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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
TRANSCRIPT OF PROCEEDINGS  
Prehearing  
December 5, 2005  
Jefferson City, Missouri  
Volume 3

In the Matter of the Application )  
of Aquila, Inc., for Authority to )  
Acquire, Sell, and Lease Back )  
Three Natural Gas-Fired Combustion )Case No. EO-2005-0156  
Turbine Power Generation Units )  
and Related Improvements to be )  
Installed And Operated in the City )  
of Peculiar, Missouri )

RONALD D. PRIDGIN, Presiding  
REGULATORY LAW JUDGE

CONNIE MURRAY,  
STEVE GAW  
ROBERT M. CLAYTON, III  
LINWARD "LIN" APPLING,  
COMMISSIONERS

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A P P E A R A N C E S

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P R O C E E D I N G S

JUDGE PRIDGIN: Good morning. We are on the record. This is the hearing in Case No. EO-2005-0156 in the matter of the application of Aquila, Incorporated, for authority to acquire, sell and lease back three natural gas-fired combustion turbine powered generation units and related improvements to be installed and operated near the City of Peculiar, Missouri.

I'm Ron Pridgin. I am the regulatory law judge assigned over this case. This is being held December 5th, 2005, at the Governor Office Building in Jefferson City, Missouri. The time is 10:15 in the morning.

I would like to get entries of appearance from counsel, beginning with Staff, please.

MR. WILLIAMS: Nathan Williams and Dana K. Joyce, P.O. Box 360, Jefferson City, Missouri, 65102.

JUDGE PRIDGIN: All right. Mr. Williams, thank you. If I could remind you and other counsel to try to speak into the microphone, we're broadcasting this over the web.

1                   From the Office of the Public Counsel,  
2                   please?

3                   MR. WHEATLEY: Good morning, your  
4                   Honor. My name is Mark Wheatley. I'm a senior  
5                   public counsel for the Office of the Public  
6                   Counsel, representing the Office of the Public  
7                   Counsel and the public. Our address is P.O.  
8                   Box 2230, Jefferson City, Missouri, 65102.

9                   JUDGE PRIDGIN: Mr. Wheatley, thank  
10                  you. On behalf of Aquila, please?

11                  MR. BOUDREAU: Yes. Thank you. Let  
12                  the record reflect the appearance of Paul  
13                  Boudreau from the law firm of Brydon,  
14                  Swearengen & England, Post Office Box 456,  
15                  Jefferson City, Missouri, appearing on behalf  
16                  of applicant Aquila, Inc. Also here today with  
17                  me is Jim Swearengen. Thank you.

18                  JUDGE PRIDGIN: Mr. Boudreau, thank  
19                  you. Any other parties wishing to enter an  
20                  appearance?

21                  MR. COMLEY: Good morning. Good  
22                  morning.

23                  JUDGE PRIDGIN: Good morning.

24                  MR. COMLEY: Good morning, Judge  
25                  Pridgin. Let the record reflect the entry of

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1 appearance of Mark W. Comley, Newman, Comley &  
2 Ruth, 601 Monroe, Suite 301, Jefferson City,  
3 Missouri, 65101, on behalf of Cass County,  
4 Missouri.

5 JUDGE PRIDGIN: Mr. Comley, thank  
6 you. And I did hear from Mr. Douglas. He  
7 called me this morning and informed me he did  
8 not plan to appear. And I believe he  
9 represents the City of Peculiar, if I'm not  
10 mistaken.

11 All right. What I'd like to do is -- is  
12 kind of alert the parties how I'd like to  
13 proceed. We're here because of Office of  
14 Public Counsel's Motion to Stay.

15 And what I would like to do is get some  
16 sort of opening statements from counsel  
17 beginning with the Office of Public Counsel  
18 since it's your motion, Mr. Wheatley. And then  
19 we will proceed with any bench questions we may  
20 have.

21 And this may lead into getting testimony  
22 from witnesses. And I do see that some parties  
23 have brought some witnesses. And so, again,  
24 we'll just address the Commission's concerns  
25 after the opening statements. So,

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1 Mr. Wheatley?

2 OPENING STATEMENT

3 BY MR. WHEATLEY:

4 MR. WHEATLEY: Thank you, Judge,  
5 and good morning. And may it please the  
6 Commission. My name is Mark Wheatley. I'm an  
7 attorney for the Office of the Public Counsel,  
8 representing the Office and the public in this  
9 matter.

10 We -- I believe that -- that this issue  
11 comes down to -- to actually three questions  
12 regarding what has transpired in this case.  
13 This case appeared to begin and -- as any other  
14 normal case, Aquila filed its application in  
15 December 6th of 2004.

16 And in that application, one of the things  
17 they asked for was authorization to cause said  
18 electric generation station, which is the South  
19 Harper station in Peculiar, in Cass County,  
20 authorization to cause said electric generation  
21 station to be subject to the lien of indenture  
22 as security for the benefit of the holders of  
23 the revenue bonds and authorization to enter  
24 into a sale and lease back agreement with the  
25 City of Peculiar to facilitate the issuance of

0100

1 tax advantaged Chapter 100 revenue bonds to  
2 finance the construction and operation of a  
3 power generation station.

4 Well, this case proceeded as normal.  
5 Testimony was filed by all of the parties.  
6 Ultimately, the parties entered into a  
7 stipulation and agreement in which the parties  
8 agreed to evaluation of the combustion turbines  
9 and related equipment and also agreed that  
10 Aquila could enter into the Chapter 100  
11 financing.

12 After that stipulation was filed on  
13 December 1st of this year, after that point,  
14 the Commission held a hearing regarding the  
15 stipulation and -- and agreement, in which all  
16 of the parties asked that the Commission  
17 approve the -- the stip -- stipulation and  
18 agreement.

19 It wasn't until after that hearing that I  
20 happened to speak with Mr. Douglas, who you  
21 mentioned earlier, who represented the City of  
22 Peculiar. But he is also a bond counsel with  
23 the Kansas City firm of Gilmore & Belle.

24 And Mr. Douglas, I had talked with him  
25 that afternoon after the hearing, and he had

1 told me that these bonds had been issued  
2 already. In fact, they were issued in December  
3 30th of 2004.

4 And there is -- the problem with this is  
5 that -- that this renders, in our opinion, that  
6 entire transaction void. The statutes in  
7 Missouri are very clear. Chap -- Section  
8 393.19 -- .190 says in pertinent part that, "No  
9 electric corporation shall hereafter sell,  
10 assign, lease, transfer, mortgage or otherwise  
11 dispose or encumber the whole or any part of  
12 its franchise, works or system without having  
13 first" -- and that's the operative word there  
14 first -- "without having first secured from the  
15 Commission an order authorizing it to do so.  
16 Every such sale, assignment, lease, transfer,  
17 mortgage, disposition, encumbrance made other  
18 than in accordance with the Order of the  
19 Commission authorizing same shall be void."

20 That's very clear. Although they --  
21 Aquila, in their testimony and throughout the  
22 hearings, even the hearing on the stipulation  
23 and agreement has put -- we believe put forward  
24 statements which indicate that the bond  
25 financing had not yet been closed.

1           It was only until my discussion with  
2           Mr. Douglas on the afternoon of the hearing --  
3           hearing -- after the closing of the hearing  
4           that I discovered that, in fact, the  
5           transaction had been closed several months  
6           earlier.

7           And so we believe that, first -- as the  
8           first issue, that under this statute, the  
9           transactions which Aquila entered into with the  
10          City of Peculiar are void. It's -- it's very  
11          plain from the statute.

12          And as a little bit of background, let me  
13          explain that the City of Peculiar entered into  
14          an agreement, an economic development  
15          agreement, with the Aquila to finance or issue  
16          bonds -- the City was going to issue bonds in  
17          an amount up to \$140 million to help finance  
18          the construction of the South Harper plant.

19          To this end, the Aquila paid -- paid to  
20          the City as an issuance fee, if you want to  
21          call it that, the amount of \$700,000. They  
22          also paid the City's legal cost for the  
23          issuance of the bonds in the amount -- it was  
24          an estimated amount of \$10,000. They also paid  
25          the trustee fees for 30 years, which is the

1 term of the bonds of \$87,500. And their own  
2 financial advisor was paid approximately  
3 \$130,000.

4 And they -- Aquila also had legal fees  
5 associated with this and with related rate --  
6 legis -- or the appeals which are still pending  
7 in the Western District of Missouri. And those  
8 are all costs which have been incurred by  
9 Aquila in closing this Chapter 100 financing.

10 And we have shown -- Staff has obtained  
11 certified copies of deeds showing the transfer  
12 of the land, a -- that was recorded with the  
13 Recorder of Deeds of Cass County, Missouri, on  
14 December 30th, 2004, along with a memorandum of  
15 the lease agreement and the Deed of Trust.

16 Also, the bond indenture. We found it was  
17 entered into with Commerce Bank, I believe, as  
18 trustee on that same particular date.

19 So as our first issue, we believe it is  
20 clear that this transaction is void because it  
21 was -- it was undertaken without first having  
22 secured from the Commission an order to do so.  
23 And the statute's very clear that says that  
24 shall be void.

25 The next issue that I -- that I see is the

1 stipulation and agreement. Should the  
2 Commission approve this stipulation and  
3 agreement? Our position is no. The  
4 stipulation and agreement on page 8  
5 specifically says that, "In the event the  
6 Commission finds that Aquila failed to provide  
7 the signatory parties with material and  
8 relevant information in its possession or which  
9 should have been available to Aquila through  
10 reasonable investigation or in the event the  
11 Commission finds that Aquila misrepresented  
12 facts relevant to the agreement, this agreement  
13 shall be terminated."

14 The stipulation also continues on page 9  
15 by saying that, "In the event that the  
16 Commission does not approve and adopt the terms  
17 of this agreement in total, it shall be void  
18 and no party hereto shall be bound, prejudiced  
19 or in any way affected by any of the agreements  
20 or provisions hereof.

21 I think that it is clear that from the  
22 fact that the -- the transaction itself is void  
23 under statute, the Commission cannot now  
24 approve any part of the stipulation and  
25 agreement because it is based on

1           misrepresentations made by Aquila. And for  
2           this reason, we -- we would ask the Commission  
3           not to approve the stipulation and agreement  
4           because it's -- it's void as is the -- the  
5           Chapter 100 financing.

6           The third issue that I -- I mentioned I  
7           had three issues, and this is a -- a very  
8           serious issue, I believe. And it deals with  
9           statements that have been made to this  
10          Commission by Aquila through its testimony and  
11          through its pleadings, which have misled the  
12          parties and the Commission regarding the status  
13          of these bonds.

14          As I indicated, the original application  
15          was filed in December 6th of 2004. Aquila did  
16          not ask for expedited treatment of their  
17          application. But they did ask for prospective  
18          relief authorizing Aquila to sell and convey  
19          the real estate, facilities, equipment and  
20          installations authorizing Aquila to lease the  
21          project from Peculiar and operate the project;  
22          authorizing Aquila to cause the project to be  
23          pledged to the trustee under the terms of the  
24          indenture; authorizing Aquila to enter into and  
25          perform in accordance with the terms of the

1 agreement; authorizing Aquila to enter into and  
2 perform in accordance with the terms of the  
3 lease; authorizing Aquila to enter into and  
4 perform in accordance with the terms of  
5 indenture; authorizing Aquila to enter into and  
6 perform in accordance with any and all other  
7 necessary agreements and instruments under the  
8 act; authorizing Aquila to do any and all other  
9 things incidental necessary or appropriate to  
10 the performance of -- of any of these acts to  
11 be authorized in such order or orders.

12 Well, then they -- following that -- or  
13 let me say first, the first matter that -- that  
14 Aquila filed was the direct testimony of Dennis  
15 Williams, which was Exhibit 1 in this case.

16 In this case, the testimony reveals that  
17 Mr. Williams is the vice president for Electric  
18 Regulatory Services for the electric network  
19 operations. He has -- Mr. Williams has overall  
20 responsibility for matters including electric  
21 operations before State regulatory commissions  
22 in Missouri, Kansas and Colorado.

23 The question is asked in the testimony,  
24 "Are you familiar with the subject matter of  
25 this case?"

1           "Yes, I am," is the answer. "This case  
2 involves an application by Aquila for various  
3 determinations by and approvals from the  
4 Commission related to the construction of the  
5 electric power generation system. In this  
6 regard, the company, through its Aquila  
7 network, MPS, Operating Division, will acquire  
8 from an affiliated entity three 105 megawatt  
9 natural gas-fired tur -- combustion turbines in  
10 conjunction with the construction of the  
11 electric power station. And Aquila will enter  
12 into a service agreement with the City of  
13 Peculiar, the purpose of which is to finance  
14 the construction costs with tax advantaged  
15 Chapter 100 bonds."

16           Mr. Williams' testimony continues to say  
17 "How generally will the project transaction be  
18 structured?"

19           The answer that he gave was, "In the event  
20 the bonds are issued" -- in the event the bonds  
21 are issued. This is direct testimony which was  
22 filed on January 13th of 2005. And as I had  
23 said previously, the bonds had already been  
24 closed on December 30th of 2004.

25           But Mr. Williams says, "In the event the

1 bonds are issued, it is expected that the  
2 project will be conveyed to and owned by  
3 Peculiar and leased back to Peculiar -- to  
4 Aquila, an arrangement that will exempt the  
5 property from property taxes levied by any  
6 applicable taxing authority for as long as  
7 Peculiar owns the project. The lease payments  
8 made to Peculiar shall be equal to and time to  
9 coincide with the due date and pledged to pay  
10 all applicable principal and interest."

11 "How will this structure come about," is  
12 the next question.

13 Mr. Williams answers, "Aquila will cause  
14 AE to transfer the CTs," that's combustion  
15 turbines, "to Aquila Networks MPS at the  
16 conclusion of construction of the new power  
17 station. The project will be transferred to  
18 Peculiar. At the conclusion of the  
19 construction of the new power plant, the bond  
20 -- the project will be transferred to the City  
21 of Peculiar. Peculiar will lease the project  
22 back to the company pursuant to a lease  
23 agreement between Peculiar and Aquila."

24 Another question was, "Will the project  
25 assets be pledged or encumbered in connection

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1 with the financing structure you have  
2 described?"

3 Mr. Williams answered, "Yes. The lease  
4 also provides that the project will be" --  
5 again, showing a prospective nature -- "will be  
6 pledged to a trustee under the terms of an  
7 indenture and a deed of trust and security  
8 agreement as security for the benefit of the  
9 holders of the bonds."

10 Now, keep in mind that this is the direct  
11 testimony of Mr. Williams, which was filed on  
12 January 13th of 2005.

13 Then in June 3rd of 2005, Aquila filed its  
14 First Amended Petition. In that petition,  
15 Aquila has asked for all of the same relief  
16 authorizing the Chapter 100 financing and  
17 specifically says, "In all other respects, the  
18 application is filed on December 12th." It was  
19 actually filed on December 6th, 2004, is  
20 restated, ratified and confirmed.

21 Well, then -- then we move on to June 27th  
22 of this year. And Mr. Williams files  
23 surrebuttal testimony, which was admitted as  
24 Exhibit 3. And in there, Mr. Williams  
25 indicates that -- states that OPC witness, Ted

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1           Robertson, does suggest that requests  
2           enumerated G through L on Aquila's application  
3           are, quote, completely unwarranted and  
4           unsupported, end quote.

5                     The question, "what are Requests G through  
6           L?" And the answer is, "They are -- they are  
7           requests for necessary authorizations for  
8           Aquila as follows." And this is the same exact  
9           litany of authorizations which I had previously  
10          discussed.

11                    Then it continues -- his answer continues,  
12          "Except for Request L, which I understand to be  
13          a provision to Aquila of the legal authority to  
14          carry out whatever is ordered to do in this  
15          docket, including performance of Chapter 100  
16          agreements. The other requests are all  
17          specifically related to the performance of  
18          agreements associated with the issuance of the  
19          Chapter 100 bonds."

20                    And here is part of his surrebuttal  
21          testimony in which he then states, "Without  
22          approval of these requests, the Chapter 100  
23          financing mechanism will not take place." This  
24          is in June 27th of 2005, nearly six months  
25          after the bonds had already been closed.

1           The pleadings are complete with the same  
2           sort of misdirection. In suggestions to the  
3           application of Cass County to intervene, Aquila  
4           states that the County is not party to any of  
5           the Chapter 100 financing documents that are  
6           being submitted to the Commission for its  
7           review and approval.

8           In its reply to the response of Cass  
9           County, Aquila further states that, "The second  
10          consideration is whether Aquila will be  
11          permitted to enter into a number of  
12          transactions, the collective purpose of which  
13          is to fund the construction of South Harper  
14          station with low cost revenue bonds."

15          After the fact that the bonds had been  
16          closed several months prior to that, was  
17          unknown to the Office of Public Counsel and I  
18          believe the Commission staff, other interested  
19          parties, and so we had a hearing on the  
20          stipulation and agreement on September 21st,  
21          2005, approximately nine months after the  
22          Chapter 100 financing had been closed.

23          In this transcript, Mr. Williams says that  
24          the second -- the second thing the stipulation  
25          accomplishes is the ability to approve -- and

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1 get approval to issue Chapter 100 bonds to  
2 finance the South Harper combustion turbines.  
3 Approval to issue those bonds.

4 On page 53 of the transcript, Dennis  
5 Williams indicates that all this stipulation  
6 does is it approves and agrees that Chapter 100  
7 bonds are a good thing and that we should enter  
8 into the agreement. We should enter into the  
9 agreement. Again, this is nine months after  
10 they've already done it.

11 And then, finally, at the conclusion of  
12 the hearing, Commissioner Gaw asks several  
13 questions with Aquila representatives present  
14 in the hearing room. And Commissioner Gaw says  
15 -- the question is, "I just want to clarify.  
16 The bonds haven't been sold yet, have they? It  
17 couldn't have happened, could it? If the bonds  
18 had -- would have been sold, there would not  
19 have been -- had to have a transfer of the  
20 South Harper facility or there would not have  
21 had to have transfer of the South Harper  
22 facility on legal documents in the City of  
23 Peculiar. That couldn't happen, could it? The  
24 transaction would be void, wouldn't it? Would  
25 it not, under the statute since we haven't

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1 approved it? I'm assuming that didn't occur."

2 Commissioner Gaw continues. "Nothing has  
3 occurred. No bonds have been issued up to this  
4 point in time, correct?"

5 He continues, "Wouldn't the issue of the  
6 bonds be hand in glove with the transfer of  
7 title to the South Harper facility?"

8 And finally, Commissioner Gaw asks, "It  
9 would be void -- it would be a void transfer,  
10 wouldn't it, since the Commission hasn't  
11 approved it?"

12 Aquila representatives were in this very  
13 hearing room. And when Commissioner Gaw was  
14 asking these general questions of anyone who  
15 was present, Aquila said nothing.

16 And so at that point, following that  
17 hearing, as I mentioned before, I discovered  
18 that afternoon that the bonds had actually been  
19 issued nine months earlier and transfer of the  
20 property had -- had taken place at that same  
21 time in December 30th of 19 -- or of 2004.

22 That is the reason that Public Counsel  
23 filed its Motion to Stay. And we attached as  
24 attachments a special warranty deed that we had  
25 obtained and a -- the Memorandum of Lease

1 Agreement and also the trust indenture. And we  
2 asked that the Commission stay the proceedings  
3 on the hearing of the stipulation agreement --  
4 and agreement until such time as we could look  
5 into this new information because we had been  
6 -- all been going under the assumption that the  
7 Chapter 100 financing had not yet occurred.

8 The Staff responded to Public Counsel's  
9 motion by agreeing that -- that that motion  
10 should be granted. And Aquila, even in its  
11 response to the Motion to Stay, says, "Given  
12 the apparent confusion, it may be advantageous  
13 to grant Public Counsel's request."

14 However, apparently, Aquila asserts that  
15 this matter became a matter of record on March  
16 15th of 2005. And this -- this is the part  
17 that I think probably insults the intelligence  
18 the most is that they refer to a public --  
19 local public hearing, which occurred in  
20 Harrisonville, Missouri, not Peculiar, not even  
21 in this case. It was a different case.

22 And in -- in that case, the Mayor of the  
23 City of Peculiar comes up and says, "Now the  
24 City of Peculiar has completed the 100  
25 financing" -- presumably, he's talking about

1 the Chapter 100 financing -- "for this project,  
2 \$130 million worth." Actually, it was for an  
3 amount of up to \$140 million. "This was closed  
4 on December 28th, 2004." Well, actually it was  
5 closed on December 30th of 2004.

6 But even though -- due to those inaccurate  
7 statements of the Mayor of Peculiar in a  
8 separate case at a local public hearing, Aquila  
9 asserts that it -- it is not plausible to  
10 suggest at this late that public -- at this  
11 late date that Public Counsel, Staff and the  
12 Commission were less than fully informed about  
13 the timing of these transactions.

14 Members of the Commission, Public Counsel  
15 suggests that -- that this is just a ridiculous  
16 review of -- of what has occurred because  
17 Aquila, on its own, had the responsibility to  
18 alert the Commission and the parties as to what  
19 they were actually doing, that they had closed  
20 that transaction in December of 2004 rather  
21 than going through the pre -- pre-filed  
22 testimony, the surrebuttal testimony in which  
23 Dennis Williams indicates that without a  
24 Commission approval this -- these bonds will  
25 not be issued.

0116

1                   And further, through December -- the  
2                   December hearing -- or I'm sorry -- the  
3                   September hearing of -- regarding the  
4                   stipulation and agreement, it's just ludicrous  
5                   that Aquila would rely upon the inaccurate  
6                   statements of the Mayor of Peculiar to make its  
7                   case that -- that this matter has become a  
8                   matter of public record.

9                   Yet, following granting of motion -- the  
10                  Motion of -- to Stay filed by Commission, the  
11                  Staff of the Commission filed data requests.  
12                  And On Data Request No. 0111, they asked for  
13                  Dennis Williams' first knowledge of the Chapter  
14                  100 closing.

15                  It says, "Provide the date when Aquila  
16                  witness, Dennis Williams' first learned that  
17                  Aquila -- Aquila's Chapter 100 financing of the  
18                  South Harper plant in the City of Peculiar had  
19                  closed and how Mr. Williams learned that the  
20                  closing had occurred."

21                  Mr. Williams responded by saying, "I do  
22                  not specifically --

23                  MR. BOUDREAU: At this point, I'm  
24                  going to lodge an objection this document  
25                  hasn't been made part of record. I do have

0117

1 Mr. Williams here today to testify if  
2 necessary. But to offer this as part of the  
3 record when it hasn't been authenticated by the  
4 witness, I think, is inappropriate. I mean,  
5 I'll -- I'll have him here available. He can  
6 be confronted with this particular document,  
7 but I think it's inappropriate to just read it  
8 into the record.

9 JUDGE PRIDGIN: And, Mr. Wheatley,  
10 what exactly again are you reading from?

11 MR. WHEATLEY: This is a data request  
12 response -- a data request of the Commission  
13 staff sent after the -- the hearing.

14 MR. BOUDREAU: All right. I'll --  
15 I'll -- there's been no foundation laid for  
16 this document. And I'm not saying that one  
17 can't be because Mr. Williams is here.

18 JUDGE PRIDGIN: Right. I'll overrule  
19 it. And, obviously, Mr. Williams is here to --  
20 to testify and to explain whatever. And,  
21 Mr. Wheatley, you can continue. And if you  
22 could, try to wrap up your statement pretty  
23 briefly.

24 MR. WHEATLEY: All right. What  
25 Mr. Williams responded was, "I do not

1 specifically recall when I became aware of the  
2 legal closing. Certainly, by March 15th, 2005,  
3 the closing had been made a matter of public  
4 record." And that date of March 15th, 2005, is  
5 -- is when that local public hearing occurred  
6 in Harrisonville, Missouri, in that separate  
7 case.

8 Now, this is a man who is the vice  
9 president for regulatory operations in three  
10 states. And he apparently is not aware  
11 throughout December -- or September of this  
12 year.

13 And, finally, the Missouri statutes  
14 provide sanctions and penalties for  
15 specifically these types of -- of occurrences.  
16 Section 34 -- 86.560 indicates that, "Any  
17 person who falsely makes any statement required  
18 to be made to the Public Commission in which a  
19 penalty has not heretofore been provided for  
20 shall be deemed guilty of a felony and upon a  
21 conviction shall be punished by a fine of not  
22 less than \$1,000 or more than \$5,000 or by  
23 imprisonment for not less than two years, no  
24 more than five years or both such fine and  
25 penalty."

1           Section 386.570 indicates that, "Any  
2           corporation, person or public utility which  
3           violates or fails to comply with any provision  
4           of the Constitution of this state or any other  
5           law," including the statute that I read to you  
6           which makes the transaction void, "is subject  
7           to a penalty of not less than \$100, no more  
8           than \$2,000 for each offense."

9           It then goes on to say that -- that by a  
10          corporation or person or public utility, it is  
11          a separate offense. And in the case of a  
12          continuing violation, each day's continuance  
13          thereof shall be deemed to be a separate and  
14          distinct offense.

15          Section 386.580 provides that, "Any  
16          officer, agent or employee of any corporation  
17          or public utility which violates or fails to  
18          comply with or who procures, aids or abets any  
19          violation by any corporation, person or public  
20          utility of any provision of the Constitution of  
21          this state or of any other law is guilty of a  
22          misdemeanor and is punishable by a fine not  
23          exceeding \$1,000."

24          386.590 of Missouri statutes provide that,  
25          "All penalties accruing under this chapter

1 shall be cumulative of each other and the suit  
2 for recovery of one penalty shall not be a bar  
3 the effect of the recovery of other penalties."

4 And, finally, Section 386.600 says, "An  
5 action to recover a penalty may be brought in  
6 any Circuit Court of this state in the name of  
7 the State of Missouri and shall be commenced  
8 and prosecuted to final judgment by the General  
9 Counsel of the Commission. And any such  
10 action, all penalties and forfeitures incurred  
11 with up to the time of commencement of the same  
12 shall be sued for and recovered therein. And  
13 the commencement of any action to recover a  
14 penalty shall not be -- or be held to be a  
15 waiver of a right to recover any other penalty  
16 or forfeiture."

17 As I indicated at the beginning of my  
18 statement, I believe this breaks this -- this  
19 breaks down into three issues. First is the  
20 effect of the statute in which it requires that  
21 Aquila, before it transfers property, to first  
22 obtain the Commission approval. And if they do  
23 not obtain that Commission approval, that  
24 transaction is void.

25 Secondly -- the second issue is the

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1 stipulation and agreement. Well, I think I --  
2 through the various matters that I've read from  
3 the pre-filed testimony, it's clear that --  
4 that Aquila has misrepresented the nature of  
5 when this -- these bonds were issued, all the  
6 time leading one to believe that -- that they  
7 had not yet been issued. And under the  
8 stipulation and agreement, that agreement can  
9 be set aside and all matters in the agreement,  
10 if the Commission does not approve it, are  
11 void.

12 Thirdly, and the one that I -- that I feel  
13 is -- is most important to this case is the  
14 nature of Aquila's actions in this case. This  
15 Commission should expect each and every  
16 regulated utility to be honest and forthcoming  
17 in its testimony and its actions before this  
18 Commission. Aquila, it's obvious, has  
19 intentionally and blatantly misrepresented the  
20 status of this transaction. And so as the  
21 third point, I would ask that the Commission  
22 direct its General Counsel to seek the  
23 penalties which I have gone through and -- and  
24 read.

25 And that conclude my opening statement.

1 I'd be happy to answer any questions.

2 JUDGE PRIDGIN: Mr. Wheatley, thank  
3 you. If we -- if we have any questions from  
4 the bench now, certainly, a lot of the  
5 Commissioners have questions, but, otherwise,  
6 we'll move forward and hear from Mr. Boudreau.  
7 Mr. Wheatley, thank you. Mr. Boudreau?

8 OPENING STATEMENT

9 BY MR. BOUDREAU:

10 MR. BOUDREAU: Yes. Thank you. Good  
11 morning. May it please the Commission. It's  
12 always a bracing experience to start the day  
13 with being accused of being a liar. So I've  
14 got a few things I'd like to say about some of  
15 the things that Mr. Wheatley has brought up.

