursday and Friday. We could take the rest of the week if
11 the parties are available. Next week is fairly open as well
12 in terms of the hearing room.

13 MS. SHEMWELL: Staff is generally available.

14 MR. BOUDREAU: What I'd like to be able to do
15 is maybe what we can do is -- I'd like an opportunity to visit
16 with my witnesses about their availability.

17 JUDGE MILLS: Sure. I mean, I'm just going to
18 throw these out and I'm not going to ask anybody to commit
19 right now, but just give you some dates to think about and
20 talk to people over the lunch hour. And maybe when we come
21 back after lunch, we can try to firm up some dates.

22 MR. BOUDREAU: I guess some of my concern is we
23 were directed to provide testimony responsive to the issues
24 that were brought up in the public hearing, which were broad
25 ranging, they covered a number of things, air emissions,

1 noise, a whole bunch of other things that I've argued before
2 and I've argued -- and I continue to argue really aren't
3 pertinent to the issues before the Commission. But I
4 understand the Commission may want to hear more of this.

5 I guess what I'm trying to do is to deal with
6 the issues in as direct a fashion as possible. I don't know
7 maybe whether we're overdoing it or whether the Commissioners
8 wanted less information rather than more. And if there's some
9 directive from the Bench or Commission about whether or not
10 this is being responsive to what they wanted us to do, that
11 might help us kind of focus some things.

12 We've tried to deal with the issues of kind of
13 an overall response, the need for the plant, some of the noise
14 concerns that I know Mr. Eftink has said is one of his
15 client's primary concerns, air emissions, we've covered that.
16 There was a whole portfolio of things that came up. And if we
17 can get some guidance about targeting it to one or two or
18 maybe we've covered it adequately. I think security might
19 have been an issue as well.

20 MS. SHEMWELL: And siting.

21 MR. BOUDREAU: And siting. And so that's what
22 I'm looking for is -- to get some guidance from the Commission
23 might be helpful.

24 JUDGE MILLS: And I'm sure it would be. And,
25 unfortunately, I'm not really in a position to be able to give

1 you that. It's my understanding that not only are you to be
2 addressing concerns that were raised at the local public
3 hearing, but that you should also be putting on a case to
4 prove that a plant in this location is necessary or convenient
5 for the public interest.

6 And I'm not going to tell you how to do address
7 either of those and I'm not going to say you have to get it
8 done today or you -- or, you know, I'm not going to try and
9 tell you how to try your case. And I'm not really in a
10 position to give you a lot of guidance, first of all, because
11 it's not my case, and second of all, because I'm not sure that
12 the Commission really knows at this point exactly what it is
13 they need to hear in order to be able to make the decisions
14 that need to be made in this case.

15 So I think -- I think just given the number of
16 witnesses that you identified that you wanted to put on and
17 that the other parties identified that they wanted to put on,
18 we're going to need at least three more days.

19 MS. SHEMWELL: Might as well schedule them and
20 if we don't need them, then we can give them up.

21 JUDGE MILLS: That's my thinking.

22 MR. BOUDREAU: With that in mind, we'll try and
23 visit perhaps over the noon hour and get a better idea.

24 JUDGE MILLS: And not just you, but all of you
25 need to talk to your clients and your witnesses and find out

1 availability to schedule some more days for this hearing.

2 Okay. I just wanted to get you all thinking
3 about that. Obviously we're not going to decide that before
4 we go to the next witness, so let's go onto the next witness.

5 Ms. Shemwell?

6 MS. SHEMWELL: I was just thinking it might be
7 a good time to break so the parties can look through that
8 exhibit and continue with this witness -- it might make a
9 cleaner record if we continue with this witness, if that would
10 meet with your needs.

11 JUDGE MILLS: Sure. And I think actually
12 that's an excellent idea. We'll take a slightly extended
13 lunch recess until one o'clock. And the parties, other than
14 Aquila, can look through Exhibit 107 and to the extent
15 possible, we'll take care of cross-examination and possible --
16 cross-examination based on that exhibit and possible
17 objections to it when we come back after the lunch recess.

18 MS. SHEMWELL: Thank you.

19 (A recess was taken.)

20 JUDGE MILLS: Okay. And we're back on the
21 record.

22 Mr. Andrews, you're still under oath. We'll go
23 back through another round of cross-examination beginning with
24 the Staff.

25 MS. SHEMWELL: Thank you, Judge Mills. Staff

1 has had the opportunity to review the exhibit and has no
2 additional questions for Mr. Andrews on that particular
3 exhibit. We generally believe that the Department of Natural
4 Resources is the agency with an interest in the environmental
5 issues and so we have no cross. Thank you.

6 JUDGE MILLS: Thank you.

7 Ms. O'Neill.

8 MS. O'NEILL: Your Honor, we attempted to
9 review this proposed Exhibit 107. And while I would like
10 until Monday to be able to articulate any objections, I think
11 that between the review we were able to do and the
12 cross-examination that some of the other parties did this
13 morning, we don't intend any further cross-examination on this
14 exhibit.

15 JUDGE MILLS: Okay. Mr. Comley.

16 MR. COMLEY: We have no cross-examination about
17 the exhibit. We would be in a position to formulate any
18 objection to it, however.

19 JUDGE MILLS: Right now?

20 MR. COMLEY: I can if you want.

21 JUDGE MILLS: Okay.

22 MR. COMLEY: We would object to the admission
23 of this exhibit basically because most of it contains
24 information that has not been properly grounded with a
25 foundation. Many of the reports here are sponsored by Burns

1 and McDonald. As we found out, Mr. Andrews is a former
2 employee, but he is not an employee right now. The authors of
3 these reports are not available in court to be cross-examined,
4 therefore, it's hearsay and there's been no foundation laid
5 for an exemption to the hearsay rule.

6 Another example, for instance, during his
7 cross-examination he admitted that he had no understanding
8 really of building permits that were a part of this exhibit.
9 The building permits he thought -- it's not even a complete
10 list of building permits. Because of its incompleteness, we
11 think it would not be relevant to you and not be appropriate
12 to be admitted. On those grounds, we would object to the
13 exhibit.

14 Also, in the matrix that has been provided at
15 the beginning of the exhibit, there's an entry No. 19. It's
16 called the Permit for Special Use Permit. At the conclusion
17 in the status comments, the status comments contain a legal
18 conclusion and it should be -- and is objectionable on that
19 ground as well.

20 JUDGE MILLS: Mr. Boudreau, do you have a
21 response?

22 MR. BOUDREAU: Yes, I do. I might point that
23 as to the objection that they were documents produced by other
24 entities, they're matters of public record by agencies
25 authorized to issue those particular permits.

1 As far as the objection that it contains
2 hearsay, I believe an expert witness is allowed to refer to
3 the documents that he reviews or documents provided by other
4 individuals in formulating his opinions and conclusions.

5 This is also responsive to the -- directly
6 responsive to the testimony at the time of the public hearing
7 to the effect that some of the statements suggested that there
8 had been no public input or oversight or review of this
9 particular plant. And I think that this permit book indicates
10 that there were -- there was quite a bit of government
11 oversight on quite a lot of different bases and I think that
12 that's what it's being offered for.

13 And in terms of his unfamiliarity with
14 particular documents or the incompleteness, I think that just
15 goes to the weight to be given it. I don't -- he testified he
16 put it together, that these are the documents that he relied
17 upon for making his testimony here today and I think it's
18 admissible on any of those grounds.

19 JUDGE MILLS: Okay. Inasmuch as several of the
20 other parties have asked for more time to formulate
21 objections, I'm not going to rule on the objection today.
22 When we reconvene on Monday, we will take up additional
23 objections, if any, to the exhibit and rule on it at that
24 point.

25 Where were we in terms of cross-examination?

1 Mr. Comley, did you have cross on this exhibit?

2 MR. COMLEY: I'm finished, thank you.

3 JUDGE MILLS: Mr. Eftink?

4 MR. EFTINK: No further cross.

5 JUDGE MILLS: Okay. Then I believe you --

6 Commissioner Appling, do you have questions for him?

7 COMMISSIONER APPLING: I need to review this

8 so -- I need to do that.

9 JUDGE MILLS: Mr. Andrews, you can step down

10 and we will move on to the next witness.

11 I did offer the opportunity for redirect before

12 we broke for lunch, did I not?

13 MR. BOUDREAU: I believe so. I don't think

14 there's either a need or an opportunity for redirect as to the

15 admissibility of the exhibit, which I think is the limited

16 reason he was taken back up on the stand so I'm okay.

17 JUDGE MILLS: Okay.

18 MR. BOUDREAU: Should I call the next witness?

19 JUDGE MILLS: Yes.

20 MR. BOUDREAU: I'd like to call Mr. Marc Jacobs

21 to the stand, please.

22 (Witness sworn.)

23 MR. BOUDREAU: May I proceed?

24 JUDGE MILLS: Yes, please do.

25 MARC JACOBS testified as follows:

1 DIRECT EXAMINATION BY MR. BOUDREAU:

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

4 A. Marc Jacobs.

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

7 A. I'm employed by a company called Corporate Risk
8 Solutions.

9 Q. And on whose behalf are you here testifying
10 today?

11 A. On behalf of Aquila.

12 Q. Okay. What is the purpose of your testimony
13 here today?

14 A. To discuss or visit some objections that were
15 brought up in a trial in Harrisonville.

16 Q. Was this related to the public hearing in
17 Harrisonville on March 15th?

18 A. Yes, sir.

19 Q. And does this relate to the issues of external
20 security patrols?

21 A. Correct.

22 Q. Okay. Very good.

23 Could you give the Commission some idea about
24 your background and experience, what your background and
25 experience is and specialty?

1 A. Sure. Specifically, in criminal justice
2 training, executive and personal protection, interview and
3 interrogation. I'm also certified as a business continuity
4 professional and I'm a licensed investigator in two states.

5 Q. And what are your responsibilities as an
6 investigative consultant for Corporate Risk Solutions?

7 A. Well, I have been assigned to Aquila for about
8 three and a half years as their security manager.

9 Q. Could you give us a little information about
10 your educational background?

11 A. Sure. Basically criminal justice --

12 Q. Okay.

13 A. -- investigation, security concepts.

14 Q. Okay. Very good.

15 Are you familiar with the security provisions
16 that were put in place related to the South Harper location
17 and the peaking facility that's been discussed in the hearings
18 today?

19 A. Yes, sir, I am.

20 Q. Were you involved in evaluating the security
21 arrangements?

22 A. Yes, sir, I was.

23 Q. When did that first commence?

24 A. It first started -- I was brought in around
25 November of '04. It is reasonable and prudent any time a

1 company is looking at doing a construction project to have
2 security involved.

3 Q. So is this a general practice at a construction
4 site of this nature?

5 A. Yes, sir, it is.

6 Q. Have you been involved in any other
7 construction -- I mean, security at other types of
8 construction sites for Aquila?

9 A. No. Not in -- not as far as Aquila.

10 Q. Okay. But for other clients?

11 A. Yes, sir.

12 Q. Okay. And were there any particular
13 circumstances other than the fact that it's a prudent and
14 appropriate arrangement to make that caused an evaluation of
15 security at the South Harper facility?

16 A. Yes, sir, there was. There were two particular
17 incidents. I don't remember the exact date, but it was some
18 time in November of '04. There was an individual, at the
19 direction of Aquila, that was on the South Harper site and he
20 was approached by a vehicle that had come onto the property
21 that had wanted to know what he was doing at the time. This
22 individual did not offer information as it was told to me.
23 And as the female driver left, she proceeded to hit or
24 slightly hurt the individual that was on property.

25 Q. Okay. And that was reported to you?

1 A. Yes, sir, it was.

2 Q. And what was done with that information?

3 A. It was given up through what we call SMT, which
4 is the Security Management Team. Ultimately had gone to the
5 director of security, John Breckenridge. And it was decided
6 that we needed to ensure that there was a security presence
7 onsite at South Harper.

8 Q. Okay. So as I understand your testimony,
9 before this time, there really wasn't a security presence
10 onsite?

11 A. Correct.

12 Q. Okay. You mentioned that there were two
13 incidences and you've described one.

14 A. Yes, sir.

15 Q. What was the other incident?

16 A. Well, the second was real close to the holiday
17 time. There was a Christmas card, a postcard, that was sent
18 to several individuals from I believe it was stopaquila.org.
19 The front face of the postcard was a photograph of the site.
20 And I believe it said, From -- from our house to your house or
21 from our family to your family. Now, this was sent to several
22 members of the city and several members of Aquila to their
23 personal residences.

24 Q. Okay. And what did that incident cause you to
25 do and cause you to conclude?

1 A. Well, after an extensive, you know, discussion
2 within our Security Management Team group, we decided we
3 needed to take a stronger presence at the South Harper
4 facility and any of the associated construction sites.

5 Q. Okay. And, in particular, what was done in
6 that regard in terms of ramping up security?

7 A. Well, basically we started providing security
8 on January 2nd of '05. And we had security officers on staff
9 onsite --

10 Q. Okay.

11 A. -- there at the facility.

12 Q. When was that, did you say?

13 A. January 2nd of '05.

14 Q. Okay. And the security personnel, were these
15 people from your organization?

16 A. No, sir. Aquila has had a nine-year
17 relationship with Securitas, formerly Pinkerton Security. And
18 Aquila has a -- like a national account status with them. And
19 as such, we consider them a strategic partner because they
20 understand the vision of the level of professionalism that we
21 require for all the security officers.

22 Q. Okay.

23 A. So we consequently contacted them to provide
24 coverage --

25 Q. Okay.

1 A. -- out at that particular plant.

2 Q. So you were familiar with the standards that
3 Securitas uses in terms of screening personnel?

4 A. Yes, sir.

5 Q. And could you elaborate a little bit on that?

6 A. Sure. To start off, any security officer that
7 will be assigned to protect any Aquila site must have one of
8 several criteria. They must either be ex-law enforcement,
9 ex-military or have an extensive background in security. We
10 don't just typically hire, you know, anybody that wants to be
11 a security officer. That's a very rare case.

12 Then they go through a background screening
13 process through Securitas. They receive training there at the
14 office at Securitas. Then they are paired with a mentor
15 onsite when they come to Aquila. And they receive some very
16 specific instructions as to how Aquila would like for them to
17 do the patrols. Also, how Securitas, as their employer, would
18 like for them to do the patrols.

19 Q. Okay. When you say there was some direction
20 from Aquila, was Aquila directly involved in the training of
21 these individuals?

22 A. No, sir.

23 Q. Okay. How was that handled?

24 A. That -- basically the method that Aquila used
25 was established several years ago as a minimum acceptable

1 standard.

2 Q. Okay.

3 A. And that requires a certain amount of
4 background --

5 Q. Okay.

6 A. -- drug testing, those type of things. It also
7 set the parameters as far as, like I said, where they have to
8 be law enforcement or ex-military, those type of things.

9 Q. So when these individuals are trained, they're
10 trained both based on standards that Secur-- as I understand
11 your testimony, they're trained based on standards that
12 Securitas establishes for its own people as well as
13 incorporating the standards that Aquila would like to see in
14 security personnel?

15 A. Yes, sir, that's correct.

16 Q. Okay. I think you mentioned earlier that
17 Aquila has had a relationship with Securitas prior to this
18 particular circumstance?

19 A. Yes, sir. For about nine years.

20 Q. Okay. That -- excuse me. I talked over you.
21 You said what?

22 A. I'm sorry. About nine years.

23 Q. Thank you.

24 Could you give the Commission some
25 understanding of the training and experience of the security

1 people that are involved or have been involved in the security
2 around this South Harper facility and associated locations?

3 A. Sure. Securitas employs approximately
4 14 security officers. And of those, varied backgrounds,
5 21 years military, 9 years military. We have a new security
6 officer that just started, 8 years law enforcement,
7 St. Louis, 11 years security experience with another
8 individual. I believe less than 20 percent of the staff would
9 be new to the industry.

10 Q. I take it in your position with your background
11 and experience in training in the security field, how would
12 you characterize Aquila's standards for security personnel?

13 A. Aquila's standards has always been recognized
14 as one of the highest standards pretty much in the midwest
15 area. At other sites, more static sites, office buildings,
16 the officers go through up to 120 hours of training.

17 Q. Can you explain to the Commission -- well, let
18 me ask you this. Are there a number of different elements or
19 components of the training of the security personnel?

20 A. Yes, there is.

21 Q. Could you explain to the Commission briefly
22 what those different components involve?

23 A. Basically, it starts off with client relations,
24 how to communicate effectively with the client, report
25 writing, how to observe and report legal and liability issues.

1 Every security officer assigned has to go through what's
2 called safe -- I'm sorry, Securitas safe driving
3 certification. Also, there's some life safety training.

4 Q. Okay. With respect to interactions with
5 members of the public, are they trained to approach members of
6 the public for any particular purpose?

7 A. No, sir, they're not.

8 Q. Okay. What is -- well, is there training with
9 respect to interaction with members of the public?

10 A. There is to be pleasant, to answer the
11 questions fully to the best of their ability, but their sole
12 focus is to observe and report.

13 Q. Okay. And if somebody were to enter onto the
14 property, would they maybe approach members of the public in
15 that sort of circumstance?

16 A. Yes, sir, they would.

17 Q. But, otherwise, there's no particular aspect of
18 their training that would suggest that they're supposed to
19 approach or engage any member of the public?

20 A. That is correct.

21 Q. Thank you.

22 I think most -- you were at the public hearing
23 in Harrisonville, were you not, on the 15th?

24 A. Yes, I was.

25 Q. And you heard the testimony at that hearing?

1 A. Yes.

2 Q. Specifically as related to concerns about
3 security issues?

4 A. Yes, sir.

5 Q. My understanding -- I was there too. My
6 understanding is most of the concerns that were expressed
7 dealt with the issue of what I'll call external patrols. And
8 what I'd ask you to do is distinguish for the Commission what
9 I'll call close patrol or close security efforts and the
10 external patrols, if you could make a distinction between
11 those two things.

12 A. As I understand, close patrols are what I refer
13 to as static. Those are areas like a power plant where the
14 security office is to be stationed at that particular
15 facility. They are not intended to leave that site. They
16 make patrols around that particular facility, let's say on an
17 hourly basis checking for life safety concerns, checking for
18 potential fire hazards, somebody injured and checking the
19 fence line, making sure the lights are on, fire extinguishers
20 are charged, you know, typical procedures.

21 Q. Let me transition, since most of the commentary
22 was related to what I call external patrols.

23 A. Okay.

24 Q. And before we get into the description of those
25 more specifically my question to you is, at some point during

1 this process, I understand that external patrols were
2 initiated by Aquila --

3 A. Yes, sir.

4 Q. -- is that correct?

5 What was the purpose of that? When did that
6 start and what was the purpose of that activity?

7 A. Well, it was at the direction of Leroy Lutes.

8 Q. And who is Mr. Lutes, just for clarity?

9 A. His --

10 Q. Is he with Aquila?

11 A. Yes, sir, he is.

12 Q. Okay.

13 A. I'm not familiar exactly what his job title is.
14 It's with the transmission group.

15 Q. Okay. Thank you.

16 So go ahead.

17 A. At his direction, we were asked to patrol the
18 high power lines or the areas of construction where the high
19 power lines were going to be placed.

20 Q. Okay.

21 A. It was our understanding that there's a
22 right-of-way and areas where that crossed over the major
23 streets like 243rd, there would be fences and we were asked to
24 ensure that the fences were locked up at the end of the day.
25 Apparently there was some concern about cattle and livestock

1 being let loose.

2 Q. So when you say that there was some work on the
3 transmission lines, so there were transmission lines that went
4 from the South Harper facility itself to some other location
5 that were being worked on?

6 A. Correct.

7 Q. And the idea was to patrol areas -- or at least
8 locations along the transmission line route, particularly the
9 construction, as part of the security activity for Securitas?

10 A. That's correct.

11 Q. Okay. Can you just -- I don't want to assume
12 too much. Let's talk about external patrols. These are
13 vehicular patrols?

14 A. Yes, sir, they are.

15 Q. Okay. And can you just kind of generally
16 expand upon what's involved in terms of a -- as opposed to
17 what you called a close patrol, which you have somebody
18 onsite. An external patrol has a different characteristic and
19 if you could just elaborate on that a little bit.

20 A. Okay. It would be a case where a security
21 officer would use a vehicle. At the time it was a
22 Securitas-provided vehicle, a pickup. And it was their job to
23 be on the street basically 80 percent of the time. So
24 80 percent of every hour they were to be doing some form of
25 patrol or at a substation walking around, you know, checking.

1 There were also other areas like Parr's
2 Electric had a staging site. They would have to get out and
3 basically check the fence, make sure that, you know, nobody
4 was staying after hours, ensure that the truck doors were
5 closed and secured and then, you know, head off to the next
6 particular site.

