

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 September 21, 2005
9 Jefferson City, Missouri
Volume 2
10
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12 In the Matter of the Application)
of Aquila, Inc., for Authority to)
13 Acquire, Sell and Lease Back Three)
Natural Gas-Fired Combustion) Case No. EO-2005-0156
14 Turbine Power Generation Units)
and Related Improvements to be)
15 Installed and Operated in the City)
Of Peculiar, Missouri)
16

17 RONALD D. PRIDGIN, Presiding,
18 REGULATORY LAW JUDGE.

19 CONNIE MURRAY,
STEVE GAW,
20 ROBERT M. CLAYTON,
LINWARD "LIN" APPLING,
21 COMMISSIONERS.

22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR
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FOR: Staff of the Missouri Public
Service Commission.

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

2 (EXHIBIT NOS. 1 THROUGH 12 WERE MARKED FOR
3 IDENTIFICATION.)

4 JUDGE PRIDGIN: Good morning. We're on the
5 record. This is the hearing in Case No. ER-2005-0156, in
6 the matter of the application of Aquila, Incorporated for
7 authority to acquire, sell, and lease back three natural
8 gas-fired combustion turbine power generation units and
9 related improvements to be installed and operated near the
10 city of Peculiar, Missouri.

11 I'm Ron Pridgin. I'm the Regulatory Law
12 Judge assigned over this case. This hearing is being held
13 on September 21st, 2005, in the Commission's offices at
14 the Governor Office Building in Jefferson City, Missouri.
15 The time is approximately 8:45 in the morning.

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

18 MR. WILLIAMS: Nathan Williams, Senior
19 Counsel, Missouri Public Service Commission, P.O. Box 360,
20 Jefferson City, Missouri 65102.

21 JUDGE PRIDGIN: Mr. Williams, thank you.
22 On behalf of Aquila, please?

23 MR. BOUDREAU: Thank you. Let the record
24 reflect the appearance of Paul A. Boudreau, the firm of
25 Brydon, Swearngen & England, Post Office Box 456,

1 Jefferson City, Missouri, appearing on behalf of
2 Applicant, Aquila, Inc.

3 JUDGE PRIDGIN: Mr. Boudreau, thank you.
4 On behalf of the Office of the Public Counsel, please?

5 MR. WHEATLEY: Good morning, your Honor and
6 Commissioner Clayton. My name is Mark Wheatley. I'm
7 Senior Public Counsel for the Office of the Public
8 Counsel. Our address is Post Office Box 2230,
9 Jefferson City, Missouri 65102.

10 JUDGE PRIDGIN: Mr. Wheatley, thank you.
11 On behalf of Cass County, Missouri, please?

12 MR. COMLEY: Good morning, Judge and
13 Commissioner Clayton. On behalf of Cass County, let the
14 record reflect the entry of appearance of Mark W. Comley,
15 Newman, Comley & Ruth, 601 Monroe Street, Suite 301,
16 Jefferson City, Missouri 65101.

17 JUDGE PRIDGIN: Mr. Comley, thank you.
18 Does anyone appear on behalf of the City of the Peculiar?
19 Seeing no appearance. I will inform counsel, I did
20 receive a phone call from somebody from Mr. Douglas'
21 office and said that he did not intend to be here, and I
22 told them that would be fine. If the Commission had any
23 concerns, we could certainly contact them otherwise. But
24 I understand the City of Peculiar filed a statement saying
25 they did not oppose the stipulation and did not request a

1 hearing.

2 If I understand correctly, Mr. Williams,
3 before we went on the record, the parties premarked some
4 exhibits; is that correct?

5 MR. WILLIAMS: Yes.

6 JUDGE PRIDGIN: All right. And I think,
7 Mr. Boudreau, did you begin and have some exhibits
8 premarked with the court reporter?

9 MR. BOUDREAU: Yes, that is correct.

10 JUDGE PRIDGIN: Just so to be sure we have
11 those all labeled the same, if you would, Mr. Boudreau, go
12 through and let me know how those are labeled.

13 MR. BOUDREAU: With respect to the exhibits
14 that I had marked, it is my understanding that Exhibit
15 No. 1 is the direct testimony of Aquila witness Denny
16 Williams. Exhibit No. 2HC, I'm given to understand, is a
17 copy of Schedule DRW-1 to Mr. Williams' direct testimony,
18 which is 8HC. So it's designated as 2HC.

19 I'm given to understand that Exhibit
20 No. 3 is a copy of Mr. Denny Williams' surrebuttal
21 testimony.

22 Exhibit No. 4 is the surrebuttal testimony
23 of Aquila witness Neal Suess. Exhibit 4C would be the
24 surrebuttal testimony of Neal Suess HC version, highly
25 confidential version.

1 No. 5 would be the surrebuttal testimony of
2 H. Davis Rooney. No. 5HC would be the highly confidential
3 version of the surrebuttal testimony of H. Davis Rooney.

4 And I believe Exhibit No. 6 as premarked is
5 the copy of the Stipulation & Agreement that was filed in
6 this case. Those are the six exhibits that I had marked.

7 JUDGE PRIDGIN: And that's how I had those
8 labeled as well. Mr. Boudreau, did you want to offer
9 those?

10 MR. BOUDREAU: I would offer them subject
11 to the terms, the express terms of the Stipulation &
12 Agreement, which I understand to be that if the Commission
13 accepts the Stipulation & Agreement, then everybody agrees
14 to the admission of these exhibits, actually of all of the
15 exhibits of the testimony of the parties.

16 JUDGE PRIDGIN: All right. Very well. I
17 assume that we have no objection to these exhibits, then?

18 MR. WILLIAMS: No objection.

19 MR. WHEATLEY: No objection.

20 JUDGE PRIDGIN: Hearing none, Exhibits 1
21 through 6 are admitted.

22 (EXHIBIT NOS. 1 THROUGH 6 WERE RECEIVED
23 INTO EVIDENCE.)

24 JUDGE PRIDGIN: Then, Mr. Williams, I
25 understand you're going to begin with Exhibit No. 7?

1 INTO EVIDENCE.)

2 JUDGE PRIDGIN: And, Mr. Wheatley, I
3 understand we're going to start with you at No. 11?

4 MR. WHEATLEY: That's correct, your Honor.
5 Exhibit No. 11 is the rebuttal testimony of Ted Robertson.
6 Exhibit 11A is the highly confidential version of the
7 rebuttal testimony of Ted Robertson. And Exhibit 12 is
8 the surrebuttal testimony of Ted Robertson, which I would
9 offer subject to the terms of the Stipulation & Agreement.

10 JUDGE PRIDGIN: Mr. Wheatley, thank you.
11 Again, any objection?

12 MR. WILLIAMS: I don't have an objection,
13 but I was under the impression it had been marked as 11HC
14 or 11 as opposed to 11A for the HC pages of
15 Mr. Robertson's rebuttal testimony. Maybe you want to
16 check with the court reporter.

17 THE REPORTER: It's 11HC.

18 MR. WHEATLEY: I'm sorry. I stand
19 corrected. It's 11HC.

20 JUDGE PRIDGIN: So we have 11, 11HC and 12;
21 is that correct?

22 MR. WHEATLEY: That's correct.

23 JUDGE PRIDGIN: All right. Thank you.

24 MR. BOUDREAU: Just as a question of
25 clarification, if I could, could you tell me what your

1 understanding of what 11 and 11HC are, what those exhibits
2 are?

3 JUDGE PRIDGIN: I believe Exhibit 11 is
4 Mr. Robertson's rebuttal testimony, public version. 11HC
5 would be the same testimony, the highly confidential
6 version.

7 MR. WILLIAMS: Judge, I believe 11HC is
8 just the confidential pages.

9 JUDGE PRIDGIN: The confidential pages.
10 Thank you.

11 MR. BOUDREAU: And then 12 my understanding
12 would be the surrebuttal testimony of Mr. Robertson; is
13 that correct?

14 JUDGE PRIDGIN: That's what I had marked
15 down.

16 MR. BOUDREAU: With that, no objection,
17 subject to the terms of the stipulation.

18 JUDGE PRIDGIN: All right. Thank you.
19 We'll show Exhibits 11, 11HC and 12 admitted.

20 (EXHIBIT NOS. 11, 11HC AND 12 WERE RECEIVED
21 INTO EVIDENCE.)

22 JUDGE PRIDGIN: Anything else counsel wants
23 to bring to my attention before we proceed with opening
24 statement? All right. Hearing none.

25 Mr. Boudreau, if you would, do you have an

1 opening statement you'd like to give?

2 MR. BOUDREAU: I have a very brief
3 statement.

4 JUDGE PRIDGIN: Whenever you're ready, sir.

5 MR. BOUDREAU: Thank you. May it please
6 the Commission? Thank you.

7 Good morning. I'm going to keep my
8 comments, as I said, very brief. I just wanted to observe
9 that Staff filed some suggestions in support of the
10 Stipulation & Agreement, and I think that was a good
11 overview of the background of the case and the terms of
12 the stipulation, and I just wanted to -- I'm not going to
13 repeat or cover -- try to avoid covering some of the same
14 territory. I think that was a good synopsis of the case.

15 In terms of just a little bit of
16 background, this application was originally filed on
17 December 12, 2004, seeking essentially two items of
18 relief, one of which was a determination that the transfer
19 of the three natural gas-fired turbines from an affiliate
20 of Aquila's regulated MPS division at a specified value
21 did not provide a financial advantage in violation of the
22 Commission's Rule 4 CSR 240-20.015.

23 I would observe that this is a
24 determination that is needed whether or not the combustion
25 turbines which are the subject matter of the case are ever

1 allowed into rate base.

2 The second item of this is the findings
3 necessary to facilitate the financing of the construction
4 of the South Harper peaking power station with tax
5 advantaged revenue bonds under Chapter 100, RSMO. And the
6 two probably key elements of this are the sale and lease
7 back arrangement as between the company and the City of
8 Peculiar and the fact that there will be a -- that the
9 city will cause the facility to be mortgaged for the
10 benefit of the revenue bond holders.

11 The application was amended on June 3rd,
12 2005, and this filing had the practical effect of just
13 narrowing the scope of the relief that was requested in
14 the application. The County of Cass and the City of
15 Peculiar, Missouri requested and were granted leave to
16 intervene in this case.

17 The primary issue in the case has gone to
18 the question of the value of the combustion turbines, and
19 most of the testimony filed in the case addresses this
20 particular issue.

21 The Nonunanimous Stipulation that was filed
22 with the Commission on September 1st presents for approval
23 a compromised valuation of \$66,760,000, and this agreed-to
24 valuation represents a figure less than that that was
25 advocated by my client Aquila and more than was advocated

1 by the Office of the Public Counsel. Aquila's original
2 filing sought a valuation determination of \$70,800,000,
3 and Public Counsel's valuation I believe was in the range
4 of 62 to 64 million.