16 There have been some questions that have  
17 arisen about the events surrounding the closing  
18 on December 30th, 2004, of the tax advantaged  
19 revenue bond funding that's associated with the  
20 construction of the South Harper power station  
21 that's located in Cass County. As noted in a  
22 recent filing in this case, technical legal  
23 title to the real estate owned by Aquila along  
24 South Harper Road and the three natural gas  
25 combustion turbine units that have been

1 installed there were -- since then were  
2 transferred to the City of Peculiar shortly  
3 before the end of the year 2004, the effect of  
4 which was to remove the -- remove these items  
5 from the tax rolls so that they would not be  
6 subject to ad valorem taxation -- to ad valorem  
7 taxation assessment on Aquila by the various  
8 counties within which it has regulated  
9 operations as otherwise would have been the  
10 case had the company held legal title as of  
11 January 1, 2005.

12 Additional facilities associated with the  
13 South Harper project such as the service  
14 buildings, substations and transformers  
15 automatically have been titled in the name of  
16 the City as those assets have been acquired and  
17 installed.

18 Now, Aquila believes that this has been a  
19 prudent and appropriate undertaking and has  
20 been done with all due regard to the regulatory  
21 principles contemplated by applicable law and  
22 regulatory policy previously enunciated by this  
23 Commission.

24 And there are two important items that the  
25 Commission should keep in mind as we discuss

1 this today. First, this has involved a  
2 technical legal transfer of title only. It  
3 does not represent a change in operational  
4 control of the South Harper power station or  
5 any of its components which are leased back to  
6 the company by the City of Peculiar.

7 The City of Peculiar said it best in its  
8 motion for re-hearing in Appeal 65,000 which  
9 deals with the challenge to the validity of the  
10 Chapter 100 bonds. The City has said, "The  
11 City will hold bear legal title similar to the  
12 trustee of a trust and leave the land and  
13 facilities to a Aquila" -- lease the land --  
14 excuse me -- "lease the land and facilities to  
15 Aquila, but the parties have stipulated that  
16 this the City will have no real incidence of  
17 ownership in the project. "

18 Now, as such, Aquila retains the right to  
19 operate and control the facility for use in  
20 serving its regulative utility customers as if  
21 it were owned outright by the company. And  
22 this fact is not a matter in dispute anywhere  
23 in this case or any associated case.

24 As a matter of fact, the unit was  
25 dispatched to provide electric power to the

1 grid to serve Aquila's electric utility  
2 customers during this past summer.

3 Also, the evidence in this case shows that  
4 it will be booked as a regulated asset on the  
5 books of the accounts of Aquila Networks MPS  
6 and will be depreciated by Aquila over its  
7 useful life, all the incidents of ownership.

8 Second, the economic development agreement  
9 between Aquila and the City of Peculiar  
10 contains a regulatory out clause at Section  
11 4.01, which states as follows: "The bonds  
12 issued by the City may be redeemed by Aquila  
13 acting in its sole discretion if Aquila does  
14 not receive any approval required to consummate  
15 the project or perform its obligations under  
16 the agreement, the lease or the bond  
17 documents." So the whole deal can be  
18 unwrapped.

19 In short, the transfer of bare legal title  
20 to the land and the combustion turbines is only  
21 a technical matter to facilitate the tax  
22 advantage financing contemplated by the  
23 Missouri General Assembly to promote economic  
24 development in communities throughout the  
25 state. It does not give the City of Peculiar

1 any operational control over the power station  
2 and the whole arrangement can be unwound in the  
3 absence of all necessary regulatory permission.

4 In this case, regulatory approval operates  
5 as a condition subsequent as opposed to a  
6 condition precedent under the economic  
7 development agreement. But it -- regulatory  
8 approval is still contemplated by that  
9 agreement.

10 One last, but I think saline point, is  
11 that Aquila's customers will see the benefit of  
12 this lower tax cost in the pending electric  
13 rate case because it shows up in the test year.  
14 This would not have been the case but for the  
15 actions taken by Aquila at year end 2004. So  
16 we're in the ironic situation of Public Counsel  
17 complaining about a benefit that flows through  
18 to his constituency. There's no benefits that  
19 are retained by Aquila. This is just something  
20 that flows through as a tax expense in rates.

21 Now, in all frankness, the record of the  
22 circumstances is less than a model of clarity.  
23 And for that, I take responsibility, although I  
24 believe the circumstances surrounding the  
25 December 30th, 2004 conditional closing of the

1 tax advantaged revenue bond financing has been  
2 blown out of proportion if the application in  
3 this case was filed by Aquila.

4 And as counsel for the company, I must  
5 bear ultimate responsibility for the apparent  
6 confusion. I would like to offer my brief take  
7 on the topic because you are probably asking  
8 yourselves the same questions that I've been  
9 asking myself is how could it have come to this  
10 after this much time. I can understand how  
11 different people can have different views.

12 But you should know that the -- the  
13 Chapter 100 financing in this case has been  
14 something of a neglected stepchild of the  
15 entire proceeding. Nearly all of the attention  
16 and effort in this case up until the time of  
17 the hearing on -- on -- in September of -- on  
18 September 21st had been spent largely on the  
19 question of the valuation of the combustion  
20 turbines. That's where all the action was  
21 taking place. That's where most of the data  
22 requests were being submitted, and that's where  
23 most of the dialogue was taking place.

24 The tax exempt -- well, as a general  
25 matter, tax exempt and tax advantaged

1 financings had become, for lack of a better  
2 term, kind of a regulatory no-brainer over the  
3 years, and for good reason. The Commission has  
4 approved many of these such -- these types of  
5 arrangements as a matter of routine for many,  
6 many years.

7 As a consequence, I don't believe that  
8 anyone has been paying much attention to it.  
9 That explains, I think, how over a period of  
10 almost a year now so much could have been said  
11 about the subject without a commensurate and  
12 collective understanding of what's taken place,  
13 including by myself.

14 It's not a question of misdirection as has  
15 been alleged by Public Counsel because we've  
16 all been on actual notice. And I will  
17 demonstrate that in just a moment. Rather,  
18 it's a consequence of, I think, benign neglect.  
19 I have considered the matter in a rather casual  
20 manner personally because it's -- because  
21 ultimately it's a good thing to the customers.  
22 This is a flow-through item, lower tax expense.

23 Tax expense is an item in establishing  
24 rates for the electric company, so there's  
25 nothing that's being reserved by the company.

1           It's an item that will be flowed through in  
2           rate. It means lower tax expense than would  
3           otherwise be the case, and it will show up in  
4           the pending rate case.

5           Also, in 1981, a prior decision of this  
6           Commission suggests that it's not the type of  
7           transaction that has any particular regulatory  
8           consequence under Section 393.190 RSMO. So in  
9           my view, from a lawyer monitoring and handling  
10          this case, it was a -- a topic of no particular  
11          consequence, didn't have any big regulatory red  
12          flags associated with it.

13          Now, though it is right and proper that we  
14          be called to account for the state of the  
15          record in this case, I must tell you the level  
16          of rhetoric that has been employed in this case  
17          has been, in my view, inappropriate and,  
18          frankly, unjustified, particularly in light of  
19          the real cost benefit to the company and by  
20          extension to its customers. We are all  
21          professionals. We should all treat each other  
22          with the courtesy and respect that that status  
23          gives us.

24          And just because the witnesses I have  
25          sponsored in this case work for Aquila does not

1 mean that anybody should have license to vilify  
2 them or accuse them of criminal conduct. These  
3 are good people trying to do a difficult job.

4 Now, Mr. Wheatley has framed up the issues  
5 in this case in a somewhat different orders,  
6 but let me address them. I will address all of  
7 them, but they come up in a somewhat different  
8 order. As far as the stipulation, it seems to  
9 me what this Commission has before it in this  
10 case is a unanimous stipulation and agreement,  
11 and the Commission's decision is whether it  
12 should approve the stipulation and agreement or  
13 not, or in part approve it or not.

14 Commission -- the Public Counsel has gone  
15 on record now, this is something I didn't know  
16 until this morning, as saying that the  
17 stipulation and agreement, I presume, in total  
18 should not be approved. I think that's  
19 interesting because there's been no dispute  
20 about the valuation aspect of the stipulation  
21 and agreement.

22 Remember, there are two components to this  
23 stipulation and agreement. One of them deals  
24 the valuation of combustion turbines, about  
25 which nobody has -- has lodged a complaint and

1           about which any of the testimony that  
2           Mr. Wheatley has pointed out, none of that's  
3           addressed to the valuation component of the  
4           stipulation.

5           The other is the Chapter 100 financing.  
6           So keeping that in mind, there are two topics  
7           here. The standard in the stipulation is that  
8           the signature -- and I'll quote here out of  
9           Section Roman Numeral 5-C out of the  
10          stipulation says, and I quote, "The  
11          stipulation" -- excuse me. "The signatory  
12          parties enter into this agreement in reliance  
13          upon information provided to them by Aquila.  
14          In the event the Commission finds that Aquila  
15          failed to provide the signatory parties with  
16          material and relevant information in its  
17          possession or the in the event the Commission  
18          finds that Aquila misrepresented facts relevant  
19          to the agreement, this agreement shall be  
20          terminated."

21          That seems to me to be the operative  
22          language. And I think Mr. Wheatley has said so  
23          as well. Now, the question then is did Aquila  
24          fail to provide Public Counsel with material  
25          and relevant information about the fact of the

1 conditional closing of the Chapter 100  
2 financing on December 30th, 2004? Did it  
3 misrepresent facts in this regard?

4 And the answer, I believe, is no. Public  
5 Counsel knew, or by reasonable examination of  
6 the record should have known, about this  
7 development. You'll recall that the  
8 application was filed on December 6th, 2004.  
9 Mr. Wheatley correctly points to the -- to the  
10 public hearing in a related case dealing with  
11 the South Harper facility.

12 The -- on March 15th, 2005, where this  
13 Mayor of the City of Peculiar got up in front  
14 of the -- the -- I believe the same  
15 administrative law judge and several of the  
16 Commissioners here as well as myself, Public  
17 Counsel and General Counsel for the Commission  
18 and made his statement about the financing  
19 having been closed at the year end 2004.

20 In addition, shortly thereafter in  
21 response to a data request that had been  
22 submitted by Staff, and this is MPS-33, the  
23 company in -- in -- in the body of its response  
24 to that data request stated the following:  
25 "current legal title to this equipment is held

1 by the City of Peculiar in accordance with the  
2 Chapter 100 arrangement. Title was transferred  
3 December 30th, 2004."

4 I submit to you that's not an ambiguous  
5 statement. Short and few several days after  
6 that, by the way, a copy of that data request  
7 response was supplied to the Public Counsel and  
8 was, in fact, sent to the Public Counsel's  
9 witness in this case, Ted Robertson.

10 And I submit to you, they -- the -- the  
11 feigned outrage about not having been informed  
12 about this sits a little bit hard with me.  
13 This information was clearly sent to the Public  
14 Counsel's witness on March 23rd, 2005.

15 And then subsequently on -- in response to  
16 one of -- or the latter of public counsel's  
17 motions to suspend, on June 29th, 2005, in  
18 response to that motion to suspend, I filed a  
19 pleading in this case which contained in  
20 paragraph 5 the following statement: "The  
21 financing is in place and the company is making  
22 payments to the City of Peculiar in lieu of  
23 property taxes for 2005."

24 I submit it's not reasonable for Public  
25 Counsel or any other party in this case to

1 suggest or for the Commission to conclude there  
2 has been an intentional misrepresentation of  
3 the facts or that Public Counsel or Staff were  
4 not provided with sufficient information that  
5 had it been considered should have made them  
6 aware of the fact and timing of the events  
7 surrounding the bond financing closing.

8 One of the points that Mr. Wheatley has  
9 brought up is an argument that the financing  
10 should be considered void. And I respectfully  
11 disagree with that -- with that argument.  
12 First of all, in order to find the -- the  
13 transaction to be voided for -- in the first  
14 place, the Commission, I think, would have to  
15 concluded that it has statutory authority over  
16 the transaction in the first instance. And, as  
17 has been suggested, and as I've pointed out in  
18 1981 the Commission has gone on record saying a  
19 transaction of this sort really isn't that --  
20 isn't jurisdictional in facts that are -- are,  
21 frankly, nearly identical to the facts that are  
22 before the Commission today.

23 So I think that would be the first  
24 question is whether or not this is something  
25 that -- over which the Commission has statutory

1 authority in the first instance. Also, the  
2 statutes simply says, "The transaction is void  
3 only if made other than in accordance with an  
4 order of the Commission authorizing same."

5 If the Commission does not authorize this,  
6 as I've pointed out, the economic development  
7 agreement provides for unwrapping the  
8 transaction, and it will be as if it never  
9 happened.

10 I -- the suggestion by both -- I think  
11 Staff has filed a pleading to this effect and  
12 Public Counsel that the transaction is void  
13 because technical legal title was transferred  
14 to the City of Peculiar year end 2004 is a form  
15 over substance argument. I would submit to you  
16 that it ignores the undisputed fact has Aquila  
17 retains operational control of the South Harper  
18 power station and may, on its sole discretion,  
19 unwind the transaction at any time.

20 And it also disregards the significant tax  
21 advantages contemplated by the Missouri General  
22 Assembly in furtherance of economic development  
23 of communities such as the City of Peculiar,  
24 advantages which ultimately benefit Aquila's  
25 ratepayers because they lower its overall

1 property tax expense.

2 To give credence to this hyper-technical  
3 interpretation of the law offered by Staff and  
4 Public Counsel, I think, would be the  
5 embodiment of the old adage, frankly, that no  
6 good deed go unpunished.

7 Now, as to the record in this case, as  
8 I've pointed out before, I genuinely regret  
9 that the record in this case on the issue of  
10 the Chapter 100 financing has become somewhat  
11 muddled. The Commission and Mr. Wheatley is  
12 completely right about this. The Commission  
13 and the other parties to this case deserve  
14 better than -- than what I've presented to it.  
15 My credibility and that of my client are  
16 important issues, and the Commission should be  
17 able to rely on what it's told.

18 I'm here to tell that you what Mr. Denny  
19 Williams told you on September 21st, 2005,  
20 concerning the financing, he believed to be  
21 true. And with the Commission's permission, I  
22 would like to call him later in this proceeding  
23 to take the stand so that he can explain his  
24 testimony. Certainly, there's been no  
25 intentional misdirection of Aquila's pleadings

1 or Mr. Williams' testimony.

2 Let me at this stage just touch on a  
3 couple of other items, and these are somewhat  
4 random. But the Commission's order scheduling  
5 this case directed that a couple of other items  
6 be addressed or the parties prepare to a  
7 address them, one of which I believe -- I  
8 believe I've covered everything, but which one  
9 -- which is what effect, if any, do Aquila's  
10 pending cases in Court of Appeals in Case No.  
11 WD64985 and 65000 have in this case.

12 Now, just as a matter of clarification,  
13 Aquila only has one pending appeal, and that's  
14 Case No. WD64985. The company's motion for  
15 rehearing has been granted in that case, which  
16 means that the appeal is left as if no decision  
17 on the merits has been handed down in the first  
18 instance. And I'll refer to you a case, it's  
19 Colter versus Michelin Tire Corporation, 622  
20 Southwest 2nd 421. That is Missouri Appeals  
21 Court decision in 1981. I'm sorry.

22 So in effect, no decision has been handed  
23 down in this case. With respect to Case No.  
24 65000 in which the City of Peculiar and not  
25 Aquila is a respondent, an opinion has been

1 handed down, but it is not final until all post  
2 hand-down motions have been disposed and a  
3 mandate issued to the trial court. The motion  
4 for rehearing and the motion for transfer filed  
5 by the City of Peculiar was denied, I believe,  
6 on -- by the Court of Appeals on November 22nd,  
7 if my memory is correct.

8 It is my expectation that the City will be  
9 filing a motion for -- or an application for  
10 transfer directly to the Missouri Supreme  
11 Court. I do not believe that event has taken  
12 place. But it is my expectation that it will  
13 do so and I think that time is drawing near.

14 But bottom line, until the Court -- the  
15 Supreme Court Rules on that application and  
16 issues a mandate which is carried back down to  
17 the trial court, note that that opinion, too,  
18 has no legal effect. It's not a final legal  
19 decision of any appellate court.

20 So, I mean, ultimately, what's going on in  
21 this case has no effect on that proceeding and  
22 vice versa. Those things will play themselves  
23 out in due course and they'll have whatever  
24 legal effect that they have at the time the  
25 final decisions become -- or go into effect.

1           One of the questions that -- another one  
2           of the questions, and I suppose you can predict  
3           I'm coming from on this, is as to the  
4           stipulation should the Commission approve it or  
5           not, my answer is yes because I think that the  
6           stipulation is unanimous one. I do not think  
7           Public Counsel has been -- has been able to  
8           show that there's been any intentional  
9           misrepresentation or that it didn't have in its  
10          own possession facts which had it paid any  
11          attention to them would have brought to its  
12          attention the fact of the closing at year end  
13          2004.

14           And, again, as I pointed out earlier, I  
15          don't believe the aspect of the valuation  
16          portion of that stipulation is even in dispute.  
17          As a mechanical matter, I would like the  
18          Commission to take administrative notice of its  
19          order in Case No. EO-81216 which was issued on  
20          January 23rd, 1981. This is the order -- it's  
21          already been filed as an attachment to one of  
22          my more recent pleadings. But this is the  
23          decision in which the Commission looking at  
24          facts nearly identical to the ones with which  
25          it is presented today concluded it really

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1 didn't have any statutory authority over the  
2 transaction. And I've brought extra copies if  
3 the Commissioners don't have them.

4 Let me talk a little bit about, just as a  
5 closing comment, something about timing  
6 considerations, which I think the Commission  
7 should be -- of which the Commission, I think,  
8 should be made aware.

9 You will recall there have been a number  
10 of pleadings where the company has been saying  
11 that we need some sort of closure on this  
12 financing issue before the end of the year  
13 because there are some things that need to  
14 happen if the company decides to unwind the  
15 deal and -- and save itself some costs  
16 associated with unwinding that deal.

17 And as a practical matter, if the  
18 Commission, in its wisdom, sees to approve this  
19 transaction, it would be helpful -- extremely  
20 helpful for the company to have that order by  
21 no later than December 19th, which is a Monday.  
22 And I understand that's not a usual business  
23 day for the Commission to take business. But  
24 at that point, the time is such that the  
25 company's management will have to make a

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1 decision about whether or not it's going to  
2 keep this financing in place or whether it's  
3 going to notify the City that the financing  
4 will be unwound.

5 And I'm not saying that I know what the  
6 company's management's decision will be. But  
7 at that point, some corporate action may be  
8 taken with respect to that. So I just wanted  
9 the Commission to understand that the -- that  
10 time has become even more of the essence, I  
11 suppose, as we stand here.

12 In conclusion, I'd just point out that  
13 Public Counsel's protest that it just received  
14 new information as of September 21st, 2005,  
15 doesn't exactly square with the documentation  
16 with which was filed and with which it was  
17 provided. And I think, again, there's some  
18 feigned outrage and some theatre taking place  
19 today. And it's regrettable.

20 I understand the record isn't perfect.  
21 And I apologize to the Commission for that. I  
22 mean, ultimately, that's my responsibility as  
23 counsel for the company. But as I pointed out,  
24 this is not a topic that's received a whole lot  
25 of attention, I think, from anybody, any of the

1 parties. And -- including myself. I mean,  
2 it's just something that, frankly, has gone  
3 along for quite some period of time. Most of  
4 the attention has been focused on the other  
5 aspect of this case, which is the valuation of  
6 combustion turbines. And as a result, the  
7 record is imperfect in this regard.

8 I do have Mr. Williams here today. I  
9 suspect -- it was my view that the Commission  
10 might want to have the opportunity to ask him  
11 some questions about his prior testimony. And  
12 I know that he is -- he is anxious to have the  
13 opportunity to -- to clear his name and clear  
14 his reputation with respect to this because he,  
15 like me, views his credibility as an important  
16 aspect of his practice before the Commission.

17 And with that, I'll conclude my comments.  
18 Thank you.

19 JUDGE PRIDGIN: Mr. Boudreau, thank  
20 you. And, Mr. Williams, I'll call you here in  
21 just a moment. And, Mr. Boudreau, certainly,  
22 if we have Mr. Williams on the stand, I  
23 understand you're not his counsel, but you're  
24 Aquila's counsel. You might want to consult  
25 with Mr. Williams and see -- make sure that

1 he's aware of his Fifth Amendment rights in  
2 answering any kind of questions or -- if  
3 something occurs, you know, we'll certainly  
4 address it at that time.

5 MR. BOUDREAU: Indeed, I'll do that.

6 JUDGE PRIDGIN: Thank you. All  
7 right. Mr. -- Mr. Williams?

8 MR. WILLIAMS: May it please the  
9 Commission. The Staff agrees with the Public  
10 Counsel that the December 30th transaction is  
11 void -- not voidable, but void. And if it's  
12 Aquila's view that the subject of the  
13 stipulation and agreement is that December  
14 30th, 2004 transaction, then I believe we do  
15 not have a meeting of the minds with the Staff.

16 what Aquila originally filed was an  
17 application seeking Chapter 100 financing, plus  
18 valuation of three combustion turbines that  
19 were to be located at the South Harper site.

20 As Mr. Boudreau has alluded, much of the  
21 focus of Staff's attention in the case was on  
22 the valuation of the turbines. Staff's  
23 understanding of the Chapter 100 financing is  
24 that, in essence, title to the property would  
25 be transferred to the City of Peculiar.

1 As a result, Aquila would not have tax  
2 consequences for the ownership of that  
3 property. And as a municipality, neither would  
4 the City of Peculiar. In lieu of paying those  
5 taxes, Aquila would make payments to the City  
6 of Peculiar. They're called payments in lieu  
7 of taxes.

8 And Aquila estimated in its application  
9 that the net savings of those -- that tax  
10 avoidance would be 14 to 17 million over the  
11 30-year life of the project. Staff thinks  
12 that's a good thing. That's a portion of why  
13 the Staff entered into the stipulation and  
14 agreement.

15 And Staff still supports that Aquila  
16 should enter into a Chapter 100 financing with  
17 the City of Peculiar if it can respectively.  
18 Unlike the Office of the Public Counsel, the  
19 Staff still supports the stipulation and  
20 agreement, including the valuation of the  
21 turbines involved.

22 In Staff's view, the data request response  
23 that Aquila provided providing factual support  
24 that the Chapter 100 financing had closed is a  
25 -- a bit like a needle in the hay stack.

1           There's a lot of information that was being  
2           exchanged by the parties. The Staff believes  
3           that Aquila certainly could have been more  
4           forth coming and upfront about its disclosure  
5           that it had closed the Chapter 100 financing.

6           As to the impact of pending court cases,  
7           it's my understanding there are two. One is  
8           the City of Peculiar case that counsel for  
9           Aquila mentioned where there has been a  
10          decision by the Court of Appeals which has not  
11          yet become final. That decision, it's our  
12          understanding, involves the authority of the  
13          City of Peculiar to issue the bonds.

14          The other case that does involve Aquila  
15          directly that was alluded to by counsel for  
16          Aquila is the case that deals with Aquila's  
17          authority to build the plant at South Harper  
18          whether or not it has any requirement to get  
19          some authorization from the County of Cass.

20          And in terms of whether the Commission  
21          should wait until some court decisions are  
22          resolve or go ahead and act now, Staff believes  
23          that in order for Aquila to go forward, it's  
24          going to have to have the lawful authority from  
25          the courts and authority from the Commission

1 and one could precede the other. I don't know  
2 that it is of great concern. The Commission  
3 may view differently and prefer to wait until  
4 the courts have decided before it acts or it  
5 may decide to go forward. But the Staff  
6 believes that Aquila is going to have to have  
7 both matters resolved before it's going to be  
8 finally determined.

9 And unless the Commissioners have  
10 questions, I believe that conclude my remarks.

11 JUDGE PRIDGIN: All right.

12 Mr. Williams, thank you very much. And we --  
13 we may have further questions from you or for  
14 -- or for witnesses later. Mr. Comley, any  
15 statement?

16 MR. COMLEY: Thank you very much.

17 No, I have no remarks.

18 JUDGE PRIDGIN: Mr. Comley, thank  
19 you. Let me go back. Mr. Wheatley, since it's  
20 your motion, let me go back and see what kind  
21 of questions the Bench may have for you or  
22 perhaps for some witnesses.

23 Commissioner Murray, do you have any  
24 questions for Public Counsel?

25 COMMISSIONER MURRAY: Not at this

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1 time.

2 JUDGE PRIDGIN: Thank you.

3 Commissioner Gaw?

4 COMMISSIONER GAW: Yes.

5 JUDGE PRIDGIN: And, Mr. Wheatley,  
6 you can come to the podium or remain at your  
7 seat, whichever you're more comfortable doing.

8 COMMISSIONER GAW: Mr. Wheatley, I --  
9 first of all, do you have witnesses you intend  
10 to put on? Or a witness?

11 MR. WHEATLEY: I have a witness  
12 present, Mr. Ted Robertson, a CPA of our  
13 office, but I had not intended to call him.

14 COMMISSIONER GAW: He's just  
15 available?

16 MR. WHEATLEY: He is available.

17 COMMISSIONER GAW: The -- earlier,  
18 you cited to a number of different -- different  
19 provisions in direct testimony and other  
20 testimony. Do you have all of those -- do you  
21 have all of those cites available on some sort  
22 of a written document? Have they been cited  
23 already to the Commission in some written  
24 document?

25 MR. WHEATLEY: No. They have not

1           been cumulatively put together. But I'd be  
2           happy to do so.

3                       COMMISSIONER GAW: Even in just the  
4           cite form without -- without going through the  
5           quotes, that would be -- would be helpful to  
6           me. Would you -- would you -- help me to  
7           understand at this point, on -- on the side of  
8           your request that deals with just procedurally  
9           here how we progress, do you have -- help me to  
10          understand your rationale for asking for a stay  
11          rather than a dismissal in this case at this  
12          point in time.

13                      MR. WHEATLEY: Well, the reason that  
14          Public Counsel asked for a stay was that I  
15          discovered that the bonds had been issued  
16          sometime earlier the afternoon of the hearing  
17          in September 21st. And I did not want the  
18          Commission to consider the stipulation and  
19          agreement for approval based upon this new  
20          evidence that I had found out.

21                      And for that reason, I filed a Motion to  
22          Stay the proceedings so that we could further  
23          investigate.

24                      COMMISSIONER GAW: Well, at this --  
25          at this stage, is it your belief that the --

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1           that this Commission can grant relief approving  
2           a transfer that has already occurred evidently?

3                     MR. WHEATLEY:  No.  I do not.

4                     COMMISSIONER GAW:  Would it -- would  
5           it not be at least plausible, of course, to  
6           dismiss Aquila's current request before this  
7           Commission since -- I don't know -- I'm trying  
8           to understand how we -- how we approve  
9           something that is, on its face, void.

10                    MR. WHEATLEY:  Well, that's -- that's  
11           exactly my point.  Mr. Boudreau has -- has  
12           framed this as a regulatory no-brainer, which I  
13           believe would probably be true if a company  
14           went through the proper procedures to first get  
15           the Commission approval.

16                    But as I stated in the Statute 393.190, it  
17           says that the company must first secure an  
18           authorization -- an order from the Commission  
19           authorizing it to do so.  It must first do so.  
20           Mr. Boudreau used the term of "conditional  
21           closing."  I have no idea what a conditional  
22           closing is.  By all -- by all aspects, this  
23           financing was closed on December 30th of -- of  
24           last year.

25                    JUDGE PRIDGIN:  Well, it looks as

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1           though it -- it -- at this point, perhaps it  
2           was closed but of no effect potentially from  
3           the Staff standpoint of transferring any real  
4           legal title. Help me to understand that in  
5           regard to Public Counsel's position, if you've  
6           looked at it very far at this point. Who is --  
7           who really owns the South Harper facility  
8           today?

9                         MR. WHEATLEY: Well, according to the  
10           record of the Recorder of Deeds of Cass County,  
11           Missouri, the City of Peculiar does. But as  
12           we've indicated, we believe that that  
13           transaction is void and should be set aside.

14                        COMMISSIONER GAW: If it is void, but  
15           the Recorder's Office is showing it in a -- in  
16           the City of Peculiar, have you looked at what  
17           that means in regard to legal title status?  
18           Have you done any research on that, sort of  
19           like having a potential cloud on -- on a title  
20           that -- that could -- could potentially  
21           frustrate legal ownership. And I'm not -- I'm  
22           not clear -- I'm just not clear at this stage  
23           who really owns this property.

24                        MR. WHEATLEY: Well --

25                        COMMISSIONER GAW: But I'm not



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1           certainly correct.  And if you would like, I  
2           would like to offer into evidence --

3                       COMMISSIONER GAW:  The Judge may not  
4           agree with me now.  Don't take my legal  
5           analysis very far.

