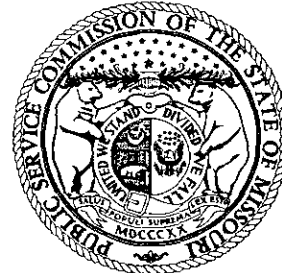


## Notice of *Ex Parte* Contact

TO: Data Center  
All Parties in Case No. **EO-2005-0156**  
**EA-2005-0248**

FROM: Chairman Jeff Davis  
Commissioner Connie Murray  
Commissioner Steve Gaw  
Commissioner Robert Clayton  
Commissioner Lin Applin



DATE: February 16, 2005

On February 6, 2005, we received the attached documents via electronic mail from Mr. Scott Manning regarding Aquila. The Commission is currently considering the issues discussed in these documents in cases **EO-2005-0156 and EA-2005-0248**, both of which are contested cases. In contested cases, the Commission is bound by the same *ex parte* rule as a court of law.

Although communications from members of the public and members of the legislature are always welcome, those communications must be made known to all parties to a contested case so that those parties have the opportunity to respond. According to the Commission's rules (4 CSR 240-4.020(8)), when a communication (either oral or written) occurs outside the hearing process, any member of the Commission or Regulatory Law Judge who received the communication shall prepare a written report concerning the communication and submit it each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, we submit this report pursuant to the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein. Additionally, case number EO-2005-0156 contains notices of *ex parte* communication that may be relevant but were not filed in EA-2005-0248.

cc: State Senator Chris Koster  
State Representative Rex Rector  
Commissioners  
Executive Director  
Secretary/Chief Regulatory Law Judge  
General Counsel

**Finnell, Kay**

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**From:** Davis, Jeff  
**Sent:** Wednesday, February 16, 2005 12:48  
**To:** Finnell, Kay  
**Subject:** FW: Commis\_0131

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**From:** Nancy Manning [mailto:nmanning@casstel.net]  
**Sent:** Sunday, February 06, 2005 2:58 PM  
**To:** Jeff.davis@psc.mo.gov; Connie.murray@psc.mo.gov; Steve.gaw@psc.mo.gov; Robert.clayton@psc.mo.gov; Linward.appling@psc.mo.gov; wess.henderson@psc.mo.gov  
**Cc:** Rex.Rector@house.mo.gov  
**Subject:** Commis\_0131

Response to Aquila's South Harper facility. I do hope that Aquila is held to the notice of Ex Parte Contact also!

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February 3, 2005

Jeff Davis, Director  
Connie Murray, Commissioner  
Steve Gaw, Commissioner  
Robert Clayton, Commissioner  
Linward Appling, Commissioner  
Missouri Public Service Commission  
Public Information Office Building  
Governor Office Building  
200 Madison Street  
PO Box 360  
Jefferson City, MO 65102-0360

Dear Director and Commissioners:

This writing is to notify you of my opposition to Aquila's request that the Missouri Public Service Commission ("PSC") grant Aquila specific authority to construct a peaking facility near 243<sup>rd</sup> and South Harper Road in Cass County, Missouri. My home is approximately ¼ mile north of the proposed plant.

I am opposed to Aquila's current request in that it represents an attempt to avoid local zoning and building requirements. These requirements apply to all other non-governmental entities and individuals, so why not Aquila? PSC representatives repeatedly have stated that the PSC has no jurisdiction to determine the location of facilities, so it would be inconsistent and inappropriate for the PSC to "approve" Aquila's request for construction at a specific location.

I also am opposed to the proposed South Harper plant in general. One of my primary objections relates the availability of power from the existing Aries facility in nearby Pleasant Hill, Missouri. Aquila began construction of the 585-megawatt, combined-cycle Aries plant as a non-regulated asset in 1999 and ultimately sold its remaining 50% share to Calpine Corp in 2004. It is ironic that Aquila tried to gain support for last year's sale by stating that it would continue to have access to power from the Aries plant (see *KC Business Journal*, Feb 24, 2004), while quietly beginning plans to build a new plant before the

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sale even closed (*KC Business Journal*, Apr 26, 2004).

Aquila now contends that the proposed South Harper plant is "needed" due to the upcoming expiration of the contract to acquire electricity from Aries – which suggests that Aquila would no longer have access to power from the facility. However, all parties (including Aquila) should know that this is not true. Calpine made a presentation to the PSC during December 2004 in which Calpine stated its desire to enter into a new contract with Aquila and provided evidence that power sold to Aquila from the Aries plant would have a lower total cost than power from the proposed South Harper plant.