5 It is, in fact, the valuation recommended
6 by Staff witness Cary Featherstone, and if accepted by the
7 Commission, the valuation would represent a collective
8 write-down on the company's books of account, if I've done
9 my math correctly, approximately \$12.2 million from the
10 original book value.

11 While Aquila has agreed to the number
12 recommended by Staff, it does not represent an agreement
13 by Aquila as to Staff's valuation method. In fact, the
14 Stipulation expressly states that no party has agreed to
15 any particular valuation methodology, in addition to other
16 principles, and that's found at Section 5A on page 7 of
17 the Stipulation.

18 What the agreement -- the agreement allows
19 Aquila to book the combustion turbines at the valuation
20 agreed to in the Stipulation & Agreement. The signatory
21 parties have also agreed to utilize this valuation for
22 ratemaking purposes in Aquila's pending rate cases as well
23 if and at such time as the South Harper power station is
24 allowed into rate base.

25 This language allows for a number of

1 the Commission's approval of the terms of the
2 Stipulation & Agreement. The testimony supports a wide
3 range of proposed values, from the low end offered by the
4 Office of the Public Counsel and the high end advocated by
5 my client Aquila. As noted, the agreed-to valuation,
6 which is essentially the Staff's suggested valuation
7 number, is essentially a midpoint between the high and low
8 ranges.

9 And I would also note that there was really
10 no material dispute about the appropriateness or the terms
11 of the revenue bond financing mechanism presented by
12 Aquilla.

13 I believe the Stipulation & Agreement
14 presents a fair and reasonable outcome of the issues
15 presented in this case. It establishes a valuation for
16 the regulated books of account and leaves the ratemaking
17 consequences to play themselves out in the following
18 months.

19 The tax-advantaged financing obtained by
20 Aquila is a low-cost manner for funding the construction
21 of the new power station, and Aquila encourages the
22 Commission to approve the terms of the Stipulation &
23 Agreement and, in so doing, make the findings contemplated
24 by that agreement.

25 That concludes my remarks. Thank you.

1 JUDGE PRIDGIN: Mr. Boudreau, thank you.
2 Mr. Williams?

3 MR. WILLIAMS: Thank you. Just briefly, as
4 shown by its joining in the Nonunanimous Stipulation &
5 Agreement and the suggestions that the Staff filed in
6 support of the Nonunanimous Stipulation & Agreement on
7 September 14, Staff supports the Nonunanimous
8 Stipulation & Agreement.

9 And if the Commission has any particular
10 questions of Staff witnesses, they are available here.
11 Any questions pertaining to the Chapter 100 financing
12 should be directed to Mr. Kiebel, and any questions
13 regarding the valuation of the CTs should be directed
14 either to Mr. Phil Williams or Mr. Cary Featherstone.

15 JUDGE PRIDGIN: Mr. Williams, thank you,
16 Mr. Wheatley, do you have any opening?

17 MR. WHEATLEY: Thank you, your Honor and
18 members of the Commission.

19 As indicated by our execution of the
20 Stipulation & Agreement, the Office of the Public Counsel
21 does agree to the terms of the settlement. I would
22 correct one statement made by Mr. Boudreau in that I
23 believe the Public Counsel testimony of Mr. Ted Robertson,
24 the surrebuttal testimony came in with a total valuation
25 of 60.6 million. I'm sorry.

1 And Mr. Robertson is here today to answer
2 any questions you might have. Otherwise, the Office of
3 the Public Counsel would ask that the Commission approve
4 the Stipulation & Agreement. Thank you.

5 JUDGE PRIDGIN: Mr. Wheatley, thank you.
6 Mr. Comley, do you have any statement?

7 MR. COMLEY: May it please the Commission?
8 Cass County intervened in this case because of its
9 connection with the judgment entered by Judge Dandurand in
10 January of 2005 concerning South Harper facility.

11 Our point was that, given the fact that the
12 circuit court, and since that time the appellate court,
13 had determined that South Harper facility was constructed
14 unlawfully in connection with zoning authority and other
15 issues, that this proceeding would be somewhat of an
16 inefficient use of your resources.

17 That is pretty much the reason why we
18 intervened. We have examined the Stipulation & Agreement.
19 We have proposed that we have no objection to it, yet we
20 do not support it either, and we are not a signatory
21 party. We are not asking for a hearing. It's content to
22 know that it is contingent. I understand that the
23 valuation that's been placed upon the turbines would be if
24 and when the South Harper would be brought in for
25 ratemaking purposes and onto rate base.

1 We have no questions for the witnesses. I
2 would welcome any questions from the Commission if there
3 are any. I think the proceedings have progressed to the
4 point where many of the questions the Commission has had
5 in the past have been answered over and over again. In
6 that respect, I would ask that I can be excused today and
7 just have my remarks this morning right here, and we do
8 not intend to stay much longer than that unless there are
9 questions from the Commission.

10 JUDGE PRIDGIN: Mr. Comley, thank you. Let
11 me see if we have any questions from the Bench for
12 Mr. Comley.

13 COMMISSIONER GAW: I would prefer
14 Mr. Comley hang around for a little while.

15 MR. COMLEY: I'd be glad to.

16 JUDGE PRIDGIN: Thank you, Mr. Comley.

17 What I'd like to do is, Mr. Boudreau, if
18 you would be prepared for questions, and if you'll
19 approach the podium, and we may kind of go at this
20 piecemeal. If the bench has any questions that require
21 any answers from witnesses, we may need to stop and swear
22 in witnesses.

23 So let me see what kind of questions that
24 we have from the Bench. Commissioner Murray, do you have
25 any questions for Aquila?

1 COMMISSIONER MURRAY: I'm going to pass at
2 this time.

3 JUDGE PRIDGIN: Commissioner Gaw?

4 COMMISSIONER GAW: I think I'll pass right
5 now, too.

6 JUDGE PRIDGIN: All right. Thank you.
7 Commissioner Appling, any questions?

8 COMMISSIONER APPLING: I don't think things
9 has warmed up enough yet, so we'll pass for this time.
10 Thank you.

11 JUDGE PRIDGIN: Mr. Boudreau, thank you.
12 And I'll note that Commissioner Clayton stepped away. He
13 may have some questions for you, and clearly the Bench may
14 have questions for you later as well.

15 MR. BOUDREAU: If I could take this
16 opportunity to apologize for the misstatement of OPC's
17 position. Obviously, their testimony stands for itself.
18 If I mischaracterized it, I apologize.

19 And the other item is I do have Mr. Denny
20 Williams here today to address any issues that are beyond
21 just the legal arena that I'm familiar with. So thank
22 you.

23 JUDGE PRIDGIN: Mr. Boudreau, thank you
24 very much.

25 Mr. Williams, let me see if the Bench has

1 any questions. Commissioner Murray, do you have any
2 questions for Staff?

3 COMMISSIONER MURRAY: You know, I don't
4 really have any questions on the stip at all.

5 JUDGE PRIDGIN: Thank you, Commissioner.

6 COMMISSIONER GAW: I may have some for
7 Mr. Williams.

8 JUDGE PRIDGIN: All right. Mr. Williams,
9 if you'll come to the podium, please. Nathan Williams.

10 COMMISSIONER GAW: Good morning,
11 Mr. Williams.

12 MR. WILLIAMS: Good morning, Commissioner
13 Gaw.

14 COMMISSIONER GAW: I don't know that I have
15 a lot of questions. I'm just trying to understand the
16 scope of what this stipulation is and to clarify how it
17 fits into the picture of the cases that are still out
18 there, at least particularly the one that's at the Court
19 of Appeals.

20 First of all, could you enlighten me and
21 the record on the status of that case?

22 MR. WILLIAMS: Its my understanding it's
23 still pending at the Court of Appeals.

24 COMMISSIONER GAW: What was the initial --
25 there was a decision from the case initially, correct?

1 that case has to do with the siting of the South Harper
2 facility; is that correct?

3 MR. WILLIAMS: It has to do with authority
4 to build the plant at that location, yes.

5 COMMISSIONER GAW: Okay. Now, this
6 particular issue that you have in the stipulation, it
7 deals with the valuation that would be allowed if the
8 turbines are allowed into rate base that are currently on
9 site at South Harper; is that accurate?

10 MR. WILLIAMS: It includes the combustion
11 turbines and some additional equipment, but it's tightly
12 defined, but yes.

13 COMMISSIONER GAW: Okay. And the transfer
14 of the -- of the three generators and the other pieces of
15 equipment that are in this -- mentioned in the
16 stipulation, they are transferred from what entity?

17 MR. WILLIAMS: There was an affiliate of
18 Aquila that the equipment was transferred from.

19 COMMISSIONER GAW: What's the name of that
20 affiliate?

21 MR. WILLIAMS: I don't recall offhand.
22 It's in the testimony of Mr. Featherstone.

23 COMMISSIONER GAW: Well, while they're
24 looking for it, do you know if that affiliate was a
25 separate corporation or not?

1 MR. WILLIAMS: It's my understanding it was
2 a separate corporation.

3 COMMISSIONER GAW: And can you describe the
4 relationship between the affiliate and Aquila?

5 MR. WILLIAMS: I believe it was Aquila
6 Merchant. I'm not absolutely certain. Someone could
7 check on that. But it was engaged in the building power
8 plants for unregulated generation, such as Aries.

9 COMMISSIONER GAW: It's the same company
10 that was involved in the Aries construction in Cass
11 County?

12 MR. WILLIAMS: I believe so. I'd have to
13 confirm that.

14 COMMISSIONER GAW: Why don't you do that?

15 MR. WILLIAMS: I've just been informed that
16 it was originally acquired by Aquilla Merchant, who then
17 transferred it to Aquila Equipment, Inc., which is a
18 wholly owned subsidiary of Aquila, Inc.

19 COMMISSIONER GAW: What's the status of
20 Aquila Merchant, in relationship to the corporate
21 structure of the affiliates is what?

22 MR. WILLIAMS: I'm not sure if it's a
23 subsidiary or just an affiliate. It's a related
24 corporation that was engaged in non-regulated generation.

25 COMMISSIONER GAW: Maybe it would be --

1 would it be better to ask these questions of someone else?

2 MR. WILLIAMS: I think Cary Featherstone or
3 perhaps Denny Williams of Aquila.

4 COMMISSIONER GAW: Parties, who do you
5 prefer me to ask questions? I'm just trying to get facts.

6 JUDGE PRIDGIN: Unless the parties object,
7 if he's asking questions about Aquila, it might make sense
8 to have Mr. Williams from Aquila.

9 MR. BOUDREAU: I was going to say, I think
10 Mr. Denny Williams -- we have too many Mr. Williams here
11 this morning -- Mr. Denny Williams is prepared to address
12 these questions, so I'd ask him to take the stand.

13 JUDGE PRIDGIN: Mr. Williams, if you'll
14 come forward to be sworn, please.

15 (Witness sworn.)