6                       MR. WHEATLEY:  -- the data --  
7           Missouri Public Service Commission's Data  
8           Request No.  0111 and the response from  
9           Mr. Williams as an exhibit in this case.

10                      JUDGE PRIDGIN:  All right.  I'll have  
11           that marked as Exhibit No. 1 for identification  
12           purposes.  Any objections?

13                      (Exhibit No. 1 was marked for  
14           identification.)

15                      MR. BOUDREAU:  Can I have a moment,  
16           please?

17                      JUDGE PRIDGIN:  You may.

18                      MR. WILLIAMS:  Staff has no  
19           objection.

20                      MR. BOUDREAU:  I don't have any  
21           objection.  I think that -- that as I  
22           indicated, we would have somebody here to  
23           verify that document in any event.  So no  
24           objection.

25                      JUDGE PRIDGIN:  All right.  Very

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1 good. Exhibit No. 1 is admitted into evidence.  
2 Commissioner?

3 COMMISSIONER GAW: I think for right  
4 now that's all I have. Thank you.

5 JUDGE PRIDGIN: Commissioner, thank  
6 you. Commissioner Clayton, any questions for  
7 counsel or OPC witnesses?

8 COMMISSIONER CLAYTON: No. Not at  
9 this time.

10 JUDGE PRIDGIN: Thank you.  
11 Commissioner Appling?

12 COMMISSIONER APPLING: Mr. Wheatley,  
13 how are you doing this morning?

14 MR. WHEATLEY: Just fine,  
15 Commissioner.

16 COMMISSIONER APPLING: I have one  
17 question, and I think it probably will end up  
18 being interesting to one of the other counsel,  
19 too. I heard what Mr. Williams said about  
20 whether we should wait on the Court or not wait  
21 on the Court to make a decision on this case  
22 and where we go from there.

23 But in your opinion, if we waited on the  
24 Court to make a decision on this case, who is  
25 going to be hurt by that? Do you have an

1 opinion on that?

2 MR. WHEATLEY: My only concern,  
3 Commissioner, would be that Aquila has a  
4 general rate case pending before the Commission  
5 in a separate case. And I'm not -- off the top  
6 of my head do not know the operation of law  
7 date for that case. But that would be my -- my  
8 concern that perhaps the Commission would need  
9 to act before that operation of law date.

10 COMMISSIONER APPLING: Okay. Thank  
11 you very much.

12 JUDGE PRIDGIN: Commissioner Murray?

13 COMMISSIONER MURRAY: Mr. Wheatley,  
14 if we were to grant OPC's motion, what would be  
15 the benefit to the ratepayers of acting as you  
16 are asking us to do?

17 MR. WHEATLEY: Well, thank you for  
18 asking that question because I -- Mr. Boudreau  
19 indicated that the whole financing, Chapter 100  
20 financing, was done to lower the property  
21 taxes, which would be reflected in rates of the  
22 customer.

23 However, my point is that the statute says  
24 that they must first get Commission approval,  
25 and it doesn't matter what the effect of -- of

1           this is. I mean, even if we all joined hands  
2           and got down and looked upward and said, Please  
3           let this be okay, let it be acceptable, the  
4           statute is still there. It is still  
5           applicable. And that statute says that it is  
6           void.

7                     And as far as the benefit to the -- to the  
8           consumers, Aquila has been paying the pilot  
9           taxes. Those are payments in lieu of -- of  
10          taxes, which presumably are lower than the  
11          property taxes they would have had to pay had  
12          this financing not already have taken place.

13                    However, it's our position that that void  
14          transaction the company should not recover  
15          those pilot payments and, as a second point,  
16          should not be credited with whatever property  
17          tax they should have paid in their -- in the  
18          rate case, even though it is an amount greater.  
19          That would just be rewarding Aquila for what  
20          they've done in this case.

21                    COMMISSIONER MURRAY: I'm just trying  
22          to get to what would be the practical effect,  
23          the bottom line practical effect, of us  
24          granting your request. And is Mr. Boudreau's  
25          argument that you're looking at form over

1 substance a valid argument?

2 MR. WHEATLEY: Well, again, let me  
3 point to the statute. You know, the statute is  
4 there, and -- and we cannot get around it, even  
5 if we all wanted to. So it's not form over  
6 substance. It's law that they have not  
7 complied with. And they must comply with the  
8 law.

9 COMMISSIONER MURRAY: All right.  
10 That's all I have. Thank you.

11 JUDGE PRIDGIN: Commissioner Murray,  
12 thank you. If there's nothing further -- all  
13 right. Mr. Boudreau, let me see what kind of  
14 questions we have from the Bench, and then we  
15 may go off into having Mr. Williams testify.

16 Commissioner Murray, do you have any  
17 questions for counsel?

18 COMMISSIONER MURRAY: I would ask  
19 Mr. Boudreau the same question that I asked  
20 Mr. Wheatley in terms of the practical effect  
21 of us granting OPC's request.

22 MR. BOURDREAU: I suppose -- and I  
23 appreciate the question. I suppose that's the  
24 thing that has -- has dismayed me probably the  
25 most about Public Counsel's position is that

1           there's been some suggestion, I think, not so  
2           much from the parties of this case, but some --  
3           some of the Commission's newest and fondest  
4           pen-pals that somehow the company is getting  
5           some financial benefit out of this Chapter 100  
6           financing arrangement that they've put this  
7           place -- or that it has put in place.

8                     The fact of the matter is it lowers the --  
9           the -- the conscious object of facilitating  
10          this financing was to lower tax expense. Tax  
11          expense is a cost of service in determining  
12          regulated rates for this company, its electric  
13          rates. And by lowering the tax expense, which  
14          is a flow-through item, the tax expense is  
15          lower than otherwise would be. And that flows  
16          right through to the ratepayers.

17                    It's happened within the test year for  
18          this case. And that -- this number is  
19          reflected at least in the case of that the  
20          company has submitted for the Commission's  
21          consideration in the pending electric rate  
22          case. So the practical effect would be to put  
23          the company in the position -- or -- and I  
24          don't want to tell you what -- what the  
25          management of the company is going to do

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1           because I don't know what the management of the  
2           company is going to do as the year end  
3           approaches.

4                     But if this arrangement needs to be  
5           undone, presumably, the -- the property would  
6           be subject to taxation centrally distributed  
7           and valorem tax, the state tax commissions  
8           imposes or at least collects and transmits to  
9           the taxing authorities in the counties in which  
10          the company has electric operations, which  
11          would be -- I think the record -- the testimony  
12          in this case reflects that over the life of the  
13          bonds, which is approximately 30 years, I  
14          believe, it's about a -- a -- approximately  
15          \$18 million, which presumably, would be --  
16          would show up in cost of service.

17                    And so I think the practical effect is it  
18          will increase the cost of service for the  
19          company. And since it's a flow-through item,  
20          ultimately increase the cost of service for the  
21          company's ratepayers.

22                    COMMISSIONER MURRAY: And just to  
23          clarify what you said earlier, I think what I  
24          understood you to say was that you had entered  
25          into an agreement with the taxing authority to

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1            basically transfer the property on paper in  
2            order to take advantage of this tax situation  
3            prior to getting the approval that was needed  
4            for the issuance of the bonds; is that correct?

5            MR. BOUDREAU:  Yes.  The closing --  
6            the -- the effect of it was that it took place  
7            at the end -- year end 2004.  I think the date,  
8            the correct date, I believe, is December 30th,  
9            2004, the idea being something like if you buy  
10           a new car and you own it at the end beginning  
11           of the year, you know, as of January 1, then  
12           you are -- then it's considered your property  
13           for purposes of determining tax for that year.

14           And this is the same sort of thing.  By  
15           transferring technical legal title to the City  
16           of Peculiar, it enabled the company to take  
17           advantage -- advantage of the lower -- the,  
18           lowered cost or the tax advantage of the bonds  
19           as of calendar year 2005.  If it had owned the  
20           property on the 1st of January, that would not  
21           have been the case.

22           COMMISSIONER MURRAY:  And part of  
23           that agreement was that if you did not get the  
24           necessary authority that the whole thing would  
25           be unwound; is that correct?

1                   MR. BOUDREAU: That's correct. The  
2                   economic development agreement has a clause  
3                   that says if -- if the necessary regulatory  
4                   approvals are not obtained, then the company,  
5                   at its sole discretion, can unwind the  
6                   transaction.

7                   And I think that brings up an important  
8                   secondary point I'd like to make. Mr. Wheatley  
9                   keeps pointing to Chapter -- or to Section  
10                  393.190. And I -- it's important, I think, for  
11                  the Commission to realize that the language in  
12                  there is only applicable to a plant that is,  
13                  and I'll quote here, necessary and useful in  
14                  the performance of its duties to the public.

15                  And so in order for this statute to  
16                  trigger, that plant would have had to have been  
17                  necessary or useful in the performance of its  
18                  duties to the public at the time the  
19                  transaction took place. Well, the company  
20                  owned the property and it owned the combustion  
21                  turbines. But the plant wasn't put in  
22                  operation. The combustion turbines weren't put  
23                  into commercial operation until the summer of  
24                  2005. So I think in order for the Commission  
25                  to conclude, as Mr. Wheatley is urging it to

1 do, to find the -- to find the transaction void  
2 as a preliminary finding the Commission would  
3 need to find that the plant in question was  
4 necessary and useful in the performance of the  
5 company's duties to the public at the time the  
6 transaction took place.

7 And I would submit to you there's nothing  
8 in the record that supports that conclusion.

9 COMMISSIONER MURRAY: And in your  
10 opinion, are there any negatives to the  
11 ratepayers in terms of the Commission's  
12 approval? And I'm not asking that very well.  
13 What I'm -- what I'm trying to ask is if at the  
14 time of the transfer in which you included  
15 these -- the clause that if the necessary  
16 approvals were not gotten that the whole thing  
17 could be unwound, was there any reason to  
18 contemplate that approval might not be given?  
19 Was there anything negative that you could see  
20 in terms of the ratepayers?

21 MR. BOUDREAU: I -- I think the  
22 answer is no because, as I've pointed out in my  
23 -- in my comments to the Commission, the --  
24 these sorts of tax exempt or tax advantaged  
25 financings have been -- the only way I can

1 characterize it is routinely approved for many  
2 years now.

3 This is isn't the only one of this nature.  
4 These sorts of EI ERA financings and -- and  
5 these financings under Chapter 100 RISMO have  
6 -- the only thing I can say are routinely  
7 approved by this Commission because of their  
8 obvious cost benefits and with the recognition  
9 that those lowered costs ultimately reflect  
10 themselves in rates.

11 The second issue is -- is the fundamental  
12 -- what I'll call the jurisdictional question  
13 about whether or not there was even any aspect  
14 of this that was -- that was the -- that  
15 triggered the statute in the first instance  
16 because what we're talking about is land that  
17 the company owned and combustion turbines that  
18 the company owned. But there wasn't any  
19 operating plant at the time it took place. So  
20 there was no power plant. There was just bits  
21 and pieces that were transferred.

22 And there was nothing that was actually  
23 dedicated to the public service at that point.  
24 So to answer your question, no, there was --  
25 you know, from my view, I don't see any

1           downside, either legally or practically  
2           speaking, ultimately to the -- to the people.

3           I think the Commission probably needs to  
4           keep in -- primarily in mind which are the  
5           ratepayers, the benefit through this.

6           COMMISSIONER MURRAY: Thank you.

7           JUDGE PRIDGIN: Commissioner Murray,  
8           thank you. Commissioner Gaw?

9           COMMISSIONER GAW: Mr. Boudreau, very  
10          quickly, on one issue you just raised, in  
11          regard to the taxation issue on real property,  
12          I'm just curious if you could give me the cite  
13          on the -- the ownership on the first day on  
14          real estate.

15          I know that -- I don't need it on personal  
16          property, but whether or not that -- that rule  
17          is the same on real estate as it is on personal  
18          property. And if you have that, you know,  
19          later on on or something --

20          MR. BOUDREAU: I do not have that,  
21          and I can't even tell that you I've looked into  
22          it. But I can get that for you, and I will get  
23          that the to the Commission.

24          COMMISSIONER GAW: And it's very  
25          possible we were talking -- but I can't recall

1 -- I know that most generally, real estate  
2 taxes on transfer is subject to a contract --  
3 contractual provisions. But from a legal  
4 standpoint, I just don't remember the specifics  
5 of -- of -- of the liability.

6 MR. BOUDREAU: I will get that  
7 information to the Commission. Thank you.

8 COMMISSIONER GAW: Earlier on, you  
9 were referring to different -- different people  
10 who -- including -- including yourself about  
11 responsibility of how the case was presented.  
12 I would -- I'm curious as to whether or not you  
13 can disclose to this Commission who made the  
14 decision to make a request to the Commission to  
15 approve this transfer and close the transaction  
16 prior to getting approval. Who made that  
17 decision, if you can disclose it?

18 MR. BOUDREAU: I'm not sure that it's  
19 a matter of disclosure so much as I'm not sure  
20 that I know who -- in terms of chain of command  
21 within the company made that decision.

22 COMMISSIONER GAW: I understand.

23 MR. BOUDREAU: So I don't know -- I  
24 don't know the answer to that question.

25 COMMISSIONER GAW: Okay. The case

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1 was originally filed, refresh my memory, when?

2 MR. BOUDREAU: December 6th.

3 JUDGE PRIDGIN: December 6th.

4 COMMISSIONER GAW: December 6th of  
5 2004; is that correct?

6 MR. WHEATLEY: Yes, that's correct.

7 MR. BOUDREAU: That is correct.

8 December 6th of 2004.

9 COMMISSIONER GAW: And Direct was  
10 filed by the company when?

11 MR. BOUDREAU: Mr. Williams, Mr.

12 Denny Williams' direct testimony was filed on  
13 January 13th, 2005.

14 COMMISSIONER GAW: January -- did you  
15 say 13th?

16 MR. BOUDREAU: 13th.

17 COMMISSIONER GAW: And other  
18 testimony filings --

19 MR. BOUDREAU: The --

20 COMMISSIONER GAW: I know this is off  
21 the record, but I'm trying to organize this in  
22 my head.

23 MR. BOUDREAU: I was doing the same  
24 thing, so -- rebuttal testimony was filed, this  
25 is by other parties, on June 13th, 2005. The

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1           company did not file a rebuttal, but  
2           surrebuttal testimony was filed on -- by my --  
3           according to my records, June 27th, 2005.

4                   COMMISSIONER GAW:   June 27th.

5                   MR. BOUDREAU:   And Mr. Williams did  
6           file surrebuttal testimony.

7                   COMMISSIONER GAW:   All right.   And  
8           when was the closing done?

9                   MR. BOUDREAU:   My -- my best  
10          information and I think the closing documents  
11          themselves reflect that the closing took place  
12          on December 30th of 2004.

13                   COMMISSIONER GAW:   December 30th.

14                   MR. BOUDREAU:   There was some  
15          testimony by Mayor Lewis, I believe, of City of  
16          Peculiar, and he referred to the date of  
17          December 28th, 2004.   I believe that's the date  
18          that the City approved the terms of the  
19          financing.   But the actual closing didn't take  
20          place until the 30th.

21                   MR. WILLIAMS:   Commissioner, I have  
22          certified copies of closing documents if you  
23          want to see those.

24                   COMMISSIONER GAW:   I will want to see  
25          them if you have them.

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1 MR. WILLIAMS: Okay.

2 COMMISSIONER GAW: It's not necessary  
3 that -- that you deliver them to me right now.  
4 So --

5 MR. WILLIAMS: They're also filed in  
6 EFIS With the pleadings.

7 COMMISSIONER GAW: Okay.

8 MR. BOUDREAU: I was going to say,  
9 these are already of record, aren't they?

10 MR. WILLIAMS: (Mr. Williams nods  
11 head.)

12 COMMISSIONER GAW: And when were  
13 those filed?

14 MR. WILLIAMS: With Staff's response  
15 to Public Counsel's Motion to Stay September  
16 23rd, '05. Commissioner, I also have some case  
17 cites that the Commission might find of some  
18 utility.

19 COMMISSIONER GAW: Okay. When we get  
20 to that point where we're inquiring of Staff,  
21 perhaps you could provide them at that point.  
22 Judge, I will probably have some questions a  
23 little later, but I -- I prefer to wait right  
24 now if -- if Mr. Williams is going to testify.

25 MR. BOUDREAU: I am -- I am going to

1 have -- it is my expectation that Mr. Williams  
2 will testify. But based on Judge Pridgin's  
3 admonition, I may want to have a quick  
4 discussion with them prior to doing so.

5 COMMISSIONER GAW: Yes. I  
6 understand. After that -- after I know what  
7 the result is of that, I may have some  
8 additional questions of counsel if Mr. Williams  
9 is not available. Thank you.

10 JUDGE PRIDGIN: And we will probably  
11 do that after lunch since we're approaching the  
12 noon hour, and that would give you some extra  
13 time to talk with Mr. Williams.

14 MR. BOUDREAU: Thank you.

15 JUDGE PRIDGIN: Commissioner Clayton?

16 COMMISSIONER CLAYTON: I'm going to  
17 wait, defer my questions until then.

18 JDGE PRIDGIN: Commission Appling,  
19 any questions for Mr. Boudreau?

20 COMMISSIONER APPLING: I think since  
21 it's lunch time, maybe we'll -- we'll do it  
22 after. Of course, it's -- it's just a simple  
23 question. I'm a little confused at the timing  
24 when the -- if we would prove or not approve  
25 the stipulation. You've mentioned it and

1 Mr. Williams talked about -- Mr. Williams from  
2 the Staff talked about he really didn't feel it  
3 was of great importance whether we made a  
4 decision early or whether we waited until after  
5 the Court made the decision. But you also  
6 spoke to the urgency of some dates when this  
7 information needed to be wrapped up and we need  
8 to take a decision on this case. Can you  
9 repeat that again for me, please?

10 MR. BOUDREAU: Generally speaking, it  
11 -- the company needs to -- in order to recover  
12 expenses associated with its transaction with  
13 the City of Peculiar, in order to recover those  
14 expenses, it would need to take some action to  
15 do so before the end of the year. There's a  
16 notice provision, I think it's a ten-day notice  
17 provision. There will be a couple of days  
18 necessary put the paperwork together to  
19 accomplish that task.

20 And so if you back away from December 31st  
21 to where we are now, that really puts the  
22 company at -- in order to -- to take that  
23 action, if it decides to take that action, it  
24 would need to do so by no later than the 19th  
25 of this month, which, as I pointed out, is a

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1 Monday. It's not a usual business day for --  
2 for the Commission to conduct business.

3 But the -- I think the management of the  
4 company at that point needs to make a decision  
5 about whether or not it wants to, you know,  
6 keep things in place and take a chance that --  
7 that the Commission will take some adverse  
8 action with respect to the financing, and --  
9 and it will be out a substantial amount of --  
10 of money or whether or not it just wants to --  
11 to take -- take the action of its own accord.

12 So I -- the point is that the Commission  
13 is inclined to think that this is a good thing  
14 for -- for the company and ultimately its  
15 ratepayers. It would certainly be helpful to  
16 know that by -- by the 19th because, at that  
17 point, like I said, management will need to  
18 make some decision.

19 I think -- I don't necessarily disagree  
20 with Mr. Williams' point that from a legal  
21 perspective and pending appeals, the two aren't  
22 necessarily linked in lock step. This is  
23 purely a business decision from the company  
24 standpoint.

25 COMMISSIONER APPLING: Thank you,

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1 sir.

2 MR. WHEATLEY: Commissioner Appling,  
3 if I could follow up on that the?

4 COMMISSIONER APPLING: Yes.

5 MR. WHEATLEY: Simply put, Aquila  
6 paid to the City of Peculiar the sum of  
7 \$700,000 to issue these bonds. By unwinding  
8 it, Aquila hopes to recoup some of that  
9 \$700,000. That is their purpose for unwinding  
10 the transaction.

11 COMMISSIONER APPLING: Thank you,  
12 sir. Appreciate it.

13 JUDGE PRIDGIN: All right. If  
14 there's nothing further from the Bench, this  
15 looks to be a convenient time to break for  
16 lunch. We will resume at approximately 1:15,  
17 and we will see if the Bench has any further  
18 questions for Mr. Boudreau or perhaps for  
19 Aquila's witnesses. Thank you very much. We  
20 are off the record.

21 (Break in proceedings.)

22 JUDGE PRIDGIN: All right. We're  
23 back on record. Mr. Boudreau, did I understand  
24 -- before we broke for lunch, we had discussed  
25 the possibility of you putting Mr. Williams on

1 the stand, and you would like to do so now?

2 MR. BOUDREAU: That is correct.

3 Although, at the risk of being presumptuous, I  
4 don't know whether there were any questions  
5 that the Commission had to put to Mr. Williams,  
6 who is the counsel for Staff. I don't know if  
7 we covered that part or not. I'll stand  
8 corrected if we've already covered that.

9 JUDGE PRIDGIN: I don't think that we  
10 had. I was going to try to go through each  
11 party, OPC, Aquila and then Staff and then see  
12 if we have anything for Cass County. So that  
13 was -- that was my plan of attack.

14 MR. BOUDREAU: Okay.

15 MR. WILLIAMS: Judge, I do have  
16 some --

17 JUDGE PRIDGIN: Mr. Williams?

18 MR. WILLIAMS: I do have some court  
19 decisions and some Commission decisions I was  
20 going to ask the Commission to take official  
21 notice of Commission decisions. Maybe that  
22 would be a good time to do that now.

23 JUDGE PRIDGIN: Certainly.

24 MR. WILLIAMS: The first court  
25 decision is Cooper County Bank versus Bank of

1 Bunston. It's 221 MO-AP 814. And I've got  
2 copies to provide. Do you want me to provide  
3 one to the court reporter? The second one is  
4 Webster versus Joplin Water Works Company, 352  
5 MO 327.

6 Then I would ask that the Commission take  
7 official notice of Case No. EO-2003-0035, which  
8 is the case similar to this one where UE asked  
9 for authority for Chapter 100 financing.

10 And the last case is in the matter of the  
11 Joint Application of Kansas City, Missouri and  
12 Kansas City Public Service Company for approval  
13 of a certain agreement executed between said  
14 parties relating to the so-called Eighth and  
15 Ninth Street car line of the company or  
16 disclaimer of jurisdiction thereof. It's 5 MO  
17 PSC New Series 495, a 1954 case.

18 JUDGE PRIDGIN: Mr. Williams, thank  
19 you. The Commission will take judicial notice  
20 of those court decisions and administrative  
21 notice of its own orders. Again, Mr. Boudreau,  
22 did you plan to put Mr. Williams on?

23 MR. BOUDREAU: Indeed. Would you  
24 like me to do so now?

25 JUDGE PRIDGIN: Yes, please. And,

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1           Mr. Williams, if you'll come forward to be  
2           sworn, please.

3                           DENNIS WILLIAMS,  
4   being first duly sworn to testify the truth, the whole  
5   truth, and nothing but the truth, testified as follows:

6                           DIRECT EXAMINATION

7   BY MR. BOUDREAU:

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

10           Mr. Boudreau, when you're ready, sir.

11                           MR. BOUDREAU: Thank you.

12           Q    (By Mr. Boudreau) Would you state your name  
13           for the record, please, sir?

14           A    Dennis R. Williams.

15           Q    Are you the same Dennis R. Williams who  
16           testified at the time of the evidentiary  
17           hearing in this case on September 21st, 2005?

18           A    I am.

19           Q    And you testified on a number of -- or on  
20           several topics, one of which being the Chapter  
21           100 financing and the revenue bonds; is that  
22           correct?

23           A    Yes. That's correct.

24           Q    Have you reviewed your testimony, including  
25           that aspect of your testimony which took the

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1 form of prepared direct and surrebuttal  
2 testimony?

3 A I have.

4 Q And with respect to your testimony provided on  
5 September 21st, 2005, did you believe it to be  
6 true and correct when given?

7 A Yes, I did.

8 Q Have you reviewed the pleadings filed by Staff  
9 and Public Counsel subsequent to the September  
10 21st, 2005 hearing?

11 A Yes, I have.

12 Q Were you present for the proceedings that took  
13 place in the hearing this morning?

14 A Yes, I was.

15 Q And you listened to the matters that were  
16 addressed by the Commission and various  
17 counsel?

18 A I did.

19 Q You are aware, then, there are a number of  
20 allegations that your testimony concerning the  
21 Chapter 100 financing was incorrect and  
22 misleading, are you not, sir?

23 A I am aware of that.

24 Q And based on your review of those materials,  
25 what have you concluded about the matters that

1           have been -- have been brought up by Public  
2           Counsel and Staff?

3           A     Well, I believe there is at least three matters  
4           that have been brought up, perhaps -- perhaps  
5           four. The first being there was confusion I  
6           recall in the September hearing itself about  
7           the transaction and -- and how that all took  
8           place -- or how -- how the transaction actually  
9           worked.

10                     And I became aware that there was  
11           confusion after I left the stand. And I  
12           apologize for that -- that confusion because I  
13           was the accounting witness, and I should have  
14           probably done a better job at explaining how  
15           the transaction itself worked. And in that  
16           regard, I have prepared a very simplified  
17           document, which at some point in time, I'd like  
18           to discuss.

19                     The other three matters, I believe, are --  
20           are in regard to allegations that my testimony  
21           was, at best, misleading. The first allegation  
22           is that, as I understand it at least, that I --  
23           I misled the Commission by stating my direct  
24           testimony in the future tense rather than the  
25           past.

1                   And I believe there's two other  
2                   allegations, although they may have not come  
3                   from parties to this case, but may be from an  
4                   individual that's not a party to this case.  
5                   But those -- those two allegations are that,  
6                   first, I replied -- or -- incorrectly in  
7                   questions that I was asked by Commissioner  
8                   Clayton about the -- where title resided.  
9                   And then, finally, that I had improperly  
10                  alleged that the company received no value from  
11                  the Chapter 100 bonds.

12           Q       Okay.  What I'd like to do, Mr. Williams, is  
13                  take those more or less in the order in which  
14                  you have identified them.  And the first item  
15                  I'd like to address is your view that there may  
16                  be -- may have been some confusion at the close  
17                  -- at the conclusion of the September 21st  
18                  hearing about the mechanics of the Chapter 100  
19                  financing.

20           A       Okay.

21           Q       And I believe you said that you prepared an  
22                  exhibit; is that correct?

23           A       I -- I have.

24           Q       Or a document?  I'd like to have this document  
25                  marked.

1 JUDGE PRIDGIN: I believe we're at  
2 Exhibit No. 2.

3 MR. BOUDREAU: That's correct.

4 (Exhibit No. 2 was marked for  
5 identification.)

6 MR. BOUDREAU: Am I to understand  
7 that that exhibit has been marked as No. 2?

8 JUDGE PRIDGIN: Yes, sir.

9 MR. BOUDREAU: Thank you.

10 Q (By Mr. Boudreau) Mr. Williams, do you have  
11 before you a document which has been marked for  
12 identification as Exhibit No. 2?

13 A I do.

14 Q Was that document prepared by you or under your  
15 direct supervision?

16 A It was prepared by me.

17 Q And could you describe for the Commission  
18 generally what this document is meant -- well,  
19 let me ask you this: Would this document  
20 assist you in explaining the mechanics of the  
21 Chapter 100 financing?

22 A It -- it would, indeed. It shows both the  
23 practical of what took place and what we were  
24 trying to accomplish by the transaction. Then  
25 it shows also the legal transactions that were

1 required to take place to comply with the  
2 statute or as I understand were required to  
3 take place to comply with the statute and then  
4 ultimately the result of all that.

5 Q Okay. The document appears -- there appear to  
6 be three columns in this illustration; is that  
7 correct?

8 A That's correct.

9 Q I'd like to ask you to deal with the first  
10 column, which I believe is entitled Accounting  
11 Records. Would you explain to the Commission  
12 the significance of the information in that  
13 first column?

14 A Sure. This is what ended up being recorded on  
15 the company's books. As we went through this  
16 case, there were really only two, perhaps  
17 three, but two main issues with the Chapter 100  
18 bonds. And those were a desire on the part of,  
19 in particular, the Staff, but I believe also  
20 OPC that however the sale lease back ultimately  
21 worked to accomplish this transaction that the  
22 assets be recorded on the book and records of  
23 the company, and, secondly, that at the end of  
24 the lease that the ownership of the assets  
25 would remain with the company.

1           The accounting records reflect not only  
2           that is what happened but that is what would  
3           have happened had the company, in fact,  
4           followed a normal financing structure.

5           The Chapter 100 legal transactions had  
6           nothing to do with the accounting transactions.  
7           The accounting transactions were we generated  
8           internal funds or took internal funds of  
9           approximately the \$140 million, and we built a  
10          plant for approximately \$140 million.