7 Q. You used the term "staging site." What do you
8 mean by "staging site"?

9 A. Well, it's an area where Parr would receive
10 products to use either the next day or, you know, later on to
11 do what it is that Parr does for this particular project.

12 Q. Okay. So the idea then I assume from the --
13 from your testimony is that to patrol these sites on a regular
14 basis to protect against what sort of eventuality?

15 A. Well, they're specifically life safety. That
16 is the ultimate concern. That's number one is life safety
17 concern. Secondary would be any potential damage or criminal
18 intent.

19 Q. You mentioned earlier -- let me do this.

20 MR. BOUDREAU: I'd like to mark another
21 document as an exhibit. I have limited copies of this so --
22 it's an oversized document.

23 JUDGE MILLS: I think we're at 109.

24 MS. REAMS MARTIN: 111.

25 MR. BOUDREAU: I apologize. I don't have more

1 copies of this document but when you see it, you'll know why.
2 I think I may have to ask counsel to share on this particular
3 document. If I could put this on an overhead, I'll do it.

4 (Exhibit No. 111 was marked for
5 identification.)

6 MR. BOUDREAU: May I approach the witness?

7 JUDGE MILLS: Yes, you may.

8 BY MR. BOUDREAU:

9 Q. Mr. Jacobs, I'm going to post an overhead or
10 aerial photograph next to you, what has been marked for
11 identification as Exhibit 111. Do you see that?

12 A. Yes, sir, I do.

13 Q. And I wonder if you could describe that
14 exhibit?

15 A. Well, this is a compilation of several
16 overheads to what I believe is approximately five miles.

17 Q. Okay.

18 A. This -- specifically you'll see from down at
19 this point where the projected site was for South Harper all
20 the way up.

21 Q. Let me ask you this. You just said where you
22 see this. Just for the record, you've looked near the bottom
23 of it and there's an indication where there's a block with the
24 words "South Harper" indicated?

25 A. Yes, sir.

1 Q. And that would indicate the location of the
2 South Harper facility?

3 A. Yes, sir.

4 Q. Okay. Please proceed.

5 A. Okay. And then it continues all the way up to
6 what's marked as 203rd Street, which is the route that we go
7 to the Peculiar sub of that 345 sub.

8 Q. Okay. And that is indicated on that document
9 near the top is the 345 sub?

10 A. Yes, sir, it is.

11 Q. Or the Peculiar 345 sub?

12 A. Peculiar, yes.

13 Q. Does this aerial view contain -- is it color
14 coded to illustrate the route of the external security
15 patrols?

16 A. Yes, sir, it is.

17 Q. Using that document, would you explain to the
18 Commission generally the route that these patrols were
19 instructed to follow?

20 A. Sure. Starting at the very bottom, the area
21 that is marked South Harper, you'll notice a yellow line going
22 what is directed towards north. You'll also notice an
23 adjacent line just to the left, which would be west where
24 there's, excuse me, a red line. And that is basically the
25 high power lines that Aquila was in the process of putting in.

1 Q. So both at the transmission line upgrade
2 between the Peculiar substation near the top that you
3 indicated and the South Harper facility down near the bottom?

4 A. Yes, sir.

5 Q. And that's marked in a red line?

6 A. Yes, sir.

7 Q. Thank you.

8 A. You also notice branches off from the South
9 Harper Road, you'll see where -- like this one that I happen
10 to be looking at says YY Highway, just above and below it is
11 Peculiar 69 sub. You'll notice this is also in yellow where
12 it -- the line also extends down to the sub area.

13 Any of the areas noted here in yellow will be
14 the predominant areas where the patrol vehicle would, in fact,
15 go and patrol. It -- in the very beginning, as I had
16 mentioned, it was the patrol officer's responsibility to be
17 gone 80 percent of the time. So their job basically would be
18 to leave this particular location and go to every one of these
19 branches that you see within an hour and be on the road
20 approximately 80 percent of that time.

21 Q. Would they patrol that both going north and
22 returning south?

23 A. Yes, sir, they would. However, one caveat to
24 that, it is general security practice so that you do not
25 establish a routine and it also allows the security officers

1 to stay fresh where you may mix that up. So at a time where a
2 security officer may start at -- say, in a morning shift, they
3 may want to leave South Harper, they may purposely mix -- or
4 miss all of these sites and start off at YY and then go ahead
5 and head on up north. But somewhere within that hour they
6 have a responsibility of ensuring that they have hit each one
7 of the individual locations.

8 Q. Thank you.

9 Have you personally reviewed the -- been to the
10 patrol route and inspected the route that the security folks
11 were directed to pursue?

12 A. Yes, sir, I have.

13 Q. Okay. And is that aerial illustration of that
14 route, is that an accurate, in your view, illustration of the
15 location of the transmission line and as marked in yellow, the
16 route that the security folks would -- or the external
17 security patrols would have routinely used in terms of their
18 responsibilities to inspect and secure these locations?

19 A. Yes. I do believe that this is an excellent
20 example, the transmission lines being in red and the routes
21 that the officers -- the patrol officers would have taken
22 would have been in yellow.

23 Q. Okay. How would these folks have -- the
24 security folks that we're talking about for the external
25 patrols, how would they have dealt with -- let me back up.

1 What was the time frame in which they were
2 responsible for security activities? Was this a 24-hour job
3 basically?

4 A. Yes, it was. For mobile patrol it was a
5 24-hour, 7-day-a-week position.

6 Q. Okay. And I take it eventually these folks
7 would get hungry or thirsty and need to go get something to
8 eat for dinner or lunch or whatever; is that correct?

9 A. Yes, sir.

10 Q. And when that happened, did they have a
11 designated route that they should take to any particular
12 location to get food or drink?

13 A. No, sir.

14 Q. So was that left to the discretion of the
15 officers as to what direction they would take?

16 A. Yes, it was.

17 Q. What's the most close by town to this location?

18 A. It would be Peculiar.

19 MR. BOUDREAU: Okay. I think with that, I'll
20 offer Exhibit 111 into the record.

21 JUDGE MILLS: Are there any objections to the
22 admission of Exhibit 111?

23 Hearing none, it is admitted.

24 (Exhibit No. 111 was received into evidence.)

25 JUDGE MILLS: And if you can get us some more

1 copies, if you have a chance.

2 MR. BOUDREAU: I will do that if I can have one
3 to take back with me.

4 BY MR. BOUDREAU:

5 Q. So from your prior testimony, you were the
6 contact point between Securitas and Aquila, is that correct,
7 for purposes of security concerning the South Harper facility?

8 A. That is correct.

9 Q. Okay. Prior to the March 15th hearing in
10 Harrisonville, did you receive any contact from members of the
11 public associated with the external patrols?

12 A. Yes, sir, I did.

13 Q. And who were you contacted by?

14 A. A gentleman by the name of Frank Dylan (ph.).

15 Q. Approximately when did he contact you?

16 A. Would have been two or three days just before.

17 Q. Okay. And what was the nature of your
18 conversation with Mr. Dylan?

19 A. It was for the need or the reason to have
20 patrol vehicles going past his residence.

21 Q. Okay. Could you describe to the Commission the
22 nature of your conversations with Mr. Dylan?

23 A. Sure. Wanting to be understood as far as what
24 his concerns were, I spoke with Mr. Dylan for approximately
25 20 minutes. During that time he had inquired if there was

1 security at the site and what was the reason for the patrol.

2 During that time I informed him that not only
3 were we concerned about the one particular facility known as
4 South Harper, we were also checking multiple locations,
5 multiple subs and a drop site that, in fact, the patrol route
6 was as far as five miles long. During that time he expressed
7 concern about patrol vehicles going past his house day and
8 night and wanted to know if it was possible to restrict that
9 or slow that down to a certain degree.

10 Q. What came of that conversation with Mr. Dylan?

11 A. I thanked him for his call. I met with members
12 of our Security Management Team, reviewed his request and it
13 was determined that we would reduce our patrols from
14 approximately 80 percent of the time down to no more than
15 50 percent of the time.

16 Q. Okay. Did Mr. Dylan seem pleased with this?

17 A. Well, I -- yes. I had called him back about
18 two, two and a half hours later at work, which he had supplied
19 that number. It sounded like he was pleased that we were
20 trying to be a good neighbor.

21 And that it was interesting enough to add, if I
22 may, there at the hearing as part of the testimony in the
23 transcripts, Mr. Dylan specifically referred to a member of
24 security department that he had spoke with and that was
25 myself.

1 Q. Okay.

2 A. And he said that he had had a nice discussion
3 with a gentleman from security department and that there had
4 been a marked improvement.

5 Q. Okay. Was there any other member of the public
6 other than Mr. Dylan that contacted you about this incident
7 prior to the March 15th hearing?

8 A. No, sir.

9 Q. Subsequent to the March 15th hearing?

10 A. Not directly, no, sir.

11 Q. Okay. You said this happened two or three days
12 before the March 15th hearing. Did you visit with this --
13 about this telephone call with Mr. Dylan with anybody at
14 Aquila prior to the March 15th hearing?

15 A. No, sir. Since I'm the security manager and
16 this is one of my assignments, I basically ran my
17 recommendations past our Security Management Team and I was
18 empowered to make that immediate change.

19 Q. Okay. And as you said, Mr. Dylan offered a
20 statement at the March 15th hearing and his words are in the
21 transcript of that hearing; is that correct?

22 A. Yes, sir.

23 Q. Thank you.

24 Okay. So you said that the security situation
25 got ramped up around November of 2004?

1 A. That's correct.

2 Q. And approximately -- you received a call from
3 Mr. Dylan shortly before the March 15th hearing; is that
4 correct?

5 A. Just a few days before, yes, sir.

6 Q. Okay. So in that period of time -- well,
7 maybe -- let me back up.

8 You got the call from Mr. Dylan about March --
9 just shortly before the March 15th hearing. When did the
10 external patrol start, roughly?

11 A. They started approximately the -- mid-January.

12 Q. So that would have been three months, is that
13 correct, that these patrols were in operation. And your
14 testimony is that the only call that you got was from
15 Mr. Dylan; is that correct?

16 A. No.

17 Q. Well, in that three-month period about external
18 patrols?

19 A. It would be about approximately two months.

20 Q. Two months. I'm sorry. My math is poor. Two
21 months, thank you.

22 To the extent that other complaints may have
23 been made, would these have been brought to your attention?

24 A. Yes, sir, they would.

25 Q. Okay. Okay. You said earlier you were at the

1 local hearing March 15th at Harrisonville; is that correct?

2 A. Yes, sir.

3 Q. And you listened to the statements that were
4 made particularly as they related to security concerns; is
5 that correct?

6 A. Yes, sir, I did.

7 Q. Did they fall into various categories as far
8 as -- I mean, from your recollection, what were the matters
9 that were addressed by the members of the public at that time?

10 A. Well, there were several allegations of
11 security officers stopping and going through trash,
12 spotlighting, driving through neighborhoods and driving
13 particularly slow in an effort to intimidate or target people.

14 Q. Okay. Were you directed to look into these
15 items after the hearing?

16 A. Yes, sir, I was.

17 Q. Okay. And did you, in fact, look into them?

18 A. Yes, sir, I did.

19 Q. Could you describe the results of your
20 analysis?

21 A. Yes, sir. Immediately the very next morning we
22 launched an internal investigation both by members of the
23 Security Management Team that supports Aquila and we also had
24 contacted Dave Vogel, the senior branch manager for Securitas,
25 and also the senior supervisor patrol supervisor, Ray Osborne.

1 And we wanted to have interviews done of each one of the 14
2 officers that actually supported that based on the allegations
3 of impropriety concerns, you know, within the statements
4 issued by the folks during the meeting.

5 Q. Okay. And what were the results of that
6 process?

7 A. Securitas did go out and interview all
8 14 officers. There had been no findings whatsoever of any of
9 the situations that I had since discussed with you.

10 It is possible some of the allegations of the
11 spotlighting -- the two individuals that I'd mentioned before
12 were both law enforcement and, you know, I'd asked them to
13 come up with, you know, possible reasons that people could
14 have surmised that they were being spotlighted. Everybody
15 categorically denied using any spotlights on any of the
16 residences; however, if I can refer to this document --

17 Q. Please do. You're referring to what's been
18 marked for identification as Exhibit 111; is that correct?

19 A. Yes, sir. As the patrol vehicles go to each
20 one of these particular areas --

21 Q. When you say "these areas," there are four
22 points where there are lateral connections between the yellow
23 patrol route and the red transmission line; is that correct?

24 A. Yes, sir. Correct.

25 Q. Okay. Go ahead.

1 A. As they pull to these particular areas that
2 they were going to check the gates, check the lines, depending
3 upon what stage Parr was in construction, they would observe
4 the gates to ensure that they were locked and secured, nobody
5 was around the equipment or the vehicles, the vehicles
6 appeared to be safe, and then they would turn around.

7 And it is the belief from Securitas that both
8 individuals -- that that may be the time when people believed
9 that their residence were being spotlighted by the patrol
10 vehicles actually making a U-turn and continuing on their
11 patrol routes.

12 Q. So I take it from your testimony that it might
13 just be the car swinging around and the headlights -- the
14 lights of the headlights casting in that turnaround maneuver?

15 A. That is the only possible explanation that
16 Securitas was able to come up with.

17 Q. Okay. Were there any allegations of patrol
18 officers or security officers taking photographs of people and
19 property?

20 A. Securitas nor Aquila ever provided anybody with
21 any cameras. There is no reason to do it because it's not
22 within their scope of work that they were ever asked to do.
23 And Aquila corporate security department has a strong policy
24 against the use of any kind of photography or recording
25 devices in and on the property. So that would be a direct

1 violation of our established policies.

2 Q. Was that a topic that was looked into in terms
3 of the post-March 15th investigation?

4 A. Yes, sir, it was.

5 Q. I think there was some testimony about one of
6 the patrol officers stopping to repair a vehicle in a nearby
7 neighborhood. Do you recall that?

8 A. (Witness nodded head.)

9 Q. What was the circumstances around that?

10 A. There was a officer that had just left the
11 South Harper facility. He was moving northbound. As he was
12 approaching 243rd Street, there appeared to be glass which he
13 tried to swerve and miss. Apparently he did not. It had cut
14 the tire. He realized this as he was approaching the first
15 inspection location.

16 He pulled off at 243rd onto what I believe is a
17 street called Lucille at what time he had gotten out of the
18 vehicle, looked for the equipment to repair the tire. The
19 equipment was not available and he had to walk back -- he left
20 the vehicle at that particular facility and walked back to the
21 South Harper site and got his personal vehicle, retrieved the
22 equipment, drove to that site.

23 Q. Okay. So as I understand your testimony
24 generally, the allegations or the statements that were made
25 about either rogue patrols or inappropriate conduct on the

1 part of the security -- external security patrols, you haven't
2 been able to verify any of those allegations; is that correct?

3 A. That's correct.

4 Q. Has Aquila, nevertheless, taken steps since
5 that hearing to attempt to better address local concerns that
6 were expressed at that hearing?

7 A. Yes, we did. Immediately we discontinued all
8 roving patrols and we went to two static posts.

9 Q. Okay.

10 A. One being down at the South Harper facility and
11 the other one being at the 345 sub, approximately five miles
12 to the north.

13 Q. Okay. Was another reason for the termination
14 of the security patrols associated with the degree of
15 construction on the transmission line?

16 A. Yes, sir, it was.

17 Q. And what is that?

18 A. It was getting to a point where the
19 construction phase was ending. And along with trying to be a
20 good neighbor and listening to the concerns of the
21 neighborhood, the timing was right to discontinue that.

22 Q. Okay. Have you received any complaints from
23 any members of the public since the March 15th public hearing
24 in Harrisonville?

25 A. No, sir, we have not.

1 MR. BOUDREAU: I believe I've offered
2 Exhibit 111. Am I correct?

3 JUDGE MILLS: I think it's been offered and
4 admitted.

5 MR. BOUDREAU: With that, I have no further
6 questions for this witness and I'll tender him for
7 cross-examination.

8 JUDGE MILLS: Okay. Cross-examination,
9 Ms. Shemwell.

10 MS. SHEMWELL: Thank you.

11 CROSS-EXAMINATION BY MS. SHEMWELL:

12 Q. Mr. Jacobs, I'm Lera Shemwell. I represent the
13 Staff.

14 Are you a subcontractor or a contractor for --

15 A. Yes, ma'am, I am a contractor.

16 Q. And you contract with Aquila as a security
17 manager?

18 A. That is one of the two titles. I'm also a
19 certified business continuity professional.

20 Q. What's business continuity, very briefly?

21 A. Business continuity, disaster recovery,
22 ensuring that your business continues after a disaster.

23 Q. You referred to a Security Management Team.
24 Does that include employees of Aquila?

25 A. One employee of Aquila.

1 Q. So the Security Management Team is primarily
2 your people?

3 A. That is correct.

4 Q. Mr. Jacobs, how did you interpret the delivery
5 of Christmas cards as an incident that required an in-depth
6 security discussion?

7 A. The fact that they went to the individuals'
8 residences concerned the employees and their family members.
9 And as such, we perceived it more in tune of a hostile type
10 investigation.

11 Q. The incident that you described where a vehicle
12 entered onto -- I'm assuming the South Harper site; is that
13 correct?

14 A. Yes, ma'am.

15 Q. And it almost hit or came close to an employee,
16 did you come call the police and make a report as a result of
17 that?

18 A. If -- let me backtrack first, if I may. It
19 did, in fact, strike the individual. And we did not notify
20 the police. Corporate security did not find out until several
21 days after the event.

22 Q. Was that person an employee of Aquila that was
23 hit or almost hit, whatever? I'll take your word for it that
24 he was hit.

25 A. I believe he was.

1 Q. And, again, this was at South Harper?

2 A. Yes, ma'am.

3 Q. The security patrols are no longer than 24/7,
4 there's no patrol; is that correct?

5 A. No longer, correct. We have since stopped
6 that.

7 Q. Let's talk about these guards though. Were the
8 guards armed?

9 A. No, ma'am, they are not.

10 Q. Telephones, radios?

11 A. They basically have telephones. They are
12 required to check in on an hourly basis or to report any
13 incidents at any time.

14 Q. Why did you identify life safety as your
15 greatest concern?

16 A. Well, as far as security, life safety is one of
17 the top concerns. We have already had one event in which a --
18 a contractor construction worker was onsite and was just
19 coming out of a diabetic seizure and the security officer was
20 able to help him. And then actually followed him home to his
21 residence to ensure that he was safe and secure.

22 Because of the nature of the construction site,
23 you have a lot of very large holes, it's dark in the evening,
24 you have rebar sticking out of the ground, you have a lot of
25 steel, a lot of sharp corners. You want to restrict people in

1 a very particular area that is well lit. You want to ensure
2 that, you know, you know who is onsite. We have to know who
3 is onsite based on NERC standards.

4 Q. And that's the North American Energy
5 Reliability Council; is that --

6 A. Very good. Yes, ma'am.

7 Q. So your life safety concerns were at least as
8 much for the contractors onsite as for individuals who might
9 come onto the site?

10 A. There is no distinction --

11 Q. Okay.

12 A. -- made by security.

13 Q. Are there fences around these sites?

14 A. There are fences being put up currently.

15 Q. Do you know, having driven that route, how many
16 homes security officers would have passed when they were doing
17 their 24-hour/7 routes?

18 A. No, ma'am, I don't know that number.

19 Q. We've talked a lot about residential areas.
20 And I'm thinking of a residential area personally as homes on
21 maybe 100-by-100 foot lots, 25-plus homes. Is there such an
22 area that they would pass driving this route?

23 A. Yes, ma'am, there is one area in particular. I
24 believe and it is -- I'm sorry, I don't know the name of the
25 subdivision. It is right up to the east of YY and South

1 Harper.

2 Q. Is it on that map?

3 A. Yes, ma'am. May I refer to it?

4 Q. Certainly.

5 A. Okay. Actually, it would be this area right
6 here (indicating) where you can see these -- these homes.
7 This is where I would call a cluster of homes.

8 Q. And is that in a turnaround area for your
9 security patrol people?

10 A. No, ma'am. They would take a right here and
11 check this 69 sub (indicating).

12 Q. Mr. Dylan that you referred to, do you know,
13 does he live somewhere along this route?

14 A. I did not inquire as to his exact address nor
15 have I ever looked. He just said he was a resident and the
16 vehicles do pass past his residence.

17 Q. The vehicles, were they a particular type of
18 vehicle?

19 A. Yes, ma'am. They were provided by Securitas.
20 They were a white pickup marked with a Securitas logo and they
21 had a small light bar that went across. However, this
22 particular vehicle was rather old and it broke down so they
23 had to, in fact, rent from I believe it was Enterprise, you
24 know, a temporary vehicle to move the officers back and forth.

25 Q. When you say "light bar," would that be

1 something like flashing yellow lights?