16 JUDGE PRIDGIN: I understand his testimony
17 has already been admitted without objection. Unless
18 counsel sees any reason to lay foundation, we can go ahead
19 and go with questions from Commissioner Gaw.

20 MR. BOUDREAU: That would be fine.

21 JUDGE PRIDGIN: All right. Thank you.

22 DENNIS WILLIAMS testified as follows:

23 QUESTIONS BY COMMISSIONER GAW:

24 Q. Good morning, Mr. Williams.

25 A. Good morning.

1 Q. Why don't you state your name and your
2 affiliation for us?

3 A. My name is Dennis Williams. I'm the vice
4 president of electric regulatory services for Aquila.

5 Q. Okay. And how long have you been with
6 Aquila?

7 A. I've been with Aquila since 1986.

8 Q. Okay. That includes its predecessors in
9 name --

10 A. Yes.

11 Q. -- and interest, right?

12 A. That's correct.

13 Q. Okay. The three general -- excuse me.

14 COMMISSIONER GAW: Mr. Boudreau?

15 MR. BOUDREAU: Just a point. Was
16 Mr. Williams sworn in? I just want to make sure.

17 COMMISSIONER GAW: I asked the same
18 question. Did I miss --

19 JUDGE PRIDGIN: I believe that I did.
20 Mr. Williams?

21 MR. BOUDREAU: There was some confusion. I
22 just wanted to make sure.

23 COMMISSIONER GAW: Thank you, Mr. Boudreau.
24 I feel better now that I asked.

25 BY COMMISSIONER GAW:

1 Q. So anyway, Mr. Williams, the three
2 generating units and the other pieces of equipment that
3 are mentioned in the stip that are before us, they are
4 being transferred from what entity again?

5 A. They were transferred from MEP Investments,
6 Incorporated, which was a subsidiary of Aquila, to Aquila
7 Networks, which is a division of Aquila.

8 Q. Okay. When did that happen, approximately?

9 A. The transfer, I believe, occurred in or
10 around November of 2004.

11 Q. Okay. And that transfer -- the generators
12 were initially purchased new or used?

13 A. The generators were initially purchased new
14 from -- they were purchased and held by Aquila Equipment,
15 LLC, which was another subsidiary of Aquila.

16 Q. Do you know what year that was?

17 A. 2002, I believe.

18 Q. 2002. Okay. Do you want to just go ahead
19 and take me from their initial purchase and all the
20 transfers within Aquila affiliates up to present time?

21 A. Certainly. They were purchased initially
22 from Siemens Westinghouse and by a subsidiary of Aquila
23 Merchant. The initial intent was to use them in the
24 Merchant operations. They were later --

25 Q. What was the name of the subsidiary of

1 Aquila Merchant?

2 A. Aquila Equipment, LLC.

3 Q. That's what you said earlier.

4 A. Well, the Aquila Merchant was MEP, which is
5 MEP Investments. They were transferred from MEP
6 Investments to Aquila Equipment, LLC. That transfer took
7 place in September of 2002.

8 Q. Okay.

9 A. That transfer took place at the time that
10 Merchant determined they were no longer going to use the
11 turbines in the Merchant venture. They were transferred
12 to the -- to Aquila Equipment for -- to hold while they
13 were -- while a buyer was being sought.

14 Q. Okay. Was Aquila Merchant the same company
15 that was involved in the Calpine venture with Aries?

16 A. It was -- yes, one of its subsidiaries
17 would have been, all under the same umbrella.

18 Q. Okay. The initial obligation, do you know
19 if the -- if the money for the payment of these generators
20 initially when it was purchased from Westinghouse, was
21 that purchased with cash or was it purchased with borrowed
22 funds? Do you know?

23 A. I'm not aware. I'm sure that cash payments
24 were made. Where the funding source for that cash came
25 from would probably have been both borrowing and funds on

1 hand, cash on hand.

2 Q. Do you know whether or not there were any
3 liens on the generators when they were initially purchased
4 as a result of financing or other arrangements to purchase
5 them?

6 A. There were not.

7 Q. So they -- so if there were loans, they
8 were not secured with the generating units?

9 A. That's correct.

10 Q. Or the other pieces of equipment that we're
11 talking about here?

12 A. That is correct.

13 Q. And then I want you to tell me if it's --
14 if it's in the record, in the testimony about what the
15 purchase price was. And if -- I'm asking you that way so
16 if it's HC, and I don't know if it's HC, so you can just
17 point out to me where that is.

18 A. It's not HC. It is in, actually I believe
19 in my rebuttal testimony at page 5.

20 MR. BOUDREAU: As a point of clarification,
21 your surrebuttal testimony?

22 THE WITNESS: My surrebuttal testimony,
23 yes. Thank you.

24 The value recorded on the books at the time
25 of transfer from MEP to Aquila Equipment was \$78,716,233,

1 plus an additional approximately 300 -- or \$3 million of
2 preliminary survey charges, so a total of almost
3 \$82 million.

4 BY COMMISSIONER GAW:

5 Q. What is that 3 million of survey charges?
6 What is that?

7 A. That's -- that's cost with seeking land
8 sites, acquiring land, that type of thing.

9 Q. Okay. How much was the purchase price from
10 Westinghouse?

11 A. I'm looking to see if that's in an exhibit
12 as well. There were a number of contracts and amendments
13 to contracts with Siemens, and they are attached as
14 exhibits to the surrebuttal testimony of Davis Rooney.

15 I'm not sure if I could quickly come to
16 a -- to the total amount because, I mean, the contract
17 included technical assistance along with the equipment.

18 Q. I see. Are those numbers in that
19 testimony?

20 A. They are. The question is, can they easily
21 be added up?

22 Q. I see.

23 A. But it would -- when you take the total, it
24 would approximate that \$78 million number.

25 Q. Okay. So that's not -- that figure isn't

1 too far removed from the original purchase price?

2 A. That's correct.

3 Q. Okay. And then the transfer again to
4 Aquila that is sought to be approved in this transaction
5 is from what entity to what entity again?

6 A. From Aquila Equipment, LLC to Aquila,
7 Incorporated, the regulated networks division. So it
8 would be the -- it's recorded now on the books of the MPS
9 division.

10 Q. Are there -- the relationship between those
11 two companies is what again? Aquila Equipment is a
12 subsidiary, direct subsidiary?

13 A. It's a subsidiary of Aquila, Incorporated,
14 yes.

15 Q. So it's a direct transfer from an affiliate
16 to its parent?

17 A. In essence, yes. The clarification is, on
18 the accounting records, it's to a division of its parent.

19 Q. Okay. All right. Are there other
20 financial -- first of all, is this a cash payment that
21 will come back from the parent to the subsidiary?

22 A. It was just a transfer on the books and
23 records. You wouldn't really see any cash exchange hands
24 from one part of Aquila to another part of Aquila.

25 Q. So there's a note or an obligation of some

1 sort from the parent to the subsidiary after the transfer?

2 A. It's -- the accounting would have simply
3 been to credit the equipment on the books of Aquila
4 Equipment and debit the intercompany payables or
5 receivables, and then the opposite entry would be on the
6 books of Aquila, Incorporated.

7 Q. Will there ever be any actual cash
8 transferred to the subsidiary as a result of this
9 transfer?

10 A. No.

11 Q. Are there other transfers that have
12 occurred in between this subsidiary and Aquila?

13 A. I believe this was a special purpose
14 subsidiary that was established just to hold these assets.

15 Q. I see. Okay. The transfer that was made
16 to the equipment company, was it a similar booking
17 arrangement?

18 A. Yes.

19 Q. There never was any real cash that changed
20 hands between the entities?

21 A. That's correct.

22 Q. What's the status of the Merchant
23 corporation?

24 A. The Merchant corporation still exists as a
25 legal entity, as a subsidiary of Aquila, Incorporated,

1 although its operations are limited to just a few
2 remaining assets that it holds.

3 Q. Are those generating assets or other kinds
4 of assets?

5 A. They're generally generating assets, and
6 within some of its subsidiaries there's still some
7 obligations for gas purchases and those type of things.
8 The book has not totally been wound down, but it's fairly
9 small.

10 Q. Does that company also show debt?

11 A. I'm sure it would have debt, yes.

12 Q. Would that be significant, do you know?

13 A. I don't know. I would imagine.

14 Q. Is the debt of that subsidiary also a
15 general obligation debt or a debt in any way of Aquila
16 itself?

17 A. Well, it would be my understanding that it
18 is. And to your earlier question --

19 Q. Yes.

20 A. -- an exhibit to Davis Rooney's testimony,
21 there is mention of the price for each unit is originally
22 a base price of 24,750,000. So the total of those three
23 would be 72 or 3 million plus, but then there were --
24 there were other technical assistance packages and
25 modifications and agreements, but that's the base price

1 that's listed.

2 Q. Okay. What was Aquila -- remind me, what
3 was Aquila's original request in this case for the
4 valuation of these generating units?

5 A. It was just over \$70 million, I believe, if
6 I can find that. \$70,796,850. That was based on the
7 appraisal by R.W. Beck.

8 Q. Okay. Do you have access to the amount of
9 debt that is owed by Aquila today that would be
10 attributable to activities of the Merchant subsidiary?

11 A. Not with me.

12 Q. Do you have an estimate of what that might
13 be at all?

14 A. I don't.

15 Q. Would it be in excess of the value of these
16 generating units?

17 A. I would think it is, but I have no specific
18 knowledge.

19 Q. How, if in any way, does the debt that
20 might be attributable to Aquila Merchant play into the
21 setting of rates for ratepayers of Aquila itself?

22 A. In my opinion, it would play no role.
23 There could be parties that would argue that in setting
24 rates you would look at a capital structure of the
25 corporation, which might include the debt of Merchant.

1 However, on our regulated books, we have segregated the
2 regulated capital from the nonregulated. By capital, I'm
3 referring to both equity and debt.

4 Q. Okay. Where is the cash coming from to pay
5 the debt related to activities of the nonregulated
6 portions of Aquila?

7 A. The cash that's used to pay debt comes from
8 a variety of sources.

9 Q. Yes.

10 A. It comes from ongoing operations of
11 Merchant because, I mean, cash is fungible, so cash comes
12 into the corporation, it's pegged for a variety of
13 purposes, including the debt obligations of the entire
14 company. We are in the process of announcing some sales
15 of properties and have accomplished some sales of
16 properties. So there's another source of cash that would
17 be used for all corporate purposes.

18 Q. Okay. So some of it would be coming from
19 sales of assets or companies; would that be accurate?

20 A. Yes. All sources of cash come into the
21 company. Cash is used for disbursements.

22 Q. All right. So some of the cash that might
23 come in from income from regulated activities, from
24 customers of your -- of Aquila as a regulated entity,
25 would be going to pay debt that was accumulated as a

1 result of activities in unregulated areas?