11          That's what goes on the accounting  
12          records, and that was accomplished -- I guess  
13          that's what I was really focused on. I had  
14          committed that that's what we would accomplish.  
15          That's what we did accomplish in the  
16          transaction that was effectuated in November of  
17          2004.

18          So on the utility books and account -- and  
19          records, this is -- this first column  
20          represents what's on the book and records as of  
21          November 2004 and remains that way today.

22          Q     Now, if I could ask you to address the second  
23          column in your illustration.

24          A     The second column -- and I prepared this to  
25          simplify things. I want that understood. If

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1 an attorney did this, it would, I'm sure, be  
2 six pages instead of one. I don't mean to  
3 insult the attorneys.

4 Q Thank you for that.

5 A But -- but it -- it doesn't reflect, like,  
6 trust agreements and -- but to simplify things,  
7 basically what happens is this: Aquila,  
8 legally, to comply with the Chapter 100, sold  
9 the plant to the City for approximately \$140  
10 million.

11 In return, the City issued bonds which the  
12 company purchased for \$140 million. Now, that  
13 was all a paper transaction just to comply.  
14 And I have to admit, I'm not an attorney, so I  
15 don't understand all the reasons that that was  
16 necessary. But it was necessary to meet the  
17 Chapter 100 statutes. No cash changed hands.  
18 No accounting entries were made on the books.

19 The second transaction that's reflected in  
20 that middle column is what happens on an annual  
21 basis. On an annual basis, Aquila makes lease  
22 payments to the City because it a sale lease  
23 back on paper. The City also on paper makes  
24 bond -- or services the bonds to Aquila,  
25 approximately 1.12 million per year. Again,

1           those are just paper transactions to comply  
2           with the legal requirements of Chapter 100, as  
3           I understand it. No cash changes hands. No  
4           accounting entries are made. So except for the  
5           fact that legally to comply with Chapter 100,  
6           from an accounting point of view, those  
7           transactions don't even occur.

8           Q    Okay. So as I understand your testimony, from  
9           an accounting perspective, it's -- the -- the  
10          assets in question are still on the books of  
11          the regulated utility?

12          A    The assets remain on the books of the regulated  
13          utility from an accounting standpoint and GAAP  
14          ownership is retained by the utility.

15          Q    Okay. Thank you for that. There's a third  
16          column on your illustration, is there not?

17          A    There is.

18          Q    What is that intended to convey?

19          A    It's intended to convey that -- the benefit,  
20          and it really only shows one benefit. There's  
21          really two. The benefit of that middle column  
22          of complying with the Chapter 100 results in a  
23          savings of approximately \$18 million. And  
24          that's the pilot payments are \$18 million less  
25          over the life of the property than what the

1 estimated property taxes would be.

2 The other benefit that's not shown on  
3 there is the fact that there is a benefit to  
4 Cass County residents because the pilot  
5 payments all stay within Cass County where,  
6 under normal distribution of property taxes,  
7 they wouldn't. And over the life of the  
8 property, Cass County residents probably save  
9 about \$5 million.

10 Q Thank you.

11 MR. BOUDREAU: With that, I'd like to  
12 offer Exhibit No. 2 into the record, please.

13 JUDGE PRIDGIN: Thank you. Any  
14 objections? All right. Hearing none, Exhibit  
15 No. 2 is admitted.

16 Q (By Mr. Boudreau) Mr. Williams, I'd like to  
17 move on to the next item that you identified  
18 earlier in your testimony as an area of -- of  
19 critique about the testimony that you offered  
20 and gave at the hearing on September 21st, and  
21 I believe that was the allegation that your  
22 testimony was -- was misleading to the other  
23 parties in the case and also possibly to the  
24 Commission. Do you recall that?

25 A I do.

1 Q And do you have a response to that?

2 A I do. To understand the context of this, I --  
3 I wrote this testimony in December. And I  
4 wrote it using -- when you write testimony --  
5 or at least I do. I -- I attempt to make it as  
6 easy on myself as possible. So I used -- as a  
7 guide, I used the application that the company  
8 had filed.

9 The application was in the future tense.  
10 And this is in the future tense. I understand  
11 that has caused some people some consternation.  
12 For the reasons I stated before, I -- I  
13 probably in retrospect, if you look at all  
14 these attachments to my testimony, they're  
15 dated December 30th. In retrospect, I probably  
16 -- it should have dawned on me, they're dated  
17 December 30th for a reason, this transaction  
18 is.

19 And had I been focused on that, it would  
20 have been more appropriate to file the  
21 testimony in the past tense rather than the  
22 future. No. 1, I wasn't focused on it for the  
23 reasons I discussed. Chapter 100. I have to  
24 admit I just probably lost sight of the ball.  
25 The two issues had been resolved that I was

1 responsible for and had taken place in  
2 November. And the other is that I viewed this,  
3 and still do, that this Chapter 100 agreement  
4 is subject to the approval of the Commission  
5 subject to regulatory approval.

6 It has caused some legal consternation, I  
7 understand. But, again, I was focused on the  
8 accounting transaction, not the legal. I think  
9 there was also some question, and it relates to  
10 the third issue that was -- that was raised  
11 regarding Chapter 100.

12 My -- my rebuttal testimony in -- in June  
13 -- I believe it was in June also used the word  
14 will, we will not undertake this. And that was  
15 in regard to some issues that the OPC had with  
16 the Chapter 100 agreement itself. And I would  
17 leave that testimony the same if I -- if I were  
18 to give that today because -- perhaps it would  
19 have been better to say ultimately will.

20 But Aquila, under the approach that the  
21 OPC desired, would not have undertaken the  
22 Chapter 100. We would have ultimately unwound  
23 that if that were a requirement if -- if those  
24 sections had been excluded.

25 Q I understand. I want to ask you this question,

1           sir: When did you become aware about -- of the  
2           timing of the closing of the transaction at the  
3           end of December of 2004?

4           A    Well, I had the opportunity to become aware,  
5           obviously, at the time I filed my testimony  
6           because if -- those documents do say December  
7           30th. I received an e-mail -- I've gone back  
8           and looked and -- to see when -- when I was  
9           notified.

10                    I received an e-mail, which, frankly, I  
11           don't even know if I opened it. But within  
12           that e-mail, it talked about the transaction.  
13           And that -- that was received on January 11th.  
14           Again, I just didn't -- I probably -- I receive  
15           200 e-mail or more a day. And it was a needle  
16           in the hay stack, as has been pointed out  
17           before earlier. I just didn't -- didn't notice  
18           it. It didn't dawn on me. It probably should  
19           have.

20                    There were other opportunities I had to  
21           become aware. But -- but, frankly, sitting  
22           here in September, if I were asked the  
23           question, Has that transaction closed, did  
24           title pass to Peculiar? I would have had to  
25           think long and hard about it because I hadn't

1 focused on it. And I probably would have had  
2 to end up saying I don't know for sure. I -- I  
3 may have if I had thought long and hard enough  
4 about it been able to say yes. But I really  
5 don't know.

6 Q And, again, you were the witness addressing  
7 this topic. I mean, could you explain to the  
8 Commission, you know, why that amount of time  
9 might have gone by and you not noticed it?  
10 What was the focus of your --

11 A The focus was the valuation. As I said, the  
12 only -- there was no disagreement on Chapter  
13 100 being a good thing. The only party at risk  
14 was Aquila because we had to expend some monies  
15 to accomplish the Chapter 100.

16 But there were -- there was the \$18  
17 million benefit to the ratepayers and the  
18 \$5 million benefit to Cass County residents.  
19 It just hadn't been an issue except for those  
20 items that I mentioned previously.

21 Nobody mentioned it in rebuttal except for  
22 -- except Mr. Robertson who mentioned a few  
23 sections that he -- he mentioned. So it -- it  
24 just didn't come up, frankly, And during all  
25 that time, Chapter 100 was not an issue. The

1 focus on was on the valuation.

2 Q So I want to ask you again, based on the  
3 testimony that you gave at the time of the  
4 September 21st 2005 hearing, do you believe  
5 your testimony was accurate -- did you believe  
6 your testimony to be accurate at the time you  
7 gave it?

8 A I -- I did. And I've gone back and read it,  
9 and I -- I believe it's still accurate as of  
10 September -- on September 21st, the testimony I  
11 gave, from the context I was giving it, it's  
12 still accurate.

13 Q And when you say the context that you were  
14 giving it, from an accounting context?

15 A From an accounting context, yes, which speaks  
16 to -- to -- to the next issue, which -- which  
17 was the -- we were having a discussion first  
18 with Commissioner Gaw and then Commissioner  
19 Clayton, I believe, about where does ownership  
20 reside. And was it with AEQ? Or was it with  
21 Aquila Networks, Inc.?

22 Q Just to refresh the Commissioners' attention,  
23 AEQ is what? Not the name so much, but --

24 A AEQ was the subsidiary, the Aquila subsidiary,  
25 in which the turbines had resided prior to

1           their transfer to the regulated utility.

2           Q     And it's that transaction that gave rise to the  
3                 affiliate transactions aspect of the  
4                 application for relief in this case?

5           A     That's correct.

6           Q     Okay.

7           A     And it's the transaction that gave rise to  
8                 these -- to the recording of the utility plant  
9                 on the books and records of -- of -- of the  
10                utility.

11          Q     Okay. Now that -- I'm sorry to interrupt. You  
12                 were talking about -- take you back to the  
13                 testimony that you gave in response, I believe  
14                 you said to -- to a series of --

15          A     We were talking about ownership between -- had  
16                 ownership transferred. And I believe  
17                 Commissioner Clayton asked the question, Well  
18                 -- so where does title transfer -- something to  
19                 the extent where does title reside now within  
20                 AEQ or Aquila Networks.

21                 I interpreted that question to be where  
22                 does ownership reside. If the question was  
23                 from a legal where does title reside, I don't  
24                 think we had talked about the City of Peculiar,  
25                 but the legal title, obviously, we know now

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1           resided with the City of Peculiar. From a GAAP  
2           standpoint, ownership still resides with Aquila  
3           Networks, the utility.

4           Q    And, again, you've used the term I think "GAAP"  
5           a couple of times. That's G-A-A-P?

6           A    That's right. Generally Accepted Accounting  
7           Principles.

8           Q    Thank you.

9           A    And the -- the third issue --

10          Q    The fourth?

11          A    Or the fourth issue that was discussed was --  
12               and we've touched on it briefly, was -- is  
13               there any value -- did you mislead the  
14               Commission when you said there was no value to  
15               the company? Frankly, there is only risk.

16                        There's been a lot of effort on the part  
17                        of the company to try to accomplish the Chapter  
18                        100 bonds. I think some people felt like the  
19                        Chapter 100 bonds were somehow raising cash for  
20                        Aquila to use which we otherwise could not have  
21                        -- have -- have accomplished. And hopefully  
22                        I've shown by this diagram that there was no  
23                        cash generated from the Chapter 100 bonds. The  
24                        only benefits go to the customers and to the  
25                        citizens of Cass County.

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1                   MR. BOUDREAU: Okay. Thank you. I  
2                   don't believe I have any other questions for  
3                   Mr. Williams at this time. At this point, I  
4                   would tender him for questions from the  
5                   Commission or otherwise as Bench may deem  
6                   appropriate.

7                   JUDGE PRIDGIN: Mr. Boudreau, thank  
8                   you. Let me see if we have any  
9                   cross-examination from counsel. Mr. Wheatley?

10                  MR. WHEATLEY: Thank you, your Honor.

11                                   CROSS-EXAMINATION

12                  BY MR. WHEATLEY:

13                  Q     Good afternoon, Mr. Williams.

14                  A     Good afternoon.

15                  Q     In your direct testimony, which has been  
16                         admitted into this hearing as Exhibit 1, you  
17                         indicate that you're employed as the Vice  
18                         President of Electric Regulatory Services for  
19                         the Network Operations; is that correct?

20                  A     That is correct.

21                  Q     And it also indicates that you have overall  
22                         responsibility for matters involving electric  
23                         operations before state regulatory commissions  
24                         in Missouri, Kansas and Colorado; is that  
25                         correct?

1           A    I believe it -- that is what it says.  And the  
2                    context should emphasize the regulatory  
3                    matters.  The way you read it to me, it says  
4                    electric operations.  But it's the regulatory  
5                    matters associated with those electric  
6                    operations that I would be responsible for, not  
7                    the operations themselves.

8           Q    Could you tell me briefly what your job does  
9                    entail, then?

10          A    Sure.  I'm responsible for -- for all filings  
11                   within those three states that we mentioned,  
12                   all regulatory filings.  I am responsible for  
13                   regulatory compliance within those three  
14                   states.

15          Q    And do you have a staff that works for you?

16          A    I do.

17          Q    And how many people work for you?

18          A    Nineteen at last count.  Although that may  
19                   include me.  I'd have to re-count it.  It may  
20                   be 18 that work for me.

21          Q    All right.  The application -- the original  
22                   application in this case was filed on December  
23                   6th, 2004.  And if I can find it, that  
24                   application contains a verification signed by  
25                   you, does it not?

1 A It does.

2 Q That you had been sworn and that you are  
3 authorized to make this statement on behalf of  
4 Aquila Networks and the matters and things  
5 stated in the application are true and correct  
6 to the best of your information, knowledge and  
7 belief; is that correct?

8 A That is correct.

9 Q In your testimony, your direct testimony, you  
10 indicated, "Are familiar with this subject  
11 matter?" You indicated, "Yes, I am. This case  
12 involves an application by Aquila for various  
13 determinations by and approvals from the  
14 Commission. In this regard, the company,  
15 through its Aquila Networks, MPS, Operating  
16 Division will acquire from an affiliated entity  
17 three 105 megawatt natural gas-fired combustion  
18 turbines to provide electric power to its  
19 customers. And in conjunction with the  
20 construction of the new electric power station,  
21 Aquila will enter into a series of agreements  
22 with the City of Peculiar, Missouri, the  
23 purpose of which is to finance the construction  
24 bonds with tax advantaged Chapter 100 revenue  
25 bonds."

1 A I will accept that's what it says.

2 Q But, as a matter of fact, the bonds were not  
3 issued in conjunction with the construction of  
4 the new electric power station, were they?

5 A Could you reference me to that page again?

6 Q It's on page 3 of your direct testimony.

7 A That -- it's my understanding that that -- that  
8 is the legal -- what was -- what legally on  
9 paper the Chapter 100 bonds were intended to  
10 do. But you are correct. The cash to actually  
11 construct the plant came from internally  
12 generated sources.

13 Q You also indicate there that Aquila will enter  
14 into a series of agreements with the City of  
15 Peculiar?

16 A I did.

17 Q All of these statements are prospective in  
18 nature; is that correct?

19 A They are. I -- when I start writing in future  
20 tense, I continue to write in future tense. I  
21 -- I believe I explained why I took that future  
22 tense previously.

23 Q Well, in the -- in your direct testimony, you  
24 have attached copies of the economic  
25 development agreement, the lease agreement and

1 the trust indenture and the deed of trust and  
2 security agreement, all of which were unsigned.  
3 However, when you filed this testimony on  
4 January 13, signed copies of those documents  
5 existed; is that not right?

6 A As I understand it, signed copies of those did  
7 exist, although they not -- they did not exist  
8 at Aquila.

9 Q Aquila had no copies?

10 A Not at that time.

11 Q Who had the copies?

12 A It's my understanding that the -- that Douglas  
13 had the copies.

14 Q And don't you receive a copy of the -- what  
15 they call a transcript of the -- the bond  
16 transaction?

17 A I don't know.

18 Q That wouldn't fall under your responsibilities  
19 as Vice President of Electric Regulatory  
20 Services?

21 A No, it would not.

22 Q Well, then, let me ask you this: When you file  
23 an application as we were -- discussed before,  
24 does someone tell you to do that?

25 A Either someone tells me to do that or I just

1 know that it's part of my job to do it. It  
2 would depend on -- it would depend on the  
3 filing.

4 Q Well, in the case of asking for authority to  
5 enter into the sale and lease back agreement  
6 with the City of Peculiar, is that one that you  
7 knew had to be done or one that someone told  
8 you about?

9 A Well, I knew that the Board had authorized the  
10 -- the Chapter 100 bonds. And I'm sure that  
11 from that -- out of that arose discussions  
12 among a number of people. But I would have  
13 been aware from those discussions and from the  
14 knowledge that the Board approved the Chapter  
15 100 bonds that if regulatory counsel felt a  
16 filing was required, then I was the one  
17 responsible for making that filing.

18 Q And by regulatory counsel, who are you  
19 referring to? Are you referring in-house?

20 A I'm referring to outside counsel.

21 Q Do you have attorneys in -- in-house?

22 A We do have attorneys in-house, yes.

23 Q How many do you have?

24 A It would be a guess, but I'd say five or six.

25 Q And they also give you advice of -- as far as

1           what is to be submitted in the applications to  
2           the Commission?

3           A     Not generally.

4           Q     Not generally?

5           A     Not generally.  We generally rely on outside  
6           regulatory counsel for those discussions.

7           Q     Let me get back to the question I'd asked you  
8           before as far as who had instructed you to file  
9           this application.  Who was that person?

10          A     I -- I would imagine I would have -- I would  
11          have probably made that decision on my own  
12          after discussion with regulatory counsel that a  
13          filing needed to be made.  I'm sure there were  
14          discussions among numerous people, though.

15          Q     Let me refer you back to your direct testimony  
16          on page 2.

17                     A question was asked, "Are you familiar  
18                     with the subject matter of this case?"

19                     The answer, "Yes, I am.  This case  
20                     involves an application by Aquila for various  
21                     determinations by an -- and approvals from the  
22                     Commission related to the construction of an  
23                     electric power generation station near the City  
24                     of Peculiar in Cass County, Missouri.  In this  
25                     regard, the company through the Aquila Networks

1           MPS, Operations Division, will acquire" --  
2           again, we're -- it's in the future tense --  
3           "from an affiliated entity three 105 megawatt  
4           gas fired turbines to buy -- to provide  
5           electric power."

6                     Do you remember testifying to that?

7           A       That is what it says, yes.

8           Q       Okay. Now, when Mr. Boudreau was asking you  
9           questions, one of the questions that he asked  
10          was the -- regarding AEQ --

11          A       Yes.

12          Q       -- is that right? And would you explain what  
13          that -- what those initials stand for?

14          A       I'm not sure what the Q stands for. It's  
15          Aquila Equipment, Inc.

16          Q       Okay. And that is a non-regulated entity?

17          A       That's correct. The -- the transfer, as I  
18          understand it, could have been made directly  
19          from AEQ to the City of -- of Peculiar.

20                     However, in discussions with the staff and  
21          to ensure that we were complying with the  
22          affiliate transactions rules, we decided to  
23          transact -- or transfer first from AEQ to the  
24          regulated utility. And then ultimately, the  
25          Chapter 100 transactions were done then between

1 the utility and the City of Peculiar.

2 Q And when were the, the turbines transferred  
3 from AEQ to Aquila?

4 A I believe that it was sometime in November. It  
5 could have been early December of 2004. I  
6 believe it was November of 2004.

7 Q And the decision to transfer those turbines was  
8 entirely Aquila's decision; is that correct?

9 A That is correct. It was Aquila's ultimate  
10 decision, although some of the influences as to  
11 why that decision was made were from outside of  
12 Aquila.

13 Q Your testimony also indicates that the new  
14 power station will replace a purchase power  
15 contract that expired in June of 2005. Has  
16 Aquila recently entered into a purchase power  
17 agreement?

18 A It's my understanding that Aquila has recently  
19 entered into a short-term one year purchase  
20 power agreement.

21 Q And who is that with?

22 A There is -- well, we actually have a number of  
23 purchase power agreements. I'm not -- I'm not  
24 sure of -- with -- with all the parties. We  
25 have a -- a purchase power agreement with

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1 Nebraska Public Power District. We have a  
2 purchase power agreement with Calpine. And I  
3 believe we probably have some other purchase  
4 power agreements.

5 Q Now, your testimony was prepared in January 13,  
6 2005; is that correct?

7 A It was filed January 13th. It was actually  
8 drafted in December of '04.

9 Q Do you remember when in December?

10 A Before Christmas.

11 Q Would it be after the 15th?

12 A I -- I imagine it started before the 15th and  
13 finished after the 15th.

14 Q In your direct testimony on page 7, you -- you  
15 were asked the question, "How generally will  
16 the project transaction be structured?"

17 And your answer --

18 A I'm sorry. I missed the reference.

19 Q The question was how generally will the project  
20 transaction be structured.

21 MR. BOUDREAU: Could you direct the  
22 witness to a page and line number?

23 Q (By Mr. Wheatley) Page 7. I'm sorry.

24 MR. BOUDREAU: Thank you.

25 A Yes.

1 Q (By Mr. Wheatley) Okay. And the first part of  
2 your answer says, "In the event the bonds are  
3 issued."

4 A That's correct. It does.

5 Q What --

6 A It's in the future tense.

7 Q It's in the future tense. As if they had not  
8 been issued?

9 A As I've explained, the entire direct testimony  
10 was written in the future tense.

11 Q During your questioning by Mr. Boudreau, you  
12 seemed to make a point that the unsigned  
13 documents which have you attached to your  
14 direct testimony were dated December 30th.

15 Would you agree that in a complicated  
16 financial situation, or a financing, that it's  
17 not uncommon to have all of the documents  
18 prepared in advance of the closing of that  
19 transaction?

20 A I'm sure those documents were prepared in  
21 advance of the closing. But they were -- they  
22 were all dated December 30th. And -- and I  
23 guess my point was that by them being dated  
24 December 30th, that should have given me a clue  
25 that the transaction might, in fact, take place

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1 December 30th.

2 Q But since these were drafts they could very  
3 well -- the date could have been changed, could  
4 it not have?

5 MR. BOUDREAU: I object to the  
6 characterization of the documents as drafts.  
7 That hasn't been established.

8 JUDGE PRIDGIN: Mr. Wheatley?

9 MR. WHEATLEY: Well, they were  
10 unsigned documents.

11 MR. BOUDREAU: They were filed as  
12 execution copies to the application. That was,  
13 -- that was how they were entitled in the late  
14 filing of exhibits. They were entitled  
15 execution copies.

16 JUDGE PRIDGIN: I'll sustain. And,  
17 Mr. Wheatley, if you want to rephrase your  
18 question.

19 Q (By Mr. Wheatley) All right. The execution  
20 copies were not signed, correct?

21 A That's correct. They were not.

22 Q And it's possible, certainly, that by -- for  
23 some reason the financing transaction could not  
24 be closed on December of 2004 and so you'd have  
25 to change the date; is that correct?

1           A     Just because these copies said December 30th  
2                    did not mean that the transaction would  
3                    actually have taken place December 30th.  I  
4                    mentioned that solely -- I guess a little bit  
5                    of humbly to indicate that I should have taken  
6                    that as a cue that they might, in fact, it have  
7                    taken -- have taken place December 30th.

8                    But as you point out, it could have taken  
9                    place later.  And as I pointed out before, I  
10                   wasn't paying much attention to that because it  
11                   hadn't been an issue, which I think is kind of  
12                   to my point that I was not intentionally  
13                   misleading this Commission.  It was just the  
14                   point I was trying to make was perhaps I should  
15                   have paid better attention to the date on those  
16                   documents.

17           Q     In response to one of Mr. Boudreau's questions,  
18                    didn't you indicate that there was lots of  
19                    effort that was placed on the 100 -- Chapter  
20                    100 financing?

21           A     There -- there was lots of effort involving in  
22                    particular the negotiations with the City.  
23                    There have certainly been continued efforts in  
24                    this proceeding.

25                    MR. WHEATLEY:  Can I get my Exhibit

1 1, please?

2 JUDGE PRIDGIN: You may.

3 MR. WHEATLEY: May I approach the  
4 witness?

5 JUDGE PRIDGIN: You may.

6 Q (By Mr. Wheatley) Mr. Williams, let's me hand  
7 you what has been marked as Exhibit No. 1.  
8 This is a Data Request 0111 from the Missouri  
9 Public Service Commission. And the description  
10 is, Provide the date when Aquila witness Dennis  
11 Williams first learned that Aquila's Chapter  
12 100 financing of the South Harper plant with  
13 the City of Peculiar had closed and how  
14 Mr. Williams learned that the closing had  
15 occurred.

16 JUDGE PRIDGIN: And, Mr. Wheatley, if  
17 I could trouble you, if you're able to get near  
18 a microphone just for web cast purposes for web  
19 cast. Either that one or the one at your desk  
20 if you're more comfortable there. Thank you.

21 Q (By Mr. Wheatley) Do you recognize the -- the  
22 second page of that exhibit?

23 A I do, indeed.

24 Q And did you prepare that?

25 A I did.

1 Q Okay. And what was the response that you made  
2 to -- when you were first aware of the  
3 transaction?

4 A I indicated that I did not recall when I became  
5 aware of the transaction. Would you like me to  
6 read the full response?

7 Q Yes. Please read the full response.

8 A Certainly. "I do not specifically recall when  
9 I became aware of the legal closing.  
10 Certainly, by March 15th, 2005, the closing had  
11 been made a matter of public record."

12 Q Thank you, Mr. Williams. What is the  
13 significance of March 15, 2005?

14 A That was the first date that I could find that  
15 in a public document in this -- in the case  
16 before the Commission where an indication had  
17 been made that the transaction had closed,  
18 which, again, was an indication that -- that  
19 perhaps I should have been aware. But it just  
20 didn't register.

21 Which the question was a little difficult  
22 for me because I said, Well, when did you  
23 become aware? And I may have been aware. But  
24 I didn't really probably recognize the import  
25 of that because it -- and -- for two reasons.

1 One, again, I was focused on the accounting  
2 transaction. And, two, it was -- it was always  
3 -- in my mind, this was subject to regulatory  
4 approval.

5 We do a lot of transactions that are  
6 subject to regulatory approval. I didn't draw  
7 the legal distinction. So it probably never  
8 registered in my mind that I should take  
9 special note of that.

10 Q March 15th is also the date of the local public  
11 hearing in -- that was held in Harrisonville,  
12 Missouri, in another related case; is that  
13 correct?

14 A That's true. That's the first indication I  
15 could find that it was in the public record.

16 Q And were you present at that public hearing?

17 A I was.

18 Q And did you hear the Mayor of the City of  
19 Peculiar discuss the issuance of the bonds?

20 A I -- I heard the Mayor speak. Again, it did  
21 not register with me. I'm sure I heard him say  
22 that, yes, because I was there. But it did not  
23 register with me that -- that I should take any  
24 special note of that.

25 Q So you weren't particularly shocked or made

1 note that -- that he had talked about a closing  
2 of a -- of the Chapter 100 financing?

3 A No. Again, it hadn't been an issue in the  
4 case.

5 Q Well, you just told me that you've expended  
6 lots of effort in preparing for the Chapter 100  
7 financing. And if -- which is it?

8 A You --

9 MR. BOUDREAU: Well, that's --

10 A You asked about the effort, and I indicated  
11 that most of the effort was in negotiating with  
12 the City. There wasn't a large amount of  
13 effort. There was some effort in preparing  
14 initially, but not a lot for the Chapter 100.  
15 My reference to preparation for Chapter 100 has  
16 been in the continued proceedings in this case.

17 Q (By Mr. Wheatley) Do you know in the  
18 negotiations with the City of Peculiar if there  
19 was a payment made to the City to issue the  
20 bonds?

21 A I don't think during the negotiations a payment  
22 was made. If you're referring to a \$700,000  
23 payment that was made as the cost to issue the  
24 bonds, yes, there was a \$700,00 payment, if  
25 that's what you're referring to.

1 Q And that was paid by Aquila?

2 A Yes, it was.

3 Q And the bond counsel fees of approximately a  
4 hundred thousand dollars to Gilmore & Belle,  
5 those were paid by Aquila; is that correct?

6 A I -- I don't have with me the full list of the  
7 -- of the payments that were made. It was  
8 supplied in response to a data request.

9 Q But all of the costs of -- of issuance were  
10 paid by Aquila; is that correct?

11 A That's correct. I think some of the costs you  
12 were referring to in your opening statement  
13 might have been talking about annual costs that  
14 would be paid over 30 years. So there was --  
15 I didn't recognize some of those numbers. But  
16 -- but, yes, Aquila has paid -- has made -- has  
17 made payments to effectuate the issuance of the  
18 Chapter 100 bonds.

19 Q Let me direct your attention to the First  
20 Amended Application that Aquila has filed in  
21 this case, and that was filed on June 3rd of  
22 2005. And, again, this is verified by you; is  
23 that correct?