2 A. Yes, ma'am.

3 Q. Would that include a security or a spotlight?

4 A. No, ma'am.

5 Q. Did any of the vehicles have spotlights?

6 A. They had a handheld-spotlight kept inside.

7 Q. Are you aware of when they would use that
8 spotlight?

9 A. Yes, ma'am.

10 Q. When?

11 A. Specifically when they were onsite at the South
12 Harper facility as they were driving around, to spotlight the
13 construction area, the -- you know, along where what is now
14 determined the fence line. Also, when they go to -- if I may
15 refer back --

16 Q. Certainly.

17 A. -- up to what is called Parr show up or I call
18 it Parr's drop area, this particular area (indicating) where
19 Parr would have the large spools of wire and a lot of the wood
20 and, you know, the construction items necessary to do their
21 job.

22 Q. Let's stop for a moment. Parr Electric, was
23 that a subcontractor of Aquila?

24 A. I don't know the relationship.

25 Q. But they were onsite regularly. Is that who

1 Parr is?

2 A. Yes, ma'am.

3 Q. And they would have had, you said, spools.

4 Would that be of copper wire or something of that sort?

5 A. There were large wooden spools.

6 Q. I guess what I'm trying to get at, is it
7 something that could be stolen or would be attractive to
8 steal?

9 A. Yes, ma'am.

10 Q. Have you experienced any thefts from any of the
11 sites or vandalism?

12 A. Yes, we have.

13 Q. Would you describe that, please?

14 A. Over at the South Harper site, the actual
15 facility, one of the contractors with Parr reported that he
16 had lost some tools or some tools were stolen. We did not
17 have a dollar amount.

18 Q. When was that?

19 A. I don't recall the exact date. It was in
20 February of '05.

21 Q. You've described changes to security procedures
22 that have occurred recently. You mentioned that you've gone
23 away from the patrols to just being on the two sites. Any
24 other changes that you've made?

25 A. No, ma'am.

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

2 JUDGE MILLS: Thank you.

3 Ms. O'Neill.

4 MS. O'NEILL: Thank you.

5 CROSS-EXAMINATION BY MS. O'NEILL:

6 Q. Good afternoon, Mr. Jacobs.

7 A. Hello.

8 Q. My name's Ruth O'Neill. I'm with the Office of
9 the Public Counsel. And I apologize, I've got some allergy
10 issues going on this week so I'm a little hoarse. If you
11 can't hear me, just ask me to repeat. Okay?

12 A. Sure.

13 Q. I wanted to follow up on a couple of things.
14 You indicated that the situation where an employee was hit by
15 a vehicle, did that person seek medical attention?

16 A. I don't believe so.

17 Q. Okay. So no report to any medical professional
18 or to law enforcement about the incident?

19 A. No, ma'am, I don't believe so.

20 Q. Okay. And this Christmas card, did you get a
21 Christmas card?

22 A. No, ma'am, I did not.

23 Q. Have you seen the Christmas card?

24 A. Yes, I did.

25 Q. Did you bring one with you?

1 A. No, ma'am. Unfortunately, I didn't. It was
2 locked up in evidence before I was able to retrieve it to come
3 down here.

4 Q. You have an evidence locker?

5 A. Well, yeah. We secure any-- anything like
6 this, yes, we do.

7 Q. Did you turn over a Christmas card to law
8 enforcement professionals?

9 A. No, ma'am.

10 Q. Where's your evidence locker at?

11 A. Down at Aquila.

12 Q. Down in Kansas City?

13 A. Yes, ma'am.

14 Q. At your office?

15 A. Yes, ma'am.

16 Q. And can you describe that for me? Is it a
17 formal evidence area that's secured and staffed?

18 A. No. It's not like law enforcement uses an
19 evidence area. It's secured in the senior consultant's desk
20 where only he has the key, where only he has access to it.

21 Q. Are you the senior consultant?

22 A. No, ma'am, I'm not.

23 Q. Okay. Did you speak to the person who was
24 involved with the car contact, this hit -- being hit by the
25 car? Did you speak to that person yourself?

1 A. No, ma'am. This was before we got involved
2 with that site.

3 Q. So this was a report you heard from someone
4 else?

5 A. Correct.

6 Q. Okay. The incident with the tool theft, was
7 that reported to the police or to the sheriff's office?

8 A. We volunteered to assist it, but that was -- it
9 was recommended to the individual who reported it to us.
10 Whether they, in fact, called the sheriff, we don't have any
11 record of that.

12 Q. Your security people didn't call the sheriff's
13 office or any law enforcement people?

14 A. No, ma'am.

15 Q. Okay. Now, if you could help me out for a
16 minute here. And like I said, I have an allergy attack so
17 maybe I missed something, but your actual employer is
18 Corporate Risk Solutions?

19 A. That is correct.

20 Q. Now, what kind of operation is that? Is that
21 basically your company or do you work for some other people
22 and contract with Aquila? How does that work out?

23 A. Well, if I can answer that in a different way,
24 Aquila has one full-time security person. His name is John
25 Breckenridge. He is the director of security. Approximately

1 four years ago Mr. Breckenridge developed a strategic
2 partnership with Corporate Risk Solutions to provide
3 approximately five other individuals that are contractors, of
4 which I am one of them, to handle very specific areas. And
5 these areas are like in cyber security, guard force
6 management, which is my area.

7 Q. So you're basically on loan from one company to
8 another?

9 A. Yes, ma'am.

10 Q. But it's a long-term thing for you?

11 A. Yes, ma'am.

12 Q. Okay. And you indicated that you have some
13 training in criminal justice. Could you tell me a little bit
14 about that? Where did you get your training?

15 A. Through -- there's an academy called Lion
16 Investigation Academy out of Bethlehem, Pennsylvania.

17 Q. Is that a certified law enforcement academy?

18 A. No. It is not a post-certified. I've not gone
19 through the post-certification classes for law enforcement.

20 Q. Okay. You say post-certification. Have you
21 gone through pre-certification classes for law enforcement?

22 A. No, ma'am.

23 Q. Have you ever been a police officer?

24 A. No, ma'am.

25 Q. Okay. And when I say "police officer," I also

1 mean like sheriff's deputy, Highway Patrol.

2 A. Correct. I understand.

3 Q. None of those?

4 A. No, ma'am.

5 Q. This is Lion's?

6 A. Lion.

7 Q. How long of a course is that?

8 A. Two years.

9 Q. Two years. Do you get a degree?

10 A. Yes, ma'am.

11 Q. What's your degree in?

12 A. Investigation and security concepts.

13 Q. Is that like an associates degree, bachelors

14 degree?

15 A. It's an associates degree.

16 Q. Okay.

17 A. Credited through the Commonwealth of

18 Pennsylvania.

19 Q. Okay. And in that coursework that you took,

20 did you take any classes in interrogation methods?

21 A. Yes, ma'am.

22 Q. Investigation of crime scenes?

23 A. No, ma'am.

24 Q. Securing of evidence?

25 A. No, ma'am.

1 Q. Did you take any classes in supervising law
2 enforcement personnel?

3 A. No, ma'am.

4 Q. Besides your associates degree from this
5 institution, do you have any other post-high school degrees?

6 A. I'm also certified, as I had said, in business
7 continuity, disaster recovery. I've also graduated from Reed
8 Interview and Interrogation Techniques out of Chicago.

9 Q. Okay. I wish I had known that. I know a
10 little bit about Reed, but I'm not really prepared to go into
11 that and I'm not sure we need to get there today.

12 This certificate you have on business
13 continuity, where did you get that?

14 A. It's D-R-I-I, Disaster Recovery Institute, Inc.
15 out of St. Louis.

16 Q. Okay. And how long a course program was that?

17 A. I took the accelerated course of two weeks.
18 People basically will spend up to two years studying for this
19 particular course.

20 Q. Okay. And when I think of disaster recovery, I
21 think about things like computer crashes, grid failures. Is
22 that the sort of thing that you studied?

23 A. That is only a small part of business
24 continuity, disaster recovery.

25 Q. Was that part of what you studied?

1 A. Small part.

2 Q. Okay.

3 A. 20 -- maybe 20 percent.

4 Q. In your two-week program, what specific areas
5 besides that did you cover?

6 A. Mine was more enterprise-wide as far as
7 business continuity, ensuring that all facets of the
8 company -- look at the interdependencies, what one department
9 requires of another department, both upstream and downstream.

10 Q. So you're kind of a liaison between departments
11 to make sure things get back on the work schedule, that sort
12 of thing?

13 A. In a general statement, yes.

14 Q. The relationship between Aquila and Securitas,
15 are you the person that's the go-between between Securitas and
16 Aquila regarding these security guards out here by Peculiar?

17 A. Yes, ma'am. My job is to enforce the security
18 contract for Aquila.

19 Q. Okay. And when you say enforce the contract,
20 what does that mean?

21 A. That means that I make sure that they have the
22 proper staffing to be able to fulfill all of the posts, that
23 they meet the acceptable requirements of training, that they
24 have gone through I believe it's called Securitas safe driving
25 certification, have gone through all the report writing,

1 communication with the internal clients.

2 Q. Okay. The internal client in this case being
3 Aquila?

4 A. Yes, ma'am.

5 Q. Now, you'd indicated that Leroy Lutes works for
6 Aquila. What's his position? He's the one that ordered the
7 external patrols. Right?

8 A. Right. And I stated that I wasn't sure of
9 exactly what his title was.

10 Q. What does he do?

11 A. All I know is that he's connected with the
12 transmission group.

13 Q. Okay. And he wanted the external patrols
14 mainly because of the transmission construction that was going
15 on; is that right?

16 A. That is correct.

17 Q. Okay. That's what I thought you -- I heard you
18 say. And so you had 14 security officers driving back and
19 forth on this road for a couple of months. Is that pretty
20 much what was going on?

21 A. No, ma'am, that's incorrect.

22 Q. Okay. Why don't you tell me how many officers
23 were involved in the road patrol?

24 A. There were 14 officers that were involved
25 throughout the whole project so far from start to finish to

1 where we are today.

2 Q. Yes.

3 A. During that time we would only have one officer
4 on the roads at any one given time. And about every hour or
5 every two hours, to keep the officers fresh, we would switch.
6 We would take -- the patrol officer would become the static
7 officer, and the static officer would then become the patrol
8 officer. This way it would allow them to take a break, use a
9 warm restroom, get a fresh hot cup of coffee, if necessary.

10 Q. So how many security guards were on duty at a
11 given time? Would that be two at a time? Three at a time?

12 A. There was one point for about two hours every
13 morning we would have three security officers. One would be
14 patrolling, two would be onsite. This would be from 6:00 to
15 8:00 in the morning. We wanted to -- actually this was at the
16 direction of Aquila. They wanted to do this so that as the
17 contractors checked in, that there would not be a lot of
18 traffic on South Harper. This way they could badge everybody
19 as they were coming in to ensure that they had gone through
20 all the safety training, that they had the proper credentials
21 to be working on site.

22 Q. Badge everybody, please tell me what that means
23 in English.

24 A. My pleasure. As I had referred to from the
25 NERC standards, we must have 100 percent compliance as far as

1 who was allowed onsite. We need to know who they are. We
2 went through a process as new contractors for the various
3 companies that worked at the site came on, they were
4 photographed first, their names were recorded, their ID was
5 checked.

6 Q. So they all got an ID card that said, I can be
7 on the site?

8 A. Eventually, after they went through their
9 safety training.

10 Q. All right. Now, you said that you made sure
11 that all of the Securitas guards had had all the training they
12 were supposed to have. Did you personally talk to each of
13 those guards that were working for you folks or was this like
14 a document review? How did you do that?

15 A. I would periodically come onsite and do what I
16 call spot inspections in which I would visit with the
17 individual security officers. I've met close to 80 percent of
18 the officers personally.

19 Q. You've met close to 80 percent of the
20 14 officers?

21 A. Correct.

22 Q. Okay. What's 80 percent of 14 because I don't
23 know?

24 A. I'm going to put it at about 12; 11 to 12.

25 Q. Okay. Were the security guards informed of the

1 incident with the car collision when they came to work for
2 Aquila, that there had been this incident with the car?

3 A. They were not informed by me. I'm not aware if
4 Securitas informed them about that.

5 Q. Were they informed about the Christmas cards?

6 A. Again, not by me, but could have been by
7 Securitas.

8 Q. Do you know whether or not the guards were
9 given any reason to believe that there might be citizens in
10 the area that were not gung-ho behind Aquila's construction
11 project?

12 A. That information would not have come from me.
13 Again, I couldn't speak for Securitas.

14 Q. You weren't there for the day-to-day operations
15 security down in Peculiar; isn't that right?

16 A. No, ma'am, I was not.

17 Q. Was one of your employees down there in charge
18 of it or was it just like you'd check in once in a while?

19 A. Once they had gone through the mentor process,
20 they were released to work at that particular site. And some
21 of the 14 actually worked at the corporate facility as fill-in
22 when people had gotten sick. So, no, there was no direct
23 supervision with the exception of hourly call-ins.

24 Q. So there really wasn't any close supervision of
25 these guards? They were pretty much on their own to do

1 what -- you know, to do their job as long as they met those
2 time parameters as far as the roving patrols. Is that fair to
3 say?

4 A. Not by myself. We had a very active client,
5 Tom Miller, the site point of contact.

6 Q. Tom Miller works for Aquila?

7 A. Yes, ma'am.

8 Q. Is Tom Miller here today?

9 A. No.

10 Q. Did Tom Miller have day-to-day interaction with
11 these guards?

12 A. Yes.

13 Q. Tom Miller know about the Christmas card?

14 A. I couldn't answer that.

15 Q. Tom Miller know about the incident with the car
16 hitting somebody?

17 A. I believe so, yes.

18 Q. Tom Miller know about the tool incident?

19 A. I believe so, yes.

20 Q. Did you talk to Tom Miller about whether or not
21 the guards should be apprised of any safety concerns regarding
22 the folks that were living in the area?

23 A. Could you repeat that?

24 Q. Okay. Did you and Tom Miller have any
25 discussions about whether there would be any safety concerns

1 for the site from the people who lived in the area?

2 A. Yes. I had conversations with -- with
3 Mr. Miller about that.

4 Q. How often?

5 A. Just in the very beginning.

6 Q. Okay. Did you convey to him that you wanted to
7 make sure that these security guards would keep the local
8 residents away from the project?

9 A. I never gave any type of instructions like
10 that.

11 Q. Did you discuss the fact that that would be a
12 good idea with him?

13 A. All I discussed was prudent security practices.

14 Q. Okay. Now, you said that after you heard about
15 the various complaints at the local public hearing on
16 March 15th, that you -- well, let me ask you this. Did you
17 order an investigation into those complaints?

18 A. Yes, ma'am. Immediately the next morning.

19 Q. And when you ordered that investigation, you
20 did not conduct the investigation yourself; is that right?

21 A. At my direction, I asked Securitas to start
22 their investigation, as well as members of the Security
23 Management Team looked into it also.

24 Q. Okay. But you did not question anybody?

25 A. No, ma'am, I did not.

1 Q. You did not direct any of these 14 guards to
2 write any reports to you about any alleged incidents?

3 A. No, ma'am, not to me.

4 Q. So the only -- do you know whether -- since you
5 were the one who ordered the investigation, other than
6 interviewing the security guards themselves, what else was
7 done?

8 A. A review of the patrol practices was looked at
9 by members of the Security Management Team, discussions ensued
10 with Mr. Lutes and it was determined to discontinue the
11 patrol.

12 Q. Did your people or Securitas talk to any of the
13 people who had made the complaints at the local public
14 hearing?

15 A. No, ma'am.

16 Q. Do you know how long the people -- the
17 residents in the area knew that the local public hearing was
18 coming up on the 15th of March?

19 A. I would have no idea.

20 Q. You don't know when notice was issued?

21 A. No, ma'am.

22 Q. Okay. Several different people came in with
23 complaints about the security guards. Right?

24 A. Yes, ma'am.

25 Q. And there were several different types of

1 complaints?

2 A. Yes, ma'am.

3 Q. And at the local public hearing everyone had to
4 say who they were. Right?

5 A. I believe they did.

6 Q. Give their address?

7 A. Not specifically. I believe they asked if they
8 were a resident of the county.

9 Q. Okay. All right. You did not direct anyone to
10 go and touch base with those folks to see if they could give
11 you any more information or follow up with them after the
12 interviews with the security officers?

13 A. No, ma'am. Never.

14 Q. Did you direct your investigation to include --
15 well, let's see. You say you review these patrol procedures,
16 they just decided not to patrol as often. Is that kind of
17 what happened with that?

18 A. No, that's incorrect.

19 Q. Okay. What happened?

20 A. What we -- what we had decided through our
21 communication with Mr. Lutes, who was our internal client for
22 the patrol, was to actually discontinue the patrols. And we
23 elected to move the patrol officer up to the 345 approximately
24 five miles to the north.

25 Q. Okay. Now, as part of the questioning of the

1 guards, were the guards specifically asked if they had used
2 spotlights?

3 A. Yes, ma'am, they were.

4 Q. Were they asked if they had taken any pictures
5 of anybody?

6 A. Yes, ma'am, they were.

7 Q. And the answers to those questions were no from
8 all 14 of them?

9 A. That is correct.

10 Q. And you received a report that said that?

11 A. Yes, ma'am.

12 Q. And were they asked specifically if they had
13 ever gone into anybody's trash?

14 A. I'm not sure if they were or not.

15 Q. Okay. Now, you were responsible for the
16 contract with Securitas, but you weren't responsible for
17 actually supervising these guards, so you don't have any
18 direct knowledge of how they performed their duties. Would
19 that be fair to say?

20 A. They were performed within the parameters
21 established by Aquila.

22 Q. As far as you know?

23 A. Yes, ma'am.

24 Q. Because you weren't there, you didn't watch
25 them do it?

1 A. No, ma'am.

2 MS. O'NEILL: No further questions.

3 JUDGE MILLS: Okay. At this time we're going

4 to take a 10-minute recess. We'll be back at 20 minutes till

5 3:00.

6 (A recess was taken.)

7 JUDGE MILLS: Let's go back on the record.

8 Mr. Jacobs, you're still under oath.

9 Mr. Comley, I believe we're up to you.

10 MR. COMLEY: I have no questions for

11 Mr. Jacobs.

12 JUDGE MILLS: Mr. Eftink?

13 MR. EFTINK: Just a few.

14 CROSS-EXAMINATION BY MR. EFTINK:

15 Q. Could you tell us the name of this person who

16 you say was injured?

17 A. I don't know the name of the individual, sir.

18 Q. Now, after these people got up at the public

19 hearing and gave their name and said they had complaints about

20 this patrolling, did you do anything to determine their

21 addresses and whether they, in fact, are on this route as

22 displayed on Exhibit 111?

23 A. No, sir, I did not.

24 Q. You did not?

25 A. No, sir.

1 Q. Now, I want to ask you, how would somebody that
2 lives in the area around this site know how to contact you?

3 A. It's my understanding that he contacted Al
4 Butkus (ph.) of corporate communications and had a phone call
5 or a visit with him. And then that communication was
6 forwarded to the director of security, John Breckenridge. And
7 then since South Harper is part of my assignment, Mr. Dylan --
8 or basically I was given his contact information.

9 Q. Okay. So part of the time the car that's going
10 around is an Enterprise rental car, correct, which obviously
11 doesn't have any telephone number on it?

12 A. Correct.

13 Q. And at other times it's a Securitas car going
14 around which doesn't have your phone number on it either, does
15 it?

16 A. It would be a white pickup and, no, there's no
17 phone number.

18 Q. Did Al Butkus tell you that other people had
19 called?

20 A. No, sir.

21 Q. Before you began patrolling the county roads,
22 did you talk to anybody at the Cass County Sheriff's
23 Department about that?

24 A. No, sir, we did not.

25 MR. EFTINK: Okay. That's all the questions I

1 have.

2 JUDGE MILLS: Thank you.

3 I don't have any questions from the Bench.

4 Mr. Boudreau.

5 MR. BOUDREAU: Yes. Thank you. Just a couple
6 of questions.

7 REDIRECT EXAMINATION BY MR. BOUDREAU:

8 Q. Mr. Jacobs, I believe in answer to a question
9 that you received from Ms. O'Neill, you said that you were not
10 a certified law officer; is that correct?

11 A. That's correct, yes.

12 Q. I also believe you said that the individuals
13 that are hired by Securitas are either ex-military or
14 ex-police officers or peace officers; is that correct?

15 A. That is the preferred individuals that Aquila
16 will utilize onsite, but they are highly trained either
17 ex-military or ex-law enforcement.

18 Q. Okay. Thank you.

19 I believe you've also been asked whether any
20 effort was made by you or by anybody on your behalf, including
21 Securitas, to follow up with the people who spoke at the
22 public meeting in Harrisonville on March 15th and you said no;
23 is that correct?