2 A. I want to be careful in how that's
3 characterized, because the cash itself that comes in, you
4 don't really identify cash. You don't follow the flow of
5 cash coming in. I mean, cash could come into the
6 regulated entity from a sale of electricity, and I suppose
7 if you had the accounting availability, which we don't,
8 you could follow that through and see, well, was that
9 dollar used to pay dividends, which we're not currently
10 paying dividends, or is that dollar used to pay for
11 accounts payable or is it -- but you don't track cash.

12 What we do know is that in setting rates
13 for our customers, that the rates have been set excluding
14 any obligations of the Merchant activities. So in that
15 manner, the answer to your question is no, as far as cash
16 itself, there's no way of knowing which dollar went where.

17 Q. I understand what you're saying, I think.
18 As long as there's sufficient cash to pay all the
19 obligations, the accounting takes care of how it's
20 allocated?

21 A. That's correct.

22 Q. If you get into a situation where there's
23 not sufficient cash to pay all of the obligations, then
24 the accounting doesn't fix that?

25 A. That would be correct.

1 Q. What is your understanding, if you -- if
2 this is within something you think is appropriate for you
3 to answer, Mr. Williams, what is the -- what in your view
4 is the stipulation's bottom line as far as this -- as far
5 as a determination is concerned by this Commission?

6 A. Bottom line, the stipulation accomplishes
7 two things. One, there's an affiliate transaction rule
8 which says that any transfer from an affiliate to a
9 regulated entity should be done at the lower of cost or
10 market. We made a transfer from an affiliate to the
11 regulated entity and, based upon an appraisal, booked
12 that.

13 However, I was aware that there were --
14 there was the possibility of opinions of other parties
15 that that might not be the appropriate value. And so what
16 this does is it established -- it establishes an agreement
17 as to what is the appropriate value to be transferred to
18 meet the affiliate transaction rule.

19 Q. Okay.

20 A. The second -- the second thing that the
21 stipulation accomplishes is the ability and approval to
22 issue Chapter 100 bonds to finance the South Harper
23 combustion turbines.

24 Q. Okay. I want to spend just a little bit of
25 time on the Chapter 100 bonds issue. This is the same

1 method of financing that was utilized to finance the Aries
2 plant, correct?

3 A. That's correct.

4 Q. All right. The actual legal title to the
5 three generating units if this transfer occurs under
6 Chapter 100 financing, the legal title to it is held by
7 whom?

8 A. The City of Peculiar, Missouri.

9 Q. And then how is it shown on the books of
10 Aquila?

11 A. It's shown on the books of Aquilla as an
12 asset.

13 Q. And is there any -- anything that
14 distinguishes something that's leased from something
15 that's actually owned from an accounting standpoint?

16 A. Not in this case.

17 Q. And why is that?

18 A. Well, it's because effectively the lease is
19 operating as a capital lease, just as if we owned the
20 properties ourselves. There are some legal reasons that
21 title stays with the City of Peculiar, but the lease
22 payments track what would have been incurred had the
23 company owned that property itself.

24 Q. Okay. Now, tell me how the cash transfers
25 in this Chapter 100 process from entity to entity, from

1 City of Peculiar to whatever entity, from Aquila to the
2 City of Peculiar. Describe that for me.

3 A. From a legal standpoint, I don't know.

4 Q. What about from an accounting standpoint?

5 A. From an accounting standpoint and a
6 practical standpoint, Aquila pays the bondholders.

7 Q. Aquila pays the bondholders. In this case,
8 who would they be? It's whoever buys the bonds, correct?

9 A. Whoever buys the bonds from the city?
10 There will probably be an agent that we would pay.

11 Q. Okay.

12 A. Who would then distribute the money if the
13 bonds were collected on.

14 Q. Now, the bond generate money, right? The
15 sale of the bonds generate money?

16 A. That's correct.

17 Q. Where does that money go?

18 A. Well, the sale of the bonds is made, issued
19 by the city. The cash comes in.

20 Q. Where does it go to?

21 A. It's transferred to Aquila, which then pays
22 it out to -- as part of the construction.

23 Q. Pays it out as part of the construction?

24 A. Right. We've been incurring construction
25 costs, so they're funding the construction at South

1 Harper. So as cash comes in, we have in essence been
2 paying all of those contractors.

3 Q. What's the total amount of the Chapter 100
4 financing contemplated to be?

5 A. There's a limit. I'm not sure of the exact
6 amount. I think it's around 140 million.

7 Q. 140 million. Now, is that --

8 A. That's subject to check, but it's
9 approximately that.

10 Q. Okay. And then that is -- is that -- is
11 the purpose of the Chapter 100 financing to pay the
12 construction costs at South Harper plus the costs of the
13 equipment?

14 A. Yes.

15 Q. Okay. And what are the construction costs
16 at South Harper? If that's HC, you might warn me.

17 A. I believe what we estimated the cost would
18 be in the upcoming rate case was in the area of 150 to
19 155 million.

20 Q. Okay. That's -- and that does or does not
21 include the cost of equipment?

22 A. That would include the cost of the
23 turbines.

24 Q. Okay. All right. So you might be short --
25 now, is that -- what valuation of the turbines?

1 A. That was at a valuation of the 70,796,000.

2 Q. I thought that might be a different deal.

3 Okay.

4 A. So when we get to a rate case, should this
5 stipulation be approved by the Commission, that would
6 reduce by approximately 4.2 million.

7 Q. Okay. So there is about -- you're thinking
8 that 140 million in bonds will be sold, and then that
9 money will be paid -- sale of those bonds, the proceeds
10 from, that will be paid to Aquila?

11 A. That's --

12 Q. Actually, it should actually flow to the
13 city of Peculiar.

14 A. It flows through the city, I'm sure.

15 Q. And then they pay Aquila whatever it is
16 that they're paying Aquila for the whole project?

17 A. That's correct. And then Aquila will make
18 lease payments back to the city, which are -- equate to
19 the funding associated with those municipal bonds.

20 Q. So Aquila is going to receive some cash for
21 these turbines over and above the cost of construction?
22 I'm not sure what that subtracts out to, but isn't that
23 correct?

24 A. Aquila is going to get cash less than the
25 cost of the turbines plus the installation costs. The

1 total cost of the turbines and installation is going to be
2 the 150 to 100-- approximately \$150 million.

3 Q. Okay. I guess what I'm getting at is,
4 you've incurred some construction costs. That money will
5 come back to Aquila. Part of that will be used to
6 reimburse Aquila for construction costs?

7 A. Correct.

8 Q. The other part is attributable to the cost
9 of the equipment?

10 A. That's correct as well.

11 Q. And that money will also come to Aquila?

12 A. That's correct.

13 Q. But Aquila is not paying anything and will
14 never pay anything to its affiliate for the purchase of
15 this equipment?

16 A. There is no cash directly from the
17 regulated division that's being paid out to the
18 subsidiary.

19 Q. Chapter 100 obligations, those are legal
20 obligations that Aquila will have to pay to the City of
21 Peculiar?

22 A. That's correct.

23 Q. And then the City of Peculiar will owe the
24 money on the bonds?

25 A. Yes.

1 Q. And the financing arrangement on the --
2 what's anticipated in regard to the costs, the interest
3 costs on the bonds at this point?

4 A. I do not know.

5 Q. Will Aquila -- is Aquila going to pay the
6 exact amount that the City is obligated for on the bonds?

7 A. Yes.

8 Q. But we don't know what that interest rate
9 will be?

10 A. I don't know what it is.

11 Q. Does somebody know?

12 A. I don't know. I don't know how far
13 along --

14 Q. There would be a projected amount, I'm
15 sure.

16 A. Right.

17 Q. We wouldn't know. But the City of Peculiar
18 has some sort of bond rating. There would be some way of
19 anticipating what the sale would result in in regard to
20 interest?

21 A. That's correct. And I would imagine being
22 a city and being able to get municipal financing is
23 probably lower cost money than what Aquila could obtain on
24 the market.

25 Q. Yes. And that would be -- do you have any

1 idea how much percentage-wise --

2 A. I don't know.

3 Q. -- you might gain?

4 A. No.

5 Q. But Aquila does not pay any additional
6 premium to the City of Peculiar in this transaction, or do
7 they?

8 A. Well, they don't pay a premium. Aquila did
9 pay a -- I'm not sure, an agent's fee or something, the
10 typical fee that the advisor to the City determined would
11 be paid in a normal issuance of municipal bonds, I think
12 something to the tune of \$700,000.

13 Q. That's to cover the costs the City might
14 otherwise incur?

15 A. Right. That's the issuance cost.

16 Q. As far as there being any additional
17 payment to the City over and above what the City's costs
18 are anticipated to be, there wouldn't be any?

19 A. No.

20 Q. Okay. And there are tax advantages to
21 utilizing this method of financing or not?

22 A. There are. There are certainly tax
23 advantages, yes.

24 Q. What are those?

25 A. Dollar amount, are you asking, or --

1 Q. Just generally.

2 A. -- how do they --

3 Q. You can give me general ideas. If you have
4 the dollar amount, that's helpful.

5 A. Over the 30 years, we estimate the
6 benefit's about \$18 million.

7 Q. 18 million?

8 A. Yes. And the way that comes about is,
9 instead of paying ad valorem taxes, it would be at the
10 rates of the various jurisdictions in which Aquila
11 operates. Instead, there's a negotiated payment in lieu
12 of taxes, a PILOT payment.

13 Q. Okay. And the savings of taxes over and
14 above the payment in lieu of taxes you estimate over
15 30 years to be about 18 million?

16 A. Yes.

17 Q. Who's losing money in this deal, what
18 subdivisions?

19 A. Well, I guess you could argue no one is
20 losing money because no one is currently -- there's no tax
21 being taken away from any place. This is all incremental.
22 Now, absent the PILOT or absent the Chapter 100 financing,
23 what would happen, this plant would be taxed at some rate,
24 which we don't really know. It would be various rates.
25 And it would be distributed to all the counties in which

1 Aquila -- that Aquila serves.

2 Q. And the negotiation that you're -- that you
3 have had in regard to payment in lieu of taxes, does that
4 negotiation include all of those counties?

5 A. It does not.

6 Q. Who's being paid?

7 A. The PILOT payments stay within Cass County.

8 Actually, the Raymore/Peculiar School District, the
9 Legislature basically set how the distribution under
10 Chap-- chapter 100 specifies how the distribution is to be
11 made, and probably 60 to 70 percent of the PILOT payments
12 go to the Raymore/Peculiar School District. Other funds
13 go to Cass County itself and some other public agencies
14 within Cass County.

15 Q. Okay.

16 A. They go to the local taxing authorities in
17 which the plant itself resides.

18 Q. Is that percentage and how much they're
19 supposed to get all controlled in Chapter 100, or is it
20 all subject to negotiation?

21 A. The only thing that is subject to
22 negotiation is the dollar amount itself. The distribution
23 is set by Chapter 100.