24 A I don't know.

25 MR. WHEATLEY: Your Honor, may I show

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1           him this?

2                           JUDGE PRIDGIN:  You may.

3           A     Yes.  It is verified by me.

4           Q     (By Mr. Wheatley)  Now, this First Amended  
5           Petition, are you -- are you indicating that  
6           that was prepared in mid December?

7           A     I'd have to look at the first -- I -- could I  
8           look at that again?  And I'll tell you.  This  
9           appears to be the filing that was made in June  
10          of 2005.

11          Q     In fact, your verification is dated and  
12          notarized as of June 3rd, 2005; is that  
13          correct?

14          A     That is correct.

15          Q     Now, on the First Amended Application, which  
16          was filed, you, again, ask for the prospective  
17          approval of the Chapter 100 financing from the  
18          Commission; is that correct?

19          A     I don't have that with me.  I'd have to -- I'd  
20          have to reread that to see what we asked for.  
21          As I read this, what the first amendment gets  
22          down to is a narrowing of our request in the  
23          case where we strike the request for an  
24          agreement that -- or a finding that this is the  
25          least cost option for additional power supply.

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1                   And then I see you have highlighted in all  
2                   other respects the application is filed on  
3                   December 12th, 2004, is restated, ratified and  
4                   confirmed. My focus would have been on what  
5                   were we trying to accomplish here, and what we  
6                   were trying to accomplish was narrowing of the  
7                   issues.

8                   MR. WHEATLEY: Permission to approach  
9                   again?

10                   JUDGE PRIDGIN: You may.

11           Q        (By Mr. Wheatley) Mr. Williams, let me hand  
12                   you the original application, which was filed  
13                   on December 6th. And in there, I have  
14                   highlighted E through L of your request, which,  
15                   again, is -- is requesting that the Commission  
16                   authorize Aquila to convey to compute to  
17                   Peculiar the real estate, authorize --  
18                   authorize Aquila to lease the project,  
19                   authorize Aquila to cause the project to be  
20                   pledged by -- to the trustee.

21                   All of the requests that you made in your  
22                   application which you reiterated in your First  
23                   Amended Application were prospective in nature,  
24                   were they not?

25           A        They were. My focus would have been on the

1 fact in this filing that we were asking that  
2 Item M, finding that the project in combination  
3 with power supply agreements to the least cost  
4 option for additional power generation for  
5 Aquila Network MPS operations was to be  
6 eliminated from our initial filing.

7 Q But yet the First Amended Application was filed  
8 June 3rd. And in your data request that we  
9 just went over, you indicated that it was a  
10 matter of record by March 15th of 2005.

11 A Yes. That is correct.

12 Q You still were not aware that the bonds had  
13 been issued?

14 A Again, I -- I think I tried to explain before  
15 -- that's the difficulty of that question. I  
16 may have been aware and it just not registered  
17 that it -- it was important. Or I may not have  
18 been aware.

19 Q Let me ask you this: You filed surrebuttal in  
20 this case, did you not?

21 A I did.

22 Q And that was marked as Exhibit 3?

23 A I don't know.

24 Q Let me read you part of the relevance to -- the  
25 Chapter 1 finance -- 100 financing. You

1 indicated that OPC witness Robertson does  
2 suggest that requests enumerated as G through L  
3 in Aquila's application are quote, completely  
4 unwarranted and unsupported, end quote. And  
5 then you go on with the question of, What are  
6 requests G through L?

7 And, again, these are the same requests  
8 prospective in nature authorizing Aquila to  
9 cause the project to be transferred to be  
10 subject to the Deed of Trust --

11 MR. BOUDREAU: I'm going to object to  
12 the form of the question.

13 JUDGE PRIDGIN: What is the question,  
14 Mr. Wheatley? Are you reading from the --

15 Q The question that I asked was -- the testimony  
16 reads -- the question, "What are requests G  
17 through L?"

18 And the answer is, "They are requests for  
19 necessary authorization to Aquila as follows."

20 And then there is a list that we have gone  
21 through of those enumerated items authorizing  
22 Aquila to cause the project to be pledged to  
23 the trustee, authorizing the transfer of the  
24 property, et cetera; is that correct?

25 A That is correct.

1 JUDGE PRIDGIN: Objection is  
2 overruled.

3 Q (By Mr. Wheatley) And on page -- on page 12 of  
4 your surrebuttal testimony, the last sentence  
5 on that issue, you indicate that without  
6 approval of these requests, the Chapter 100  
7 financing mechanism will not take place?

8 A That's correct. And I believe I explained  
9 earlier why I used that word. And I continue  
10 to support that word. Or even that -- that  
11 tense. Because in my view, with those sections  
12 G through L, if they were not approved by this  
13 Commission, then it would not have been  
14 Aquila's position that required approvals had  
15 been received under Section 4 of the economic  
16 development agreement, and we would not have  
17 proceeded with the Chapter 100 financing. It  
18 would have been unwound and, for all practical  
19 purposes, would not exist.

20 Q Are you aware that there is a Missouri statute  
21 which requires that Aquila, before the transfer  
22 of any assets or real estate, first obtain  
23 approval of the Commission?

24 MR. BOUDREAU: I object to the  
25 question on the grounds that it calls for a

1           legal conclusion.  But with that, I'll allow  
2           the -- the witness to answer in his capacity of  
3           a layman and his understanding, I suppose.

4                       MR. WHEATLEY:  That's exactly what I  
5           asked is if he was aware of it.

6                       JUDGE PRIDGIN:  All right.  Thank  
7           you.  Overruled.

8           A    I -- I have heard that referred to numerous  
9           times today, although my understanding is that  
10           that statute includes the words necessary and  
11           useful for service.

12           Q    (By Mr. Wheatley)  Are you saying that the  
13           property is not necessary and useful for --

14           A    I'm saying that the -- I also heard today a  
15           discussion that at the time of the transfer of  
16           title that the plant in question was not -- it  
17           was not complete.  It was not putting power out  
18           in the grid, so it was not useful for service  
19           at that time of transfer.

20           Q    I guess I'm not following you.

21           A    I'm only repeating what I've heard today.

22           Q    You have requested Commission approval of the  
23           Chapter 100 financing.  But if it was not used  
24           or useful, would you not need Commission  
25           approval.

1           A     We discussed this with regulatory counsel early  
2                   -- early on.  And we were advised that while  
3                   all aspects of a filing -- or all aspects of a  
4                   transaction may sometimes not require approval  
5                   that typically, you just go ahead and ask for  
6                   the Commission to bless the whole transaction  
7                   just so the whole thing is not questioned.  So  
8                   -- so we filed this based upon advice of  
9                   counsel.

10          Q     Now, your surrebuttal testimony was dated June  
11                   27th of 2005, in which you indicated that  
12                   without approval of these requests that Chapter  
13                   100 financing mechanism will not take place.  
14                   And you did not prepare this in December; is  
15                   that correct?

16          A     No.  I believe I prepared that in June.

17          Q     And, Mr. Williams, you were here for the  
18                   hearing which took place on September 21 of  
19                   this year; is that correct?

20          A     Yes, I was.

21          Q     And you testified in that hearing?

22          A     I did.

23          Q     Okay.  And on page 41 of the transcript, you  
24                   indicated in your answer, "The second -- the  
25                   second thing the stipulation accomplishes is

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1 the ability and approval to issue -- to issue  
2 Chapter 100 bonds to finance the South Harper  
3 combustion terminal -- turbines." Do you  
4 recall that answer?

5 A Yes. And I believe that is still a correct  
6 answer. We need regulatory approval. The  
7 transaction was done subject to regulatory  
8 approval. The stipulation requires regulatory  
9 approval or the transaction will, in effect,  
10 not take place.

11 Q Well --

12 A Certainly --

13 Q Mr. Williams, you had -- you had just  
14 previously testified that you -- it was your  
15 understanding that you needed the Commission's  
16 approval first before you could transfer those  
17 assets, yet those assets were transferred on  
18 December 30th of 2004, correct?

19 MR. BOUDREAU: I object. I do not  
20 believe that that was Mr. Williams' testimony.

21 A I said I heard that today.

22 Q But you are talking about the stipulation. And  
23 one of the things that the stipulation  
24 accomplishes is the ability and approval to  
25 issue the bonds -- to issue the bonds. Again,

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1           that's prospective in nature. This is in  
2           December -- or September of '05 when the bonds  
3           were issued in December of '04.

4           A    I believe the Commission has to rule that the  
5           company -- or that the bonds -- well, I don't  
6           know from a legal standpoint. But the  
7           stipulation assumes that the Commission has to  
8           approve the issuance of those bonds, or at  
9           least ask the Commission to issue approval of  
10          those bonds.

11                    They have to do it sometime. Or we're  
12          asking them to do sometime. The transaction is  
13          subject to regulatory approval. That's --  
14          that's my point.

15          Q    Were you aware at the time of the hearing that  
16          the bonds had been issued by that time in  
17          September? Were you aware?

18          A    I believe I answered that in response to a  
19          question from Mr. Boudreau. And I can repeat  
20          that question if you -- or that answer if you'd  
21          like.

22          Q    Please do. Please remind me.

23          A    My answer is that I probably was aware, but I  
24          would have had to think long and hard about it  
25          because the -- the awareness I had was probably

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1 lodged in the back of my brain someplace  
2 because, again, I just did not view that from  
3 my accounting perspective as being important to  
4 this transaction. So I may have known. But if  
5 I did, it didn't register as being important.  
6 And had I been asked that question on September  
7 21st, I more than likely would have had to say  
8 I don't know.

9 Q Let me ask you about your Exhibit 2 which you  
10 have prepared.

11 A Yes.

12 Q In the first column, it indicates Aquila raises  
13 funds not from City approximately \$140 million.

14 A That's correct.

15 Q How was that money raised?

16 A Internally generated funds. The turbines had  
17 already -- already existed and had been paid  
18 for. The cost to build the plant, the  
19 additional 74 million, came from funds that the  
20 company had on hand, cash on hand.

21 Q And, Mr. Williams, you indicated earlier as --  
22 in your position as Vice President of  
23 Regulatory Operations that you are responsible  
24 for the compliance with Commission -- the  
25 Commission rules; is that correct?

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1 A That is correct.

2 MR. WHEATLEY: I have no further  
3 questions.

4 JUDGE PRIDGIN: Mr. Wheatley, thank  
5 you. Mr. Williams?

6 MR. WILLIAMS: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. WILLIAMS:

9 Q Good afternoon, Mr. Williams.

10 A Good afternoon, Mr. Williams.

11 Q I hope we don't make the transcript too messy  
12 today.

13 A I'll try to be better.

14 Q I was just referring to the fact that we have  
15 the same last name. Have you in the past seen  
16 execution documents that were actually executed  
17 on different dates than were shown on the  
18 execution copies you saw?

19 A I don't know that I have. But I am aware that  
20 that could occur.

21 Q When did Aquila and the City of Peculiar begin  
22 negotiating regarding Chapter 100 financing for  
23 what's now South Harper?

24 A Sometime in the fall of 2004. I'm not aware of  
25 the specific dates.

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1 Q Do you know when they reached an agreement in  
2 principle as to what the terms of that  
3 financing should be?

4 A I do not.

5 Q No idea whatsoever?

6 A No. Again, it was sometime in the fall -- fall  
7 of 2004.

8 Q How do you know that?

9 A Because the transaction was signed in --  
10 December 30th of 2004, is my understanding.  
11 Fall continues to December 22nd, so I'm  
12 reasonably sure that the -- the discussions  
13 were well along or completed by fall of 2004.

14 Q And do you know they did not begin in the  
15 spring of 2004?

16 A They -- they could have begun in the spring of  
17 2004.

18 Q Does the Chapter 100 financing have any cash  
19 flow implications for Aquila?

20 A No, it does not.

21 Q If it's making payments that are less than the  
22 taxes it would otherwise pay, isn't it getting  
23 a reduction in the amount of cash that it has  
24 to lay out?

25 A Not given the timing.

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1 Q Can you explain what you mean by that?

2 A Certainly. We are currently in a rate case.  
3 We have incurred pilot payments to date, but  
4 those are included in -- in the rate case. So  
5 while I -- I suppose there would be -- there  
6 would be a few months of cash flow, the  
7 difference -- and let me start over.

8 If we had incurred property taxes instead  
9 of pilot payments as a result of not closing  
10 the transaction December of '04, we would have  
11 incurred property tax payments of approximately  
12 1.1 million -- or let's just say a million  
13 dollars.

14 Q And is that for a particular year or over the  
15 course of 30 years?

16 A No. That would be for that -- for that year.

17 It would be --

18 Q For 2005?

19 A I'm not sure when the payment would have it  
20 actually been made. It would have been  
21 assessed as of the property on hand at December  
22 31st, 2004, or January 1st, 2005. I'm not sure  
23 when the actual payment would have taken place.  
24 Instead, we incurred pilot payments of 200,000  
25 plus in May and 200,000 plus in September. So

1           there could be some minor cash flow, either  
2           degradation or improvement, depending on when  
3           that -- when that property tax payment would  
4           have been due. But it -- it will all be  
5           negated very quickly once we have new rates in  
6           effect, which will be no later than April 22nd  
7           of '06.

8           Q     And couldn't a party have taken a position in  
9           the rate case that regardless of whether you  
10          had engaged in a Chapter 100 financing that you  
11          should have done so?

12          A     They certainly could have.

13          Q     You indicated you wrote your testimony for -- I  
14          think it was your direct testimony in December  
15          of 2004 in this case; is that correct?

16          A     I -- I'm sorry. Would you repeat the question?

17          Q     The testimony you filed in this case, your  
18          direct testimony, did you not write that in  
19          December of 2004?

20          A     I -- I wrote it in December of 2004.

21          Q     Did anyone assist you in writing that  
22          testimony?

23          A     I -- I did work on it with my attorney,  
24          Mr. Boudreau.

25          Q     Did anyone else assist you?

- 1 A No.
- 2 Q In its filing in this case before the  
3 Commission, did Aquila ever ask this Commission  
4 to not assert jurisdiction over the Chapter 100  
5 financing?
- 6 A Not that I'm aware.
- 7 Q Is Aquila presently taking power from the South  
8 Harper facility and serving Missouri customers  
9 with that power?
- 10 A Yes, it is.
- 11 Q And when did it begin doing so?
- 12 A The -- there was testimony -- or in -- that was  
13 put out into the grid in, I believe, early  
14 June. The Unit No. 3 was turned over to the  
15 dispatchers on June 30th, Unit 2 on July 1st,  
16 and Unit 1 on July 11th.
- 17 Q And you mentioned a figure of 1.1 million in  
18 property tax. Is that an estimate or a hard  
19 figure or --
- 20 A Well, it has to be an estimate since we weren't  
21 fully assessed that amount. So you look at --  
22 what you have to do is look all the tax rates  
23 of the various taxing entities across -- across  
24 the service territory that we serve. And so  
25 there is some estimation that goes into that,

1 but it's -- it's reasonably close.

2 Q That was going to be my next question. It's  
3 sufficient that you would set aside that money  
4 if you thought you were going to have to pay  
5 it?

6 A Yes.

7 Q And in your application, there are actually two  
8 parts. There's a Chapter 100 financing request  
9 and there's a valuation of turbines request; is  
10 that not true?

11 A That is correct.

12 Q Why are those joined together in the  
13 application?

14 A That was advice of counsel.

15 Q And who made the decision, then?

16 A I did, based upon advice of counsel.

17 Q Could they have been filed separately?

18 A I don't know.

19 Q Is there some reason the application wasn't  
20 filed until December 6th of 2004?

21 A There probably is, but that was a year ago, and  
22 I don't recall.

23 Q Well, isn't part of the valuation of the  
24 turbines, the appraisal that was done by R.W.  
25 Beck?

- 1 A Yes.
- 2 Q And isn't that appraisal dated November 22nd of  
3 2004?
- 4 A I think that's attached to my testimony. I'd  
5 have to look for sure.
- 6 Q Why don't you take a look at schedule DRW-1  
7 attached to your direct testimony.
- 8 A It was dated November 22nd, 2004. And that  
9 probably played an important role in the filing  
10 of the application.
- 11 Q And was there some reason Aquila didn't ask for  
12 expedited treatment if it was concerned about  
13 closing the Chapter 100 financing by the end of  
14 the year of 2004?
- 15 A I don't think at the time we -- we thought  
16 about -- we knew that was all -- was subject to  
17 -- to regulatory approval. Actually, as far as  
18 I know, the discussion of filing for a  
19 expedited treatment never came up. I think we  
20 knew that we needed to get an order by December  
21 of '05 and thought that there would be no  
22 problem in accomplishing that.
- 23 Q Are you speaking of your knowledge?
- 24 A I'm speaking of my knowledge.
- 25 Q And I have a few clean-up questions. You

1 referred to Aquila Networks, Inc. I'm aware of  
2 Aquila Inc., d/b/a, Aquila Networks MPS and  
3 Aquila Networks L&P. And I'm also aware of  
4 Aquila, Inc. But I'm not aware of an Aquila  
5 Networks, Inc. Could you clarify what you  
6 meant by that?

7 A It's -- it's the Aquila Networks MPS. And I  
8 don't know the -- the legal d/b/a. It's the  
9 South Harper plant is recorded on the books at  
10 MPS.

11 Q It's my understanding it would be Aquila, Inc.  
12 d/b/a Aquila Networks MPS?

13 A That sounds correct.

14 Q And then you referred to March 15th, '05, and  
15 the transaction referring to the Chapter 100  
16 closing being in the public -- December 30th,  
17 2004 closing being in the public record. Do  
18 you recall that?

19 A Yes, I do.

20 Q Weren't the documents associated with that  
21 closing filed in the Recorder's office at Cass  
22 County?

23 A Yes. When I was talking about the public  
24 record, I meant the public record that was  
25 before the Commission.

1 Q You mean some record that was in front of the  
2 Commission?

3 A Yes.

4 Q Were you involved in the Chapter 100  
5 negotiations with the City of Peculiar on  
6 behalf of Aquila, Inc.?

7 A No, I was not.

8 Q Do you know who was?

9 A I believe the primary negotiator was Beth  
10 Armstrong.

11 Q So if we wanted to find out further about when  
12 that deal was essentially set, although the  
13 paperwork hadn't been done, she's who we should  
14 be talking to?

15 A As far as I know, she would be the most  
16 appropriate party.

17 MR. WILLIAMS: No further questions.

18 JUDGE PRIDGIN: Mr. Williams, thank  
19 you. Mr. Comley?

20 MR. COMLEY: I have no questions.

21 JUDGE PRIDGIN: Thank you,  
22 Mr. Comley. Let me see if we have any  
23 questions from the Bench. Commissioner Murray?

24 COMMISSIONER MURRAY: I'll pass right  
25 now. Thank you.

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1 JUDGE PRIDGIN: Thank you.

2 Commissioner Clayton?

3 COMMISSIONER CLAYTON: Yes.

4 CROSS-EXAMINATION

5 BY COMMISSIONER CLAYTON:

6 Q Good afternoon, Mr. Williams.

7 A Good afternoon.

8 Q I'm going to ask you some questions. And if  
9 you don't know the answer, if it's a legal  
10 question that you're not comfortable with  
11 answering and it's beyond your expertise, feel  
12 free to let me know.

13 A Okay.

14 Q Just say you don't know. That's cool. Can you  
15 tell me what aspects of the Chapter 100  
16 financing have to be approved by this  
17 Commission? Are we approving one document  
18 transfer? Are we approving the land transfer?  
19 Are we approving any other aspects of it? Tell  
20 me exactly what you're requesting in your  
21 application.

22 A That would be beyond my legal knowledge.

23 Q Okay. Who would you ask that question? Would  
24 it be someone internally at Aquila, or would it  
25 be external counsel? Who would be the person

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1 to ask that question?

2 A It would be external counsel.

3 Q External -- Mr. Boudreau? Would he be -- would  
4 he be the man? Or Mr. Swearngen or --

5 MR. BOUDREAU: Let me try to address  
6 that. The specific elements that were asked  
7 that the company is asking the Commission to  
8 approve are the items that show up in the  
9 Prayer of the paragraph of the application as  
10 amended -- which was one of them --

11 COMMISSIONER CLAYTON: Well, assuming  
12 I don't have the application right on top of  
13 the stack of papers that I have here, what is  
14 Aquila asking for in terms of authorizing this  
15 transfer or this -- this transaction? Is it  
16 the land transfer? Is it the actual bond  
17 issuance, lease back? I mean, there are a  
18 number of different transactions that are  
19 involved here, a number of different contracts.  
20 What are you requesting authorization for?

21 MR. BOUDREAU: It covers quite a  
22 waterfront because not only does it involve the  
23 Chapter 100 financing, but it also involves the  
24 -- the valuation aspect of --

25 COMMISSIONER CLAYTON: Beyond the

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1 valuation. There were two parts. One was the  
2 valuation of the turbines. The second part was  
3 approving the Chapter 100 bond -- Chapter 100  
4 bonding, correct?

5 A Yes.

6 MR. BOUDREAU: Yes. And the  
7 application requests that the Commission  
8 authorize Aquila to sell and convey to  
9 Peculiar, the City of Peculiar, which is an  
10 abbreviation, the real estate, facility,  
11 equipment, installations necessary to control,  
12 construct, control, manage and maintain the  
13 project, the project being the South Harper  
14 station.

15 It also asks for -- that the Commission  
16 authorize Aquila to lease the project from the  
17 City of Peculiar and to operate the project.  
18 It requests that Aquila be authorized to cross  
19 -- cause the project to be pledged to the  
20 trustee under the terms of the indenture as  
21 security for the holder of -- holders of the  
22 bonds.

23 And it basically asks the -- the  
24 Commission to authorize Aquila enter into and  
25 perform in accordance with the terms of the --

1 the various agreements, including the economic  
2 development agreement, the lease, the trust  
3 indenture and to perform related general acts  
4 as necessary to carry out that general purpose.

5 COMMISSIONER CLAYTON: Okay. Now,  
6 that Prayer is -- is made pursuant to a statute  
7 that requires Commission approval for those  
8 types of transaction, correct?

9 MR. BOUDREAU: The filing was made  
10 pursuant -- that aspect of the filing was made  
11 pursuant to Section 393.190 RSMO, which --  
12 which has been referred to by -- by  
13 Mr. Wheatley and to the extent the Commission  
14 has statutory authority over the transaction to  
15 grant that authority requested.

16 COMMISSIONER CLAYTON: So just  
17 quickly, I would like to go through -- and I  
18 apologize. Don't go anywhere. Going through  
19 each one of these things, PSC authorization is  
20 required for Aquila to transfer the land to the  
21 City, correct? I know -- I know you've  
22 requested authorization, but is it required  
23 according to the statute?

24 MR. BOUDREAU: I would -- I would  
25 argue that -- that the statute requires that

1 the company get authority to transfer any of  
2 its franchise work or system that is necessary  
3 and useful in the performance of its duties to  
4 the public. I would suggest -- my view of it  
5 would be that -- that the Commission should  
6 look at this and decide whether or not the  
7 items that are the subject of the application  
8 were, in fact, necessary and useful in the  
9 performance in its duties to the public at the  
10 time the request was made at the time the  
11 transaction was made and also at the time the  
12 request was made, I suppose, because they're  
13 pretty much contemporaneous.

14 COMMISSIONER CLAYTON: From Aquila's  
15 standpoint, is that a yes or is that a no?

16 MR. BOUDREAU: I think this  
17 Commission can handle this case either way. I  
18 have pled this in at least one filing, one  
19 recent filing. So the Commission would be  
20 within its -- within its rights to conclude  
21 that this plan, the South Harper plant -- or  
22 actually, the real estate and the combustion  
23 turbines that were -- the legal title was  
24 transferred to the City of Peculiar were not  
25 necessary and useful at the time that they were

1 transferred at the end of 2004 and dismiss the  
2 application for lack of statutory authority.  
3 The Commission could take that action, and that  
4 would be acceptable to the company.

5 The other thing is if the Commission for  
6 some reason concludes that the property is  
7 necessary and useful in performance of the  
8 duties -- of its duties to the public to assert  
9 jurisdiction and to authorize those -- those  
10 activities that were requested.

11 COMMISSIONER CLAYTON: Is that a yes  
12 or was that a no?

13 MR. BOUDREAU: That's a yes.

14 COMMISSIONER CLAYTON; it is a yes.  
15 So you -- it's Aquila's position that Aquila  
16 needs authorization from the Commission to  
17 first transfer the land?

18 MR. BOUDREAU: If it necessary and  
19 useful in the performance of its duties to the  
20 public. That's a threshold question the  
21 Commission needs to address is, frankly, what  
22 is the scope of its statutory authority.

23 COMMISSIONER CLAYTON: Okay. Would  
24 your answer be the same regarding conveying  
25 management, maintenance and control of the

1 facilities on the real estate to the City?

2 MR. BOUDREAU: I don't think the --  
3 the City ends up with -- with operational  
4 control over the -- over the facility under the  
5 economic development agreement or any related  
6 -- any related document that -- in fact, the  
7 City is on record in its own appeal of saying  
8 that its -- its status is that similar to a  
9 trust under a Deed of Trust where there's --  
10 where there's some aspect of title that's held,  
11 that actual possession and operational control  
12 is in another purview.

13 COMMISSIONER CLAYTON: I guess this  
14 is what I'm getting to and I don't feel like  
15 I'm getting the answer. It's probably my fault  
16 from -- from your answer. If this Commission  
17 did not enter the order that Aquila is  
18 requesting here today, under the circumstance,  
19 perhaps dismissing the petition for some --  
20 some reason, I want to know what part of the  
21 this transaction is void in Aquila's position,  
22 Aquila's standpoint. Where do you need PSC  
23 approval?

24 MR. BOUDREAU: Well, if -- probably  
25 the -- probably the two key elements would be

1 the transfer of title, legal title to the City.  
2 And the other aspect of it would be the -- the  
3 sale and lease back arrangement. I mean,  
4 they're all kind of tied together. But those  
5 are probably the two key elements.

6 COMMISSIONER CLAYTON: Okay. Now,  
7 how --

8 MR. BOUDREAU: That causing the  
9 property to be subject to the -- to the  
10 indenture, the trustee indenture. Excuse me.

11 COMMISSIONER CLAYTON: Okay. So --  
12 so as of today, are those transactions void, in  
13 Aquila's position?

14 MR. BOUDREAU: No. Aquila's position  
15 is the transactions are not void. The statute  
16 says that any transaction taken other than in  
17 accordance with the terms of Commission order  
18 would be void. The Commission hasn't ruled on  
19 whether or not it's going to approve this or  
20 what conditions it might impose.

21 And if it were to impose conditions or  
22 qualifications that weren't acceptable to the  
23 company such that it couldn't perform in  
24 accordance with the terms of the order, then it  
25 would -- then it would -- presumably, I would

1 think, management would -- would consider  
2 backing out of the entire arrangement.

3 COMMISSIONER CLAYTON: Is there any  
4 time restriction on -- between when a  
5 transaction is completed in this instance,  
6 December of last year, with when the actual  
7 transaction has to be approved?

8 MR. BOUDREAU: Well, practically  
9 speaking, in this case, I think we're looking  
10 at the end of this year, as I've explained for  
11 some practical business reasons on Aquila's  
12 part the end of this year is -- is the saline  
13 date.

14 COMMISSIONER CLAYTON: Okay. And how  
15 long have you practiced before the Commission,  
16 Mr. Boudreau?

17 MR. BOUDREAU: I have practiced in  
18 some capacity or other for approximately 20  
19 years.

20 COMMISSIONER CLAYTON: Okay. Can you  
21 give me some -- say, one, two, three examples  
22 of when a transaction of this sort was  
23 completed prior to receiving Commission  
24 authorization?

25 MR. BOUDREAU: The only transaction I

1 can think of is a -- the same statute but a  
2 different type of transaction. There was a --  
3 I believe there was a merger transaction that  
4 took place between a natural gas utility,  
5 Greely Gas Company, sometime back. I can't  
6 remember exactly when it was.

7 I could -- I could get the information  
8 where the -- where the company did the  
9 transaction and came back in subsequently and  
10 sought Commission approval. The circumstances  
11 were somewhat different, but -- but sought  
12 approval and obtained it from the Commission.

13 As far as the -- if you -- more  
14 specifically, to your point about a condition  
15 subsequent sort of arrangement as opposed to a  
16 Commission precedent which would be probably  
17 the more familiar transaction, I -- I can't sit  
18 here and tell you that there's -- there's an  
19 extensive body of experience on that front.

20 COMMISSIONER CLAYTON: I appreciate  
21 your characterization precedent versus  
22 subsequent. However, my question is simply  
23 where a request like this is made. Generally,  
24 the rule of thumb is to do the transaction  
25 after Commission has given approval, correct?