24 A. That is correct.

25 Q. Okay. Now, those people did not -- they were

1 not requested to give their addresses at the time of the
2 public hearing; is that correct?

3 A. I believe they were asked for their name,
4 whether they were Aquila customers and did they reside in the
5 county.

6 Q. Now, what do you think these people would have
7 thought had somebody been knocking on their door, asking to
8 follow up on what they had said at the public hearing knowing
9 that they hadn't given their home addresses?

10 MR. EFTINK: Objection, calls for speculation
11 as to what's in the mind of these people.

12 JUDGE MILLS: Sustained.

13 BY MR. BOUDREAU:

14 Q. Given the nature of the comments that were made
15 on March 15th, 2005 in Harrisonville concerning the security
16 concerns, do you think it would have been prudent to have
17 followed up with looking up the addresses of these people who
18 under oath got up and gave public statements at a public
19 hearing?

20 A. No, sir, I don't believe it would have been.

21 MR. BOUDREAU: Concludes my questions.

22 JUDGE MILLS: Thank you. You may step down.

23 THE WITNESS: Thanks.

24 JUDGE MILLS: Mr. Boudreau, who's next?

25 MR. BOUDREAU: I think I'm going to call Terry

1 Hedrick to the stand, please.

2 JUDGE MILLS: Hang on one second.

3 (Witness sworn.)

4 TERRY HEDRICK testified as follows:

5 DIRECT EXAMINATION BY MR. BOUDREAU:

6 Q. Would you state your name for the record,
7 please, sir?

8 A. Terry S. Hedrick.

9 Q. And by whom are you employed and in what
10 capacity?

11 A. Aquila, Incorporated, generation services
12 manager.

13 Q. What is your educational background, sir?

14 A. Bachelor of science, mechanical engineering,
15 University of Missouri-Columbia.

16 Q. Okay. And what are your responsibilities as
17 general services manager for Aquila?

18 A. Generation services manager.

19 Q. Or generation services, excuse me.

20 A. That position entails quite a bit of different
21 functions, but for this project it entails what Mr. Boehm gave
22 testimony earlier today. I put together the self-build
23 projects which look at different options that the company
24 would want to utilize for generation. And then as that would
25 move forward, I would become project manager on that and

1 fulfill those responsibilities.

2 Q. In addition to your educational experience, do
3 you have any professional training or certificates?

4 A. I've been with Aquila, Incorporated for
5 20 years. The entire time I've been in generation and been on
6 the regulated side.

7 Q. Okay. Are you familiar with the development of
8 the peaking power facility being constructed along South
9 Harper Road in Cass County, Missouri?

10 A. Yes.

11 Q. And how have you become familiar with that
12 project?

13 A. Once again, I put together the proposal for the
14 self-build option. And then as that moved on and management
15 gave approval to do this project, I became project manager.
16 And as part of that, started doing some of the outreach, some
17 of the work with the different entities that would be
18 involved, including the city, that sort of thing, including
19 contractors, consultants, engineering firms, and in addition,
20 assembled an internal team of personnel to address
21 transmission, insurance, risk management, that sort of thing.

22 Q. Okay. You've indicated a number of different
23 activities. What are the primary responsibilities you have as
24 project manager for the South Harper facility?

25 A. Primary responsibility would just be

1 coordination. There's a lot of people involved in the
2 project, a lot of different entities, processes, order, that
3 sort of thing. So just a coordination of all those efforts.

4 Q. Does that cause you to be at the location of
5 the construction on a frequent basis?

6 A. I am -- I'm probably on average at least there
7 twice a week. I'm in communication with the site daily
8 numerous times. I would say early in the morning until
9 usually about seven o'clock at night I have a -- a conference
10 call with the site manager down there and he wraps everything
11 up from the day.

12 Q. Okay. Very good.

13 And I take it that this degree of activity or
14 responsibility has been from the inception of the project or
15 the commencement of the actual site preparation activities?

16 A. Yes.

17 Q. And that was since approximately when?

18 A. Since we started developing the site?

19 Q. Yes, please.

20 A. 7/6/04 was the first activity there.

21 Q. So you're familiar with not only this site, but
22 I assume the surrounding area as well?

23 A. Yes.

24 Q. Okay. And I think you've mentioned that in
25 your capacity as project manager, you've had occasion to

1 directly interact with officials of the City of Peculiar; is
2 that correct?

3 A. Yes.

4 Q. Officials of Cass County; is that correct?

5 A. Yes.

6 Q. Some of the neighboring property owners?

7 A. Yes.

8 Q. Were you present at the local hearing in
9 Harrisonville on the evening of March 15th, 2005?

10 A. Yes.

11 Q. What is the purpose of your testimony here
12 today?

13 A. Purpose of my testimony will be to provide a
14 background on the procedures we've taken on this project,
15 chronology, presentations that we've given, that sort of
16 thing.

17 MR. BOUDREAU: Okay. I'd like to have another
18 item marked as an exhibit.

19 JUDGE MILLS: We're at 112.

20 (Exhibit No. 112 was marked for
21 identification.)

22 MR. BOUDREAU: May I approach the witness,
23 please?

24 JUDGE MILLS: Yes, you may.

25 BY MR. BOUDREAU:

1 Q. Mr. Hedrick, I'm going to hand you what's been
2 marked for identification as Exhibit No. 112 and ask you if
3 you can have that available to refer to as you testify?

4 A. Yes.

5 Q. I wonder if before we discuss the particular
6 documents that are in this binder that I've just handed you,
7 if you could just generally talk about why -- I think there's
8 some question as to why this particular location at South
9 Harper was selected for this particular project. And I wonder
10 if you could give the Commission at least some overview of the
11 points that went into that decision?

12 A. Yes. Site selection -- and Chris Rogers will
13 give testimony to that here I guess after me in great detail,
14 but just in general, the site has real estate available, was
15 basically an 80-acre site of which 74 of those acres were
16 available. Transmission that we owned was going to cross that
17 site. Gas pipelines were going to cross that site. Gas
18 compressor station. Compatibility issue of having the gas
19 compressor station there made it a highly desirable site.

20 In Mr. Boehm's testimony this morning he talked
21 about growth and that sort of thing. That's one of the things
22 we have to look at for these type of peaking facilities.
23 There was water infrastructure there also.

24 Q. I notice in -- if you will refer to the binder
25 that I just handed you, I believe there's some documents or

1 some materials in that binder that deal with the site
2 selection item?

3 A. Yes.

4 Q. Would you turn to those documents and briefly
5 describe what's contained under the tab that's indicated as
6 site selection?

7 A. The first document is a matrix that was work
8 product of SEGA. And this is a document that Chris Rogers
9 will discuss in detail, which goes into the criteria and
10 actual selection process.

11 Q. Was this document prepared by him for -- or
12 excuse me, at your direction?

13 A. Yes.

14 Q. Okay. What is the next one?

15 A. The second document is site selection criteria.
16 And this is a document that I basically prepared and Chris
17 Rogers assisted with on this.

18 Q. Okay. I wonder one of the -- let me direct you
19 to that second document.

20 A. Yes.

21 Q. And there's the reference here to load center.
22 Do you see that reference? Do you know what the meaning of
23 that -- are you familiar with that term?

24 A. Yes.

25 Q. What does that term mean? What's the

1 significance of the term "load center"?

2 A. Load center is basically what it sounds like.
3 We have system loads. That's a center. As we -- and it says
4 load center and growth and there's anticipation of growth
5 there. You have to have transmission, you have to have
6 generation available to service that load center, which would
7 contain residential, commercial and industrial operations.

8 Q. Are there certain advantages to locating
9 generation facilities near a load center?

10 A. Yes.

11 Q. And what would those advantages be?

12 A. You have to transport the generation. So if
13 you have the generation at the load center, you eliminate
14 chances of not being able to provide energy to those areas.

15 Q. I notice the same document makes reference to,
16 on the second page, local support for the project.

17 MS. O'NEILL: Your Honor, I think I need to
18 interpose an objection here. We're taking testimony from
19 something that -- not that I want it in evidence, but
20 documents that are not in evidence, documents we haven't -- I
21 don't know. Some of it looks like it might -- there may be
22 some duplication here, but I guess my objection is that he's
23 testifying about a document that's not in evidence, without
24 agreeing that it should be in evidence.

25 MR. BOUDREAU: Well, I haven't actually offered

1 the item into evidence. There's a number of documents that I
2 want to go through and to establish a foundation for its
3 admission, he needs to testify as to his familiarity. I mean,
4 on this particular one he's testified he had it prepared or
5 that he prepared it himself in conjunction with another
6 individual but he's got some personal familiarity.

7 But the objective here was to go through these
8 various documents, have him testify about what his knowledge
9 is -- his knowledge base is and then to offer the entire thing
10 as an exhibit. So I --

11 JUDGE MILLS: I think unless all the parties
12 are willing to stipulate to its admissibility, you have to
13 allow him to lay a foundation for it.

14 MS. O'NEILL: And, your Honor, I agree that a
15 foundation needs to be laid before exhibits can be offered
16 into evidence. And I'm glad that Mr. Boudreau is going down
17 that road, but I don't think laying a foundation means you
18 testify about the detailed contents of the items that are not
19 in evidence. So that's the basis of my objection.

20 JUDGE MILLS: Well, the objection's overruled.
21 You can continue.

22 MR. BOUDREAU: Thank you.

23 BY MR. BOUDREAU:

24 Q. You mentioned one of your --

25 JUDGE MILLS: Although before you move on, if

1 you have a specific objection to specific questions that go to
2 that point, you're certainly willing -- welcome to raise them
3 again. I don't mean to shut you down permanently on that line
4 of objections.

5 Go ahead.

6 MR. BOUDREAU: It was going pretty well up
7 until then.

8 BY MR. BOUDREAU:

9 Q. I believe you indicated earlier that as part of
10 your responsibilities as project manager, you've had a great
11 deal of interaction with representatives of various local
12 entities and agencies and governmental agencies; is that
13 correct?

14 A. Yes.

15 Q. How has that come about just generally? What
16 has caused that sort of interaction to take place?

17 A. We have an economic develop-- development
18 person, Mark Dawson. And as part of this project -- and I
19 believe it was Mr. Empson that testified that as this project
20 started, we were approached by several different communities
21 inquiring about doing the project in their area. So they
22 talked to our economic development. He, in turn, speaks with
23 me. I have -- if there seems to be a reason to continue on
24 with that, we have informal meetings to see if there's a way
25 to do a project with them.

1 Q. Okay. And that caused you to have some
2 contacts and conversations with, for instance, representatives
3 of the City of Peculiar?

4 A. Yes.

5 Q. And Cass County officials as well?

6 A. Yes. For -- for me, we had a different team
7 put together to meet with like Gary Mallory and people like
8 that.

9 Q. Okay.

10 A. I've met with the codes director with Cass
11 County and some different people that -- the roads director,
12 but --

13 Q. But that direct -- that is really the
14 responsibility of somebody other than you in terms of contact
15 with the officials of Cass County?

16 A. Yes. That's the way we set it up.

17 Q. Thank you for that clarification. I appreciate
18 it.

19 You're familiar with this -- the project and
20 its general layout and how it will ultimately function both
21 operationally and otherwise. And what I want to ask you is
22 are you familiar enough with this to know whether or not you
23 believe that there are going to be benefits for local -- or
24 local benefits arising out of the construction and operation
25 of this facility and for the surrounding area?

1 A. That's one of the reasons the economic
2 development kind of starts the process. They work with the
3 communities to see if they're interested in like a Chapter 100
4 financing, which would hold more money in their area. Also in
5 conjunction with that, it gives more money to fire district,
6 water district, and allows us to open up discussions with them
7 to see if we can enhance their systems. In this case, we did.
8 20 more fire hydrants, an additional water loop which was on
9 their long-range plan but was making it happen immediately.

10 Q. Will those benefit the local residents of the
11 area?

12 A. Yes.

13 Q. So there will be additional fire protection
14 available and better capacity?

15 A. In the form of fire hydrants and my
16 understanding is in the form of lower insurance because of the
17 fire hydrants.

18 Q. Okay. Has there been an effort on the part of
19 Aquila and you, in particular, to get involved in what I'll
20 call community outreach-type activities, informational
21 meetings with interested persons and local residents?

22 A. Yes.

23 Q. Could you tell us the nature of those meetings?
24 And to the extent that you need to refer to particular
25 materials that are in that binder, please do so.

1 A. Probably the first meeting for South Harper
2 would be in August. And it was the city council work station.
3 There were a couple of residents in the audience at that
4 meeting. We gave the presentation of -- which is also
5 included in this binder.

6 Q. Could you direct this Commission to which
7 presentation that is?

8 A. It's the tab marked Initial Presentation.

9 Q. Okay. Please continue.

10 A. We also -- after that and as it seemed that the
11 project was moving forward, we gave that same presentation at
12 a Chamber of Commerce meeting on 9/14. Once again, there was
13 local representation there from the City of Peculiar.

14 And then on the 15th at Greenwood we gave an
15 open house and gave -- pretty much had the presentation there
16 in poster board form. And then also on the 25th the
17 presentation was given at a mayors breakfast. I gave the
18 presentation at that.

19 Q. So were you present at these different -- the
20 four different presentations that you've mentioned here?

21 A. Yes.

22 Q. And you participated in those presentations?

23 A. Yes.

24 Q. Can you tell the Commission how those
25 presentations were received generally, if you have an

1 impression of that?

2 A. I would say standard. We had Q and A, lots of
3 discussion, people held us afterwards to ask questions. And I
4 would say in general, positive.

5 Q. Okay. Were there subsequent presentations that
6 were made?

7 A. Yes.

8 Q. And are there some materials in this binder
9 that are referable to that?

10 A. Yes. Tab 2 -- after the project started moving
11 on --

12 Q. When you say tab 2, which --

13 A. Second Presentation tab.

14 Q. Okay. Thank you.

15 A. As the project started moving forward, we -- we
16 began getting more details, we updated the presentation, we
17 had another Greenwood tour, invited people to come in. Once
18 again, set it up in poster board format for the presentation.
19 On the 11th we had a public meeting in Peculiar. And on the
20 12th, another Greenwood open house.

21 And I might add, the reason we had a lot of
22 these presentations at Greenwood is it's a similar facility,
23 will have a similar look to it. We started a unit so it will
24 have a similar sound. That way they could get a good feel for
25 exactly what we were talking about as opposed to looking at

1 pictures and presentation.

2 Q. Very good.

3 And so there were three different meetings at
4 which this presentation was given then?

5 A. At least.

6 Q. Okay. And were you present at those
7 presentations?

8 A. Yes.

9 Q. Did you participate in those presentations?

10 A. Yes.

11 Q. Can I ask you to tell the Commission if you
12 have an impression as to how the information was received by
13 the individuals who appeared for these presentations?

14 A. At these presentations, there began to be some
15 opposition. In particular, on 10/11/04, the public
16 information meeting, there was opposition.

17 Q. How did that go? How was that opposition
18 expressed?

19 A. Myself and Glenn Keefe tried to work through
20 the presentation and the crowd got loud and asked questions at
21 a nonstop pace, made it difficult to get through the
22 presentation.

23 Q. Okay. Were you able to get through the
24 presentation?

25 A. I was able to get through my section of the

1 presentation. Glenn Keefe was held up with -- with people,
2 you know, interrupting and that sort of thing.

3 Q. Okay. Just for the record, I'll point out that
4 Commissioner Gaw is not here, but I believe the second page of
5 this document shows -- let me ask the witness.

6 The second page of this presentation, would you
7 take a look at that, sir?

8 A. Second Presentation?

9 Q. Yes, please. I believe that's --

10 A. Second page.

11 Q. -- that's a map?

12 A. Yes.

13 Q. What does that document illustrate?

14 A. This is the service territory map.

15 Q. For electric operations?

16 A. For electric operations for Aquila in Missouri.

17 It shows the South Harper location, it shows the locations of
18 Lake Road, KCI, Sibley, Greenwood, RG3 and Nevada that are
19 other locations where we have facilities.

20 Q. Thank you.

21 MR. BOUDREAU: The only purpose for that
22 question was the second part of the follow up from the
23 questions I believe we received from Commissioner Gaw was
24 about wanting to know the electric service territories of
25 Aquila. We've given the map as far as Kansas and --

1 JUDGE MILLS: Right. Thank you.

2 BY MR. BOUDREAU:

3 Q. During the course of these meetings that you've
4 been present for and participated in, have you had a chance to
5 visit with some of the folks that showed up and to listen to
6 their concerns and comments?

7 A. Yes. At -- I would say on present -- second
8 presentation all of those we were able to speak with -- even
9 at Greenwood, to residents. And the public information
10 meeting, there were people who stayed after and spoke to us --

11 Q. Okay.

12 A. -- about posters.

13 Q. What types of issues did they -- just generally
14 did they like to describe -- or discuss, excuse me?

15 A. Questions about sound and environmental and --

16 Q. I take it you were able to visit with them and
17 give them some more information?

18 A. Yes. What we would do, we would set it up
19 where we had the different people within our company or
20 consultants at kind of a table. And we would direct them to
21 that table, oh, you have a question about this, go see this
22 person and they would answer the question directly.

23 Q. Do you know whether there were any comments
24 that were received that caused you or -- you, as project
25 manager, to look into or recommend changes to the design or

1 configuration of the South Harper facility?

2 A. There was quite a bit of discussion on noise.
3 And I think as you heard before, we've improved the stack
4 sound abatement. And so things like that. So, yes, we did
5 try to address their concerns.

6 Q. Okay. So that change was responsive to the
7 comments that you received from the public?

8 A. Yes.

9 Q. Okay. Are there any others that you can think
10 of?

11 A. One of the things we discussed, peaking
12 facilities are typically -- on this size of acreage and
13 their -- we try to keep them low profile and that sort of
14 thing. So we discussed trees and berms. We discussed with
15 some of the other neighbors that we would come to their
16 residence if they had an issue and talk to them about trees
17 and berms on our site or even possibly on theirs.

18 Q. Okay. Were any changes made in terms of
19 putting berms in place or commitments to putting berms in
20 place as a result of those interactions with the public?

21 A. Yes. In fact, we've -- we've added quite a bit
22 of berming. All the excess dirt has been utilized strictly
23 for berming north, south, east. On the west side it's already
24 heavily treed.

25 Q. Okay. How high are these berms, just for my

1 information?

2 A. The -- the main berm on the north side is
3 approximately 12 -- 12 feet high.

4 Q. Okay. So they vary in height?

5 A. Yes. Dependent on the cut of the land and from
6 which angle you're looking at. But I would say in general,
7 pretty consistent 12 feet.

8 Q. So this earth and berming work is being done to
9 do as much as possible in terms of screening the plant from
10 view from neighboring landowners?

11 A. Correct.

12 Q. Okay. And you mentioned the placement of
13 trees. Are those trees along the berm or on top of the berm?

14 A. They will be. We have a forester in house with
15 Aquila. He's already had his initial meeting with two
16 subcontractors to determine what kind of trees. They'll be
17 the type that don't lose their leaves, that sort of thing.
18 And try to get the type of height that will give the
19 screening, but at the same time have a balance to where they
20 don't get them too big where they can't survive.

21 Q. Okay. I may be taking this somewhat out of
22 order. Hopefully you'll forgive me for doing so.

23 I want to direct your attention to what's been
24 tabbed Public Communications in your binder and ask you if you
25 would explain to the Commission or describe to the Commission

1 what those materials represent?

2 A. These materials came from our external affairs
3 group. And this is just press releases, Q and A that Kansas
4 City Star requested. And then some of the ads that were
5 placed in the paper by Aquila to notify people in the area of
6 the facility --

7 Q. Okay.

8 A. -- information about the facility.

9 Q. And I take it that some of those notices are
10 notices of some of the meetings that you've described --

11 A. Yes.

12 Q. -- for instance, the tour of Greenwood?

13 A. Yes.

14 Q. Okay. Thank you.

15 And also while I'm just looking at the
16 document, I'd ask you to turn to the tab that's marked
17 Chronology, take a look at that document. Do you recognize
18 that document?

19 A. Yes.

20 Q. What is that document?

21 A. This is a document -- I spoke earlier about an
22 internal team that has been put together. We've got
23 generation people, RVP, regulatory people, insurance people,
24 risk management people, transmission people. We have a Monday
25 morning meeting. As a result of that, key dates are

1 identified and logged. These are a list of those key dates
2 that were discussed at those meetings. And I guess I should
3 clarify. These -- these dates are given at those meetings and
4 to the best of my knowledge, are accurate.

5 Q. And also, I apologize for taking this out of
6 order. You mentioned -- you talked about materials that were
7 used for both an initial and a second presentation. Remember
8 looking at those documents?