24 Q. And all of the entities that have a right
25 to negotiate under Chapter 100 have signed off on it?

1 A. The PILOT payment is negotiated by the
2 issuer of the bonds. In this case, it would be the City
3 of Peculiar.

4 Q. So Peculiar negotiated for the --

5 A. Yes.

6 Q. -- other entities?

7 Do you know whether the Commission has to
8 make a finding in this case -- this may not be something
9 for you, Mr. Williams -- but in regard to the impact on
10 taxes to political subdivisions?

11 A. We made no request in this case, I don't
12 believe.

13 Q. I'm not sure whether this case falls under
14 some of that statutory language in regard to making that
15 finding. So maybe somebody else can tell me later.

16 Is there -- the obligation that you -- that
17 you have under this arrangement is one that Aquila and
18 this particular division itself is entering that is the
19 rate -- deals with regulated activities is entering into
20 as a result of this stipulation, assuming it's approved?

21 A. Could you --

22 Q. Yeah, that's a little convoluted. The
23 Chapter 100 financing is being entered into by the
24 regulated division of Aquila?

25 A. That's correct.

1 Q. And that arrangement, then, would Aquila
2 consider that then to be an obligation of its ratepayers?

3 A. Well, it would be an obligation of Aquila,
4 which would be within the regulated entity, and if you're
5 asking would that financing be included in what we would
6 view as the capital requirements of the regulated entity
7 ultimately paid for by the customer --

8 Q. Yes.

9 A. -- the answer would be yes.

10 Q. Okay. Is that in dispute? Will that be in
11 dispute at some future point with the way the stipulation
12 is worded, in your opinion?

13 A. I don't believe so.

14 Q. And what I'm trying to get at here is
15 really trying to discern how far this stipulation goes in
16 resolving any -- resolving issues in the future.

17 Is the -- is the question of whether or not
18 that obligation is something that is within the regulated
19 portion of Aquila and should be booked in that fashion
20 being resolved by this case?

21 A. In and of itself, no.

22 Q. Okay.

23 A. Because I think what you're asking is, it
24 gets back to the matter of, well, did we use the division
25 capital structure or a corporate capital structure, and

1 that would still be subject to argument in a rate case of
2 what it -- all this stipulation does is it approves and
3 agrees that Chapter 100 bonds are a good thing, and that
4 we should enter into the agreement.

5 The financing, as far as Aquila goes, it's
6 no different than if we had purchased -- had issued bonds
7 ourselves, because we're making the same payments that the
8 city would be making. So our proposal will be that that
9 is included as a debt cost, debt component of the MPS
10 division. Whether or not other parties might argue with
11 that, that is still open in a rate case.

12 The other thing which it -- it doesn't
13 state that it settled, but perhaps there is a -- I mean,
14 the PILOT payments, they've not been agreed to
15 specifically, but I think all the parties agree that there
16 is benefit from the PILOT payments compared to the ad
17 valorem taxes.

18 So the stipulation doesn't specifically
19 address that that's what will be recovered, but I think
20 there's probably a general understanding that in a rate
21 case that's what we look to for recovery is the PILOT
22 payments only and not the higher ad valorem taxes.

23 Q. What happens if -- if South Harper is not
24 allowed to continue to function as a result of court cases
25 that are currently pending, what happens with the

1 Chapter 100 financing?

2 A. Aquila has the ability to unwind the
3 transaction at any time, and --

4 Q. Tell me how that would work.

5 A. More than likely, what would happen, there
6 is a clause in the agreement that allows us to buy the
7 equipment for a thousand dollars. So we would take over
8 formal legal ownership of the entire site for a thousand
9 dollars. At the same --

10 Q. Who would take them over?

11 A. Aquila.

12 Q. Aquila, Incorporated?

13 A. Right. We talked right now that title is
14 actually held by the City of Peculiar.

15 Q. Yes.

16 A. We could unwind that to where Aquila itself
17 would then hold title to that property. At the time we
18 did that, you would also -- the Chapter 100 bonds would
19 then be paid off. So they would be gone. It would be --

20 Q. And who would pay them off?

21 A. It would be Aquila would pay off the bonds.

22 Q. Okay. So in essence, Aquila would be
23 paying a thousand dollars to the City of Peculiar, plus
24 whatever the bonds were that were outstanding?

25 A. That's right. We'd have to go through a --

1 we would then have the financing associated with that.

2 Now, I guess there is always the alternative --

3 Q. Go ahead.

4 A. -- that you don't unwind that and the
5 ownership stays with the city of Peculiar, but I would
6 think that would not be -- that probably wouldn't be a --
7 that might be a legal answer, but probably not a viable
8 practical answer.

9 Q. Is that an option -- is the option to
10 unwind Aquila's, or does Peculiar have the ability to
11 unwind it?

12 A. It is Aquila's.

13 Q. Okay. So if this -- if it would occur that
14 you'd have to unwind the transaction because the site was
15 declared to be not appropriate under what happened, under
16 the cases that are pending, then there would be no -- you
17 couldn't use the facility. Let's assume you couldn't use
18 the facility. You weren't allowed to operate.

19 A. More than likely what we would do would be
20 to dismantle the facility and use what equipment we could
21 at alternative locations.

22 Q. How much money would have to be expended to
23 unwind -- let me use a different word. How much money
24 would have to be used to dismantle what had been built at
25 South Harper, if that's public?

1 A. It's not public.

2 Q. Okay. I wondered.

3 A. It would be -- it would not be inexpensive,
4 but it would -- it would be -- probably be a better
5 solution than just leaving the title with the -- with the
6 City and turning those assets over to the City.

7 Q. Now, is there any risk or any risk that
8 ought to be discussed in regard to the possibility that
9 Aquila would not financially be able to unwind this
10 transaction?

11 A. I'm trying to evaluate the potential risk,
12 and I really can't think of any. You're talking about
13 risk to the customers. I assume we have bigger problems
14 than that if --

15 Q. I'm trying to see how the amounts factor
16 into Aquila's ability to take care of going back in,
17 paying for or paying off all of the bonds and coming up
18 with the money to do that, how difficult that is with --
19 for Aquila in its current financial condition.

20 A. Oh, I think -- I think we would be able to
21 do that.

22 Q. Can you give me a little bit more
23 information?

24 A. Well, in essence, what you're talking about
25 is paying off the bonds, and to pay off the bonds, then

1 there's a question of how do you do that, do you do that
2 out of cash or do you do that through other sources of
3 financing. We have seen that we have been able to get
4 other sources of financing. The financial condition is
5 improving. Through the sales we will have some cash on
6 hand, although some of that cash will be used to pay off
7 existing debt obligations.

8 So that's -- you know, how far out in the
9 future do you want me to look? The farther out you go,
10 the more speculative it becomes.

11 Q. Okay.

12 A. But today as we sit, I see no problem in
13 unwinding that if that were the course that we chose or
14 were required to take.

15 Q. Okay. There is some risk, I suppose, to
16 the City of Peculiar if Aquila couldn't buy the bonds
17 back. They're the ones that are on the hook for the
18 bonds?

19 A. They are, but in essence they would inherit
20 a power plant, which then probably has some value.

21 Q. Does that -- how is that one over at --
22 that Aries plant doing right now?

23 A. I have no knowledge.

24 Q. Has it been operating this summer?

25 A. It has operated a little bit.

1 Q. It has? That's good. A lot?

2 A. Not a lot.

3 Q. I wondered if you might be expressing some
4 interest in it when you said it was operating a little.
5 Never mind.

6 COMMISSIONER GAW: That's all I have right
7 now of Mr. Williams.

8 JUDGE PRIDGIN: Commissioner Gaw, thank
9 you. Commissioner Clayton?

10 COMMISSIONER CLAYTON: Thank you, Judge.

11 QUESTIONS BY COMMISSIONER CLAYTON:

12 Q. Most of the questions that I had have been
13 answered. I wanted a little bit of clarification on a
14 couple of points, and I'll try to do that quickly.

15 First of all, clarify, who owns the
16 turbines right now?

17 A. The turbines right now are owned by Aquila,
18 Inc.

19 Q. Aquila, Inc., not by Aquila Equipment --

20 A. No.

21 Q. -- Inc.?

22 A. They have been transferred to --

23 Q. They've already been transferred?

24 A. Yes.

25 Q. Okay. So Aquila, Inc. owns them today,

1 would transfer them to City of Peculiar. And if the court
2 case or the court rules that Aquila cannot continue, then
3 unwinding the transaction, they would then be transferred
4 back to Aquila, Inc., just like they are today?

5 A. More than likely, yes.

6 COMMISSIONER CLAYTON: I don't think I have
7 any other questions. Thank you.

8 JUDGE PRIDGIN: Commissioner Clayton, thank
9 you. Commissioner Appling?

10 COMMISSIONER APPLING: I don't think I have
11 any questions at this time.

12 JUDGE PRIDGIN: Let me see if we have any
13 questions from counsel. Anyone wishing cross-examination?
14 All right. Seeing none. Mr. Boudreau, any redirect?

15 REDIRECT EXAMINATION BY MR. BOUDREAU:

16 Q. I'm going to give my witness a rare
17 opportunity to correct his attorney. In my opening
18 statement I had a figure that I mentioned about the
19 accounting write-down effect, the collective write-down
20 effect. I believe I misstated that. Could you correct me
21 if it needs correcting?

22 A. I will do that. I believe you said there
23 was a -- you expected a total write-down of approximately
24 12 million. We have already written the -- at
25 November 2004, we wrote the property down over

1 \$10 million, from the 81 million down to the 70,700,000.
2 And then this -- as a result of this stipulation, we would
3 be writing down another 4.2 million. So the total would
4 be close to \$15 million of write-down.

5 MR. BOUDREAU: Thank you for that. I have
6 no further questions. Thank you.

7 JUDGE PRIDGIN: All right. Mr. Boudreau,
8 thank you. May this witness be excused? Any further
9 questions from the Bench? Mr. Williams, thank you very
10 much.

11 This looks to be about as convenient a time
12 as any to take a break since we've been going for a little
13 while. Let's take a brief recess for about 10 to 15
14 minutes.

15 COMMISSIONER CLAYTON: Judge, before we
16 recess, can I ask a question? Just for clarification,
17 what do we have? We still have opening statements from
18 other parties, or what do we have left to do?

19 JUDGE PRIDGIN: We have taken opening
20 statements. We have had -- and you had stepped out for a
21 moment. We had given Aquila the chance to answer Bench
22 questions, and they're still willing to do that, and we've
23 heard testimony from Mr. Williams. That's how far we've
24 got so far.

25 COMMISSIONER CLAYTON: What do we have

1 left?

2 JUDGE PRIDGIN: What we have left, I guess,
3 is for the parties -- we were on Staff. Mr. Williams from
4 Staff had been answering questions from Commissioner Gaw,
5 and we took a detour to get Mr. Williams from Aquila.

6 COMMISSIONER CLAYTON: I recognize that.
7 So are we going to have Staff witnesses? Should I
8 anticipate that?

9 MR. WILLIAMS: They're available if you
10 have questions.

11 COMMISSIONER CLAYTON: Just available?
12 You're not -- they're just available for questions, you're
13 not planning on putting on testimony, correct?