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1 MR. BOUDREAU: That is probably more  
2 customary, yes.

3 COMMISSIONER CLAYTON: Yeah. Okay.  
4 Okay. Do you know what year that Greely Gas  
5 Company case was, generally?

6 MR. BOUDREAU: Bear with me. I can  
7 probably give you --

8 COMMISSIONER CLAYTON: You don't have  
9 to run across the street.

10 MR. BOUDREAU: It's just right here  
11 in my --

12 COMMISSIONER CLAYTON: I mean, '80s,  
13 '90s?

14 MR. BOUDREAU: The case I'm thinking  
15 of it Case No. GM-91-355. It's dated as of --  
16 it was issued on June 7th, 1991.

17 COMMISSIONER CLAYTON: June 7th,  
18 1991?

19 MR. BOUDREAU: Yes.

20 COMMISSIONER CLAYTON: Is that  
21 correct? Okay.

22 MR. BOUDREAU: I have not done  
23 extensive research on this. This is just a  
24 case I happen to be aware of.

25 COMMISSIONER CLAYTON: Mr. Boudreau,

1           you may have said this at some point during  
2           your opening statement this morning.  And if  
3           you did, I apologize for re-asking the  
4           question.  I know there's lot of repetition,  
5           especially from the Bench.  But did you state  
6           when you became aware of the fact that the  
7           transaction had occurred?

8                         MR. BOUDREAU:  I did not state that.  
9           It was sometime after the first of the year.  
10          And I don't recall specifically when it was.

11                        COMMISSIONER CLAYTON:  Well, that --  
12          that sounds like -- recently after the first of  
13          the year or -- sometime after the first of year  
14          could mean about 12 months.

15                        MR. BOUDREAU:  My -- I don't have a  
16          clear recollection of when it was.  It was, I  
17          think, sometime shortly before --

18                        COMMISSIONER CLAYTON:  First quarter?  
19          Second quarter?

20                        MR. BOUDREAU:  It would have been  
21          first quarter.

22                        COMMISSIONER CLAYTON:  First quarter.  
23          Okay.  Okay.  Thank you very much.  For now,  
24          before I go to Mr. Williams, Judge, can I ask  
25          Mr. Wheatley a question?

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1 JUDGE PRIDGIN: Certainly.

2 COMMISSIONER CLAYTON: Mr. Wheatley,  
3 in reviewing your motion, the Motion to Stay  
4 which was filed sometime ago, this doesn't have  
5 a date on it. You requested an additional  
6 investigation. I wanted to be clear before I  
7 begin my discussion with Mr. Williams on syntax  
8 and usage and grammar on his verb tenses, what  
9 exactly are you asking for here today?

10 MR. WHEATLEY: Well, thank you,  
11 Commissioner, for allowing me to clear that up  
12 because --

13 COMMISSIONER CLAYTON: You're  
14 welcome.

15 MR. WHEATLEY: There has been a lot  
16 of talk about Public Counsel's Motion to Stay.  
17 That Motion to Stay has already been granted by  
18 this Commission.

19 COMMISSIONER CLAYTON: What are you  
20 requesting today?

21 MR. WHEATLEY: We're requesting to  
22 today that the transaction that was done  
23 without first having Commission approval be  
24 declared void. Secondly, that the stipulation  
25 and agreement be declared void. And, thirdly,

1 that the Commission authorize its General  
2 Counsel to seek remedies for the  
3 misrepresentations and for the actions which  
4 have been taken against the Commission.

5 COMMISSIONER CLAYTON: Did you state  
6 in your opening statement what the harm was to  
7 the public if we go ahead and approve this  
8 retroactively?

9 MR. WHEATLEY: Well, yes. I believe  
10 there's -- there's substantial harm because,  
11 you know, it -- it would appear then to the  
12 public that -- that this corporation has a -- a  
13 theory of it's better to beg for forgiveness  
14 than to ask for permission first.

15 COMMISSIONER CLAYTON: That's  
16 personal knowledge.

17 MR. WHEATLEY: I think the big  
18 picture here is that -- that Missourians depend  
19 upon this Commission to follow the laws and the  
20 companies which appear before it to be just, to  
21 be truthful and to be forthcoming. And I think  
22 if the Commission were to -- to just approve  
23 this later, I think it would be a black eye to  
24 the Commission.

25 COMMISSIONER CLAYTON: So the

1 position is based on principle that the letter  
2 of the law was not followed and that we  
3 shouldn't approve it purely based on --

4 MR. WHEATLEY: That's correct.  
5 That's correct.

6 COMMISSIONER CLAYTON: -- on  
7 principle not because the transaction has a  
8 harm to the ratepayers or that there's a  
9 problem with the way the stipulation agreement  
10 is set up?

11 MR. WHEATLEY: Well, I was asked  
12 earlier if I was placing form over substance.  
13 And I -- I want to -- to -- to emphasize that  
14 the public image of this Commission is -- is --  
15 is very important and should be preserved at  
16 all costs.

17 Companies should not look at this case and  
18 -- and say, well, we can do what -- whatever we  
19 want to. And if there's no blood, there's no  
20 harm.

21 COMMISSIONER CLAYTON: Last question.  
22 Are you raising your hand, Mr. --

23 MR. WILLIAMS: Well, I have a  
24 little --

25 COMMISSIONER CLAYTON: Just yes or

1 no.

2 MR. WILLIAMS: Yes.

3 COMMISSIONER CLAYTON: Hang on just a  
4 second. Last question. Mr. Wheatley, does the  
5 Commission have the power or is it possible for  
6 this Commission to go ahead and approve the  
7 stipulation agreement, retroactively approve  
8 the transaction and also seek penalties against  
9 the company for failing to comply with the  
10 statute? Or do we restrict our ability to seek  
11 penalties from the company by approving the  
12 stipulation, by saying, basically, well, we'll  
13 approve it, no harm, no foul?

14 MR. WHEATLEY: Well, the -- part of  
15 the -- the stipulation and agreement is that --  
16 states that in the event the Commission finds  
17 that Aquila failed to provide the signatory  
18 parties, one of which was OPC, with material  
19 and relevant information in its possession or  
20 in the event that the Commission finds that  
21 Aquila misrepresented facts relevant to this  
22 agreement, this agreement shall be terminated.  
23 And the -- that part of the agreement is  
24 interconnected with the valuation of the -- of  
25 the turbines because it says in the event the

1 Commission does not approve the terms of this  
2 agreement in total, it shall be void. And so  
3 it is our position that the Commission is --  
4 would be unable to -- to approve the -- to  
5 approve a void action and then subsequently  
6 seek a penalty action.

7 COMMISSIONER CLAYTON: Okay.

8 Mr. Nathan Williams?

9 MR. WILLIAMS: A couple of responses.  
10 First of all, there's a concern that some  
11 party, say, a taxpayer may come in and get a  
12 decision that says that the transaction is  
13 voided. And if this Commission approves it and  
14 ratifies the December 30th, 2004 transaction,  
15 the Staff's view is that that transaction is  
16 void.

17 However, a Chapter 100 financing still  
18 should be done if it's available and that the  
19 Commission should authorize that future  
20 transaction, which when we entered into the  
21 stipulation agreement was what we were entering  
22 into.

23 We were not asking for ratification of a  
24 transaction that had already occurred. The  
25 language, specific language in the stip and

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1 agreement on page 6 says, "Subject to the  
2 commitments set out below, the signatory  
3 parties agree that the Commission should  
4 approve Aquila's request to enter into a sale  
5 and lease back arrangement."

6 COMMISSIONER CLAYTON: So Staff's  
7 position is not to retroactively approve the  
8 transaction of December 2004, but to grant  
9 authorization for a new transaction?

10 MR. WILLIAMS: Correct.

11 COMMISSIONER CLAYTON: Does Staff  
12 have any idea of the costs associated with  
13 that?

14 MR. WILLIAMS: The cost associated  
15 with --

16 COMMISSIONER CLAYTON: Costs to the  
17 company or to all the parties in implementing a  
18 new transaction.

19 MR. WILLIAMS: No.

20 COMMISSIONER CLAYTON: You don't.  
21 Okay. Thank you.

22 Q (By Commissioner Clayton) Mr. Dennis Williams?

23 A Yes.

24 Q Are you aware of any cases in which PSC  
25 authorization or approval is required on a

1 transaction where the transaction was actually  
2 completed ahead of time as in this case? Have  
3 you ever participated in a case like that?

4 A I know we -- we've done merger transactions  
5 before where we've -- we've sold property  
6 subject to the approval of the Commission.

7 Q You sold them before getting approval?

8 A There may be legal nuances, but yes. And in my  
9 mind, we --

10 Q Okay. Can you give me an example? Can you  
11 just give me an example of a transaction that  
12 occurred prior to -- that required PSC approval  
13 in which PSC approval hadn't been granted?

14 A The sale of our gas properties to Empire  
15 District Electric require Commission approval.  
16 We have, in essence, as I understand it, sold  
17 those properties to Empire subject to the  
18 approval of this regulatory body.

19 Q Do you have any other examples?

20 A Most -- most any sale of asset that's -- that I  
21 can think of that's -- that requires Commission  
22 approval.

23 Q So Empire is sending out bills to former Aquila  
24 customers?

25 A No. I didn't say that.

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1 Q You said that they sold -- that you've already  
2 sold the properties.

3 A That's -- that's my understanding, yes. Yes,  
4 that we have sold those properties. And the  
5 only way they get out of that contract is if  
6 the Commission doesn't approve it.

7 Q Is it a contract to sell? Or did you actually  
8 sell the properties and convey title to the  
9 property?

10 A I don't know the difference.

11 Q You don't know the difference. So that may not  
12 be a good example because there may just be a  
13 contract to sell the assets. You're just not  
14 sure?

15 A Sure. And in my --

16 Q Are there any assets --

17 A From my perspective.

18 Q From your perspective. Okay. Are there any  
19 other examples that you want to throw out as a  
20 case in point where the transaction occurs and  
21 then approval from the PSC would come through?

22 A Those are the only type of transactions that I  
23 can think of.

24 Q Okay. Is it the normal practice of Aquila to  
25 seek approval prior to entering into such a

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1 transaction to convey title to a property?

2 A I would -- I would suggest it is.

3 Q Is that the -- the best practice?

4 A Given -- given the facts that -- it would be  
5 obviously the best practice. I think we were  
6 trying to save some money for our customers  
7 here.

8 Q Okay. And save money for Aquila, too?

9 A No.

10 Q It had nothing to do with Aquila saving money?

11 A Aquila saves no money.

12 Q Okay. How is that not the case?

13 A It's -- it's immediately passed through. We're  
14 treating --

15 Q Are -- are these expenses included in rates  
16 today?

17 A They -- in the current rate case, pilot  
18 payments are included, not --

19 Q In rates today, though --

20 A In rates today, there are no property taxes nor  
21 pilot payments --

22 Q Okay.

23 A -- included.

24 Q Okay.

25 A So -- so right now, Aquila is getting nothing .

- 1 Q Okay. Aquila is --
- 2 A It's -- it's getting no recovery for any kind  
3 of payment today, either pilot or property  
4 taxes.
- 5 Q It's getting no recovery. But it's also not  
6 required to pay those taxes, correct?
- 7 A We have made pilot payments. We are required  
8 to make pilot payments.
- 9 Q Okay.
- 10 A Had we not closed the transaction, we would  
11 have been required -- or we would have been  
12 assessed property taxes.
- 13 Q In the -- the September hearing before the  
14 Commission, you testified that it was not your  
15 part of the case or not your responsibility to  
16 talk about some things beyond the accounting  
17 treatment of the asset. And I'm probably  
18 mischaracterizing your statement, so I want you  
19 to clarify it first and then, I guess, verify  
20 what I'm talking about.
- 21 A I -- I'm an accounting expert, not a legal  
22 expert.
- 23 Q Okay. So who would have been the witness that  
24 it would have been available to talk about the  
25 status of the transaction, whether it had

1           occurred or each step along the way what has to  
2           happen to consummate the transaction?

3           A     I don't believe we -- we had a witness because  
4           it didn't seem -- it -- it hadn't -- it was not  
5           an issue in the case at that time.

6           Q     Well, would you agree that it wasn't an issue  
7           because no one knew that the transaction had  
8           already been completed?

9           A     Perhaps.

10          Q     Perhaps?

11          A     I don't know if it would have been an issue.

12          Q     Do you think it would have been an issue if the  
13          parties would have known that the transaction  
14          would have occurred?

15          A     I don't know.

16          Q     Okay. In your prior testimony, I think you  
17          testified that when you drafted your direct  
18          testimony you were not aware that the  
19          transaction had occurred?

20          A     That's correct. Well, at the time I drafted my  
21          testimony, the -- the transfer of title, if  
22          that's what we're calling the transaction, it  
23          had not occurred.

24          Q     Okay. And when did you file your direct  
25          testimony?

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1 A It was filed January 13th.

2 Q Okay. So on January 13th when you -- you swore  
3 to the accuracy of your testimony, it was your  
4 understanding that the transaction had not  
5 occurred, that it would be a future  
6 transaction; is that correct?

7 A To the best of my knowledge at the time, that  
8 -- that is true.

9 Q Okay. Who in the company would have been aware  
10 whether that transaction had occurred?

11 A I'm not sure. I --

12 Q Well, let's start with this. Who do you report  
13 to?

14 A I report to John Imson (ph.).

15 Q John Imson. Do you know if John Imson knew?

16 A I do not know if he knew.

17 Q Okay.

18 A I know that some of the documents were signed  
19 by our treasurer.

20 Q And who is the treasurer?

21 A Randy Miller.

22 Q Were you -- did you -- did you say when you  
23 found out that the transaction had occurred? I  
24 know you probably testified to that earlier,  
25 but could you repeat it for me?

1 A I said I had the opportunity to -- to know on  
2 several occasions.

3 Q When was the first time you heard about it?

4 A Going -- going back, I have found an e-mail  
5 that I received January 11th that told me it  
6 had taken place. I don't even know if I opened  
7 that e-mail, but that e-mail does exist.

8 Q When did you open that e-mail?

9 A After September -- after September's hearing.  
10 I went back to find when I possibly could have  
11 known.

12 Q Okay. Well, when would be the next date since  
13 you've already testified that you didn't know  
14 on January 11th?

15 A The next date would have been the March public  
16 hearing.

17 Q So can you testify with certainty that that was  
18 the first time that you were aware about it --  
19 aware of it?

20 A I'm not even sure I was aware of it at that  
21 time. I certainly heard the words. But  
22 whether it registered with me at that time, I  
23 don't know. I -- I -- it was one of those  
24 things, I didn't view important -- as important  
25 because I have always viewed this transaction

1 as being subject to regulatory approval. So it  
2 doesn't happen if the Commission says no.

3 Q Well, I -- I don't necessarily disbelieve you.  
4 I want to know where my concern should lie in  
5 the company of Aquila. Who kept you from  
6 knowing this information? Or did somebody by  
7 design not want this information to come out?  
8 Are you aware of the answer to any of those  
9 questions?

10 A There would have been no reason for us to want  
11 it not to come out. The -- the fact of the  
12 matter is we would have liked an answer one way  
13 or the other as early as possible. So I  
14 certainly don't believe there was any attempt  
15 to try to hide this from anybody.

16 The fact that I got the January 11th  
17 e-mail is an indication we weren't trying to  
18 hide it. Some filings to Mr. Boudreau  
19 mentioned earlier were an indication. We  
20 weren't trying to hide it. I, as the witness,  
21 didn't view it as important, and I think  
22 probably nobody else was watching the  
23 regulatory proceedings. So to the extent that  
24 there is a -- an error, it is mine.

25 COMMISSIONER CLAYTON: I don't think

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1 I have any other questions at this time. But I  
2 don't think you're releasing the witness  
3 immediately, are you?

4 JUDGE PRIDGIN: That's correct.

5 COMMISSIONER CLAYTON: Okay. Thank  
6 you.

7 JUDGE PRIDGIN: Let me see if we have  
8 any more questions from the Bench.  
9 Commissioner Appling?

10 CROSS-EXAMINATION

11 BY COMMISSIONER APPLING:

12 Q Mr. Williams, how are you doing?

13 A Doing okay.

14 Q Okay. Holding up. Okay. A couple things on  
15 finance question. Your attorney today talked  
16 about unwinding. Reversing being back I think  
17 is what that means. For a country boy like me,  
18 it's hard for me to understand some of this  
19 language that you attorneys use.

20 But anyway, how do you perceive -- explain  
21 to me how you perceive that would be done if --  
22 if this thing can go forward. What benefit  
23 would it be to you all to unwind this thing?

24 A Well, the benefit to us to unwind the thing  
25 would be clarity and certainty. Right now, we

1           have expended funds to effectuate this benefit  
2           for our customers, which if the Commission says  
3           no, we can unwind and we get our money back.  
4           Or we get a portion -- a good portion of our  
5           money back. If we don't unwind it by December  
6           31st, we don't get our money back.

7           Q     You lose the \$700,000?

8           A     Or 630 plus in legal fees. So if -- it could  
9           get up to around a million dollars.

10          Q     Okay.

11          A     Now, I think -- I think part of your question  
12          was how do you unwind it. And how you unwind  
13          it is basically -- as I understand it, there --  
14          we have to give a ten-day notice. And then  
15          there's just some legal filings. And I don't  
16          know what they are. But I've been told by  
17          attorneys it would take about two days to do.

18                 And then it says if the transaction hadn't  
19          happened. Now, how that would play out, I  
20          don't know. But it -- it is supposed to be  
21          that it's as if the transaction did not happen.

22          Q     My second question, under the financial  
23          question is -- and I'm still having problems  
24          with have bonds been issued? And if so, who  
25          holds them?

1           A     It's a legal thing. Bonds have technically  
2                    been issued that Aquila technically has  
3                    purchased from the City. However, there was no  
4                    cash. There was -- were no accounting. It --  
5                    it's a piece of paper that, in my mind, doesn't  
6                    amount to anything except meeting the legal  
7                    requirements to effectuate the Chapter 100  
8                    statute.

9                    So it was done so that lower property  
10                    taxes or pilot taxes instead of property. And  
11                    that's all that it accomplished.

12           Q     Yeah. I've heard you say that several times  
13                    today. On the question of ownership of the  
14                    assets, are Aquila -- are they Aquila's assets  
15                    or are they the City's assets?

16           A     There is a -- an apparent difference of  
17                    perception if you're an attorney versus me as  
18                    an accountant.

19           Q     Uh-huh.

20           A     From Generally Accepted Accounting Principles,  
21                    control resides with the company. In fact, the  
22                    City can't even come on to the property without  
23                    really our permission. So the -- the plant is  
24                    ours. It's a sale lease back, a capital lease  
25                    so that ownership stays with us. It's recorded

1 on our books.

2 From an accounting standpoint, ownership  
3 resides with Aquila. My understanding is from  
4 a legal standpoint, title has transferred to  
5 the City of Peculiar, so, legally, that may  
6 mean that the City of Peculiar owns the -- the  
7 assets. Practically, it means that Aquila owns  
8 the assets. Have I confused things enough?

9 Q Well, I've been confused for a long time over  
10 all of your all issues here. But if the City  
11 of Peculiar has -- if they have claim to the  
12 assets, and this is stretching it a little bit  
13 further because I don't understand, should the  
14 City be a part of the stipulation, in your --  
15 in your -- in your best judgment? This  
16 probably should be something addressed to your  
17 attorney. But, you know, I'm curious about  
18 whether they should be a appointed to a party  
19 to this stipulation.

20 MR. BOUDREAU: It --

21 A I don't think so because, as has been stated  
22 before, the legal ownership that they have  
23 gives them really no rights to the property  
24 whatsoever. And Aquila can unwind this  
25 transaction, it's my understanding, at any

1 point in time should we desire or need to do  
2 so.

3 So the -- the only benefit, again, is --  
4 is that the transaction -- that legal  
5 transaction, that transfer of title, all that  
6 accomplishes is lower property tax payments.  
7 So it doesn't accomplish anything else, so I  
8 don't see why they'd be a party to the  
9 stipulation.

10 Q (By Commissioner Appling) Mr. Williams, let me  
11 ask you this one last question. And you can  
12 answer it any way you choose. At any time, did  
13 you intend to mislead this Commission in any  
14 way in any of your comments, any of your  
15 testimony?

16 A No, I didn't.

17 COMMISSIONER APPLING: Okay. Can you  
18 put a pin in it just one second and let me ask  
19 OPC a question, please?

20 Is OPC withdrawing from this stip? Do you  
21 have any thoughts about withdrawing? Have you  
22 withdrawn? Are you planning on withdrawing  
23 from this stipulation?

24 MR. WHEATLEY: Yes, Commissioner,  
25 simply because the -- the stipulation is based

1           upon representations made by Aquila, which we  
2           believe should set aside the Chapter 100, the  
3           stip -- the stipulation and agreement in total,  
4           but particularly due to the Chapter 100  
5           financing.

6                     And as I've mentioned before, the Chapter  
7           100 financing and the value -- valuation of the  
8           combustion turbines go hand in hand. And so if  
9           -- if one is -- if one is void, the other is  
10          void. They're both void. And so the -- our  
11          position is that the Commission cannot approve  
12          the stipulation and agreement.

13         A         Commissioner, if I might, I didn't fully answer  
14           your question. You -- you had asked what's the  
15           impact to the company, and I -- I -- I  
16           mentioned half of it. The other impact, if the  
17           stipulation is not approved, then Aquila will  
18           -- because we haven't received regulatory  
19           approval, we will unwind the transaction.

20                     We have been advised that there are  
21           parties that still think Chapter 100 is a good  
22           thing and will impute in rates as if we had  
23           received the lower pilot payments. So,  
24           therefore, in my mind, the company is faced  
25           with being penalized for having tried to do the

1 right thing in the first place, that is, get  
2 lower pilot payments for -- for its customers.  
3 So that's the other half of how Aquila is  
4 impacted.

5 Q (By Commissioner Appling) And I say this with  
6 some risk to myself and this Commission, but,  
7 Mr. Williams, I'm sure you know that there's  
8 some mindset in this that Aquila was not  
9 truthfully in dealing with this Commission back  
10 some months ago when we were talking about --  
11 when we had the hearing on this Commission.  
12 Specifically, I think the Commissioner Gaw had  
13 asked some specific questions which I'm sure he  
14 feels that was not truthfully answered.

15 I'm not speaking for him, and I want to  
16 make sure that that's on the record that I'm  
17 not speaking for him. But something has got to  
18 happen here before the 19th on -- things get  
19 really -- really, really, wrapped up.

20 A They get very confused.

21 Q Very, very confusing.

22 A And it certainly was not my intent to mislead  
23 or deceive. That goes to my credibility. And  
24 I'm not going to -- I wouldn't risk 20 plus  
25 years of credibility for an issue -- I can't

1           imagine any -- anyone would, especially one  
2           that -- that has no value to -- to it.

3           Q     Right.  And I understand that, and I think I  
4           know you well enough to know that -- that I do  
5           understand what you're saying and believe what  
6           you're saying.  I'm just trying to get at where  
7           is it that I should and the rest of my four and  
8           five colleagues should cast their vote towards?  
9           What it is that we should be doing here?  And  
10          it's very confusing.  It's very frustrating  
11          right now to all for us, and I'm sure it is to  
12          you all, too.  But thank you for your  
13          testimony.  Appreciate it.

14                    JUDGE PRIDGIN:  Commissioner Appling,  
15          thank you.  Commissioner Murray?

16                    COMMISSIONER MURRAY:  I had one  
17          question for Mr. Boudreau, if I could.  
18          Mr. Boudreau, if we were to do a title search  
19          who would be the -- was there a recording of  
20          this transfer of the assets?  Would it show up  
21          as -- who would show up as the owner?

22                    MR. BOUDREAU:  Well, it's my  
23          understanding that there has been a filing with  
24          the Recorder of Deeds' office in Cass County,  
25          and I suspect it would show up on the -- in

1 real estate records of Cass County. Perhaps as  
2 far as personalty, it may show up also. I  
3 don't know if this for a fact, but I wouldn't  
4 be surprised to find out that there was a -- a  
5 parallel filing on the Secretary of State's  
6 office as to fixtures and/or personalty, which  
7 is pretty typical in financing transactions so  
8 that you have a security interest recorded with  
9 respect to the real estate and also with  
10 respect to the personalty.

11 COMMISSIONER MURRAY: Thank you.

12 JUDGE PRIDGIN: And Commissioner  
13 Appling I believe had a question for Staff.  
14 We'll take a break here in just a moment.

15 COMMISSIONER APPLING: Mr. Williams,  
16 help me out here if you would just a little  
17 bit. You just heard the comments that OPC had  
18 said that they planned to withdraw from the --  
19 from the stip. Should the parties -- where is  
20 Staff on the stipulation? Would you follow OPC  
21 and withdraw, or would you stay a party to the  
22 stipulation?

23 MR. WILLIAMS: Well, it's our belief  
24 that the stipulation and agreement addresses an  
25 event that has not yet occurred.

1 COMMISSIONER APPLING: Okay.

2 MR. WILLIAMS: It would be a future  
3 Chapter 100 financing. We support that. We do  
4 not support the Chapter 100 financing that  
5 closed December 30th of 2004.

6 COMMISSIONER APPLING: Okay. Should  
7 there be a revisit of the parties that's left  
8 if OPC drops out? Should there be a revisit  
9 between Staff and the Aquila and whoever else  
10 is a party to this stipulation? Would you see  
11 a need to do that?

12 MR. WILLIAMS: Well, if OPC has valid  
13 grounds to withdraw from the stipulation and  
14 agreement, certainly, it has the right to do  
15 so. And in that event, there would not be any  
16 stipulation and agreement in front of the  
17 Commission.

18 COMMISSIONER APPLING: Okay.

19 MR. WILLIAMS: I think that requires  
20 a determination by the Commission as to those  
21 facts.

22 COMMISSIONER APPLING: Whether OPC is  
23 allowed to withdraw from it?

24 MR. WILLIAMS: Yes.

25 COMMISSIONER APPLING: Okay. That's

1 all I have. Thank you.

2 JUDGE PRIDGIN: Commissioner Appling,  
3 thank you. This looks to be an appropriate  
4 time for a break. I notice it's about 3:30.  
5 Let's try to reconvene at 3:45. And,  
6 Mr. Williams, you will still be under oath and  
7 still be on the stand.

8 MR. COMLEY: Judge Pridgin?

9 JUDGE PRIDGIN: Yes.

10 MR. COMLEY: Cass County has been  
11 very cordially invited to attend the hearing  
12 and we do serve at the pleasure of Commission.  
13 But I was going to inquire, since we are not a  
14 signatory party to the stipulation and so far  
15 the Commission has not had any questions for  
16 Cass County, I was going to ask if there are  
17 any questions for Cass County -- and if there  
18 are none, I was going to ask if I could be  
19 excused.

20 JUDGE PRIDGIN: Mr. Comley, thank  
21 you. Let me see if there are any concerns from  
22 the Bench for Cass County.

23 COMMISSIONER CLAYTON: I have one.

24 JUDGE PRIDGIN: Commissioner Clayton  
25 has a question.

1                   COMMISSIONER CLAYTON: Mr. Comley,  
2                   are you aware of reviewing this statute, this  
3                   section of the law where a transaction occurs  
4                   and then approval comes after the fact in your  
5                   experience in practicing before the Commission?

6                   MR. COMLEY: Could you repeat that  
7                   for me again, just --

8                   COMMISSIONER CLAYTON: Are you aware  
9                   of any cases in which a transaction requiring  
10                  PSC approval had already occurred prior to  
11                  receiving that approval?

12                  MR. COMLEY: Yes. There have been  
13                  occasions in the telephone industry where I  
14                  know the transactions have occurred before  
15                  Commission approval. There have been times  
16                  during the 20-some years I've practiced here  
17                  when telephone companies, small ones, have come  
18                  before the Commission and asked for approval  
19                  nunc pro tunc, and it was by mistake.

20                  Customers or other assets were transferred  
21                  by companies that deal in a variety of other  
22                  jurisdictions and didn't realize that we still  
23                  have a statute on the books that require that  
24                  approval. So it is conceivable nunc pro tunc  
25                  was used, not extensively, but it has happened.

1                   COMMISSIONER CLAYTON: That's all I  
2                   have.

3                   COMMISSIONER GAW: Give me those  
4                   cites, Mr. Comley. Give me the cites, the  
5                   dates and the case on your way -- after you've  
6                   had time to get home.