I have spoken with Calpine directly as well. The Aries plant currently operates at roughly 20% of capacity and will be largely idle should Aquila stop purchasing power from the facility. In addition, the new contract price offered to Aquila by Calpine reportedly is less than the price under the existing Aries contract. Was it not Aquila's non-regulated business that set the current contract price at which power is sold to its regulated operation? If this is true, how can Calpine now can sell power at a lower price?

Aquila clearly has access to power from the Aries facility, and it is possible that Aquila may be able to reacquire the facility from Calpine outright. It is unreasonable that these alternatives are being ignored.

Calpine seems an eager seller that has proposed a price for power that reportedly is [i] less than the current contract rate and [ii] at or below the value of capacity payments for power from the proposed South Harper plant. The Aries facility has greater capacity and is more efficient and environmentally friendly (combined cycle) than the proposed plant. It was built by Aquila only a few years ago and completely sold to Calpine just last year. The Aries facility will sit idle should Aquila abandon it in order to build the proposed South Harper plant – which is to be located in an existing residential neighborhood only 20 miles away. Given all of this, how on earth can the proposed South Harper plant be justified?

Yet, Aquila continues to pursue construction, even in the face of a permanent injunction issued by the Circuit Court. Why? Ads in local newspapers purchased by Aquila suggest that its motivation is to serve the growth of its Cass County customer base. Sounds noble enough, but Aquila's sale of the 585-megawatt Aries facility (in favor of the proposed 315-megawatt plant) exposes this to be nothing more than a marketing pitch. I suggest that there are other motivations:

- *Employ depreciating assets.* Construction of the proposed South Harper plant provides Aquila with an opportunity to employ, and thus include in its rate base, 3 aging simple-cycle natural gas turbines that have not been utilized since being purchased for the non-regulated operation. Incidentally, the PSC should not permit these dated turbines to be transferred into the regulated operation. Bad business decisions happen, but neither Aquila's rate payers nor the public in general should have to bail out Aquila for decisions made in its non-regulated business.
- *Favorable financial package.* The City of Peculiar gave Aquila a financing package for the proposed plant that includes an abatement of property taxes in return for only modest PILOT payments. The package has been estimated to provide a net benefit of \$17 million or more to Aquila. Arguments that [i] the financing package is advantageous to taxing authorities and [ii] the \$17 million really benefits the public represent such obvious spin that they are insulting. Only the City of Peculiar and its selected entities (in an attempt to gain support?) will receive any benefit, while other taxing authorities will be denied the taxes typically due to them. Regarding the second argument, the \$17 million that Aquila was able to negotiate from the City already was intended for the public good (schools, roads, public services, etc.), so 100% of the benefit to Aquila must be used to reduce rate payers' electricity bills in order for this even to be considered net neutral. And is this at all likely to happen?

As a tax and rate payer in Missouri, I question whether the City of Peculiar had sufficient expertise to negotiate a fair agreement with Aquila. As a citizen, I question how the City has the ability to eliminate payments due to other taxing authorities and also would argue that the \$17+ million represents nothing but a publicly funded subsidy.

- *Contract avoidance.* During the past year, Aquila has paid to terminate several contracts in which it acquired power from third parties. So, entering into a new contract to purchase power from Aries may not fit with management's plans to renew Aquila. However, such a contract, or purchase of the facility, makes sense. Again, rate payers and the public should not bear the burden for Aquila's non-regulated operation.

Aquila has indicated that it already has a substantial investment in the proposed South Harper plant and suggests, as a result, that it should be allowed to complete the project. However, such a "reliance" argument can only be made by an innocent party acting in good faith. Does anyone really think this standard applies to Aquila? Community opposition was evident within days of the proposed plant's announcement, and litigation was filed well before Aquila had done significant work on the site. Interestingly, Aquila still seems to be pouring money into the proposed plant -- despite the obviously negative court decision and a litany of required approvals. A more thoughtful approach would be for Aquila's management to evaluate alternatives before spending additional funds on project with such nagging uncertainties.

The bottom line is that Aquila does not need the proposed South Harper plant; Aquila only wants it. And, in my view, Aquila only wants it in order to help its financial situation -- which is not a legitimate rationale for a regulated utility to construct a new facility.

I urge the PSC to deny Aquila's current request for specific approval and to strongly advocate that Aquila negotiate a new contract with, or the outright purchase of, the Aries facility. I welcome the opportunity to speak with a representative of the PSC, formal or otherwise, on this topic.

Sincerely,

Scott Manning  
Cass County, Missouri

c: Emanuel Cleaver, US Representative (mailed hardcopy)  
Rex Rector, MO Representative  
Chris Koster, MO Senator