14 MR. WILLIAMS: Correct.

15 COMMISSIONER CLAYTON: Is that the case for
16 Office of Public Counsel?

17 MR. WHEATLEY: Yes, sir.

18 COMMISSIONER CLAYTON: Available to answer
19 questions?

20 MR. WHEATLEY: Yes, sir.

21 COMMISSIONER CLAYTON: And then I don't
22 know if Cass County -- Mr. Comley, you represent --

23 MR. COMLEY: Yes. We have no witnesses.

24 COMMISSIONER CLAYTON: You want to leave?

25 COMMISSIONER GAW: He wants to leave and

1 I'm not letting him.

2 MR. COMLEY: I renew my request to be
3 excused.

4 COMMISSIONER CLAYTON: We'll take that
5 under advisement. It's just basically up to the Bench
6 asking questions?

7 JUDGE PRIDGIN: Yes, sir.

8 COMMISSIONER CLAYTON: I want to get an
9 idea of scheduling for my own. I've got things. So okay.
10 Thank you.

11 JUDGE PRIDGIN: All right. Thank you. If
12 there's nothing further, we'll go off the record for a
13 brief recess.

14 (A BREAK WAS TAKEN.)

15 JUDGE PRIDGIN: We're back on the record.
16 I would like to go out of order just a moment, and
17 Mr. Comley's already approached the podium, and see if the
18 Bench has any questions for Cass County, and that way
19 Mr. Comley, who's asked to be excused, can go on if
20 there's no other concerns from the Bench. So Mr. Comley,
21 thank you. Commissioner Gaw, any questions?

22 COMMISSIONER GAW: I'm going to pass to
23 Commissioner Clayton.

24 JUDGE PRIDGIN: Commissioner Clayton?

25 COMMISSIONER CLAYTON: Thank you.

1 Mr. Comley, in an effort to make the PSC more user
2 friendly and available to the public and your concern with
3 taking care of other business today, we thought we'd skip
4 to you and ask you a few questions, and then you can
5 decide what you want to do after that.

6 MR. COMLEY: I'm grateful to the
7 Commission.

8 COMMISSIONER CLAYTON: I wanted to clarify
9 first of all, you are here representing the County of Cass
10 only here today?

11 MR. COMLEY: That's correct.

12 COMMISSIONER CLAYTON: Was there ever a
13 time when you represented stopaquila.org?

14 MR. COMLEY: No.

15 COMMISSIONER CLAYTON: And they are not a
16 party in this case?

17 MR. COMLEY: No, they are not.

18 COMMISSIONER CLAYTON: Did we deny
19 intervention?

20 MR. COMLEY: That's my remembrance.

21 COMMISSIONER CLAYTON: But we did grant
22 intervention to Cass County?

23 MR. COMLEY: Yes.

24 COMMISSIONER CLAYTON: That was a long time
25 ago, and I don't recall exactly what happened. At the

1 time that the Court of Appeals sustained the Cass County
2 Circuit Court's order and held -- upheld Cass County
3 Circuit Court said that the plant could not be built, did
4 Cass County file any documents in this case suggesting a
5 suspension of the procedural schedule in this case?

6 MR. COMLEY: Cass County had filed
7 initially a motion to suspend. After the case -- the
8 Court of Appeals, somewhere around late June, shortly
9 after the opinion had been rendered, I think it was Office
10 of Public Counsel that renewed motion to suspend, and then
11 Cass County filed suggestions supporting that.

12 COMMISSIONER CLAYTON: Okay. And has Cass
13 County withdrawn its comments with regard to suspending
14 the procedural schedule in this case?

15 MR. COMLEY: No. They are still on file.
16 We have -- Cass County has simply reviewed the
17 stipulation, and its position has been -- well, I guess I
18 could remind the Commission the position of the County.
19 The County does not oppose power plants being built within
20 the county, if the Commission concludes that the public
21 interest is served by a power plant in that area or the
22 public interest is going to be served by the evaluation of
23 these turbines at this time. I look at it as a question
24 that doesn't absolve -- or a solution that absolves Aquila
25 from building in a location which local government zoning

1 would not permit.

2 But your decisions, we think that there's
3 no reason to oppose nor support the stipulation in this
4 case. I still think there are very strong grounds to
5 suspend the proceeding pending the outcome of the Court of
6 Appeals decision, and I think it's always been -- it's
7 been intimated already that there are motions pending at
8 the Court of Appeals asking for a rehearing or a transfer
9 of that.

10 And we were visiting during the break about
11 a time when that might come, and I'm sure that's on the
12 Commissioners' mind, too. Not that my experience is that
13 great at the Court of Appeals, but I think it unlikely
14 that the court will take more than 90 days to decide that
15 motion. So I would suspect that it's fair to say a
16 decision is eminent.

17 COMMISSIONER CLAYTON: So is it Cass
18 County's position that the procedural schedule now should
19 be suspended or not in this case?

20 MR. COMLEY: In this case, I think we --
21 Cass County did file no objection to partial suspension of
22 the procedural schedule, and I think that went to the
23 hearing, the briefs and the other issues that would have
24 preceded the hearing.

25 COMMISSIONER CLAYTON: Okay. In the --

1 there was a case that came here where we indicated that --
2 and correct me if I'm wrong -- in a prior certificate
3 granted Aquila the authority to build a power plant, to
4 summarize what our ruling was in that case. Do you agree
5 with that?

6 MR. COMLEY: I think that's a fair summary.

7 COMMISSIONER CLAYTON: And that case has
8 been appealed to the Cass County Circuit Court; is that
9 correct?

10 MR. COMLEY: Exactly. It's on writ of
11 review in the Cass County Circuit Court.

12 COMMISSIONER CLAYTON: And would you
13 refresh my memory as to the status of that writ of review?

14 MR. COMLEY: I think the Commission has
15 already responded to the writ. The record is on file.
16 The parties convened with Judge Dandurand and -- excuse
17 me. I think it was the Staff counsel who visited with
18 judge Dandurand with permission of the parties, and it was
19 concluded that we would not pursue that matter until the
20 Court of Appeals had ended its review and we have an
21 unappealable judgment to review.

22 I think all of us, and I think rightly so,
23 considered that the decision of the Court of Appeals is
24 critical to what the decision of the Commission is, and
25 would be very helpful in the review of that decision.

1 COMMISSIONER CLAYTON: And potentially
2 ultimately the Supreme Court --

3 MR. COMLEY: Exactly.

4 COMMISSIONER CLAYTON: -- as a final
5 exhaustion of remedies?

6 Okay. Cass County has not filed an
7 objection to the stipulation as you've said, correct?

8 MR. COMLEY: Exactly.

9 COMMISSIONER CLAYTON: And does this case
10 in setting a value on this equipment or moving forward
11 with this determination, in any way does it interfere with
12 either the writ of review before the Cass County Circuit
13 Court now or the case before the Missouri Court of
14 Appeals?

15 MR. COMLEY: Well, I've taken the position
16 and would take the position elsewhere in other forums, if
17 necessary, that it does not, that there is nothing about
18 the decisions rendered by Judge Dandurand or the decision
19 of the Commission and I think what I'll refer to as the
20 0248 case, I don't think that your conclusions about the
21 valuations of the turbines in this matter will affect any
22 of the decisions that have preceded it.

23 COMMISSIONER CLAYTON: So you would not see
24 any interference in any way by moving forward with this
25 case?

1 MR. COMLEY: I see none. I see it does not
2 prejudice any of the positions of the parties in the other
3 cases.

4 COMMISSIONER CLAYTON: Does the County of
5 Cass see any down side to moving forward with financing
6 that may have to be unwound at a later date should the
7 Court of Appeals rule against Aquila?

8 MR. COMLEY: The County hasn't given me any
9 position to tell the Commission on that. I don't have any
10 position from the County itself on that, no.

11 COMMISSIONER CLAYTON: Are you familiar
12 with Chapter 100 financing and bonds that go with that?

13 MR. COMLEY: No, I am not. I am not
14 familiar with the mechanism. Well, I have read the
15 chapter. I have not been intimately connected with
16 transactions involving Chapter 100 financing.

17 COMMISSIONER CLAYTON: Is there a down side
18 in the event that this transaction has to be unwound in
19 any way, in your opinion?

20 MR. COMLEY: In my opinion, yes, I think
21 there would be. I think that it would be -- I think that
22 it would be, again, premature for the City of Peculiar and
23 Aquila to enter into a transaction that has a high risk of
24 being unwound. And I think at this stage we still have
25 that concern.

1 COMMISSIONER CLAYTON: But you don't have
2 any specific concerns for the people of Cass County or --

3 MR. COMLEY: I have -- I know of none, and
4 none have been told to me.

5 COMMISSIONER CLAYTON: Okay. You were in
6 the courtroom, the hearing room, when Mr. Williams was
7 testifying?

8 MR. COMLEY: Yes.

9 COMMISSIONER CLAYTON: Do you have any
10 disagreement with his explanation of how events would
11 unfold if the Court of Appeals sustains the status quo in
12 terms of unwinding the financing agreement?

13 MR. COMLEY: I don't have any reason to
14 question what he said. I don't know of any reason,
15 anything to question about what he said.

16 COMMISSIONER CLAYTON: Do you see
17 potentially any harm to any ratepayers if this matter has
18 to be unwound at a later day? And if you don't know, you
19 don't know.

20 MR. COMLEY: I don't know. I know that's
21 going to be a struggle for the Office of the Public
22 Counsel and the Staff when those kinds of events occur.
23 And I think Cass County is content with the expertise of
24 both of those agencies to make sure that the ratepayers
25 and their interests are covered.

1 COMMISSIONER CLAYTON: Okay. I don't think
2 I have any other questions. Thank you, Judge.

3 JUDGE PRIDGIN: Commissioner Clayton, thank
4 you. Commissioner Appling?

5 COMMISSIONER APPLING: No questions. Good
6 to see you. I hadn't seen you in so long, I thought you
7 might have taken residence in another state.

8 MR. COMLEY: I still have breath and I'm
9 still here.

10 COMMISSIONER APPLING: Thank you very much.
11 Good to see you.

12 JUDGE PRIDGIN: Commissioner Appling, thank
13 you. Commissioner Gaw, any questions?

14 COMMISSIONER GAW: No. And I have no
15 objection to Mr. Comley leaving now.

16 MR. COMLEY: Thank you.

17 JUDGE PRIDGIN: Mr. Comley, thank you very
18 much.

19 MR. COMLEY: Thank you, sir.

20 JUDGE PRIDGIN: What I'd like to do is go
21 back to where we were before we swore in Mr. Dennis
22 Williams from Aquila, and I believe Mr. Nathan Williams,
23 counsel for Staff, was answering questions of Commissioner
24 Gaw.