7                   MR. COMLEY: All right.

8                   COMMISSIONER GAW: All right.

9                   MR. COMLEY: I will try to find them.

10                  COMMISSIONER GAW: Since you think  
11                  they exist. And tell me how an order is  
12                  entered nunc pro tunc without a previous order.

13                  MR. COMLEY: I think it was because  
14                  of the craftiness of the attorneys that  
15                  proposed it to the Commission.

16                  COMMISSIONER GAW: I see. That's  
17                  pretty crafty, all right.

18                  MR. COMLEY: I will try and locate  
19                  them.

20                  COMMISSIONER GAW: You think those  
21                  orders approve those transfers retroactively?

22                  MR. COMLEY: No.

23                  COMMISSIONER GAW: No. I don't  
24                  either. But find them. Maybe that will shed  
25                  some light.

1                   MR. COMLEY: I think the orders  
2                   indicated that there was a approval  
3                   prospectively only so that closing on those  
4                   transactions would have occurred effective upon  
5                   the approval of the Commission.

6                   COMMISSIONER GAW: It did not -- it  
7                   did not in any way ignore the statute that said  
8                   that those transfers were void, did it? Did  
9                   any of those cases say that those previous  
10                  transfers were not void?

11                  MR. COMLEY: I can't recall that the  
12                  order actually declared them void.

13                  COMMISSIONER GAW: Yeah. In essence,  
14                  what it was doing was saying if it did  
15                  anything, we'll look at them, but it did not go  
16                  back and repair the -- the transfer  
17                  retroactively. It was only a prospective  
18                  approval, something that would occur after the  
19                  date of the order.

20                  MR. COMLEY: I think that's how the  
21                  Commission couched the order.

22                  COMMISSIONER GAW: If there is some  
23                  cases. If there are some cases.

24                  MR. COMLEY: Presuming there are,  
25                  yes.

1 COMMISSIONER GAW: Okay. Thank you.

2 JUDGE PRIDGIN: Any further question  
3 for Mr. Comley? All right. Seeing none, I  
4 believe, Mr. Comley, you may be excused. Thank  
5 you, sir. Again, we will take a break and  
6 resume at 3:45.

7 (Break in proceedings.)

8 JUDGE PRIDGIN: All right. We're  
9 back on the record. Mr. Williams, I'll remind  
10 you again that you're still under oath. I  
11 believe that Commissioner Gaw has some  
12 questions for you. Commissioner, when you're  
13 ready, sir.

14 COMMISSIONER GAW: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY COMMISSIONER GAW:

17 Q Mr. Williams, please forgive me if I -- if I  
18 repeat questions that have been asked earlier,  
19 and I'll try not to do that to the extent that  
20 I -- I can. Can you tell me when the December  
21 closing on the transfer of South Harper to  
22 Peculiar was set, when it was -- when it was  
23 set?

24 A No. I don't know. You're -- by set, you mean  
25 at what point was there an agreement that we're

1 going to sign on December 30th?

2 Q Yes.

3 A I don't know.

4 Q Who would know that?

5 A I would say the most likely person would be  
6 Beth Armstrong who negotiated most of the  
7 Chapter 100.

8 Q Who is she?

9 A She is a -- she's in the financial -- I'm not  
10 sure of her exact title. She's within the  
11 accounting department.

12 Q Okay.

13 A Reports to our CFO.

14 Q And who -- who is that, your CFO?

15 A Our CFO is Rick Dobson.

16 Q And would Rick Dobson have been aware of it  
17 being set prior to the closing?

18 A I don't know.

19 Q Would it -- would it -- how do you work with  
20 Rick Dobson? How do you work with him? What's  
21 your relationship between your office and his?

22 A Ancillary. It's not direct.

23 Q Okay. Who do you report to?

24 A John Imson.

25 Q And how does John Imson relate to Rick Dobson?

1 A John Imson and Rick Dobson are both member --  
2 senior vice pres -- well, Rick Dobson is CFO.  
3 John Imson is senior vice president. Both of  
4 them are members of the leadership team.

5 Q Okay. Would John Imson have been consulted in  
6 regard to the closing of the sale, this  
7 transfer of South Harper?

8 A I don't know.

9 Q I suppose I'd have to ask him, right?

10 A Right.

11 Q How is Rick Green related to -- in position to  
12 Rick Dobson and John Imson?

13 A I believe that John Imson reports to Keith  
14 Stamp who reports to Rick Green.

15 Q Okay.

16 A And I believe that Rick Dobson reports to  
17 directly to Rick Green.

18 Q Okay.

19 A But that would be subject to check.

20 Q Go right ahead and check if you'd like to,  
21 Mr. Williams. I'll just wait for you.

22 A I -- I can probably do that with some people in  
23 the audience.

24 Q Sure. Go right ahead.

25 (Discussion off the record.)

1 A I think that information is correct.

2 Q (By Commissioner Gaw) Okay. And you consulted  
3 with who in determining that?

4 A I consulted with Davis Rooney who is in the  
5 accounting department.

6 Q Okay.

7 A I thought he would have a better idea since he  
8 reports up that chain of command.

9 Q All right. And I think you've been asked this  
10 question before, but I'd like to -- to at least  
11 ask it a little bit different way.

12 At what date did you learn about the  
13 December 30th closing of the South Harper  
14 transfer?

15 A I do not know specifically when I learned of  
16 it. It certainly registered shortly after the  
17 hearing when -- but I -- I've mentioned that  
18 I've had the opportunity -- I mean, I've -- I  
19 certainly was at the meeting -- the public  
20 hearing in March that We talked to.

21 And -- and I'm -- certainly, I heard the  
22 words that it had closed. But whether it -- I  
23 mean, it didn't register with me as being  
24 something important at that time.

25 Q Now, again, I think earlier there was some

1 representation as to when your direct testimony  
2 was filed. That was filed around January 13th  
3 of '05; is that correct?

4 A That is correct.

5 Q And in that direct testimony, the wording of  
6 your direct testimony clearly indicates that  
7 the closing is to be prospective, does it not?

8 A The wording of the testimony was in the future  
9 tense. And I -- I explained and drafted that  
10 testimony in December and basically just lifted  
11 a lot of words out of the application, which  
12 was in the future tense.

13 Q Okay. So you -- so your -- is it your  
14 testimony that your -- your initial preparation  
15 of that testimony was -- was prior to the  
16 closing?

17 A That's correct. The drafting of it was.

18 Q Okay.

19 A But not the filing.

20 Q Who was involved in the drafting?

21 A Mr. Boudreau and I.

22 Q All right. And you filed -- did you review  
23 that testimony prior to it being filed?

24 A I -- I reviewed it prior to it being filed, but  
25 I don't know that it immediately -- I don't

1 know what the date of my last review was.

2 Q Was it after the closing of the South Harper  
3 transfer?

4 A More than likely, yes.

5 Q All right. And would you have been unaware of  
6 the South Harper transfer at the time that it  
7 occurred?

8 A Yes. The earliest opportunity I can find that  
9 I had to have become aware was in a January  
10 11th e-mail. I was -- I cannot find any  
11 evidence that anybody conveyed that to me  
12 before then, although it's possible that --  
13 that there could have been a string of e-mails  
14 that I haven't found.

15 Q All right. And would you have reviewed your  
16 direct testimony subsequent to January 11th?

17 A I doubt it.

18 Q And would you have reviewed your direct  
19 testimony prior to January 11th?

20 A Yes.

21 Q When?

22 A I don't know what the last -- obviously,  
23 between the drafting which occurred, I  
24 mentioned earlier, was before Christmas. And I  
25 know I read it -- I'm sure I read it sometime

1           early January, but I don't know the specific  
2           date.

3           Q     Did you make any attempts, Mr. Williams, to --  
4           to correct that direct testimony subsequent to  
5           it being filed?

6           A     No, I didn't because I -- it didn't really dawn  
7           on me that it needed to be corrected.

8           Q     You subsequently filed surrebuttal testimony in  
9           June, late June of '05?

10          A     I did.

11          Q     And did that testimony also treat the transfer  
12          in the future tense?

13          A     The only indication that anyone has questioned  
14          is the final sentence in the discussion of --  
15          under the topic Chapter 100 financing.  And it  
16          appears on page 12.  The sentence reads,  
17          "Without approval of these requests, the  
18          Chapter 100 financing mechanism will not take  
19          place."

20                 And I have said before, I -- I stand by  
21          that because my belief is that the -- the  
22          restrictions being placed upon us would not  
23          have been satisfactory and we would have  
24          unwound that.  And so the -- that -- this  
25          transaction effectively would not have taken

1 place.

2 I said at one point earlier in my  
3 testimony, it probably would have been more  
4 prudent to put the word ultimately in front of  
5 will so that ultimately will not take place.

6 Q But it wasn't there?

7 A It was not there.

8 Q And, Mr. Williams, did -- did any -- was anyone  
9 else with the company involved in -- in -- at  
10 any time in looking at your testimony?

11 A I -- I think I forwarded it to -- I probably --  
12 I know that Mr. Boudreau did. I probably  
13 forwarded my testimony to Beth Armstrong. I  
14 may have forwarded it to Davis Rooney because  
15 he was also testifying -- or filed surrebuttal  
16 testimony in this case regarding valuation.

17 To what extent any of those people would  
18 have reviewed it or -- I'm not really sure.

19 Q But you think you forwarded it to at least  
20 those two individuals. Can you tell me when  
21 that would have occurred?

22 A I probably drafted this two to three weeks  
23 before -- probably two weeks before it was  
24 filed. So probably within a couple of weeks of  
25 June 27th. Maybe a week before June 27th.

1 Q Did you have any conversations in regard to --  
2 to this transfer with your immediate supervisor  
3 prior to the hearing in the case that was held  
4 -- when was that? Sometime last summer?

5 A I think it was held in September.

6 Q In September. Excuse me.

7 A Not that I recall.

8 Q No conversations?

9 A We probably had conversations that I was going  
10 to be testifying, but I -- I don't think we  
11 really talked too much, if at all, about the  
12 scope of the testimony.

13 Q So you don't think you would have -- you would  
14 have discussed anything outside of, I'm going  
15 to be testifying, and that's the extent of  
16 it?

17 A In general, yes, I think that's correct. And  
18 -- and when we're talking about this testimony,  
19 I assume we're focusing on the Chapter 100  
20 because there were a lot more detailed  
21 discussions on the valuation issue.

22 Q On the valuation issue with whom?

23 A Well, we -- with -- with -- with both -- with  
24 Mr. Imson. When I said I didn't talk with him  
25 about my testimony, I can't recall that I would

1           have ever talked to him about the Chapter 100.  
2           But we certainly would have talked about the  
3           Beck appraisal. And -- and I probably would  
4           have talked about the valuation with, oh, I  
5           imagine some people in the -- perhaps in the  
6           fuel procurement -- or in the energy services  
7           group, someone like an Andrew Corte or somebody  
8           like that.

9           Q    In regard to the Chapter 100 financing and the  
10           South Harper transfer, would there have been  
11           anyone in the company, not attorneys, anyone in  
12           the company that you would have discussed this  
13           issue with and your testimony?

14          A    Not the specifics other than -- than Beth who I  
15           -- who I mentioned.

16          Q    Mr. Williams, you weren't involved in the  
17           closing of this transfer, correct?

18          A    No, I wasn't.

19          Q    You weren't involved in preparing for the  
20           closing of the transfer?

21          A    No, I wasn't.

22          Q    And yet you were the witness that was offered  
23           by the company to come and tell us what it was  
24           that you were going to do in regard to that  
25           Chapter 100 financing. Is that -- that what

1           you're telling me?

2           A     That's what I'm telling you because I had  
3           knowledge of the issues that had been raised  
4           regarding Chapter 100 at the time.

5           Q     Now, you -- you came before this Commission on  
6           9/21/05 as that witness; is that correct?

7           A     That's correct.

8           Q     And you in that -- in that testimony answered  
9           some -- a number of questions in regard to --  
10          to that transfer; is that correct?

11          A     Yes, I did.

12          Q     And in that question and answer, did you not  
13          represent to this Commission that that transfer  
14          had not yet occurred?

15          A     I would have to check the transcript in detail,  
16          but I don't recall ever having said that trans  
17          -- that transfer did not occur, other than the  
18          discussion I had earlier in the proceeding in  
19          response to some questions at September from  
20          Commissioner Clayton.

21                     And I explained at that time I thought we  
22          were talking about accounting ownership. And  
23          accounting ownership, from an accounting  
24          standpoint, Aquila does own and -- and those  
25          assets are recorded on the books of Aquila as

1 if the ownership resides there.

2 Q But to -- to the -- those interested in legal  
3 title, legal title doesn't rest with Aquila if  
4 the transfer is effectually done, correct?

5 A I understand that now.

6 Q And, in fact, if the closing would have -- did  
7 occur as you have told us in December of '04,  
8 notice would have been given to -- to the world  
9 through the recording of the transfer that, at  
10 least on its surface, some right of title  
11 existed with Peculiar; is that correct?

12 A That -- that is my understanding from a -- an  
13 accounting and regulatory standpoint. I didn't  
14 see that that had an impact.

15 Q You didn't think that the legal title was  
16 important?

17 A I didn't. And I don't. But --

18 Q You don't think it's important?

19 A I --

20 Q Do you own a home, Mr. Williams?

21 A I do.

22 Q Do you?

23 A I do.

24 Q And -- and do you know whether or not that  
25 legal title is in your name or your name and

1 someone else's name?

2 A I think it's probably in my mortgage company's  
3 name.

4 Q Now, wait a minute. Do you -- do you -- and  
5 I'm not going to ask you whose name it's in,  
6 but do you have a home that -- where the legal  
7 title is in your name or your name and some  
8 other person's name subject to, perhaps, a Deed  
9 of Trust?

10 A Perhaps that. I -- you know, I -- I don't  
11 know. I know it's my name and my wife's name  
12 on -- on the tax rolls.

13 Q It is?

14 A Yes.

15 Q It's -- it's there because of the fact that you  
16 have title legally in your name, isn't it,  
17 Mr. Williams?

18 A Probably.

19 Q Or your and your wife's name perhaps?

20 A Probably.

21 Q Yes. And do you think that that legal title  
22 might be of some significance to the outside  
23 world when they're deciding whether or not you  
24 can sell that home?

25 A I -- I think it would, and I think this is a

1 different -- I think this is not the same.

2 Q Do you -- we'll explore that. Since you seem  
3 to think it's not important, we'll just  
4 continue to explore it a while.

5 Can you tell me whether or not it's  
6 important if you're trying to buy a piece of  
7 property to know whether or not the person or  
8 entity that's wanting to sell it to you holds  
9 legal title to that property?

10 A If we're --

11 Q Or would you not care or think that's very  
12 significant in that event?

13 A When I -- when I was saying it was not  
14 important, I was referring to from an  
15 accounting and regulatory standpoint.

16 Q Well, let me -- let me say this to you: I'll  
17 be glad to listen to you on the accounting  
18 portion, but let me share a little bit of the  
19 judgment about whether it's important on a  
20 regulatory standpoint. Would that be fair?

21 A You would know better than I.

22 Q Not necessarily. But I would like to have an  
23 opportunity to -- to -- to voice my opinion at  
24 some point in time, Mr. Williams. And what I'm  
25 concerned about is that I didn't get that

1 chance up to this point because I wasn't made  
2 aware of the fact that this title had been  
3 transferred before we ever heard the case  
4 asking for permission to do it.

5 A I understand --

6 Q And in that -- and that is why I'm inquiring  
7 about what the status of this was when we had  
8 this hearing.

9 A I -- I under --

10 Q So let me ask you again: Is it important if  
11 you're buying a home to know whether or not  
12 someone has legal title to that that you're  
13 buying it from?

14 A I believe it is. I think that's why I paid for  
15 title insurance --

16 Q Yes.

17 A -- when I bought my home.

18 Q All right. Now, when you get to the point of  
19 what you said in the hearing in September, from  
20 an accounting standpoint, is it important to  
21 know whether or not -- or perhaps to someone  
22 how much interest is being paid on bonds that  
23 are being issued in a transaction under Chapter  
24 100, at least for the City that's issuing it  
25 and perhaps for the entity that's paying for

1           it? Is that important?

2           A     Again, in this transaction, there is the paper  
3           amount that is being paid for bonds.

4           Q     Yes.

5           A     And then there is the real cash amount, which  
6           is zero.

7           Q     Two different figures?

8           A     They are. One --

9           Q     Two sets of books. Is that what you're telling  
10          me?

11          A     One, as I understand it, is the legal  
12          transaction required to meet the Chapter 100  
13          statute requirements.

14          Q     Yes.

15          A     The other is the accounting, which reflects  
16          that there is no interest payment.

17          Q     Was there an interest payment that was in one  
18          of those documents or some -- some set of  
19          documents or something dealing with those  
20          bonds? Was there an interest amount?

21          A     There -- there is a document which states that  
22          the City will service the bonds at a rate of 8  
23          percent of the outstanding value of the bonds.

24          Q     All right.

25          A     Equal -- and that the lease payments from

1           Aquila will also be that same amount. They  
2           offset. So from an accounting standpoint and  
3           -- there is no cash that changes hands. From  
4           an accounting standpoint, no transaction.

5           Q     That rate was set when?

6           A     That rate was in the -- in -- in one of the  
7           original agreements that I had attached to my  
8           direct testimony.

9           Q     All right. So it was set -- it was set at  
10          least at -- prior to the time that your direct  
11          testimony was filed, correct?

12          A     Yes.

13          Q     All right. And at that point in time, it was  
14          not a projected amount, was it? It was a set  
15          amount.

16          A     It was a set rate, not a set amount.

17          Q     Set rate amount. Okay. that's fair. Then  
18          tell me why it was that when -- when I inquired  
19          of you in September -- and I'll just read this  
20          to you to -- and you tell me if this -- if this  
21          is your recollection.

22                         This is on page 47. "Will Aquila -- is  
23          Aquila going to pay the exact amount that the  
24          City is obligated for on the bond?" That was  
25          the question.

1 Answer, "Yes."

2 Question, "But we don't know what that  
3 interest rate will be?"

4 Question -- answer, "I don't know what it  
5 is."

6 Question, "Does somebody know?"

7 "I don't know. But I don't know how far  
8 along" -- and then it -- then it continues.

9 Answer -- or excuse me. Question, "There  
10 -- there would be a projected amount, I'm  
11 sure."

12 Answer, "Right."

13 Now, Mr. Williams, help me to understand  
14 something. You just told me that that interest  
15 rate would not have been projected, it would  
16 have been set. Even when you filed your direct  
17 testimony because the transaction had already  
18 been completed, correct?

19 A No. The -- the amount would have had to be  
20 projected because the amount is calculated at 8  
21 percent. And as the plant is built, those --

22 Q Yes.

23 A -- bonds increase up to \$140 million.

24 Q All right. Were you present during the entire  
25 hearing in September?

1           A     I believe so.

2           Q     Did you go home or leave to go take care of  
3                 business?

4           A     I -- I believe I was here. Well, I stepped out  
5                 a few times.

6           Q     Were you here in the -- toward the end when I  
7                 was inquiring -- and you weren't on the stand,  
8                 but when I was inquiring about whether or not  
9                 this transaction had ever -- had ever -- had  
10                already occurred? Excuse me. Were you here  
11                then?

12          A     I don't recall.

13          Q     Were you here when -- when the discussion was  
14                 being held about whether or not the bonds had  
15                 been sold previous to this -- to the hearing in  
16                 September?

17          A     Again, I -- I don't recall. I -- I may have  
18                 been in the room.

19          Q     Let me refresh your memory on some of these  
20                 questions.

21          A     Please.

22          Q     And, again, they weren't to you on the stand.  
23                 "I just want to clarify. The bonds" -- this is  
24                 on 89. "I just want to clarify. The bonds  
25                 haven't been sold yet, have they?" That was

1 one of the questions.

2 Another question, "It couldn't have  
3 happened, could it? If the bonds would have  
4 been sold, would there not have been -- had to  
5 have been a transfer of the South Harper  
6 facility on legal documents in the City of  
7 Peculiar? That couldn't have happened, could  
8 it? That transaction would have been void,  
9 would it not, under the statutes, since we  
10 haven't approved it?"

11 A I -- I --

12 Q Help me understand something. Was -- was it  
13 just deemed to be okay to sit there and -- and  
14 allow at least one commissioner to go on and on  
15 about the basic assumption relying on your  
16 testimony, your direct testimony, that nothing  
17 had occurred and that you were coming in here  
18 to seek permission to do a transfer and remain  
19 silent and not speak up and say, Wait a minute,  
20 we need to clarify something here?

21 Explain that to me. Help me to understand  
22 why there was no comment made to clarify that  
23 this was not correct, that your direct  
24 testimony was not correct.

25 A If I was in the room -- if I was in the room,

1 and I may have been, first of all, I'm not sure  
2 I would have appreciated the questions you were  
3 asking and where that was leading.

4 And, second, I'm rather sure I wouldn't  
5 have been allowed to say anything because I did  
6 earlier recognize that there was some confusion  
7 on your part about how the transaction itself  
8 worked. And I wanted to clarify the record. I  
9 was off the stand and was told that I couldn't,  
10 basically. So I don't think I would have had  
11 the opportunity to -- even if I had recognized.

12 But I don't recall recognizing that --  
13 that your questions raised any alarms in my  
14 mind. If I was here for those questions. I  
15 just -- I just don't recall.

16 Q But you, at some point in time that day, became  
17 aware that I was under the impression that no  
18 transfer had occurred at that point in time.  
19 Were you not aware of that?

20 A I became aware at the end of the hearing that  
21 there was -- that there was an issue along  
22 those lines. And -- and we -- we clarified  
23 internally at least, yes, that transaction has  
24 taken place. And I don't know if -- I don't  
25 know if we were supposed to file something

1           differently or not. I don't know.

2           Q    When -- when the transfer was done in December,  
3           Aquila didn't have approval of this Commission  
4           to make the transfer, did it?

5           A    No. It's my understanding the approval was  
6           made subject -- or the transfer was made  
7           subject to regulatory approval. And -- and  
8           within the economic -- I know within the  
9           economic development agreement that Aquila  
10          reserves the right that if we don't get  
11          approval that the transaction will be undone.  
12          It won't have occurred.

13          Q    It's a little difficult, isn't it,  
14          Mr. Williams, to have to undo a transaction  
15          that is void without being approved to begin  
16          with? A transfer is made if the statute says  
17          it's void, if it's -- if that's what it says  
18          and it was done anyway, what's there to unwind  
19          other than straightening out all of the  
20          paperwork that's scattered in the Recorder's  
21          office suggesting that legal title to this real  
22          estate was transferred without having had legal  
23          ownership in it -- or legal ability to transfer  
24          the title when it was represented to the world  
25          that the -- the company had it?

1 A Whether or not that transaction is void is  
2 beyond my scope of expertise.

3 Q I understand. Who would have signed the  
4 document transferring legal title to South  
5 Harper?

6 A I don't know that.

7 Q I guess it would be a record, wouldn't it?

8 A It -- it should be on record, yes.

9 Q Is that -- do you know if any of that paperwork  
10 is filed?

11 A I believe that's been filed in this case.

12 Q May -- does someone have that? Is it in the  
13 record, I guess I should ask first.

14 MR. WILLIAMS: It is attached to  
15 Staff's response to Public Counsel's Motion to  
16 Stay. And I also have the originals from the  
17 Recorder's office here.

18 COMMISSIONER GAW: Well, without --  
19 let me ask Mr. -- Mr. Williams, counsel for  
20 Staff, real quick if he has that if front of  
21 him if I could look at it real quickly, so long  
22 as it's already in where I'm allowed to look at  
23 it. Thank you, sir. Is this -- is this a  
24 special warranty deed?

25 MR. WILLIAMS: I think that's the

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1 particular document you're referring to. That  
2 encompasses actually all of the documents.

3 COMMISSIONER GAW: Okay.

4 Q (By Commissioner Gaw) Mr. Williams, on the  
5 stand, Mr. Williams?

6 A Yes.

7 Q Who is Randall Miller?

8 A Randall Miller is our treasurer.

9 Q Is his appropriate title Vice President,  
10 Finance and Treasurer?

11 A It may be. I only know of him as our  
12 treasurer.

13 Q Okay. All right. Is he an employee of the  
14 company?

15 A He is. Yes.

16 Q Of which company?

17 A He is an employee of Aquila, Incorporated.

18 Q All right. And do you -- are you aware of who  
19 must act to authorize Randall Miller to sign a  
20 transfer of real estate?

21 A I -- I believe the Board approved the entire  
22 transaction, the Chapter 100 financing.

23 Q Do you know whether or not they approved that  
24 transfer to have occurred prior to approval by  
25 this Commission?

1 A As Schedule 8 to my direct testimony, is  
2 indicates that resolutions approving the  
3 Chapter 100 financing, among other things, were  
4 signed -- or were -- the Board met and approved  
5 November 3rd of 2004.

6 Q Okay. Do you know whether or not that  
7 particular document authorizes a closing prior  
8 to the end of the year or at some specific  
9 time?

10 A I -- I -- it does not state a specific closing  
11 date. It is resolved that actions -- I think  
12 it resolves that the CEO, COO, CFO, Treasurer  
13 or any Senior Vice President of the company is  
14 authorized, empowered and directed to do and  
15 perform or cause to be done what's needed to be  
16 done.

17 Q Okay. And that document is attached to -- to  
18 what again?

19 A That was schedule DRW-8 to my direct testimony.

20 Q All right. Who is Leslie -- is it -- I think  
21 it's Perette (ph.)?

22 A Leslie Perette is our former General Counsel.

23 Q He's no longer General Counsel?

24 A That's correct. He's no longer with the  
25 company.

1 Q Where is he now?

2 A I don't know.

3 Q How long has he been gone from the company?

4 A Nine months or so. Approximately nine months.

5 Q He was still there at the end of December of

6 '04?

7 A Yes, he was.

8 Q Okay. And sometime after that, he left?

9 A Yes. I believe it was fairly shortly after

10 that. So he's been gone between nine months

11 and a year, I guess.

12 Q He was the senior vice president, General

13 Counsel and Secretary for Aquila, Inc.?

14 A Yes.

15 Q Who replaced him?

16 A Chris Reitz, R-e-i-t-z.

17 Q And is Mr. Perette, Jr., a Missouri resident or

18 Kansas resident currently? Do you know?

19 A I -- I don't know.

20 Q Mr. Williams, can you point out to me the

21 testimony to this Commission that described the

22 closing and the details of the closing to this

23 Commission in the documents that -- in the

24 testimony that was filed before the Commission

25 in this matter and recite to me the page

1 numbers, please?

2 A No, I can't.

3 Q Why not?

4 A I don't believe the closing was discussed. I  
5 didn't discuss it in my testimony. And I  
6 believe I -- I'm the only witness on Chapter  
7 100.

8 Q So, in essence, there was no testimony  
9 disclosing that that transfer had taken place,  
10 correct?

11 A I don't believe there was any testimony,  
12 only --

13 Q From the company?

14 A Correct. Only filings and data responses.

15 Q This Commission does not necessarily see data  
16 responses, does it?

17 A That's -- that's true. I think they would have  
18 to be introduced into evidence.

19 Q Mr. Williams, were you ever instructed not to  
20 speak up to this Commission in regard to this  
21 -- this transfer?

22 A No, I was not.

23 Q Were you -- were you cautioned not to say  
24 anything --

25 A No.

1 Q -- about anything to this Commission regarding  
2 this transfer?

3 A No, I wasn't.

4 Q Earlier, you made some mention of saying that  
5 you thought that there might ought to be some  
6 clarification, but something to the extent that  
7 you were not allowed to discuss it or that you  
8 were told not to discuss it.

9 A I don't recall that.

10 Q Explain -- you don't?

11 A No.

12 Q I'll have to look at it, look it up, I guess.  
13 I don't have Live Note anymore to go back to  
14 that to look at it.

15 MR. BOUDREAU: If I might interject,  
16 I think I know what Mr. Williams was referring  
17 to. And it was at the close of the hearing --  
18 or as the hearing in September 21st was coming  
19 to go a conclusion.

20 A I don't remember.

21 MR. BOUDREAU: I don't recall the  
22 exact circumstances, but Mr. Williams took me  
23 to the side and --

24 COMMISSIONER GAW: I'm not trying to  
25 get into attorney/client discussions.

1                   MR. BOUDREAU: I know. But I just  
2                   will tell the Commission that I advised  
3                   Mr. Williams that he would probably not have an  
4                   opportunity to clarify the record because he  
5                   had already been up on the stand, testified.  
6                   There had been cross examination and questions  
7                   from the Commission.