9 A. Yes.

10 Q. Were you involved in the preparation of those
11 materials?

12 A. I was involved in -- in the preparation of
13 those, along with other consultants.

14 Q. So those materials were prepared by you or
15 under your direct supervision?

16 A. Yes.

17 Q. I want to go back and touch in a little bit
18 more detail something that you and I were just talking about,
19 which relates to what I'll call the aesthetic considerations.
20 And those concerns that were expressed by members of the
21 public to you about visibility or plant profile, for lack of a
22 more artful term, I suppose.

23 And I want to ask you what -- to tell the
24 Commission what you think this plant will look like after it's
25 completed and the various steps that you've described or put

1 into place.

2 A. Okay. We could probably start with under
3 General Information there's a rendering, which shows an aerial
4 photo.

5 Q. Who was this prepared by?

6 A. Burns and McDonald.

7 Q. Was it prepared by Burns and McDonald at your
8 request?

9 A. Yes.

10 Q. Thank you. Go ahead.

11 A. It's basically an aerial of the area and it
12 tries to depict what the units will look like once
13 construction is complete. Because right now during the
14 construction phase there's a lot of vehicles and lay-down area
15 and pieces of metal and that sort of thing laying throughout
16 the plant. But once it's constructed, it will look something
17 like this, have some sort of a profile like this.

18 The green areas there of the trees on it are to
19 depict the berms. Those are strategically placed based on
20 where the residents are and where they'll be looking onto the
21 facility.

22 Q. I notice in this photograph there's an area
23 near the left-hand part of it where there's no berming but
24 there appears to be a facility and some white buildings. Do
25 you see what I'm referring to?

1 A. That's the Southern Star compressor station
2 that was already existing when we went to that site.

3 Q. Thank you.

4 A. One other thing on aesthetics. All this area
5 to the bottom of the page is about 40 acres. And I think -- I
6 believe Jon Empson in his testimony, he discussed the intent
7 is to leave that as is, to try to maintain the rural setting.
8 And there was a question, I believe, on would something be
9 planted there, that sort of thing. There's already grazing
10 cattle and we have entered into an agreement with the person
11 that grazes the cattle in an effort to try to keep that cattle
12 there to maintain that rural appearance.

13 Q. Can you give the Commission some idea of the
14 lay of the land of this acreage, particularly the plant
15 footprint as it relates to South Harper Road, which appears in
16 the photograph?

17 A. It slopes north to south. It's kind of crowned
18 east to west from the compressor station. What I mean by that
19 is where those berms are on the north side of the plant, it's
20 kind of crowned there so it starts to taper downhill. You can
21 kind of see there's kind of a valley down there on the other
22 side of the plant. You can barely see there's maybe like a
23 creek or something.

24 Q. Just so we've got the directions straight,
25 north -- we're looking south?

1 A. We're looking south.

2 Q. So the north would be the berms on the nearest
3 side?

4 A. Yes.

5 Q. Okay.

6 A. Once again, the equipment is benched or cut
7 about 10, 12 feet. So you have a 12-foot berm with a
8 benching -- angled bench into the side of it.

9 Q. Okay. Just so this is clear for the record,
10 when you say "benched," what do you mean, the location for the
11 plant was benched?

12 A. It was referred to as cut earlier today.
13 Basically you have a slope, so you're cutting into that slope.

14 Q. I see.

15 A. Kind of like a triangle you had in school, the
16 30-degree triangle thing. It would be kind of like having
17 that stuck into the side of the hill there.

18 Q. So that lowers the profile of the plant?

19 A. To lower the profile of the plant.

20 Q. Okay. Did you say how much -- how deeply that
21 had been benched?

22 A. It's going to vary because the lay of the land,
23 but 10 to 12 feet would probably be fair to say it was benched
24 for that amount.

25 Q. Okay. Thank you.

1 You mentioned that there had been some effort
2 to maintain or retain as much as possible the rural character
3 of the area. Do you recall that?

4 A. Yes.

5 Q. And I think you mentioned the cattle. Are
6 there any other steps that are being taken that you can
7 mention?

8 A. That's going to be the main thing, other than
9 the Bremer farm that's existing, part of the land agreement is
10 he lives there until he passes away, him and his wife. And
11 the plan is to leave his farm, home, the farm outbuildings and
12 that sort of thing to try to -- it helps maintain screening,
13 but it also -- you know, it's a farm so to try to leave that
14 there.

15 Q. Let me ask you this. Does part of Mr. Bremer's
16 farm appear in this photograph you've been referring to in the
17 foreground?

18 A. Yes. In the lower left-hand corner it appears
19 to be some outbuildings.

20 Q. Yes.

21 A. So there's part of the barns. I believe he has
22 more barns than that. And then a -- the house that he resides
23 in.

24 Q. Okay. Thank you.

25 I want to change topics on you for just a

1 minute and I want to turn to the topic of the testimony -- or
2 the statements that were made concerning damage to local
3 roads. Are you familiar with those issues?

4 A. Yes.

5 Q. What can you tell the Commission about the
6 local roads and the allegations of damage to the local roads
7 associated with the construction of the South Harper facility?

8 A. Of course, most of the roads in the area are
9 gravel roads. As part of the -- Judge Dandurand ruling
10 there's a \$350,000 bond that was put in place to address any
11 road damage.

12 In addition to that, we have been working with
13 Cass County road's director on those roads maintaining 243rd
14 Street in conjunction with Cass County, doing that on a weekly
15 basis, probably twice a week they grade that road and, in
16 fact, have made improvements to that road.

17 There are negotiations in place. Cass County
18 has given us a price to pave that road, to pave the frontage
19 of the site. And as Jon Empson mentioned in his testimony
20 earlier, we have approval to do that. We don't have the final
21 pricing, it was estimates, so we're working through those
22 negotiations. They would like to start that work within a
23 month to work on those roads.

24 Q. I notice in the binder there's some
25 documentation associated under -- at least under a tab

1 entitled Road?

2 A. Yes.

3 Q. I wonder if you would -- if you recognize those
4 documents?

5 A. Yes.

6 Q. What are those documents?

7 A. The first document's an e-mail that I sent to
8 Jon Empson. And it was basically in response to a meeting on
9 the 15th just to kind of put on paper some of the road issues
10 and how we're dressing those, how the site manager works
11 basically on a daily basis to look at the roads, make sure
12 that construction traffic is using the proper roads.

13 I also noted on there that there's a quarry
14 where much of the gravel for the entire area comes from a very
15 large quarry. It's -- there's a -- there's an aerial that
16 kind of depicts how far it is from the site in here.

17 I noted some notes on there that at the height
18 of our construction, we estimate that coming from that quarry
19 about 20 percent of those trucks were coming to South Harper.
20 Currently we estimate maybe 1 percent of the trucks that would
21 be seen going through Peculiar or driving in that area would
22 be coming to this site. Our gravel work's complete basically.

23 Q. Okay. There's another document --

24 A. Yes.

25 Q. -- associated with that. What is that? Do you

1 recognize that document?

2 A. Yes.

3 Q. What is that document?

4 A. This document is from Cass County Commission,
5 Robert Leeper, superintendent of road and bridge. And in that
6 document he discusses the fact that he's aware that we're
7 doing construction in the area and that that -- due to that
8 construction, that heavy truck traffic is continuing to cause
9 damage to public roadways. It's also his understanding that
10 Aquila's contractors have indicated they will repair that
11 damage. He made a recommendation of how to make those repairs
12 and it's his understanding that those repairs will be made.

13 Q. Okay. Thank you. Again, I apologize for
14 taking this out of order.

15 There's another document after that which
16 appears to be an aerial photograph. Do you recognize that?

17 A. Yes.

18 Q. And what is that?

19 A. It's a little bit hard to see, but basically
20 that's an aerial of the area. It shows the location of the
21 quarry up in the upper left-hand corner. It shows City of
22 Peculiar off to the right, it shows South Harper facility in
23 the center at the bottom of the page and you can see the road
24 infrastructure.

25 As I mentioned, the quarry traffic travels in

1 all directions. It travels to the City of Peculiar to get its
2 gravel, to the Kansas City area, Grandview, surrounding areas,
3 but it also travels to that area to get trucks down to South
4 Harper -- or did when we were in the -- basically in the
5 gravel phase. The kind of heavy white lines down at the
6 bottom, it kind of makes a shape of a tee, that is the area
7 that we are considering with Cass County asphaltting that area.

8 Q. Okay. And I think your testimony was that
9 quarry is in an active operation?

10 A. Yes.

11 Q. And has been for a number of years, as I
12 understand?

13 A. To my understanding.

14 Q. I want to go back just briefly to the rendering
15 that was done for you to show you -- this is under the tab
16 General Information to show the --

17 A. Yes.

18 Q. -- projected appearance of the facility when
19 completed. Just for the record, you are familiar with this
20 general area?

21 A. Yes.

22 Q. And you've been there frequently, as you
23 testified?

24 A. Yes.

25 Q. Is this photograph a reasonable representation

1 of that area, to the best of your knowledge?

2 A. To the best of my knowledge.

3 Q. As it exists today -- or largely as it exists
4 today and obviously with the anticipation that that's a
5 rendering of how it may look tomorrow?

6 A. Correct.

7 Q. Okay. I believe there's also been some
8 testimony or some statements about the nature of the area in
9 terms of -- well, let me back up.

10 Let me ask you to turn -- let's stay with the
11 information in General Information. There is an oversized map
12 in a sleeve under the tab General Information.

13 A. Yes.

14 Q. Do you recognize that document?

15 A. Yes.

16 Q. What is that document, sir?

17 A. This document shows the general area of
18 Grandview, Lee's Summit, Greenwood, Pleasant Hill
19 Harrisonville, Belton. And it shows the sections and it shows
20 the transmission and fuel line infrastructure in that area.

21 Q. Is there an indication of the location of the
22 South Harper facility?

23 A. Yes. In the --

24 Q. Where would we find that?

25 A. In the lower left quadrant right in the middle,

1 Section 32 South Harper it's labeled, there's a purple dot
2 there.

3 Q. Okay. I think there were some questions from
4 the Commissioners -- various of the Commissioners earlier
5 about the configuration of the infra-- the existing
6 infrastructure that's there. And I'd like you to identify
7 using this map -- well, as a preliminary matter, who was this
8 map prepared by?

9 A. I requested this map and it was prepared
10 internally by a person who does this type of -- it's not CAD,
11 but it's a CAD-type program.

12 Q. Okay. What I'd like you to do is I think there
13 were some questions -- let's just start with existing
14 infrastructure in terms of fuel sources. The Southern Star
15 pipeline, where are we going to find that on this map?

16 A. Southern Star pipeline is going west to east
17 right through the site area here (indicating).

18 Q. Okay. Could you illustrate that for the
19 Commission so they can refer?

20 A. (Indicating.)

21 Q. Okay. And I take it that that pipeline -- is
22 that a pipeline just a single pipeline or is it a parallel?

23 A. Dual. Dual pipeline.

24 Q. It's a natural gas pipeline facility?

25 A. Yes.

1 Q. Is that pipeline associated with the compressor
2 station that's adjacent to the South Harper --

3 A. Yes.

4 Q. -- facility site?

5 A. Yes.

6 Q. And is that going to be a fuel source for the
7 South Harper --

8 A. Yes.

9 Q. -- unit?

10 Is there another possible source of natural gas
11 fuel?

12 A. Yes. You can see the Panhandle PEPL lines
13 coming through here. There's multiple lines coming
14 approximately two miles south of the -- the Southern Star
15 line.

16 Q. Okay.

17 A. And can I make one comment?

18 Q. Please.

19 A. You asked about who prepared this. The person
20 who prepared this, this is an overlay, so sometimes it is not
21 precise. It could be off by just a little bit. So if, like,
22 the pipeline's cutting through a line here, it might be, you
23 know, maybe an eighth of an inch off or something like that,
24 so I just want to clarify.

25 Q. It's a reasonably accurate --

1 A. Reasonably accurate, yeah.

2 Q. -- illustration?

3 A. Yes.

4 Q. And you said the PEPL has the parenthetical 4
5 after it. What does that mean, do you know?

6 A. I would say that's the number of pipelines they
7 have in that area. And that's what I thought they had in that
8 area.

9 Q. Four parallel pipelines?

10 A. Uh-huh. Yes.

11 Q. Okay. And do you know whether or not that is
12 likely to form an alternative and competitive source of fuel
13 for the South Harper station?

14 A. Yes, it will.

15 Q. Okay. There was also, I believe, some
16 indication that there's existing transmission in this area.
17 What is that transmission indicated as on this map?

18 A. Transmission is the blue line going north to
19 south.

20 Q. Okay. Is that line going north out of the
21 South Harper? It's indicated as Aquila 69 kV. Is that --

22 A. Yes.

23 Q. -- is that the line that goes up to the
24 Peculiar substation which is located north?

25 A. Yes.

1 Q. Okay. And that substation is going to be
2 located at the -- near or at the intersection of the Aquila
3 345 kV transmission --
4 A. Yes.
5 Q. -- line and the 69 kV going north?
6 A. Where the blue and the pink line intersect.
7 Q. Okay. And it is that stretch of transmission
8 line -- maybe not exclusively, but certainly that stretch of
9 transmission line where there had been some previous testimony
10 about it being upgraded; is that correct?
11 A. Yes.
12 Q. So it's being upgraded from its current 69 kV
13 configuration?
14 A. Yes.
15 Q. To what?
16 A. 161 kV.
17 Q. Okay. Is it just that stretch or is there more
18 of the transmission network that's being upgraded?
19 A. Basically just that stretch from the site up to
20 here (indicating).
21 Q. Okay.
22 A. Now, there may have to be some other upgrades,
23 but that's basically the extent of the project.
24 Q. Okay. Are there any other transmission
25 facilities in the general area?

1 A. Yes. There's two dual KCPL 161 kV lines.

2 Q. How were those indicated on this map?

3 A. Kind of dark blue double lines named KCP&L
4 Transmission.

5 Q. And those are just to the south of the South
6 Harper facility?

7 A. Yes. Once again, approximately two miles.

8 Q. Do you know whether or not there's any
9 interconnection or link between Aquila's transmission network
10 here and the KCPL line?

11 A. Not at this location.

12 Q. Are there any other companies other than Aquila
13 that has a transmission grid set up in this general area other
14 than the KCPL line that you've just mentioned?

15 A. There's -- Osage Valley operates in that area.

16 Q. Okay. Is there an indication of where their
17 facilities -- where their transmission facilities are located?

18 A. No.

19 Q. Do they have transmission facilities in this
20 area?

21 A. My understanding is the Aquila 161 kV supports
22 their 69 kV system that's in that area.

23 Q. Okay. So is it fair to say that the retail
24 customers of Osage Valley that are in this general area,
25 including the South Harper facility, that service is being

1 supported by Aquila's transmission grid in this area?

2 A. Correct.

3 Q. Based on your understanding of the layout and
4 the facilities that Aquila has in this area, is this a
5 reasonably fair and accurate representation of the
6 transmission facilities and the location of the natural gas
7 pipelines that are in this area?

8 A. Yes.

9 Q. I want to direct you lastly to the tab that's
10 marked as Aerials. We've already talked about the first
11 rendering. Correct?

12 A. Yes.

13 Q. I want you to take the balance of these aerial
14 photographs one by one --

15 A. Okay.

16 Q. -- and explain to the Commission what these
17 aerials depict and what they illustrate in terms of the
18 development of the South Harper facility in Cass County.

19 A. This first one here is looking kind of
20 northwest and the notes on it indicate that Mary Latrel lives
21 in that corner up there, has property adjoining the area. One
22 of the things we're doing with Mary, we've been in contact
23 with her from the start, is there's a farm fence (indicating)
24 and the person we bought the land from, Mr. Bremer, when he
25 put that farm fence in, he went around creeks, made it zigzag,

1 went onto her property basically. She has asked us to
2 straighten that fence out, put in a better fence and we're in
3 the process of doing that.

4 Q. Okay. I notice there's also an indication
5 about Mark Andrews?

6 A. Yes. Mary kind of set this whole thing up and
7 there has been a meeting with Mark Andrews and the plan is to
8 continue that fence. It goes right along that tree row and do
9 the same thing with his portion of the fence too.

10 Q. Okay.

11 A. And I believe on the 15th he testified and made
12 a statement to that effect --

13 Q. Okay.

14 A. -- that Aquila was working with him on that.

15 Q. Okay. Just generally, the -- oh, I guess this
16 photograph is an aerial looking generally northwest; is that
17 correct?

18 A. Correct.

19 Q. Okay. Can we move onto the next photograph?

20 A. The next one is looking at the north. It shows
21 the two Bremer properties. The one in the top center is the
22 farm. The one off to the right is one of his relatives. The
23 arrow is pointing to a home that we understand was sold at
24 94 percent of the contractor price.

25 Q. Sold in March the note indicates?

1 A. Sold in March, yes.

2 Q. Is this an accurate representation of the
3 general area looking north?

4 A. Yes.

5 Q. Ask you to turn to the next photograph -- or
6 the next rendering, please.

7 A. The next one --

8 Q. What is this?

9 A. This is just looking east to the site. It
10 shows as you look east, you see the gas compressor, you see
11 the Bremer relative.

12 The next photo after that shows looking to the
13 south of the site. And there's a structure off to the left
14 and we just wanted to show that that's a barn down there.

15 Q. Okay. And in the foreground just before the
16 obvious construction area, that's the Southern Star compressor
17 station?

18 A. That is the Southern Star compressor station.
19 And if you look, there's like a little roadway that goes off
20 to the upper right of that and there's a dark kind of black
21 line that goes across. I'll point to it (indicating). This
22 is the berm that we've been discussing that's on the north
23 edge that's being constructed.

24 Q. Okay. I'd ask you to move onto the next
25 rendering, please. What is this rendering?

1 A. Mine says north. Does your say north?

2 Q. Yes. This one has an indication of north on
3 it. What does this illustrate? Is that another rendering or
4 a photograph of the South Harper facility?

5 A. This is a photograph of South Harper. And it
6 was taken from a perspective farther back.

7 Q. Okay.

8 A. The other previous photos were mainly of the
9 site. This one is moved back and it's looking to the north.

10 Q. Okay. And there are a number of residential
11 areas to the north that appear in the photograph; is that
12 correct?

13 A. Yes.

14 Q. Okay. I'd ask you to move to the next
15 photograph, which indicates I think there's a notation at the
16 top that says south?

17 A. Mine says south.

18 Q. What does that rendering illustrate?

19 A. This one's a little bit closer in, but it shows
20 south of the facility what the lay of the land looks like. In
21 the trees just below the pond there, there is a home there,
22 but that is the only thing in this photo.

23 Q. Okay. Ask you to move onto the next aerial
24 photograph, which is -- I believe has an indication of
25 southeast?

1 A. Southeast.

2 Q. What is this?

3 A. This one was taken from the southeast, one just
4 to show that area to the southeast, but at the same time some
5 of the houses in the foreground it's my understanding are
6 people that are part of the opposition, so we wanted to show
7 from that perspective.

8 Q. Okay. Do you know who those are, by any
9 chance?

10 A. I believe Nancy Manning's house is in this
11 photo, but I'm not for sure.

12 Q. Okay. That's fine.

13 There's another one after that with the
14 indication of east --

15 A. East.

16 Q. -- at the top?

17 Could you please explain to the Commission the
18 significance of this photograph?

19 A. This one just shows -- you can see from --
20 we're on the west side. You can see, I believe, Mark Andrews
21 house down to the right lower and his property there. As you
22 look to the east in the center upper portion of the picture,
23 there's a white line. That's the road, that's 243rd, that's
24 the road that we're in discussions with about blacktopping --

25 Q. Okay.

1 A. -- asphalt.

2 Q. And I believe there's yet one more, and I think
3 it's the last, with an indication of west at the top of it?

4 A. Yes. And that's just to show the lay of the
5 land to the west.

6 Q. Okay.

7 A. And we have poster boards of these if there's a
8 reason to place those up.

9 Q. Okay. Just bear with me here for a minute. I
10 think I'll be able to wrap up pretty quickly.

11 There's one last thing I want to ask you about
12 this. There's a tab in the binder which you have in front of
13 you which is indicated as Sound. Would you take a look at
14 those documents?

15 A. Yes.

16 Q. What is that document?

17 A. This is a -- a sound memo from Burns and
18 McDonnell. It just gives some basic information. It's not as
19 detailed as what Block Andrews spoke about earlier in his
20 testimony.

21 Q. Okay.

22 A. This is more something I would look at just to
23 get some general information.

24 Q. Were you here earlier today when Mr. Andrews
25 testified?

1 A. Yes.

2 Q. With respect to the information that's
3 contained in here about decibel sound levels, do you recall
4 the testimony that there's been an updated version or an
5 updated study that's been done that the numbers in the chart
6 that appear on the second page may be somewhat overstated?