25 MR. WILLIAMS: I was trying at least.

1 JUDGE PRIDGIN: Commissioner Gaw, do you
2 have any further questions for Staff counsel?

3 COMMISSIONER GAW: Mr. Williams, as --
4 enlighten me on the appropriateness of moving forward on
5 this case from Staff's standpoint when we're in the
6 position we are with the Court of Appeals with the only
7 order that is currently existing saying that South Harper
8 cannot proceed.

9 MR. WILLIAMS: There's no, in Staff's view,
10 harm caused by the Commission moving forward. What the
11 Commission would be doing would be granting authorization
12 for the Chapter 100 financing, it would not be requiring
13 the parties to go forward with that authorization. It
14 would not mean that the transaction will consummate.
15 There may be some other impediment besides getting
16 Commission authorization.

17 COMMISSIONER GAW: Such as?

18 MR. WILLIAMS: Court order. What happens
19 with the South Harper appeal may have an impact on whether
20 or not the Chapter 100 financing actually occurs.

21 COMMISSIONER GAW: At this point, the only
22 order we have says it can't occur, subject to rehearing,
23 subject to appeal or transfer. That's all we have right
24 now.

25 MR. WILLIAMS: There's also been a bond

1 posted and the effects of that order stayed is my --

2 COMMISSIONER GAW: A bond posted, but right
3 now the order says you can't do -- you can't build it
4 there, you can't have it there. So I'm trying to
5 understand, I guess, what is the purpose of proceeding
6 with additional transfers of the ownership of this
7 facility and the incurring of additional obligation
8 that -- on behalf of the regulated company under these
9 circumstances?

10 MR. WILLIAMS: Well, the facility has been
11 built. It is in place.

12 COMMISSIONER GAW: But you are authorizing
13 by this stipulation and asking the Commission to authorize
14 additional legal obligations by Aquila with the
15 Chapter 100 financing, additional transfers of the title
16 to the equipment and the real estate it sits on with the
17 Chapter 100 financing, all of which may need to be -- may
18 either be of no use whatsoever to the ratepayers or have
19 to be unwound in order to make it useful.

20 And we know those things today, that we've
21 got an order that says you can't do this. It's going to
22 take a reversal or a change in that order to change the
23 circumstances. Why should we proceed with approval of
24 this stipulation until we know that the order is going to
25 be changed?

1 MR. COMLEY: As the Staff's indicated,
2 there's a financial advantage to the company by doing this
3 financing over not doing so.

4 COMMISSIONER GAW: I understand, but I'm
5 talking about timing right now. Why is it in the public
6 interest to approve this transfer and financing
7 arrangement when we know the order says at this point you
8 can't have this facility here?

9 MR. WILLIAMS: That's also a non-final
10 order at this point.

11 COMMISSIONER GAW: It's the only thing I
12 have, though. What is it that makes it in the public
13 interest to go ahead and approve this transaction, which
14 results in transfer of title, which results in additional
15 obligations on behalf of Aquila, which results in
16 obligations on behalf of the people of the city of
17 Peculiar, albeit with their governmental body's consent?
18 Why is it important to do this now as opposed to waiting
19 until we know what happens in that case?

20 MR. WILLIAMS: I'm not sure offhand what
21 the term of the agreement is. Usually an agreement has a
22 term within which it must be consummated or else it is no
23 longer an availability.

24 COMMISSIONER GAW: Let me ask this. I
25 could potentially argue, could I not, that the financing

1 that I can procure from this arrangement might somehow
2 be -- cost Aquila less than proceeding under the current
3 arrangements of whatever they're utilizing to pay off the
4 obligations to build the South Harper facility? Is
5 that -- would that be accurate or not?

6 MR. WILLIAMS: I think the primary benefit
7 is the tax advantage, making a payment in lieu of taxes as
8 opposed to paying the taxing authority, because the legal
9 title to the property is going to be with the political
10 subdivision.

11 COMMISSIONER GAW: That's an advantage
12 perhaps to Aquila's -- to Aquila and Aquila's shareholders
13 and perhaps to its ratepayers at some point in time,
14 potentially; is that correct? I mean, I --

15 MR. WILLIAMS: I believe so.

16 COMMISSIONER GAW: Of course, it's a
17 disadvantage to those who aren't receiving the tax
18 benefits from it, the people that are in the political
19 subdivisions that would otherwise receive those taxes?

20 MR. WILLIAMS: That's assuming the plant
21 would still have been built where it has been constructed.

22 COMMISSIONER GAW: Well, they seem darn
23 determined to build it where it's constructed, don't they?

24 MR. WILLIAMS: I think they were looking at
25 another site before they moved to Peculiar.

1 COMMISSIONER GAW: I understand. Despite
2 all sorts of court orders, they've continued to try to
3 build it and run it there?

4 MR. WILLIAMS: Yes.

5 COMMISSIONER GAW: So if I'm looking at
6 this arrangement, and that's just -- that's not about
7 where it's located anyway, as long as it was -- I guess as
8 long as it was within an area that Peculiar had something
9 to say about, which I'm not sure if it matters where that
10 is. It appears that it doesn't matter since this tract of
11 land isn't within the city or not even adjacent to it, the
12 South Harper facility, correct?

13 MR. WILLIAMS: I don't know if it's
14 adjacent. I know it's nearby to the city of Peculiar, is
15 my understanding. Originally it was anticipated to be
16 annexed.

17 COMMISSIONER GAW: It wasn't, though, was
18 it?

19 MR. WILLIAMS: As far as I know, it's never
20 been.

21 COMMISSIONER GAW: It's another one of
22 those things in this case that was anticipated to happen
23 that didn't?

24 MR. WILLIAMS: I think Aquila was
25 anticipating it to happen.

1 COMMISSIONER GAW: Maybe Aquila was
2 anticipating that they wouldn't have a judge that would
3 say you can't build it there either.

4 MR. WILLIAMS: Could be.

5 COMMISSIONER GAW: What I'm getting to is
6 just trying to understand the timing of this. Again, what
7 is the advantage -- I'm going to give you a disadvantage
8 perhaps and ask you if you think that's the case.

9 Is it a disadvantage potentially for us to
10 get another step along the way here by transfer of title,
11 transfer -- additional obligation under the requirements
12 of this leasing obligation, additional -- additional
13 transactions in regard to the bonds being issued, the
14 costs of that, the costs of perhaps then having to unwind
15 that bonding arrangement if the case ends up being
16 basically what it is today where this order is made final
17 and left in place?

18 MR. WILLIAMS: It seems to me that should
19 be more a decision left to the City of Peculiar and Aquila
20 than the Commission putting an impediment in place when
21 there, in Staff's view, is no detriment to the cost of
22 ratepayers by the transaction, and there is the payment in
23 lieu of tax benefit that's out there.

24 If the Court of Appeals does change its
25 view and says, no, it's okay for the plant to be there, or

1 something else occurs where Aquila reaches a resolution
2 where the plant is left in place, there's nothing to be
3 gained by delay. And as Mr. Williams indicated, there is
4 a provision in the agreement where Aquila can pay off the
5 existing bonds plus a thousand dollars and get the title
6 to the property back.

7 COMMISSIONER GAW: And there are costs to
8 that, are there not? There are costs to unwinding that
9 transaction. Do you know what those costs are? Has Staff
10 estimated how much that's going to take?

11 MR. WILLIAMS: No.

12 COMMISSIONER GAW: So you don't know what
13 the detriments potentially are in this case to going ahead
14 and proceeding under an order that says you can't proceed?

15 MR. WILLIAMS: From a ratepayer standpoint,
16 Staff doesn't perceive there is a detriment.

17 COMMISSIONER GAW: If you have approved the
18 transfer of this -- of this facility and the entering in
19 of the lease by Aquila under this transaction, have you in
20 any way granted that this is -- that this facility is
21 something that is appropriate for Aquila in its portfolio
22 and conceded any issues in regard to the question of
23 whether or not it's appropriate in a rate case in the
24 future if this facility is argued to that it should be
25 included in rate base?

1 MR. WILLIAMS: No. All Staff is agreeing
2 to is the financing vehicle, and if the CTs are included
3 in rate base, what that value would be, nothing more.

4 COMMISSIONER GAW: So you have acquiesced
5 to the value of it being included in rate base. You have
6 not acquiesced to anything in regard to whether it should
7 be included in rate base?

8 MR. WILLIAMS: Correct.

9 COMMISSIONER GAW: Do you -- if Aquila
10 would have received the generating units and the equipment
11 concerned in this stipulation as a gift, would -- what
12 would be the value that would be included in rate base of
13 this equipment?

14 MR. WILLIAMS: I think that would be zero.

15 COMMISSIONER GAW: And what is the
16 difference between a gift of this property and the
17 transfer of the property to Aquila with no expectation and
18 no plan to ever pay anything for it?

19 MR. WILLIAMS: If I understood Mr. Williams
20 correctly, he was saying that there were transactions
21 reflected on the books. There just was not an actual
22 physical transfer of cash.

23 COMMISSIONER GAW: So if there's never any
24 payment, it's just shown as an obligation but there's
25 never any expectation of paying it, what's the difference

1 between that and just transferring it for no cost?

2 MR. WILLIAMS: You may need to get the
3 accountants up here, but my belief would be that by
4 reflecting it on the books, you're showing a transaction.
5 It's not merely just a gift.

6 COMMISSIONER GAW: I'm just thinking of the
7 fact that my recollection on something that may be totally
8 unrelated in that a trans-- any kind of a note that you
9 set up that you never intend to pay off and that both
10 parties understand is never intended to be paid off is not
11 acknowledged as a legal obligation if that intent is
12 disclosed or discovered for purposes of taxes and other
13 things.

14 So what -- if there's never any intent to
15 actually pay for these, for Aquila to pay its affiliate
16 for the transfer of these things, isn't that the same
17 thing as a gift? I'm just struggling with that. The
18 concept probably has an easy explanation for accountants,
19 but from my standpoint, it strikes more along the line of
20 some of the cases I've looked at in other arenas where
21 there's no -- there's no intent to ever pay for, by either
22 the transferor or the transferee, for the property.

23 MR. WILLIAMS: I don't disagree with your
24 analysis, but I don't know that that's -- I don't think
25 that's applicable here.

1 COMMISSIONER GAW: It may not be, but I
2 think I'd want to know the answer to that question.

3 MR. WILLIAMS: Mr. Williams would be able
4 to --

5 COMMISSIONER GAW: If I were in Staff's
6 shoes, or in Public Counsel's shoes, but particularly in
7 my shoes right now.

8 Okay. What is the down side of not
9 approving this at this point and waiting until we have a
10 final order? Only the issue of whether or not there's
11 taxes that aren't -- that don't have to be paid, is that
12 it?

13 MR. WILLIAMS: I also know that Aquila was
14 wanting to record on their books what value to cap for the
15 CTs before the close of year.

16 COMMISSIONER GAW: Why is that?

17 MR. WILLIAMS: My understanding is they're
18 wanting to recognize their losses in this year and get
19 them out of the way as opposed to having them continue in
20 the future.

21 COMMISSIONER GAW: Okay. You have to tell
22 me for what purposes when you say wanting to recognize
23 your losses. For purposes of what, taxes, other things,
24 what?

25 MR. WILLIAMS: I think it probably -- it

1 may be taxes, but I think it also pertains to appearances
2 on how they're proceeding on their plan to get their feet
3 back under them. I think that's -- it would be better for
4 Aquila to explain what its desires are, but that's my
5 understanding.

6 COMMISSIONER GAW: It sounds to me like one
7 of the advantages of this transaction is that it places,
8 and I can't remember the exact amount, but a significant
9 amount of money back as cash for Aquila into -- from the
10 sale of these bonds. Is that not accurate?

11 MR. WILLIAMS: I think it depends on who
12 purchases the bonds.

13 COMMISSIONER GAW: Why does that make a
14 difference?

15 MR. WILLIAMS: If Aquila's purchasing the
16 bonds, which is the sort of transaction I've seen in the
17 past, Aquila still has the debt.

18 COMMISSIONER GAW: Do you believe that's
19 what may occur in this case?

20 MR. WILLIAMS: I don't know if that's the
21 situation or not.

22 COMMISSIONER GAW: Why would Aquila -- why
23 would Aquila purchase the bonds in this transaction
24 when -- help me to understand that.

25 MR. WILLIAMS: They still reap the tax

1 advantage.

2 COMMISSIONER GAW: Is that what's
3 contemplated in this whole case?

4 MR. WILLIAMS: I'm not sure about that.

5 COMMISSIONER GAW: I wasn't aware of that.
6 That's news to me. Can you explain how it would work?

7 MR. WILLIAMS: Well, basically you'd have
8 ownership with the City. You would have Aquila owning
9 the -- I'm probably not the best one to explain how that
10 would work. Mr. Kiebel probably should be able to do it.

11 COMMISSIONER GAW: Is he here?

12 MR. WILLIAMS: Yes.

13 JUDGE PRIDGIN: Mr. Kiebel, if you want to
14 come forward.

15 MR. KEEVIL: Sure.

16 (Witness sworn.)

17 JUDGE PRIDGIN: Thank you very much, sir.
18 If you would please have a seat. And Commissioner Gaw...

19 JOHN KIEBEL testified as follows:

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. Just state your name and position, please,
22 first.

23 A. My name is John Kiebel. It's K-i-e-b-e-l.
24 I'm a Utility Management Analyst 3 with the Staff of the
25 Public Service Commission.

1 but I don't know who the parties are that are paying and
2 receiving. I want to know, are you making an assumption
3 that Aquila -- in that statement that Aquila has bought
4 all of the bonds?

5 A. Yes.

6 Q. So Aquila buys the bonds. Is that a
7 one-time cash transfer when they buy the bonds?

8 A. No. This will be -- there will be payments
9 that will be made throughout the life of the -- throughout
10 the life of the bonds.

11 Q. Well, that's paying the bonds back, isn't
12 it?

13 A. Yes.

14 Q. You'll have payments on the lease from
15 Aquila to Peculiar, right?

16 A. Yes.

17 Q. You'll have payments from -- you'll have a
18 transaction where the bonds are sold by Peculiar to
19 Aquila --

20 A. Yes.

21 Q. -- right?

22 Then you'll have payments -- and there will
23 be a cash -- there will be a cash transaction there,
24 right? They buy the bonds. They have to pay the cash to
25 somebody, or is there some special arrangement of

1 financing on purchasing the bonds as well?

2 A. I'm not familiar with that.

3 Q. So would you say that there has been a cash
4 transfer on the purchase of the bonds contemplated?

5 A. That I don't know.

6 Q. How familiar are you with Chapter 100
7 financing, Mr. Kiebel?

8 A. Fairly familiar with it.

9 Q. What does it contemplate under Chapter 100
10 financing in regard to the sale of bonds?

11 A. Okay. That aspect of it I'm not very
12 familiar with, but with regards to the payment structure
13 and how it's set up and the ruling from the State Tax
14 Commission, I am familiar with the classification of the
15 property of the local versus the distributable that's been
16 an issue with the school district.

17 Q. Okay. Well, maybe we'll get to that in a
18 minute. So you don't know if there's a cash payment made
19 by Aquila to Peculiar when the bonds are sold?

20 A. No, I do not.

21 Q. Where else would the money come from?

22 A. I don't know.

23 Q. Isn't this basically an arrangement where
24 the bonds are sold, bonds produce money, that money goes
25 to Peculiar, Aquila is -- then that money is then

1 transferred to Aquila itself so that Aquila can then
2 transfer the title to the South Harper facility over to
3 Peculiar?

4 A. Yes.

5 Q. Then Aquila then makes lease payments to
6 Peculiar, which are contemplated under the agreement?

7 A. That's correct.

8 Q. So this whole arrangement, then, is just an
9 arrangement done as a financing mechanism to avoid the
10 payment of taxes?

11 A. It's a payment in lieu of tax.
12 Mr. Williams stated earlier this morning that the company
13 will probably save approximately 18 million over the life
14 of the revenue bonds.

15 Q. But the whole structure is designed not --
16 so you do not pay certain taxes that you would otherwise
17 be paying?

18 A. That's correct. They have sought the least
19 cost option in this instance.

20 Q. What happens if -- how do you unwind this
21 transaction if it has to be unwound?

22 A. I'm not familiar with the unwinding of this
23 transaction if that were to occur.

24 Q. Do you know what kind of costs there would
25 be involved in unwinding the transaction?

1 A. No, I do not. I wouldn't hazard to take a
2 guess on that.

3 Q. Is there an agreement that any costs for
4 unwinding this transaction would be borne by Aquila's
5 shareholders, not its ratepayers?

6 A. I'm not familiar with that part of the
7 transaction.

8 COMMISSIONER GAW: Staff counsel, is that
9 in the agreement?

10 MR. WILLIAMS: I'm sorry?

11 COMMISSIONER GAW: Any costs for unwinding
12 this Chapter 100 financing would be borne by the
13 shareholders of Aquila, not by any ratepayers?

14 MR. WILLIAMS: It's not addressed in the
15 agreement.

16 COMMISSIONER GAW: How do I -- is it not --
17 is it not part and parcel of what is a very likely
18 scenario in this -- in what we're dealing with in this
19 case?

20 MR. WILLIAMS: I'd say it would be a matter
21 that would be addressed in a rate case. There would be a
22 prudency review and a determination made by Staff as to
23 whether any of those costs should be allowed or not.

24 COMMISSIONER GAW: Right now we know
25 there's a high probability that it might have to be

1 unwound.

2 MR. WILLIAMS: We don't even know that it's
3 going to happen, your Honor. I mean, the question --

4 COMMISSIONER GAW: But it will go ahead and
5 happen -- do you think this -- it's contemplated this is
6 going to happen before the end of the year if we approve
7 the stip?

8 MR. WILLIAMS: I don't know offhand. That
9 would be a question Aquila should be able to answer.

10 COMMISSIONER GAW: I think that's all I
11 have for Staff. Thank you.

12 JUDGE PRIDGIN: Commissioner Appling, do
13 you have any questions for Staff? All right. Thank you.

14 Any questions from counsel for the witness?

15 MR. BOUDREAU: None, thank you.

16 JUDGE PRIDGIN: Seeing none, no redirect?
17 I'm sorry, Mr. Wheatley.

18 MR. WHEATLEY: Yes, your Honor,

19 RE CROSS-EXAMINATION BY MR. WHEATLEY:

20 Q. Just to clarify, Mr. Kiebel, you were
21 talking about the lease arrangement whereby Aquila would
22 pay back the amount of the bonds. But you first indicated
23 that Aquila was the purchaser of the bonds, and those are
24 two separate entities or two separate -- could be two
25 separate entities?

1 A. Yes.

2 Q. And do you know for a fact that Aquila was
3 the purchaser of the bonds?

4 A. No, I do not.

5 MR. WHEATLEY: That's all I have.

6 JUDGE PRIDGIN: Mr. Wheatley, thank you.
7 Anything else from counsel? From the Bench?

8 FURTHER QUESTIONS BY COMMISSIONER GAW:

9 Q. I just want to clarify, the bonds haven't
10 been sold yet, have they?

11 A. I'm not aware of what has happened with the
12 actual physical transaction.

13 Q. It couldn't have happened, could it? If
14 the bonds would have been sold, would there not have had
15 to have been a transfer of the South Harper facility on
16 legal documents in the City of Peculiar?

17 A. That could be. I just -- I'm not aware of
18 that.

19 Q. That couldn't happen, could it? That
20 transaction would have been void, would it not, under the
21 statute, since we haven't approved it?

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

23 Q. I'm assuming that didn't occur.

24 COMMISSIONER GAW: Mr. Williams?

25 MR. WILLIAMS: I'm sorry?

1 COMMISSIONER GAW: Nothing has occurred, no
2 bonds have been issued up to this point in time, correct?

3 MR. WILLIAMS: Not that I'm aware of.

4 COMMISSIONER GAW: They couldn't have,
5 could they?

6 MR. WILLIAMS: I wouldn't think so.

7 COMMISSIONER GAW: Wouldn't the issuance of
8 bonds be hand in glove with the transfer of title to the
9 South Harper facility?

10 JUDGE PRIDGIN: And, Mr. Williams, if I can
11 get you to speak into the microphone, please.

12 MR. WILLIAMS: It's contemplated as a
13 portion of the entire transaction, so I would not have
14 thought it would have occurred at this point.

15 COMMISSIONER GAW: It would be a void
16 transfer, wouldn't it, since the Commission hasn't
17 approved it?

18 MR. WILLIAMS: In connection with this
19 financing, yes, this arrangement, right, under the statute
20 it would be void.

21 COMMISSIONER GAW: That's all I have.

22 JUDGE PRIDGIN: Commissioner Gaw, thank
23 you.

24 If there are no further questions for this
25 witness? Mr. Kiebel, thank you very much for your

1 testimony. You can be excused.

2 THE WITNESS: Thank you, Judge.

3 JUDGE PRIDGIN: And Mr. Williams, I
4 believe -- let me see if we have any further questions
5 from the Bench for Mr. Williams or for any other Staff
6 witnesses.

7 COMMISSIONER GAW: I'm done.

8 JUDGE PRIDGIN: Thank you, very well.
9 Mr. Williams, thank you very much.

10 Any questions from the Bench for Office of
11 the Public Counsel?

12 COMMISSIONER GAW: I'm done.

13 JUDGE PRIDGIN: If there's nothing further
14 from the Bench, anything further from counsel? All right.
15 Seeing none. We will then go off the record. This
16 concludes the hearing in Case No. EO-2005-0156. Thank you
17 very much.

18 WHEREUPON, the hearing of this case was
19 concluded.

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