7 A. Correct.

8 Q. Okay. I've just got one last question for you,
9 Mr. Hedrick.

10 A. Yes.

11 Q. There has been some testimony by the prior
12 witness about incidents which caused Aquila to consider
13 ramping up security at the South Harper site. Do you remember
14 that testimony?

15 A. Yes.

16 Q. And one of the incidents was the apparent
17 mailing of Chris-- what has been referred to as a Christmas
18 postcard?

19 A. Yes.

20 Q. Were you one of the recipients of a Christmas
21 postcard?

22 A. Yes.

23 Q. Did you think it was a laughing matter when you
24 received it?

25 A. No.

1 Q. Tell me about how it came about and what your
2 reaction to it was.

3 A. My wife was opening Christmas cards and I heard
4 her go, Eww, this is gross. And I -- I didn't know what she
5 was talking about so I went over there. As soon as I saw it,
6 I grabbed it out of her hand and put it in a plastic bag.

7 Q. Why did you do that, sir?

8 A. Didn't know if it had any substances, anything
9 like that on it.

10 Q. Okay.

11 A. Concerned about that.

12 Q. Okay. So your wife op-- or wife got the card?

13 A. Yes.

14 Q. Did any other family members see the card?

15 A. My daughter was in the room and I just told her
16 not to talk about it, because my daughter was wanting to know
17 what it was and I told her not to talk about it.

18 Q. What was your reaction to this?

19 A. I felt threatened. I felt threatened, just
20 concerned that maybe there was a substance. The words on it
21 said, you know, something to the effect -- I grabbed it
22 quickly and put it in a bag, but it was something like, From
23 our home to your home, something like that.

24 Q. So did you think it was a laughing matter?

25 A. No.

1 Q. And I take it you reported this incident?

2 A. I brought it the next day to work and gave it
3 to security.

4 MR. BOUDREAU: Okay. Thank you.

5 I think at this point what I'll do is I'm going
6 to offer Exhibit 112 into the record and tender the witness
7 for cross-examination.

8 JUDGE MILLS: Any objection to the admission of
9 Exhibit 112?

10 Hearing none, it's admitted.

11 (Exhibit No. 112 was received into evidence.)

12 MS. O'NEILL: Your Honor, I'm sorry. I have a
13 couple of -- maybe I can get a couple of questions answered on
14 voir dire then I won't have an objection.

15 JUDGE MILLS: Okay.

16 VOIR DIRE EXAMINATION BY MS. O'NEILL:

17 Q. Mr. Hendricks, and not that I'm asking for more
18 paper or anything, but my table of contents suggests that
19 there's three presentations in here and I only have two.

20 A. Correct.

21 Q. Where's the other one?

22 A. We have the other one here. In discussions I
23 could not -- for these presentations that are included, I have
24 documentation showing where I presented them on what dates. I
25 don't have that for this last one. The last one is entitled

1 Current. It has a few updated slides on it. I know it's been
2 used for various forums, but all of the meetings at Greenwood
3 have completed, our meetings with the city have completed. So
4 we're not really using it for public outreach or work with the
5 city.

6 I think I'll defer -- if a copy is requested,
7 we have the copies. We took them out just simply because I
8 didn't have the documentation of when I have presented it.
9 And other people used them to present, but I was -- I'm not
10 able to say when they used it so that's why it was taken out.

11 Q. Okay. Also, it appears in looking through this
12 folder that some of this information is already in evidence.
13 Are you aware of whether that's the case?

14 A. I believe that to be the case.

15 MS. O'NEILL: Your Honor, I would -- and then
16 just as an observation for Mr. Boudreau, I don't have that
17 last photograph you were discussing in the back section in my
18 copy, which I think is just an oversight.

19 I wouldn't object to the admission of the parts
20 of this presentation that are not already in evidence. I
21 think it's duplicative to put in -- I think there's -- there
22 are a bunch of press releases --

23 MR. BOUDREAU: I believe --

24 MS. O'NEILL: -- and a bunch of charts that are
25 already in evidence and I'm not sure I see the point of having

1 them in multiple times. So I would object to those, but just
2 as being duplicative.

3 JUDGE MILLS: I think in the interest of just
4 moving this thing along, I'm not going to make Aquila go
5 through and pull out the pieces of paper out of this notebook
6 that are duplicated elsewhere. I think that would take much
7 more time, so that objection is overruled.

8 Exhibit 112 is admitted.

9 (Exhibit No. 112 was received into evidence.)

10 JUDGE MILLS: And did you tender the witness
11 for cross-examination?

12 MR. BOUDREAU: If I didn't I do at this time.

13 JUDGE MILLS: Let's go ahead with
14 cross-examination. Ms. Shemwell.

15 CROSS-EXAMINATION BY MS. SHEMWELL:

16 Q. I'm Lera Shemwell. Good afternoon.

17 A. Good afternoon.

18 Q. I represent the Staff.

19 I would like to refer to the picture with
20 computer images on it that follows the map?

21 A. Yes.

22 Q. I believe it's right in front of the tab marked
23 Road?

24 A. Yes.

25 Q. The computer representations, do these include

1 the stacks?

2 A. Yes.

3 Q. And do they include the additional stack that's

4 been added for sound attenuation?

5 A. Yes.

6 Q. So how high are -- are these the stacks right

7 here, these three (indicating) --

8 A. Yes. You're pointing to the stacks.

9 Q. -- rectangles?

10 And how tall are those?

11 A. 70 feet.

12 Q. Can we get a sense of how -- from this that

13 this site has dropped down?

14 A. No.

15 Q. So we can't really feel that?

16 A. Correct.

17 Q. Where is the land that you cut into?

18 A. It's -- it's right about where the stacks are

19 sitting. It's very -- it's difficult to see.

20 Q. So it's in here (indicating)?

21 A. Yes. That's cut down 10 to 12 feet.

22 MS. SHEMWELL: For the record, would you note

23 that I'm just motioning to the area right below the computer

24 overlay.

25 BY MS. SHEMWELL:

1 Q. Is that a correct description --
2 A. Yes.
3 Q. -- to call it computer overlay?
4 And will this area then be for parking?
5 A. It can be parking, lay-down area.
6 Q. Lay-down?
7 A. Yes. If you have to -- we use lay-down area if
8 you bring in equipment in, have to lay something down until
9 you're using it on the turbines or --
10 Q. So it's not where you take naps or anything?
11 A. No.
12 Q. Okay. This is a paved area (indicating)?
13 A. There -- no. This is a computer rendering. So
14 what you're pointing to there will most likely be gravel.
15 There will probably be a paved area maybe on the outer ring of
16 that.
17 MS. SHEMWELL: If the record would reflect that
18 I've been pointing to what I would describe as a very light
19 purple area above the rendering of the compute-- the computer
20 rendering of the units.
21 That's all I have. Thank you.
22 JUDGE MILLS: Thank you.
23 Ms. O'Neill?
24 MS. O'NEILL: Thank you.
25 CROSS-EXAMINATION BY MS. O'NEILL:

1 Q. Mr. Hedrick, the first tab in your folder,
2 Exhibit 112, where it says Chronology, could you open that,
3 please?

4 A. Yes.

5 Q. I note that as I go down this list, I see a
6 couple of things that -- 4/26/04, target date for zoning
7 application?

8 A. Yes.

9 Q. Okay. Did you file the zoning application?

10 A. No.

11 Q. Was that part of your work pro-- work
12 assignment on this project, the zoning issues?

13 A. I was involved in that.

14 Q. Okay.

15 A. I was in meetings.

16 Q. Okay. May 17th, '04, special meeting, target
17 date for zoning. Do you see that?

18 A. Yes.

19 Q. Were you at that meeting?

20 A. Yes. These are -- these are weekly meetings
21 and nothing was changed on this. These are the subject
22 matters that -- that were brought up at the meeting. It
23 doesn't necessarily mean those things took place on those
24 dates. The chronology is to show here's what the discussion
25 items were to develop the project.

1 Q. So in the project development, at least in
2 April and May, there were at least some discussions about some
3 zoning applications and the need to determine zoning for the
4 site --

5 A. Correct.

6 Q. -- for your plant?

7 And just -- I don't want to go through all of
8 this, but it looks like in July there was a special docket
9 hearing, Cass County planning board, July 13th of '04. Do you
10 see that? Getting toward the bottom of that first page.

11 A. Correct.

12 Q. And then a July 19th, '04 meeting with
13 Blackwell to presume BZA strategy. What does BZA stand for?

14 A. Board of Zoning Adjustment.

15 Q. And that would be with the Cass County Board of
16 Zoning Adjustment?

17 A. Yes.

18 Q. And August 10th, '04 discussions with Peculiar
19 city manager regarding annexation/rezone. Do you see that?

20 A. Give me the date one more time.

21 Q. 8/10/04. I'm sorry, the second from the
22 bottom.

23 A. Yes.

24 Q. So at least through August of '04, there were
25 discussions regarding concerns about zoning for whatever --

1 for the property that was going to be developed with the
2 plant; is that correct?

3 A. That's correct.

4 Q. And were you involved in those discussions and
5 those meetings?

6 A. Yes. The one you're referring to on the 10th,
7 that's a bullet point list. What we did as we were moving
8 forward on that project, in particular on that one, was to ask
9 questions. It was not to confirm that we were doing anything
10 like that. It was to inquire about those sorts of things.

11 Q. Okay. And there were an application with the
12 planning and zoning authority in Cass County regarding zoning
13 for this site; is that correct?

14 A. For --

15 Q. For --

16 A. -- which site?

17 Q. -- for the property --

18 A. At which site?

19 Q. -- at issue in this case?

20 A. South Harper?

21 Q. I think you have an A and a B and it was for
22 one of them. And I'm a little bit confuse about what tract is
23 A and what tract is B. Maybe you can clarify that for me.

24 A. I'm not sure either.

25 Q. Okay. There was a zoning application at one

1 point in time --

2 A. Okay.

3 Q. -- was that correct? Were you involved --

4 A. Which site are you --

5 Q. Well, I guess I don't know. I'm asking you.

6 MR. BOUDREAU: I'm going to object. I think

7 the question goes not to A and B, but to South Harper versus

8 Camp Branch. Maybe there's some clarification there.

9 MS. O'NEILL: I'm looking at documents that

10 have A and B on them, so --

11 BY MS. O'NEILL:

12 Q. Are you aware of a zoning application with Cass

13 County related to this project?

14 A. Not for South Harper.

15 Q. But for the other tract?

16 A. Correct.

17 Q. Okay. And that was withdrawn?

18 A. I believe it's been withdrawn.

19 Q. Were you part of the decision-making team that

20 decided not to seek any rezoning or approval or variance

21 regarding the South Harper tract?

22 A. I was involved in that.

23 Q. Okay. And that land's currently zoned

24 agricultural; is that correct?

25 A. To my knowledge.

1 Q. And the plant's not an agricultural use.

2 Correct?

3 A. I'm not sure -- I'm not sure what --

4 Q. Is the plant an agricultural use?

5 A. I don't know.

6 Q. Okay. Did you have any reason to believe that
7 the power plant was consistent with the agricultural zoning on
8 that tract?

9 A. My understanding is that's pretty -- that's
10 standard and has taken place in other locations.

11 Q. Agricultural zoning has taken place in other
12 locations?

13 A. Plants have been put in under agricultural --
14 under the zoning of agricultural.

15 Q. All right. But you don't know whether or not
16 in Cass County power plants are considered an agricultural
17 use, or do you?

18 A. I don't know.

19 Q. Okay. Since Mr. Boudreau brought it up, you
20 said that there was a Christmas card that came to your house
21 that caused you some concern?

22 A. Correct.

23 Q. It was a Christmas card? It was a Christmas
24 card?

25 A. It came with my Christmas cards. Like I say, I

1 grabbed it quickly, put it in a plastic bag and did not deal
2 with it. It may have had a Christmas emblem on it or
3 something, may have said Merry Christmas. What I do remember
4 is that it said something to the effect, From our home to your
5 home.

6 Q. You didn't bring a copy of that card?

7 A. I gave it to security.

8 Q. Have you seen it since?

9 A. No.

10 Q. You don't know what it says other than this,
11 From our home to yours?

12 A. Correct.

13 Q. Have you ever seen any Christmas cards with
14 that sort of a greeting, you know, From us to us, From our
15 family to your family, From our home to yours?

16 A. Possibly, yeah.

17 Q. And you do not see any message on there that
18 said that you were being threatened in any way?

19 A. I felt threatened.

20 Q. There was no message that threatened you; is
21 that correct? There were no words on there that suggested
22 that you would come to harm?

23 A. The words that were on there made me think that
24 I could come to harm, correct.

25 Q. What words were those?

1 A. From our home to your home. It made me think
2 they're coming to my home.

3 Q. Okay. And why would that threaten you?

4 A. It did.

5 Q. Can you explain why you felt threatened?

6 A. Maybe from some of the actions I saw at
7 meetings.

8 Q. You talked a little bit about some meetings
9 that you had. And the meetings that you're talking about,
10 those were the ones where there were a lot of public
11 involvement and a lot of questions; is that correct?

12 A. That is correct.

13 Q. Were those questions problematic for you?

14 A. The questions were not problematic.

15 Q. Were you able to answer those questions?

16 A. In general, was able to answer questions.

17 Q. These questions -- were these questions out of
18 the ordinary from other meetings you may have had with other
19 people when you've gone out to meet with the public?

20 A. Could you give a specific?

21 Q. I don't know what other meetings you've had so
22 I can't, no.

23 A. We had several different meetings. Some were
24 at Greenwood, so they were in different forums. Some of them
25 were at City of Peculiar at the Lion's Club, that sort of

1 thing. So there were different venues. We used different
2 methods to answer the questions. At Greenwood we used posters
3 and we had experts at each of the positions trying to describe
4 to the people whatever their concerns were, trying to answer
5 those questions.

6 Q. And you did that at all the meetings?

7 A. Correct.

8 Q. Were the concerns that were being voiced
9 concerns about the quality of life that these people would
10 experience once your power plant was in operation?

11 A. There were concerns of that, yes.

12 Q. I think we've discussed in this hearing already
13 concerns about noise. Right?

14 A. Yes.

15 Q. And pollution. Right?

16 A. Yes.

17 Q. And some concerns about possible problems with
18 property values?

19 A. I don't know specifically. I don't remember
20 hearing about that.

21 Q. You did specifically --

22 A. From me, yes.

23 Q. You did specifically include in your
24 Exhibit 112 a photograph that points out a house --

25 A. From me, yes.

1 Q. -- that's close to the -- okay.

2 So are those the kinds of questions you would
3 consider to be unusual for residents in an area where you were
4 going to build a power plant?

5 A. Those types of questions?

6 Q. Yeah.

7 A. No. Those are questions we came prepared to
8 answer.

9 Q. Were there questions that were asked that you
10 were not prepared to answer?

11 A. I don't recall.

12 Q. What questions were asked at these meetings or
13 statements made at these meetings caused you to be so
14 concerned when you saw the Christmas card?

15 A. Probably was not the actual questions. It was
16 the atmosphere, people standing, yelling, screaming, the need
17 for security.

18 Q. Were you ever physically threatened at any of
19 these meetings?

20 A. By a person that came up and threatened me or
21 just did I ever feel threatened?

22 Q. By a person that came up and verbalized a
23 threat to you.

24 A. No one came up and verbalized a specific threat
25 to me.

1 Q. Did anyone verbalize a specific threat to any
2 person who worked for Aquila?

3 A. Not to my knowledge.

4 Q. Did anyone strike you at any of these meetings?

5 A. Yes.

6 Q. Okay. Please describe that.

7 A. I was at one of the meetings and a person
8 intentionally bumped into me.

9 Q. Okay. Please describe this bumping into and
10 tell me why you thought it was --

11 A. It was not -- it was not physically aggressive.

12 Q. Was it an accident?

13 A. It was just -- I don't know.

14 Q. Okay. Let me rephrase the question, because I
15 think you misunderstood my question.

16 A. Sure.

17 Q. When I think of striking, I think of a
18 deliberate --

19 A. No.

20 Q. -- blow.

21 A. No.

22 Q. No deliberate blows to you?

23 A. Correct.

24 JUDGE MILLS: Can I ask what the relevance of
25 this line of questioning is?

1 MS. O'NEILL: I'm trying to understand why he
2 felt so threatened when he got a Christmas card, but I can
3 move on.

4 JUDGE MILLS: I understand that's what you're
5 trying to do, but why is that relevant?

6 MS. O'NEILL: I'm cross-examining about
7 something that came out on direct, but I'll move on.

8 JUDGE MILLS: Okay. Great.

9 MS. O'NEILL: And actually I don't have any
10 further questions.

11 JUDGE MILLS: Thank you.

12 Mr. Comley.

13 MR. COMLEY: Ms. Martin will be conducting the
14 cross-examination of this witness.

15 CROSS-EXAMINATION BY MS. REAMS MARTIN:

16 Q. Good afternoon, Mr. Hedrick.

17 A. Good afternoon.

18 Q. It's good to see you again.

19 A. Yes.

20 Q. I'm Cindy Reams Martin. I represent Cass
21 County. And we met before when you attended the trial
22 proceedings in Cass County in front of Judge Dandurand; is
23 that correct?

24 A. That's correct.

25 Q. I want to ask you some questions, if I can,

1 with respect to your testimony and with respect to your
2 participation in the decision to move this potential plant
3 location from the Camp Branch Energy Facility to the Harper
4 plant location. Can we talk about those things?

5 A. Yes.

6 Q. First, you mentioned that you have been the
7 generation services manager for Aquila for over 20 years; is
8 that correct?

9 A. I've been with Aquila for 20 years. I've been
10 generation services manager since approximately 2000.

11 Q. And as I understand the responsibilities you've
12 described, that includes a wide variety of duties that would
13 address the generation facilities for Aquila?

14 A. Just about everything in generation, yes.

15 Q. And by generation as distinguished from
16 transmission, we're talking about plants versus power lines;
17 is that correct?

18 A. In general, yes.

19 Q. Who's Keith Stamm?

20 A. Chief operating officer for Aquila.

21 Q. And in the hierarchy at Aquila, where does he
22 rate in comparison, for example, to you?

23 A. Several -- several levels above me. Maybe
24 four.

25 Q. In the hierarchy at Aquila, where would

1 Mr. Stamm rate in relation to Mr. Empson, who has testified in
2 these proceedings?

3 A. I believe Mr. Empson reports directly to Keith
4 Stamm.

5 Q. Now, you have testified that a part of your job
6 duties include preparing what you have called self-build
7 analyses; is that correct?

8 A. Correct.

9 Q. And those are prepared in connection with
10 decisions to be made by Aquila with respect to constructing
11 power plants or in lieu of constructing power plants, perhaps
12 buying power from other facilities; is that correct?

13 A. Correct.

14 Q. And you would have prepared such a need
15 analysis -- or excuse me.

16 You would have prepared such a self-build
17 analysis in connection with the need analysis that Mr. Boehm
18 has testified about in these proceedings; is that correct?

19 A. Correct.

20 Q. Did you also prepare any type of self-build
21 analysis at the time Aquila, through its non-regulated side,
22 determined to participate in construction of the Calpine
23 plant, the Aries plant?

24 A. No.

25 Q. Did you play any role whatsoever in the

1 decision by Aquila on its regulated or non-regulated side to
2 participate in the construction of the Aries plant?

3 A. No.

4 Q. Do you have any knowledge with respect to the
5 construction of that plant?

6 A. Just general.

7 Q. You're aware that the plant was constructed on
8 the merchant side of Aquila?

9 A. Correct.

10 Q. And you're aware that that construction was in
11 approximately 1999?

12 A. Correct.

13 Q. And you're aware then that on the regulated
14 side in approximately 1999, Mr. Boehm testified that Aquila
15 evaluated power purchase contracts that included a proposal
16 from the Aries plant?

17 A. I believe that to be the case.

18 Q. And so you are aware that at about the same
19 time the Aries plant was being constructed, Aquila was looking
20 at, on its regulated side, acquiring power from that plant; is
21 that correct?

22 A. You're talking about 1999?

23 Q. Yes, sir.

24 A. I didn't have any involvement at that time.

25 Q. But you did have an involvement in beginning --

1 well, let me ask you this. When did you prepare your
2 self-build analysis with respect to the possible construction
3 of a power plant on the regulated side?

4 A. I've prepared several different proposals over
5 the last -- since probably 2001, 2002, but I don't have the
6 exact date.

7 Q. And how many different proposals have you
8 prepared?

9 A. Maybe two.

10 Q. Were they both --

11 A. Maybe three.

12 Q. -- for peaking facilities?

13 A. My proposals probably had a combination of
14 different proposals, different offerings.

15 Q. And explain that to me, please.

16 A. There would probably be peaking facilities that
17 would be in the proposal, peaking facilities that use
18 different types of equipment, different sizes. And then some
19 of those proposals could have combined cycle that would either
20 use the smaller gas turbines or maybe a larger. I don't
21 believe I ever presented one that had F-technologies such as
22 Aries facility, but -- I'm not 100 percent sure, but I don't
23 believe I ever prepared one like that.

24 Q. And I think you said you might have prepared
25 two or three such proposals?

1 A. Over the last -- since I've been generation
2 services manager, I would say that would be true.

3 Q. Who directs you to prepare those proposals?

4 A. Glenn Keefe.

5 Q. And who is Glenn Keefe?

6 A. VP of Missouri operations.

7 Q. To your knowledge, who directs Mr. Keefe to
8 have you prepare those proposals?

9 A. Currently Jon Empson.

10 Q. And would Mr. Stamm play a role in that
11 process?

12 A. He could be involved.

13 Q. In connection with the preparation of the
14 self-build analyses, would you have been directed to evaluate
15 use of existing turbines owned on either the regulated or
16 non-regulated side of Aquila?

17 A. Probably -- if not -- not on non-regulated, but
18 on regulated I would be directed.

19 Q. Well, let me ask the question a different way,
20 Mr. Hedrick. In any of the self-help analyses you've
21 prepared, have you assumed that Aquila owns three turbines
22 similar to those being utilized at the South Harper facility?

23 A. Self-build --

24 Q. Yes, sir.

25 A. -- analysis?

1 Yes.

2 Q. How many of your self-build analyses made that
3 assumption?

4 A. I don't know the exact number. At least one.

5 Q. From what source did you acquire information
6 that Aquila had access to three turbines it desired to use in
7 one of your self-build analyses?

8 A. I would say multiple sources. It was -- it was
9 kind of common knowledge that there were turbines available.

10 Q. And it was common knowledge. When you say
11 that, what do you mean?

12 A. Common knowledge?

13 Q. Yes, sir.

14 A. Kind of in the industry you know where there
15 are turbines that are available. I knew those were available,
16 I knew there were turbines available from, you know, different
17 locations. There's websites.

18 Q. The three turbines we're talking about when you
19 say you knew they were available, from whom did you believe
20 they would be available?

21 A. I'm on the regulated side and they would be
22 available from a regulated entity if I were to use them.

23 Q. Okay. We're talking in riddles here,
24 Mr. Hedrick. And I'm going to get straight to the point.
25 Were you aware that at the time you were preparing self-build

1 analyses for a peaking plant that incorporated three turbines
2 that Aquila had access to, that, in fact, those turbines were
3 owned by the non-regulated side of Aquila in an entity known
4 as AEQ Limited?

5 A. For me, it would be just the potential to use
6 three turbines. That's all I would -- would use for my
7 analysis.

8 Q. And my question was, were you aware that those
9 three turbines were already owned, in effect, by Aquila on its
10 non-regulated side?

11 A. I knew they owned three turbines, yes.

12 Q. And you were aware, in fact, that in 19--
13 excuse me, in 2000, Aquila had, in fact, on its non-regulated
14 side acquired a number of turbines from Siemens-Westinghouse,
15 I believe?

16 A. In general from Siemens-Westinghouse?

17 Q. Yes, sir.

18 A. Yes.

19 Q. And you were aware that at some time after that
20 point, Aquila made a decision that it wanted to exit the
21 merchant operations that it had entered into; is that correct?

22 A. That is correct.

23 Q. And that involved disposing of assets that were
24 maintained on the non-regulated side; is that correct?

25 A. That would be someone from that side to answer.

1 Q. And, in fact, you're aware that a number of the
2 turbines that had been purchased by Aquila in 2000 on the
3 non-regulated side were sold. All but these three; is that
4 correct?

5 A. Could you be specific on which ones were sold?

6 Q. Did Aquila sell all of the turbines it had
7 acquired in 2000 except for the three that you were told could
8 be available for a peaking plant?

9 A. I'm not sure I know the answer to that
10 question.

11 Q. You heard Mr. Stamm's testimony during the
12 trial on the subject, didn't you, Mr. Hedrick?

13 A. At -- in front of Judge Dandurand?

14 Q. Yes, sir.

15 A. Yes.

16 Q. And you heard Mr. Hedrick testify that, in
17 fact, Aquila had disposed of all of the turbines except the
18 three that it desired to transfer from the non-regulated side
19 to the regulated side?

20 A. Mr. Stamm?

21 Q. Yes, sir.

22 A. I'm not sure if he used the word "disposed."

23 Q. Were you instructed in preparing your
24 self-build analyses to place a value or a cost on these three
25 turbines with respect to working up the numbers?

1 A. I was not instructed. I know in general what
2 the values are. We used a -- a thermal flow modelling program
3 that gives us values. So a combination of those things is
4 what I used for my evaluation.

5 Q. And do you know, as you sit here today, what
6 value you placed on those three turbines?

7 A. I'd have to look at my analysis.

8 Q. If Mr. Stamm testified during the trial before
9 Judge Dandurand that Aquila placed a value or a cost on those
10 turbines between \$67 and 70 million, would that be consistent
11 with the manner in which you costed those items in your
12 self-build analyses?

13 A. I would say that's in the range.

14 Q. And, in fact, come about 2002, 2003, when you
15 started preparing these self-build analyses, had Aquila made
16 the decision that it wanted to exit the merchant side of its
17 business?

18 A. When I started preparing the self-build --

19 Q. Yes, sir.

20 A. -- analysis, had they decided to exit?

21 Q. Yes, sir.

22 A. In 2003?

23 Q. Yes, sir.

24 A. That's my understanding.

25 Q. And so without moving these turbines from the

1 non-regulated side to the regulated side, there would have
2 been no use for those turbines. Is that a fair assumption?

3 A. I can't answer for them.

4 Q. Now, I want to talk about the chronology that
5 is included in your Exhibit 112. And it's behind the first
6 tab, Chronology. And before I talk about some of the specific
7 dates, let me ask you this question. I think you testified on
8 direct that a part of your job is to conduct these self-build
9 analyses and then when you are directed that you're to proceed
10 with one of these proposals, you sort of take over the
11 operational component of construction and implementation of
12 that plant. Is that a fair summary?

13 A. I could be the project manager or they could
14 assign it to someone else if they desired.

15 Q. Okay. With respect to the desire to construct
16 a peaking plant in Cass County, when did you finalize and
17 present your self-build analysis for a plant of that nature?

18 A. I would have to look. I don't have that in
19 front of me.

20 Q. Was it 2004?

21 A. I would say prior to that, but I would have to
22 look.

23 Q. How much prior to the efforts that are
24 chronicled in this chronology would it have been, Mr. Hedrick,
25 that you presented a proposal for a self-build of a peaking

1 plant?

2 A. I would have to look at the document.

3 Q. Mr. Boehm testified in these proceedings that a
4 part of the process that leads us here today was an analysis
5 that began as early as 2002 when Aquila was reporting to Staff
6 that they desired to build a plant. Do you recall that
7 testimony?

8 A. Yes.

9 Q. And that there was some refinement of that
10 proposal based upon Staff comment. Do you recall that
11 testimony?

12 A. Yes.

13 Q. And that in January of 2003, there was a
14 refined presentation to Staff with respect to the desire to
15 build a plant. Do you recall that testimony?

16 A. Yes.

17 Q. Would that testimony from Mr. Boehm have been
18 in any way dependent upon or relying upon your self-build
19 analysis?

20 A. I don't know.

21 Q. If Mr. Boehm testified, and it is my
22 recollection that he did, that you would have prepared a
23 self-build analysis as a part of that process he described,
24 would you disagree with that testimony?

25 A. I would not.

1 Q. So if, in fact, by January of 2003 Aquila had
2 made the decision that it needed to build a peaking plant in
3 order to meet need in 2005, you'd agree with me quite a long
4 time passed up to the first date chronicled in your
5 Exhibit 112, a date of March 15th, 2004?

6 A. It was two years, yes.

7 Q. And the first thing chronicled here is a
8 tentative agreement on Waltmire land. Was that the Camp
9 Branch Energy Facility land?

10 A. Correct.

11 Q. And so as early as March of '04, Aquila had
12 made a decision about a site location for a peaking plant. Is
13 that a fair understanding?

14 A. That was a site that Aquila was looking at,
15 yes.

16 Q. What role did you play in evaluations of
17 potential sites?

18 A. At this point, not as extensive role, but I was
19 involved in this site -- site work.

20 Q. Do you know how many sites were reviewed before
21 the Camp Branch Energy Facility site was selected?

22 A. Prior to Camp Branch?

23 Q. Yes, sir.

24 A. I don't know prior to Camp Branch, but
25 Mr. Chris Rogers is going to go into great detail --

1 Q. Do you --

2 A. -- on site selection after me.

3 Q. I'm sorry for interrupting you. I apologize.

4 A. Yes.

5 Q. Do you know if prior to March of '04, at any

6 time anyone on behalf of Aquila evaluated the South Harper

7 plant site?

8 A. Prior to that?

9 Q. Yes, sir.

10 A. No.

11 Q. And so after evaluating independently a number

12 of different sites, which Mr. Rogers will tell us about, for

13 whatever reasons, Aquila settled on the Camp Branch Energy

14 Facility site; is that correct?

15 A. Could you say that one more time?

16 Q. After evaluation of a number of sites, which

17 did not include the South Harper location, Aquila determined

18 that it wanted to build the plant at the Camp Branch Energy

19 Facility?

20 A. Correct.

21 Q. And it began the process of undertaking to do

22 what needed to be done in order to build a plant at that

23 location in approximately March of 2004?

24 A. There's a lot of steps, yes. They started

25 those.

1 Q. And in March of 2004, was the plan of Aquila to
2 bring a peaking plant online by June or July of 2005?

3 A. Yes, there was a plan.

4 Q. And was that the date that Aquila planned to
5 bring the plant online?

6 A. In June of --

7 Q. Or July of 2005. Was that the target,
8 Mr. Hedrick?

9 A. Yes.

10 Q. Now, Public Counsel also already pointed out,
11 but I want to touch on this from the county's perspective. In
12 April of '04 there is an indication on this chronology of a
13 target date for zoning application.

14 A. Correct.

15 Q. And that refers to a date that was being
16 targeted by Aquila to file a rezoning application with Cass
17 County, I presume?

18 A. Once again, these are notes as we did project
19 development. A lot of times this is -- this is a note for
20 discussion. So I can't say for sure that that's -- that was
21 something that had been approved to move forward on.

22 Q. But you do know that this chronology is a
23 document that was in evidence -- or an item marked as evidence
24 from which you testified?

25 A. Correct.

1 Q. And this chronology was something you testified
2 was prepared by you and by your team members; is that correct?

3 A. That's correct.

4 Q. And so it would appear to me with the language
5 selected, that your target date for making application for
6 rezoning in Cass County was April 26th of 2004?

7 A. Correct.

8 Q. And I presume that was a rezoning application
9 for the Camp Branch Energy Facility; is that correct?

10 A. It would have been in conjunction with that.

11 Q. Okay. The next entry that relates to zoning is
12 on May the 17th, '04. And, again, I believe you testified
13 this would have been a meeting -- a special meeting target
14 date for zoning. Do you know what that refers to, special
15 meeting target date for zoning?

16 A. I'm not sure if this would have been an
17 internal or external meeting.

18 Q. And by "external," what could you be referring
19 to?

20 A. If there was something planned with Cass County
21 or someone like that.

22 Q. What does the entry 5/24/04, Blackwell legal to
23 decide zoning or special use permit, refer to?

24 A. With any project, you lay out everything that
25 you think needs to happen in these projects. And that was

1 part of a meeting and correspondence to determine what needed
2 to take place for the project.

3 Q. And specifically what I'm asking you about,
4 Mr. Hedrick, Blackwell was supposed to give you some advice at
5 least targeted by May of 2004 on the 24th of that month to
6 decide whether to seek rezoning of the Camp Branch Energy
7 Facility or a special use permit; is that correct?

8 A. With any project, that's what you do. Your
9 legal counsel advises you on, you know, next steps as you move
10 forward on a project.

11 Q. And my point is, there is a difference, is
12 there not, between rezoning and a special use permit --

13 A. Correct.

14 Q. -- you're familiar with that?

15 Rezoning literally rezones land to a new
16 classification consistent with the proposed use. Correct?

17 A. Correct.

18 Q. A special use permit permits, under certain
19 conditions, a nonconforming use on land not classified for
20 that use. Correct?

21 A. That is correct.

22 Q. And so the factors to be evaluated by local
23 government officials in determining whether to issue a special
24 use permit or to rezone are different, aren't they?

25 A. That's correct.

1 Q. And a part of what your counsel was being asked
2 to decide is whether Aquila should seek to rezone the Camp
3 Branch Energy Facility or seek to secure a special use permit;
4 is that correct?

5 A. That was part of that process.

6 Q. And so at that point in time based upon this
7 chronology, Aquila was intending to make application to Cass
8 for some sort of change in zoning or some sort of permission
9 to construct a nonconforming use on the Camp Branch Energy
10 Facility?

11 A. The desire was to work with Cass County, yes.

12 Q. And, in fact, on the 19-- excuse me, June of
13 2004 an application for a special use permit was, in fact,
14 filed; is that correct?

15 A. I don't have that on here, but it could be.

16 Q. I noted that you didn't have that on here and I
17 was kind of wondering why that was omitted?

18 A. Once again, the chronology was put in there
19 because I knew there were going to be a lot of dates asked.
20 This is something -- a running tab I've kept since this
21 3/15/04. And these are discussion items. And I clarified at
22 the beginning that they may not be exactly happening on the
23 right dates.

24 Q. Gotcha. You are familiar though that in June
25 of 2004 an application was filed for the Camp Branch Energy

1 Facility for a special use permit for this peaking plant that
2 Aquila desired to build; is that correct?

3 A. Correct.

4 Q. And you were aware that as a result of that
5 application -- well, let me ask you this question,
6 Mr. Hedrick. What role would you have played in preparing for
7 presentations or public hearings required to support an
8 application for special use permit?

9 A. I didn't have a lot of involvement. Of course,
10 some of my documents were used in preparing that. You know,
11 legal counsel gave that presentation in Cass County.

12 Q. And you know what? I misspoke. If you look at
13 your chronology on June the 16th, 2004, do you see reference
14 to the fact that a special use permit was filed on that date?

15 A. Yes.

16 Q. So, in fact, it is in your chronology that you
17 applied to the county on that date; is that correct?

18 A. Correct.

19 Q. And so at some point there would have been a
20 public hearing conducted with respect to that special use
21 permit request?

22 A. Correct.

23 Q. And you're aware that that public hearing was
24 conducted on the 13th of July, 2004, as indicated on your
25 chronology?

1 A. Correct.

2 Q. And did you attend that public hearing?

3 A. Yes.

4 Q. And you heard the testimony of a variety of
5 people, including an engineer commissioned by the county from
6 Boucher Willis (ph.); is that correct?

7 A. Correct.

8 Q. And you heard the testimony of Boucher Willis
9 that though they generally favored the plant, they preferred
10 that you seek rezoning and not a special use permit?

11 A. Correct.

12 Q. And as a result, the engineer recommended
13 denial of the special use permit; is that correct?

14 A. I believe so.

15 Q. And as a result, the public hearing resulted in
16 the Planning and Zoning Board recommending denial of the
17 application?

18 A. Correct.

19 Q. After the public hearing before the planning
20 board, there would have been another step. A hearing before
21 the Board of Zoning Adjustments; is that correct?

22 A. I believe so.

23 Q. And there was a hearing, in fact, scheduled
24 before the Board of Zoning Adjustments in August of that same
25 year, 2004; is that correct?

1 A. I'll have -- I'll have to take your word for
2 that.

3 Q. Were you aware that at the request of someone
4 on behalf of Aquila, that meeting was postponed indefinitely?

5 A. I believe that to be the case.

6 Q. And, in fact, the application for special use
7 permit for the Camp Branch Energy Facility was not withdrawn
8 until January 11th after the trial before Judge Dandurand.
9 Are you aware of that fact?

10 A. I'm not 100 percent sure on the exact date, but
11 that sounds like the right time frame.

12 Q. Let's talk then about what was going on in
13 August of 2004 that would have led to Aquila essentially
14 abandoning its special use permit application. Can we do
15 that?

16 A. Yes.

17 Q. We know what was going on during that time was
18 that Aquila got approached by Peculiar -- the City of
19 Peculiar; is that correct?

20 A. Correct.

21 Q. And they were approached by Mike Fisher, who's
22 the city administrator?

23 A. Correct.

24 Q. Is Mr. Fisher in the room today?

25 A. Yes.

1 Q. Has he been attending these proceedings since
2 their beginning yesterday?

3 A. Yes.

4 Q. And Mr. Fisher is the city administrator for
5 the City of Peculiar?

6 A. To my knowledge.

7 Q. Who did he approach at Aquila, do you know?

8 A. I believe it was Mark Dawson, economic
9 development.

10 Q. And as a result of that meeting, what happened?

11 A. Myself and -- well, first, we -- we took a look
12 at the area, once again, referring back to the infrastructure
13 site selection criteria, noted it had a lot of desirable
14 infrastructure. And as you can see in the chronology, a
15 series of meetings started to discuss the potential to do a
16 project.

17 Q. I want to back up for just a minute. Aquila
18 had already done its own independent site selection evaluation
19 process; is that correct?

20 A. There had been a site selection document, yes.

21 Q. And as a result of that, it had selected the
22 Camp Branch Energy Facility location. Correct?

23 A. Correct.

24 Q. It had already invested quite a lot of time and
25 energy in making application for a special use permit from the

1 county. Correct?

2 A. Correct.

3 Q. And then it gets a phone call from the City of
4 Peculiar and decides to change locations?

5 A. Site selection is kind of a fluid dynamic study
6 that we do.

7 Q. And isn't the reality, Mr. Hedrick, that the
8 City of Peculiar wasn't just saying, Why don't you come look
9 at this land. The City of Peculiar was telling you, Hey,
10 we've got a deal for you, you come buy land close to our city
11 limits, we'll annex you, we'll provide you Chapter 100
12 financing and you won't have all of this public outcry? Was
13 that close?

14 A. Maybe some of those things are true.

15 Q. I'm going to hand you an exhibit.

16 MS. REAMS MARTIN: If I could have this marked,
17 please.

18 JUDGE MILLS: Yes. I think we're at 113.

19 (Exhibit No. 113 was marked for
20 identification.)

21 BY MS. REAMS MARTIN:

22 Q. Mr. Hedrick, I've handed you Exhibit No. 113.
23 Do you recognize this exhibit?

24 A. Yes.

25 Q. This is an e-mail communication -- it's

1 actually two e-mail communications. The first is at the
2 bottom of the page and it is to Mike Fisher from you. The
3 second is an e-mail communication from Mike Fisher to you; is
4 that correct?

5 A. That's what it appears to be, yes.

6 Q. And the date of this e-mail communication, the
7 first one from you to Mr. Fisher, is July 28th, 2004. The
8 responsive e-mail is July 29th of 2004. Is that correct?

9 A. Correct.

10 Q. And you see reference in the first e-mail,
11 which appears at the bottom of the first page, to a meeting
12 that was held between Aquila representatives and the City of
13 Peculiar; is that correct?

14 A. Could you say that one more time, please?

15 Q. There is reference in the July 28th e-mail to a
16 meeting between Aquila representatives and representatives of
17 the City of Peculiar.

18 Mike, Aquila appreciated meeting with you
19 today.

20 A. Yes.

21 Q. Okay. And there is a discussion of the items
22 that were covered during the meeting and Aquila's assurance
23 that those items would be maintained as confidential; is that
24 correct?

25 A. Could I look at that real quickly?

1 Q. You certainly can.

2 A. I'm ready.

3 Q. There is discussion of the items that were
4 addressed during that meeting in this e-mail; is that correct?

5 A. Correct.

6 Q. There was a particular piece of property that
7 the City of Peculiar initially proposed to Aquila for a plant
8 location. Correct?

9 A. Correct.

10 Q. And that site was located at YY and South
11 Harper Road?

12 A. Correct.

13 Q. That is not the South Harper plant location, is
14 it?

15 A. That is correct.

16 Q. Because you ultimately learned that either that
17 landowner was not interested in selling to Aquila or, in fact,
18 had sold the property to somebody else; is that correct?

19 A. I spoke to the landowner and he was not
20 interested in selling.

21 Q. And the criteria at this point that the City of
22 Peculiar is looking at with respect to properties it is
23 proposing to Aquila would have related to the proximity of
24 those properties to the City of Peculiar as to make them
25 eligible for voluntary annexation. Correct?

1 A. That is correct.

2 Q. And so the primary driving force at this point,
3 Mr. Hedrick, was to make sure that Aquila found a site that
4 the City of Peculiar could voluntarily annex?

5 A. I would say we were doing site selection in
6 that area.

7 Q. And you certainly were not going to pick a site
8 that would not be eligible for voluntary annexation?

9 A. I can't say that for definite.

10 Q. It is a fair statement that at this point in
11 time the City of Peculiar was addressing voluntary annexation
12 and Chapter 100 financing with you?

13 A. Correct.

14 Q. Did you discuss the fact that you were
15 considering moving the plant location in July of 2004 with
16 Cass County officials?

17 A. Did we discuss it with Cass County officials?

18 Q. Yes, sir.

19 A. No.

20 Q. Was the intent -- well, strike that.

21 MS. REAMS MARTIN: Your Honor, I move admission
22 of Exhibit 113.

23 JUDGE MILLS: Are there any objections to the
24 admission of Exhibit 113?

25 Hearing none, it is admitted.

1 (Exhibit No. 113 was received into evidence.)

2 MS. REAMS MARTIN: Thank you.

3 BY MS. REAMS MARTIN:

4 Q. I want to talk about the e-mail from

5 Mr. Fisher back to you at the top of Exhibit 113.

6 A. Okay. Can I read it?

7 Q. Yes, you may.

8 A. I've read it.

9 Q. In the response from Mr. Fisher back to you,
10 again there is discussion about a proposed way of going about
11 pitching this deal. Is that a fair summary?

12 A. I'm not sure I see pitching the deal.

13 Q. That's my characterization, in all candor. But
14 basically there's a discussion about the way that you all are
15 going to go about getting this deal presented to the city
16 officials and approved?

17 A. He's written about five paragraphs of things
18 that need to take place if it's going to continue on, yes.

19 Q. And specifically in the second full paragraph
20 that begins with the word "hopefully," Mr. Fisher writes,
21 Hopefully, with this approach the joint support of the
22 Planning and Zoning Commission and the Board of Aldermen will
23 be solidified and all their questions and concerns answered.

24 Do you see that?

25 A. Yes.

1 Q. And so the intent of Aquila was, in fact, to
2 comply with whatever requirements the City of Peculiar might
3 have had with respect to zoning or land use regulations; is
4 that correct?

5 A. This is from Mike Fisher. I mean --

6 Q. Well, let me state the question another way.
7 The City of Peculiar expected Aquila to comply with all
8 requirements that might be necessitated by their land use
9 regulations as to require Planning and Zoning Commission and
10 Board of Aldermen approval?

11 A. It is discussed in this e-mail.

12 Q. Let me hand you what has been -- or what I
13 would like to mark, if possible, Exhibit 114.

14 (Exhibit No. 114 was marked for
15 identification.)

16 THE WITNESS: Is that for me to look at?

17 BY MS. REAMS MARTIN:

18 Q. Yes. Thank you, Mr. Hedrick.

19 Could you take a look at Exhibit 114 for me,
20 please?

21 A. Yes. Do you want me to read it to myself?

22 Q. That would be fine.

23 A. I've read it.

24 Q. This is an e-mail from you to Mr. Keefe,
25 Mr. Lutes and others with Aquila; is that correct?

1 A. That is correct.

2 Q. And the e-mail is dated August the 4th, 2004
3 and references a meeting that is going to be held -- or was
4 held, in fact, that same day; is that correct?

5 A. Correct.

6 Q. And during the meeting that you and Mark Dawson
7 had with Mike Fisher, the city administrator for Peculiar, a
8 number of subjects were discussed, but I want to focus on two.
9 First, in your e-mail you indicate that Mike Fisher, the city
10 administrator, has identified other properties in the area
11 that Aquila might acquire?

12 A. Correct.

13 Q. Is Mr. Fisher a part of the site development
14 team for Aquila?

15 A. A part of the team?

16 Q. Yes, sir.

17 A. He's part of maybe the process.

18 Q. Was he a part of the site selection team for
19 Aquila?

20 A. No.

21 Q. And you would assume Mr. Fisher was looking for
22 properties that could be eligible for voluntary annexation?

23 A. As part of the project he wanted to develop
24 with the city.

25 Q. So basically I'm taking from these e-mails that

1 at this point Mr. Fisher was more involved in selecting the
2 site than Aquila.

3 A. Not as far as Aquila's concerned.

4 Q. Well, the e-mail also talks about another issue
5 that I want to point out. And it's toward the bottom of this
6 e-mail and it's in the bullet point or where the asterisk
7 indicates rezoning details. Do you see that reference?

8 A. Yes.

9 Q. And this is your e-mail to others at Aquila
10 highlighting what the rezoning requirements for the City of
11 Peculiar will be with respect to this property the city
12 intended to annex; is that correct?

13 A. No.

14 Q. This highlights rezoning details, city
15 ordinances, conceptual plans, plat, lighting, streets, etc.
16 Requires 15 days notice PZ on second Thursday or special
17 hearing, city council the following week, two readings the
18 first Tuesday and third Tuesday.

19 A. This is probably not a complete list. This is
20 what my understanding was at the time. General list I guess I
21 might call it.

22 Q. You were reporting to the representatives of
23 Aquila what the rezoning requirements for the City of Peculiar
24 would be?

25 A. In general, yes.

1 Q. And you were reporting those because Aquila
2 intended, once this land was acquired and annexed into the
3 city, to comply with the city's zoning requirements?

4 A. In the context of this, it was information.
5 This is what I understood at the time.

6 Q. Was there any other reason that you would have
7 been reporting this information to your superiors other than
8 that Aquila intended to comply with the City of Peculiar's
9 zoning requirements?

10 A. I think this is being reported as part of the
11 process in developing this.

12 Q. And so there is no other reason other than that
13 Aquila would have intended to do comply with the zoning
14 requirements?

15 A. They're up for evaluation, yes.

16 MS. REAMS MARTIN: I move admission of
17 Exhibit 114.

18 JUDGE MILLS: Any objection to the admission of
19 Exhibit 114?

20 Hearing none, it is admitted.

21 (Exhibit No. 114 was received into evidence.)

22 MS. REAMS MARTIN: If I could approach.

23 JUDGE MILLS: Yes, you may.

24 MS. REAMS MARTIN: I'd like to mark the next
25 document as an exhibit.

1 (Exhibit No. 115 was marked for
2 identification.)

3 BY MS. REAMS MARTIN:

4 Q. Mr. Hedrick, I presume you're looking at what
5 has been marked as Exhibit 115?

6 A. Yes.

7 Q. And you see this is an e-mail from Mike Fisher
8 to several individuals, yourself included, dated October the
9 4th, 2004?

10 A. Yes.

11 Q. And this relates to a report involving, quote,
12 schedule revision; is that correct?

13 A. Subject is schedule revision.

14 Q. And Mr. Fisher reports that he has attached to
15 this e-mail a revised schedule for the annexations and
16 approval of the development plan and use designation for
17 public utilities. And he points out that the items are on
18 tomorrow's night agenda for the project.

19 A. Yes.

20 MS. REAMS MARTIN: Move admission of 115.

21 JUDGE MILLS: Any objection to the admission of
22 Exhibit 115?

23 Hearing none, it is admitted.

24 (Exhibit No. 115 was received into evidence.)

25 MS. REAMS MARTIN: May I approach?

1 JUDGE MILLS: Yes, you may.

2 (Exhibit No. 116 was marked for
3 identification.)

4 BY MS. REAMS MARTIN:

5 Q. Mr. Hedrick, you have in front of you what's
6 been marked as Exhibit 116; is that correct?

7 A. Correct.

8 Q. And this is an e-mail from you to Mr. Fisher
9 dated October the 19th; is that correct?

10 A. Correct.

11 Q. Of 2004. Correct?

12 A. Correct.

13 Q. Your e-mail says, Mike, my transmission group
14 would like to obtain a, quote, note, closed quote, that
15 indicates support of the rezone. We can discuss today at
16 lunch.

17 Is that correct?

18 A. Correct.

19 Q. And have you attached to this e-mail the note
20 that you would like Mr. Fisher to prepare to support the
21 rezone in Cass County?

22 A. Appears to be.

23 Q. Now, I want to put this e-mail in a context.
24 When you decided to shift gears from the Camp Branch facility
25 to land closer to the City of Peculiar, Aquila was really

1 looking to do two things. You wanted to build a plant and you
2 wanted to build a substantial substation; is that correct?

3 A. My part of the project is the plant. There is
4 a substation involved, yes.

5 Q. And Mr. Lutes is responsible for that
6 substation?

7 A. Correct.

8 Q. But you were aware that this was going to be a
9 combined effort with the plant being constructed at one
10 location and this new substation being constructed at another
11 location?

12 A. Correct.

13 Q. So during this process when potential
14 properties were being explored, in fact, Aquila was exploring
15 a site for the plant and a different site for a new
16 substation; is that correct?

17 A. Correct.

18 Q. And the intent of the City of Peculiar was to
19 annex the power plant site but not the substation site; is
20 that correct?

21 A. I don't know that to be correct.

22 Q. Well, you know that for some reason on
23 October the 19th, you solicited a letter from Mike Fisher with
24 the City of Peculiar asking the City of Peculiar to support a
25 rezoning pending in Cass County?

1 A. Correct.

2 Q. And there was no rezone pending in Cass County
3 for the South Harper plant?

4 A. Correct.

5 Q. There was, however, a rezoning application that
6 had been filed by Aquila in connection with a different tract
7 of property that we have called the Peculiar substation tract?

8 A. That's my understanding.

9 Q. And that tract has been located on a variety of
10 maps and exhibits that have been presented to this Commission
11 in the last couple of days. Correct?

12 A. Correct.

13 Q. And it's about five miles from the South Harper
14 plant location; is that correct?

15 A. Correct.

16 Q. And so some time before October the 19th, 2004,
17 some time after the City of Peculiar approached Aquila and
18 said, Hey, come on over to our side of town, Aquila decided it
19 wanted to buy another tract of property that was going to
20 remain in Cass County to build a substation and it applied to
21 rezone that land; is that correct?

22 A. That's my understanding.

23 MS. REAMS MARTIN: Move admission of Exhibit
24 116.

25 JUDGE MILLS: Any objection to the admission of

1 Exhibit 116?

2 Hearing none, it is admitted.

3 (Exhibit No. 116 was received into evidence.)

4 MS. REAMS MARTIN: May I approach?

5 JUDGE MILLS: Yes, you may.

6 (Exhibit No. 117 was marked for
7 identification.)

8 BY MS. REAMS MARTIN:

9 Q. Mr. Hedrick, do you have Exhibit 117 in front
10 of you?

11 A. Yes.

12 Q. And this is, again, two e-mails on the first
13 page. The first e-mail is dated the 25th of October, 2004, to
14 you from Mr. Fisher. Correct?

15 A. Could you say that again?

16 Q. The first e-mail, which is at the bottom
17 portion of page 1, is an e-mail from Mr. Fisher to you dated
18 October the 25th, 2004?

19 A. Yes.

20 Q. And the subject is letter of support, Cass
21 County, importance high?

22 A. Yes.

23 Q. And do you see Mr. Fisher's notation that he
24 has attached the letter supporting the substation rezoning.
25 If this is okay, let me know and I will sign and fax?

1 A. Yes.

2 Q. And you responded to that e-mail, didn't you?

3 If you look at the top of the first page --

4 A. I see it, yes.

5 Q. And you responded, Yes, please approve and send
6 to me. If possible, fax. And you gave your fax number; is
7 that correct?

8 A. Yes.

9 Q. And page 2 of this exhibit is the proposed
10 letter that Mr. Fisher indicated he would send on your behalf?
11 And by "you" I mean Aquila.

12 A. Yes. Could I read this?

13 Q. You certainly may.

14 A. I've read it.

15 Q. So in late October of 2004 Aquila intended to
16 seek rezoning to build a substation in Cass County?

17 A. Yes.

18 Q. In October of 2004, Aquila was exploring what
19 the requirements would be to rezone land it expected would be
20 annexed into Peculiar for a power plant?

21 A. Could you say that again?

22 Q. In October of 2004, Aquila was exploring the
23 requirements to rezone land it expected would be annexed into
24 Peculiar for a power plant?

25 A. Aquila was exploring all the requirements, yes.

1 MS. REAMS MARTIN: I move admission of
2 Exhibit 117.

3 JUDGE MILLS: Any objection to the admission of
4 Exhibit 117?

5 Hearing none, it is admitted.

6 (Exhibit No. 117 was received into evidence.)

7 MS. REAMS MARTIN: May I approach?

8 JUDGE MILLS: Yes, you may.

9 (Exhibit No. 118 was marked for
10 identification.)

11 BY MS. REAMS MARTIN:

12 Q. Mr. Hedrick, you've been handed Exhibit 118.
13 To complete the cycle, Exhibit 118 is, in fact, the letter
14 that was faxed to you per your e-mail instruction from
15 Mr. Fisher on October the 25th, 2004; is that correct?

16 A. It appears to be.

17 MS. REAMS MARTIN: Move admission of
18 Exhibit 118.

19 JUDGE MILLS: Any objection to the admission of
20 Exhibit 118?

21 Hearing none, it is admitted.

22 (Exhibit No. 118 was received into evidence.)

23 BY MS. REAMS MARTIN:

24 Q. Mr. Hedrick, on October the 25th, 2004, the
25 same day of this letter from Mr. Fisher to you, there was a

1 hearing scheduled before Cass County's public -- or Planning
2 and Zoning Board with respect to the rezoning application for
3 the substation; is that correct?

4 A. I did not schedule that hearing.

5 Q. You knew that you were attempting to secure a
6 letter of support for the pending rezoning application?

7 A. Yes.

8 Q. And it was urgent that you get it quickly, you
9 wanted it faxed. Do you recall that you were actually
10 receiving that on the same day that a hearing was scheduled
11 before the Planning and Zoning Board on the application?

12 A. Appears to be.

13 Q. And you're aware, are you not, that on that
14 same day, someone on behalf of Aquila, and I believe it might
15 have been your counsel, requested that the hearing before the
16 Planning and Zoning Board be continued?

17 A. That's possible.

18 Q. And it was continued for a short period of time
19 to November the 19th, as I recall. Do you have a --

20 A. Once again, that's possible.

21 Q. What happened on October 23rd, 2004 in the City
22 of Peculiar with respect to Aquila's plans? Do you want to
23 take a look at your chronology?

24 A. Give me the date again, please.

25 Q. October 23rd, 2004.

1 A. Peculiar City Council meeting?

2 Q. Yes, sir.

3 A. Yes.

4 Q. What happened that day?

5 A. They had their City Council meeting and voted
6 no on annexation and yes on Chapter 100.

7 Q. And by this date, looking at this chronology,
8 Aquila had already entered into contracts to buy two parcels
9 of land. Correct?

10 A. Entered into agreements, yes.

11 Q. That would have been the Bremer site for the
12 power plant and the Effert site for the substation?

13 A. Correct.

14 Q. You had already entered into contracts to buy
15 those lands, expecting that Peculiar was going to come through
16 on its assurance to annex the power plant site. Correct?

17 A. That was part of the development, yes.

18 Q. You had already engaged in significant
19 discussions with the City of Peculiar with respect to the
20 financing of these new facilities through Chapter 100
21 financing. Correct?

22 A. Correct.

23 Q. And to your dismay, on the 23rd of October,
24 Peculiar voted not to annex the power plant site?

25 MR. BOUDREAU: I'll object to the question in

1 terms of the characterization of dismay, but otherwise --

2 JUDGE MILLS: Could you rephrase the question
3 with a different or less --

4 MS. REAMS MARTIN: I'll be happy to.

5 BY MS. REAMS MARTIN:

6 Q. Were you surprised at the decision made by the
7 City of Peculiar on the 23rd of October, 2004?

8 A. They voted no on it.

9 Q. Was that what you had expected to happen?

10 A. That -- that was not what I desired to happen,
11 yes.

12 Q. Now, I started this line of inquiry asking you
13 if way back in March of 2004 when you all were first looking
14 at the Camp Branch site and, in fact, had a tentative
15 agreement to buy that land, the Aquila time frame was to bring
16 this new plant online by June or July of 2005. Do you
17 remember that testimony?

18 A. Yes.

19 Q. And now here we are in October of 2004. No
20 rezoning has been secured, no ground has been moved, no
21 special use permits have been secured and you still have a
22 desire to bring this plant online by June or July of 2005; is
23 that correct?

24 A. That was the project date, yes.

25 Q. And so after Peculiar unexpectedly determined

1 that it would not annex the power plant location, Aquila made
2 a decision to withdraw the substation rezoning application
3 that it had pending in Cass County, didn't it?

4 A. It's my understanding that was withdrawn.

5 Q. In November of 2004?

6 A. I don't believe I have that date noted.

7 Q. And at that time Aquila made the decision that
8 it was not going to proceed with securing rezoning or special
9 use permit from anybody to build the plant or the substation;
10 is that correct?

11 A. I don't have that date of when the decision was
12 made.

13 Q. Would you agree with me, Mr. Hedrick, that
14 until Peculiar decided not to annex the power plant location,
15 Aquila intended to comply with zoning and land use regulatory
16 requirements of all local governments?

17 A. Aquila was exploring that type of development,
18 yes.

19 Q. And had made applications to that effect?

20 A. At South Harper made application?

21 Q. At the substation site it had.

22 A. At the substation, yes.

23 Q. And with respect to South Harper, it had
24 reported -- you had reported the requirements to annex the
25 plant when that land was annexed?

1 A. There's an e-mail list of requirements, yes.

2 Q. To rezone the plant is what I meant to say.

3 So basically what happened by November of 2004,
4 is that there was a little bit of a cog thrown into the works
5 because Peculiar decided not to annex and you had a time frame
6 to meet with respect to bringing this plant online?

7 A. Could you rephrase?

8 Q. What happened in November of 2004, is that
9 Peculiar -- the City of Peculiar, threw a cog in Aquila's
10 works because it determined it would not annex the power plant
11 location and Aquila was faced with a time exigency of needing
12 to bring this plant online by June or July of 2005?

13 A. I would agree that Peculiar tabled the
14 annexation. I would agree that Aquila had a target date to
15 bring the units online.

16 Q. And you would agree that those two factors
17 played a role in Aquila's decision to decide not to secure
18 rezoning or special use permits from the county for either of
19 these locations?

20 A. That was part of the development, yes.

21 Q. And you have not to this date ever sought any
22 kind of permission from a land use regulatory standpoint to
23 construct the South Harper plant in Cass County? And by
24 "permission" I mean you have not sought rezoning or special
25 use permit?

1 A. For the South Harper site?

2 Q. That's correct.

3 A. That is correct.

4 Q. And you do not know then, sir, is that correct,
5 what the county's position would be with respect to any
6 application along those lines. You do not know whether the
7 county would approve or not approve or approve with conditions
8 a rezoning application or a special use permit application for
9 the South Harper plant?

10 A. I don't myself.

11 Q. You do know that when Aquila on its merchant
12 side participated in constructing the Aries plant in 1999,
13 that that was constructed in unincorporated Cass?

14 A. That was done on the merchant side.

15 Q. Is that plant located in unincorporated Cass
16 County?

17 A. I don't know those details.

18 Q. Do you know whether Aquila, through its
19 merchant side, applied for and secured rezoning from Cass
20 County for that plant?

21 A. To my knowledge, I do not know that.

22 MR. BOUDREAU: If I might, we're approaching
23 five o'clock. My witness has been on the stand for quite a
24 while. I mean, are we going to get to a point here where we
25 might be able to break, maybe give him a breather?

1 JUDGE MILLS: Let me inquire as to how much
2 more you have.

3 MS. REAMS MARTIN: I probably have another
4 30 minutes, maybe 45, to be honest with you. And I know we
5 have time issues so --

6 JUDGE MILLS: If you get to a point where it's
7 a natural break in your questioning --

8 MS. REAMS MARTIN: I'm there.

9 JUDGE MILLS: -- we'll recess at that point.

10 MS. REAMS MARTIN: I am at a natural break.

11 JUDGE MILLS: Okay. We will go off the record
12 and we will reconvene on April 4th.

13 (Exhibit No. 106 was marked for
14 identification.)

15 We're off the record.

16 WHEREUPON, the hearing was adjourned until
17 April 4, 2005.

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16	Binder entitled South Harper Peaking Facility,		
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18	Exhibit No. 113		
19	E-mail string	637	641
20	Exhibit No. 114		
21	E-mail from Mr. Hedrick to Mr. Keefe, et al.		
22	dated 8/4/04	642	645
23	Exhibit No. 115		
24	E-mail from Mr. Fisher to Ms. Armstrong,		
25	et al. dated 10/4/04	646	646

1	Exhibit No. 116		
2	E-mail from Mr. Hedrick to Mr. Fisher		
3	dated 10/19/04 and attachment	647	650
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5	E-mail string and attachment	650	652
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7	Fax to Mr. Hedrick from Mr. Fisher		
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