8                   And so as a procedural matter, I told  
9                   Mr. Williams that I didn't think there was an  
10                  opportunity for him to retake the stand. So to  
11                  the extent that there was a reference to that,  
12                  that was the context in which it took place.

13                A    And I apologize. Now, put in that context, I  
14                  do recall that discussion. And it -- it  
15                  surrounded the issue of my concern about the  
16                  lack of understanding about how the Chapter 100  
17                  transaction itself operated.

18                  But it -- it seemed in your questioning of  
19                  later witnesses that there was a thought that  
20                  there was actually some cash that was changing  
21                  hands.

22                Q    (By Commissioner Gaw) So you were referring to  
23                  the actual mechanics of how -- how the money  
24                  moves from one party to another?

25                A    Or -- or doesn't move.

- 1 Q Or doesn't?
- 2 A Doesn't move.
- 3 Q Yes. Because in this case, not only was there  
4 no -- there never any money that's going to be  
5 paid by Aquila, Inc., to its affiliate for the  
6 -- for the turbines, because even though it  
7 shows up on the books as some sort of an  
8 obligation, Aquila has no intention to actually  
9 pay that money; is that right?
- 10 A That's correct.
- 11 Q So despite that fact it still shows up on  
12 Aquila's books somehow as an asset with some  
13 value, even though they're not going to pay for  
14 it, then there is a transfer subsequent to that  
15 to the City of Peculiar which was, as we now  
16 know, done at least in the records of Cass  
17 County on December the 30th of '04, correct?
- 18 A That's correct.
- 19 Q And then there is another transfer that's done  
20 by a lease agreement back to Aquila?
- 21 A Yes.
- 22 Q There are also bonds that have been issued,  
23 correct?
- 24 A Yes.
- 25 Q Those bonds were done in order to help get this

1 whole financing arrangement done to get, at  
2 least in part, Aquila to have -- to be in a  
3 position not to have to pay taxes on this South  
4 Harper facility --

5 A Yeah.

6 Q -- correct?

7 A I want to -- I want to try to --

8 Q Am I correct --?

9 A I want to --

10 Q Am I correct about that?

11 A You're correct, except --

12 Q I -- I will let you go back. I'm not trying to  
13 keep you from talking.

14 A All right.

15 Q But I just want to make sure that I'm -- I've  
16 got it right at that point. Now the next --  
17 and I'll let you go back. But the next -- the  
18 next thing, then, is -- is that Aquila actually  
19 purchased those bonds, correct?

20 A I understand legally they did. There was no  
21 cash, no accounting entries.

22 Q Aquila purchased the bonds, correct?

23 A From a legal standpoint, I understand they did.  
24 From an accounting standpoint, no transaction  
25 took place.

- 1 Q All right. So -- and those are the bonds that,  
2 at least today, according to the Court of  
3 Appeals, are void? But perhaps that's another  
4 legal issue of no significance to Aquila.
- 5 A It certainly is a legal issue in which Aquila  
6 is not a party to that case.
- 7 Q All right. And if those bonds are, indeed,  
8 void, then do you know what occurs if they're  
9 void in regard to those bonds?
- 10 A I -- I think it's -- at that point, the City  
11 has not fulfilled their obligations under the  
12 Chapter 100 legal transactions, and Aquila then  
13 unwinds the deal.
- 14 Q Because they have failed in their legal  
15 obligation, Peculiar has?
- 16 A The -- if -- if they are -- again, I'm not an  
17 attorney. But my understanding is that they  
18 would have not had the authority to enter into  
19 the Chapter 100 legal transaction that was  
20 required --
- 21 Q Yes.
- 22 A -- to comply with the statute. And, therefore,  
23 then Aquila would have the right to unwind the  
24 transactions. And you would go back to where  
25 we're paying regular property taxes on it -- on

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1 the deal.

2 Q Okay. Because Peculiar would not have complied  
3 with some legal requirement that they had in  
4 the agreement, that there would be this  
5 transfer and lease back with the bonds being  
6 the financing instrument?

7 A That's my understanding.

8 Q And would there not be some sort of a similar  
9 situation if Aquila had not complied with its  
10 legal obligations under the agreement to  
11 transfer good title to the City of Peculiar on  
12 the real estate that was ostensibly transferred  
13 December of '04?

14 A I -- again, I'm not an attorney. If --

15 Q You ventured out there on the other side of it.  
16 I just wondered if you wanted to venture out  
17 there on --

18 A I don't want to venture there. But I do want  
19 to go back to that -- where you promised me I  
20 could go back.

21 Q Are you saying that you don't -- if Aquila did  
22 not fulfill its legal obligation, wouldn't you  
23 imagine a similar argument could be made about  
24 whether or not this transaction had issues with  
25 it?

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1 A I am absolutely certain an argument could be  
2 made.

3 Q Yes. Now, what is it that you want to go back  
4 to?

5 A I wanted to go back to on your original  
6 statement that you said, well, no cash was paid  
7 for the turbines. And -- and that is only  
8 partially true because those turbines, at some  
9 point in time, were paid for in cash by an  
10 Aquila subsidiary.

11 Q Yes. But Aquila., Inc, never has paid anything  
12 to the affiliate for those turbines?

13 A That is is -- not in terms of cash, that's  
14 true. An accounting entry was made to transfer  
15 the asset value from that subsidiary to the  
16 Aquila utility.

17 Q In exchange for something in paper that says,  
18 We owe you?

19 A Basically, yes.

20 Q But there's -- there's already been plenty of  
21 testimony, as I recall, saying there's never  
22 going to be any payment of that obligation?

23 A There will be no cash payment. Yes. I -- I  
24 just wanted to clarify that.

25 Q I think I am following that. I think. Do you

1 -- do you know, Mr. Williams, if this matter is  
2 -- is unwound, will it be unwound prospectively  
3 or retrospectively?

4 In other words, is it going to be unwound  
5 back to December of '04 when it was closed or  
6 some time in the future? Do you know?

7 A My belief is, and, certainly, my understanding  
8 is that Aquila's intent would be that it would  
9 be done retroactively. How that would be  
10 accomplished, I don't know.

11 Q All right.

12 A And whether the other party to this would agree  
13 with that, I don't know.

14 Q Do you know how much money has been expended by  
15 Aquila -- don't answer this if -- if it's a --  
16 with a number because I suspect it might be  
17 highly confidential. Unless it isn't, and then  
18 go right ahead. But I wondered if -- you know,  
19 if you would know how much money has been  
20 expended on this -- on this transfer and  
21 subsequent work that's been done to ask for  
22 retroactive approval of this transfer by Aquila  
23 as of now? Do you have any idea?

24 A It would be in the area of 700,000 to a million  
25 dollars in that, in that area. And as we

1           talked earlier, that leads to part of the  
2           reason of why it is important that we have a --  
3           a -- as early a decision as possible because  
4           \$630,000 of that at least, and perhaps more,  
5           can be refunded to Aquila if we unwind the  
6           transaction.

7                     If we have the right to unwind the  
8           transaction, if we don't receive -- or we have  
9           the right to that refund and to unwind the  
10          transaction if we don't receive approval or --  
11          or -- or receive no approval by December 31st.

12         Q         Of '05?

13         A         Of '05. And we have ten days notice period.  
14                     So that -- backing that up, we kind of need an  
15                     order by December 19th.

16         Q         Now, do you have to give notice if -- if your  
17                     intention is to unwind it because of the Court  
18                     of Appeals case?

19         A         I don't know. I --

20         Q         And if that is correct, since that Court of  
21                     Appeals -- is that Court of Appeals case, is  
22                     there a motion to transfer to Supreme Court on  
23                     it? Do you know?

24         A         I heard earlier in the hearing that the belief  
25                     was that it had not -- the motion had not yet

1           been made, but that it was going to be made  
2           very soon.

3           Q     Okay.

4           A     I believe Mr. Boudreau spoke to that.

5           Q     But I'm not asking for a legal opinion here.

6           But in your experience, has -- would the  
7           Supreme Court be able to act on the case prior  
8           to your deadline for this year?

9           A     I would think that would be highly unlikely.

10          Q     So do you know whether or not the company is  
11          able to back out or back -- unwind, as you have  
12          been using that word, this transaction  
13          subsequent to the end of the year if that's the  
14          reason that the Court of Appeals -- that the  
15          bonds are flawed?

16          A     You're asking do we still get that refund of  
17          the \$630,000?

18          Q     Yes.

19          A     And I -- I don't know the answer to that,  
20          whether -- because the City had not fulfilled  
21          an obligation whether that changes that. I --  
22          I just don't know.

23          Q     And I would assume you probably don't know  
24          whether or not there -- there might be some  
25          sort of an argument that if Aquila had not

1 properly sought approval of the transfer and  
2 that that was the reason why this trans -- the  
3 transaction was not approved, that that would  
4 -- whether or not that would have an impact on  
5 whether you could receive that \$600,000 back?

6 A I -- I don't know if that would impact that  
7 either. The -- the December 19th date just, in  
8 my mind, is -- is just pointed at this  
9 Commission telling us -- you know, I recognize  
10 there are other unknowns. But that would add  
11 clarity, certainly, and help us in our business  
12 decision as to whether to unwind or to continue  
13 to go ahead and absorb the risk of those other  
14 possibilities.

15 COMMISSIONER GAW: That's all I have  
16 right now, Judge. Thank you.

17 JUDGE PRIDGIN: Commissioner Gaw,  
18 thank you. Let me see if we have any re-cross  
19 from counsel. Mr. Wheatley?

20 MR. WHEATLEY: Just a couple of quick  
21 questions, your Honor.

22 RE-CROSS EXAMINATION

23 BY MR. WHEATLEY:

24 Q Mr. Williams, you indicated that Beth Armstrong  
25 was the one that negotiated with the City of

1 Peculiar regarding the Chapter 100 financing?

2 A Yes. I think there may have been others  
3 involved, but she was certainly the lead  
4 negotiator.

5 Q All right. And you indicated that you had  
6 forwarded your testimony to her for review; is  
7 that correct?

8 A She probably -- she -- I believe I -- I did. I  
9 believe I did.

10 Q Did she have comments?

11 A No.

12 Q Did she file testimony in this proceeding?

13 A She did not file testimony in this proceeding.

14 Q You recognize that the Commission, obviously,  
15 because you're here issued an Order setting a  
16 hearing to look into all of the matters  
17 surrounding the Chapter 100 financing; is that  
18 correct?

19 A Yes, generally.

20 Q Okay. Is Beth Armstrong here? Yes or no?

21 A She is not here today.

22 Q Is Randy Miller, the Treasurer, is he here?  
23 Yes or no?

24 A He is not here today.

25 Q And Les Perette, you say he is no longer with

1 Aquila?

2 A That's correct.

3 Q Did he leave voluntarily?

4 A Yes, he did.

5 Q But he is not here today?

6 A No, he is not here today.

7 Q One last question. You indicated that -- as  
8 far as the Court of Appeals case regarding the  
9 revenue bonds which the Court of Appeals  
10 indicated that the revenue bonds were void for  
11 a different reason, that you were not -- Aquila  
12 was not a party to that case; is that correct?

13 A That is my understanding, yes.

14 Q And -- but could I ask you who is paying for  
15 the legal fees associated with that case on  
16 behalf of the City of Peculiar?

17 A Ultimately, that comes out -- it's my  
18 understanding, comes out of the pilot payments  
19 that are made. So it's -- it's funded out of  
20 the pilot payments. So the recipients of the  
21 pilot payments would ultimately, I guess,  
22 practically bear that cost.

23 MR. WHEATLEY: I don't have any  
24 further questions.

25 JUDGE PRIDGIN: Mr. Wheatley, thank

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1           you. Mr. Williams. And then I believe the  
2           Bench will have some follow up.

3                       COMMISSIONER GAW: Actually, if I  
4           could go ahead?

5                       JUDGE PRIDGIN: Certainly.

6                       COMMISSIONER GAW: And that way, it  
7           won't be as repetitive.

8                               RE CROSS EXAMINATION

9           BY COMMISSIONER GAW:

10          Q    I've just got a couple issues that I'd like to  
11                revisit real quick. Page 41 of the transcript,  
12                Mr. Williams, in questioning of you, the  
13                question was, "What is your understanding, if  
14                you -- if this is within something you think is  
15                appropriate for you to answer. Mr. Williams,  
16                what is the -- what in your view is the  
17                stipulation's bottom line as far as -- as far  
18                as the determination is concerned by this  
19                Commission?

20                       And then your answer says, "Bottom line,  
21                the stipulation accomplishes two things." And  
22                then you -- you give the first reason. And I'm  
23                going to skip one. It has to do with affiliate  
24                transaction. And the second one, you jump down  
25                to line 20. And I believe your answer is, "The

1 second -- the second thing that the stipulation  
2 accomplishes is the ability and approval to  
3 issue Chapter 100 bonds to finance the South  
4 Harper combustion turbines."

5 Do you recall giving that answer?

6 A Not specifically. But I believe --

7 Q Would you like to see it?

8 A No. I -- I believe that is an answer I would  
9 have given.

10 Q Now, help me understand why that is not a  
11 prospective statement when you use -- use the  
12 phrasing as you -- as you did in that answer.

13 A Because I -- I've looked at this whole  
14 transaction as being prospective in nature  
15 because, if the Commission does not grant  
16 approval, the Chapter 100 financing doesn't  
17 happen. To the extent it has happened, it's  
18 unwound. It's unwound, as I said,  
19 retroactively. So it cannot -- it doesn't  
20 happen.

21 Q But it did happen, didn't it, Mr. Williams? It  
22 had already occurred at least --

23 A But it's not --

24 Q -- as far as the Recorder's office was  
25 concerned for the legal title to the property,

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1 correct? There had already been a closing,  
2 correct?

3 A The transfer of title has taken place, it's my  
4 understanding, now.

5 Q Yes. So that had occurred. The Chapter 100  
6 bonds at that point in time had already been  
7 issued, had they not?

8 A The Chapter 100 bonds had happened. But  
9 without regulatory approval, they un happen. So  
10 that's the context that I'm speaking of it  
11 from.

12 Q And that was the message that you were  
13 delivering to this Commission when you gave  
14 that testimony was exactly what you said, I  
15 mean that these things will be unwound if you  
16 don't approve them and that's why I'm wording  
17 this prospectively?

18 A The -- the actual message was, and I've  
19 testified to this before, that if I had been  
20 asked those questions that day whether the  
21 title had transferred, I would have had to say  
22 I don't know because we've gotten into this  
23 discussion before. From my perspective, that  
24 was not an important question because the whole  
25 transaction was subject to regulatory approval.

1           And so whether anything had happened or not  
2           happened, I just hadn't focused on.

3           Q     Well, had anybody in the company focused on  
4           whether or not it was -- it was important for  
5           this Commission to know that this transfer and  
6           these bonds, issuance of the transfer -- of the  
7           bonds had already occurred, the transfer of the  
8           title to the property had already occurred?

9                     Did you -- were you aware of anybody in  
10           the company that cared whether this Commission  
11           knew that?

12          A     I don't think that we -- we focused on it. I  
13           mean, that would have been my responsibility.  
14           And -- and I didn't do it.

15          Q     Well, it isn't necessary -- I don't know if  
16           it's your responsibility or not, Mr. Williams.  
17           All I know is you were the one that the company  
18           offered. But you -- you have several times  
19           today said you don't know much about the  
20           issuance on -- on the legal side of any of this  
21           in regard to these transfers. And surely  
22           somebody in the company was focused on that.

23          A     I assume our General Counsel's office,  
24           Mr. Perette, had a good deal of involvement. I  
25           don't know what -- to what extent.

1 Q Let me -- let me continue here on this page.  
2 "Okay. I want to spend just a little bit of  
3 time on the Chapter 100 bonds issue. This is  
4 the method of financing -- or excuse me. This  
5 is the same method of financing that was  
6 utilized to finance the Aries plant, correct?"  
7 This is continuing on page 42, by the way.

8 Answer, "That's correct."

9 Question, "All right. The actual legal  
10 title to the three generating units if this  
11 transfer" -- if this transfer occurs, I  
12 repeated that myself -- "under Chapter 100  
13 financing, the legal title to it is held by  
14 whom?"

15 Answer, "The City of Peculiar."

16 And that -- that question is asking about  
17 what is going to happen, and your answer was it  
18 is going to be with the City of Peculiar.

19 At least help me to understand why at that  
20 point in time you didn't clarify that this  
21 transfer had already occurred.

22 A I think I've made that clear that if I --

23 Q I haven't asked you about this statement  
24 before.

25 A No. But, in general, if I had been asked that

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1 day did you know that the transfer -- had taken  
2 place, I would have had to say, I don't know.

3 Q Well, but you have already testified that you  
4 think you got an e-mail way back in January --

5 A Which I've already --

6 Q -- that told -- that told you the closing had  
7 taken place.

8 A Which I've also told you I probably -- I'm not  
9 even sure I looked at it. I -- I mentioned  
10 that I probably get an average of 200 e-mails a  
11 day, and I don't look at them all. And I may  
12 have looked at it and just -- and read it and  
13 it not dawned on me that it was important. And  
14 we've had that discussion --

15 Q That e-mail -- wait a minute. I want to  
16 clarify something, and maybe for your benefit.

17 A Yes.

18 Q You didn't know it was important. In other  
19 words, are you saying that you didn't know that  
20 the facts contained in that e-mail were  
21 important or that you didn't know at the time  
22 that that particular e-mail was important  
23 because you didn't know what the facts were  
24 that were -- that were in it -- that was in  
25 it?

- 1 A I would say -- well, I don't know because I  
2 don't know if I opened the e-mail.
- 3 Q So you don't know because you don't remember?
- 4 A Right. And if I did open the e-mail --
- 5 Q Now you know that you had an e-mail because you  
6 must have gone back and checked?
- 7 A Because I've gone back to check -- okay. I  
8 obviously messed up.
- 9 Q Look --
- 10 A I put things in the future tense that more  
11 appropriately should have been in the past  
12 tense. And I -- I've admitted that. I've said  
13 that. So I -- I said, well, when could I have  
14 known? When perhaps should I have known? And  
15 the earliest thing I can find is that January  
16 11th e-mail.
- 17 Q Mr. Williams, who decided that you would be the  
18 witness on this case?
- 19 A I imagine I did.
- 20 Q You're the one that makes the decision about  
21 what witnesses are called in -- for Aquila in  
22 cases?
- 23 A In -- in Missouri, I am. Yes.
- 24 Q No one else has any input into that?
- 25 A No. I mean, I -- I guess if I picked a witness

1           that -- that John Imson disagreed with, and he  
2           thought, Well, Denny Williams, you'll be a  
3           terrible witness, he would say, no, you're not  
4           going to do it. He didn't know -- he didn't to  
5           that. I -- I did inform him I was going to  
6           testify.

7                         And -- and at the time I made that  
8           decision, I thought I was the appropriate  
9           witness based upon the issues that we had  
10          addressed among the parties up to the hearing  
11          date.

12         Q         Who else from Aquila was present during that  
13                    hearing in September?

14         A         I'm sure Davis Rooney was because he --

15         Q         What's his position?

16         A         He's here in the room. Can I ask him?

17         Q         Sure. Sure. I don't care.

18                         MR. ROONEY: Financial manager of  
19                    Missouri.

20         A         He is the financial manager of Missouri. He  
21                    filed testimony, surrebuttal testimony, I  
22                    believe, on the valuation case.

23         Q         (By Commissioner Gaw) Say that -- say that  
24                    again for me, Mr. Williams. I'm sorry.

25         A         He is financial manager of Missouri. He filed

1           surrebuttal testimony on the valuation issue  
2           regarding the South Harper transfer.

3           Q     Okay.  Who else was here?

4           A     I don't recall anybody else from the company  
5           being here.

6           Q     All right.  On page 58 of the transcript, these  
7           questions will be much more clear because they  
8           were asked by Commissioner Clayton.

9                     "Most of the questions that I had -- that  
10           I had have been answered.  I want a little bit  
11           of clarification on a couple of points, and  
12           I'll try to do that quickly.

13                    First of all, clarify who owns the  
14           turbines right now?"

15                    Answer, "The turbines right now are owned  
16           by Aquila, Inc."

17                    That wasn't true, was it?

18           A     Only from an accounting perspective, not from a  
19           legal perspective.  And -- and I -- I had that  
20           discussion earlier in my testimony.

21           Q     Question, "Aquila, Inc., not by Aquila  
22           Equipment?"

23                    Answer, "No."

24           A     And as I pointed outer earlier --

25           Q     Let me keep going here.

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1 A Okay.

2 Q Line 25. "Okay. So Aquila, Inc., owns them  
3 today, would transfer them to the City of  
4 Peculiar. And if the court case or the Court  
5 rules that Aquila cannot continue, then  
6 unwinding the transaction, it would then be  
7 transferred back to Aquila, Inc., just like  
8 they are today?"

9 Answer, "More than likely, yes."

10 Again, statement about -- it appears to be  
11 a statement that Aquila, Inc., was the owner  
12 when you testified 9/21/05. Again, that wasn't  
13 true, was it?

14 A Only from an accounting perspective.

15 Q I don't -- I don't know where -- did you  
16 clarify that in this testimony somewhere that  
17 all of your answers were from an accounting  
18 perspective so that this Commission were aware  
19 of how -- of the -- of the narrowness of your  
20 response?

21 A No, I didn't. But I'm certainly not a legal  
22 expert, only an accounting expert.

23 Q I understand. But you didn't clarify that  
24 anywhere in here, did you?

25 A No. As I pointed out earlier today, our

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1 discussion was about AEQ versus Aquila. And we  
2 had talked about the transfer. And I  
3 interpreted the question, perhaps wrongly, as  
4 to where does ownership lie.

5 And -- and ownership, I was looking at it  
6 from an accounting ownership aspect, not from a  
7 legal. So --

8 Q But you didn't say anywhere in here that you  
9 were looking at it from an accounting  
10 standpoint, not a legal perspective?

11 A I did not.

12 COMMISSIONER GAW: I -- that's all I  
13 have. Thank you.

14 JUDGE PRIDGIN: Mr. Clayton.

15 RECROSS EXAMINATION

16 BY COMMISSIONER CLAYTON:

17 Q Mr. Williams, I just want to follow up on that.  
18 And after going through and listening to a  
19 number of your -- your answers and  
20 explanations, I just want to be -- I want to be  
21 clear. Is it your testimony that you knew that  
22 the transfer had occurred on this date in  
23 September, September 21st of 2005? When I  
24 asked you this question about who owned the  
25 turbines, is it your testimony that you -- you

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1 didn't know?

2 A No. It is not my -- it isn't -- please re-ask  
3 the question. I -- I want to know if it was in  
4 the positive or negative.

5 Q Yeah. I may need to re-ask the question. On  
6 September 21st, 2005, did you know that the  
7 transfer had occurred of the property in  
8 question to the City of Peculiar in December of  
9 the previous year?

10 A Probably not. I -- I -- and that -- that was  
11 the point I was trying to make when --

12 Q I know you've been trying to make the point all  
13 day, and I'm not following the point because  
14 your answer is, Well, I'm not sure and I don't  
15 recall, and it's hard to understand what you  
16 were thinking on September 21st.

17 A On September 21st, I certainly wasn't focused  
18 on the fact or -- or even was recalling that  
19 the transfer had taken place. Now, at any  
20 point up to that time, had anybody ever told me  
21 -- so had I ever had knowledge? Probably. But  
22 on September 21st, by that time, I had  
23 forgotten, if I ever knew.

24 Q Well, if -- if you know that the transfer  
25 occurred December 30th, 2004 -- and you know

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1           that today, correct?

2           A     That's correct.

3           Q     Or are you -- you know that today? We're firm  
4           on that?

5           A     Right. I do know.

6           Q     Okay. If I ask the question who owns the  
7           turbines right now, what is your answer?

8           A     From a legal standpoint --

9           Q     I just want to know who owns it. I'm not  
10          asking you a legal question. I'm not asking  
11          you an accounting question. I'm saying, common  
12          sense, who owns the turbines? Don't think too  
13          hard about it. Who owns them?

14          A     The problem is there are two answers. Legal  
15          title rests with the company. The --.

16          Q     Legal title rests with --

17          A     I mean, legal title rests with -- excuse me --  
18          with the City of Peculiar. The accounting --

19          Q     Title? Is it called accounting title?

20          A     No. That's --

21          Q     How do you -- how do you prove ownership -- how  
22          do you prove accounting ownership?

23          A     Is it recorded as an asset on the books.

24          Q     On somebody's books. Now, if that's the case,  
25          can you -- can you go to court and sue somebody

1 if they won't give you your accounting property  
2 back? Is that an enforceable action in court?

3 A I doubt it.

4 Q Let's make the assumption on -- in the  
5 converse. Let's assume that you -- you still  
6 don't know that the transfer occurred December  
7 30th. Let's say you do not know for sure. And  
8 I say, Who owns the turbines right now? What  
9 is your answer?

10 A If I did not know the transfer had taken place,  
11 I would say Aquila.

12 Q Aquila., Inc, or Aquila A -- Aquila EQ or --

13 A No. Not AEQ. Aquila Networks d/b/a MPS. We  
14 had the earlier discussion. It resides on the  
15 MPS books.

16 Q Okay. And is that from an accounting basis or  
17 on a legal basis?

18 A That would be from an accounting perspective.

19 Q Okay. Who owned it -- if you didn't know about  
20 the transaction, who would have owned it on a  
21 legal perspective?

22 A If I didn't know about the transaction?

23 Q Yeah.

24 A I would assume that it -- it hadn't -- it had  
25 not taken place. So I would have assumed that

1 ownership from a legal standpoint resided with  
2 Aquila. Only with my knowledge of the transfer  
3 would I think that legal title had passed to  
4 the City of Peculiar.

5 Q Well, could accounting ownership be held by  
6 anyone else? Could you give me another example  
7 where someone owns something by accounting --

8 A Certainly.

9 Q -- in another circumstance?

10 A Certainly. If the -- if the -- if the sale and  
11 lease back had been structured differently,  
12 then -- for example, if Aquila did not have  
13 total control over the assets, if Aquila -- or  
14 if Aquila did not take control back at the end  
15 of the lease, it is likely that it wouldn't --  
16 that the accounting requirements for ownership  
17 would not be met and those -- that asset would  
18 then not be recorded on the books of Aquila.  
19 They would not be deemed to own the assets by  
20 the accounting rules, only lease them.

21 Q I need to do campaign work, I guess.

22 A Well, perhaps accounting is just as confusing  
23 as law. I don't know.

24 Q Okay. I -- in -- and this is my last line. I  
25 just want to follow up the -- the last question

1           that I asked, which is a very difficult  
2           question to follow. But it related to the  
3           transfer of property between the City of  
4           Peculiar back to Aquila.

5                     And I'm referring to lines 1 through 4 on  
6           page 59 of the -- of the transcript. And if  
7           you'd like, I'll read it back. I'm just  
8           embarrassed about how bad the question is.  
9           Would you -- would that help?

10          A     You don't need to read it back. But I need to  
11           know the context of the question.

12          Q     First of all, I begin the sentence with the  
13           word "and," and that's not correct. "And if  
14           the court case or the Court rules that Aquila  
15           cannot continue in unwinding the transaction,  
16           they would then be transferred back to Aquila,  
17           Inc., just like they are today?"

18                     Now, if you were aware that the  
19           transaction had occurred, would you have  
20           answered the question in the same manner, which  
21           was more than likely, yes?

22          A     I believe I still would have answered the  
23           same. I -- I believe that -- what I was trying  
24           to convey is the transaction would be unwound,  
25           the Chapter 100 legal transaction.

1 Q But that assumes that the transaction hadn't  
2 occurred or that the transfer hadn't occurred  
3 because Aquila, Inc., still owned the assets on  
4 page 58.

5 A Well, then there would be -- then there would  
6 nothing to unwind. So ownership would stay  
7 with Aquila.

8 Q Well, but if we approved the transaction, if we  
9 would have approved it on September 22nd, the  
10 transaction occurred, there's still a Court of  
11 Appeals that unwinds the financing, correct?

12 A That could happen. Yes.

13 Q So the unwinding of transfer was the Missouri  
14 Court of Appeals case that the City of  
15 Peculiar, I guess, has been working for --

16 A Okay.

17 Q -- correct?

18 A If the -- I've lost track of the question. But  
19 if the question is could there have been -- if  
20 the Commission had approved the transfer and  
21 the transfer took place, could there ultimately  
22 have been other events that occurred for which  
23 the transaction could then be unwound, the  
24 answer is yes.

25 Q The property would be transferred back to

1 Aquila, Inc.?

2 A Yes.

3 Q Okay. It was my understanding that the  
4 transfer hadn't -- that the transaction had not  
5 occurred, reviewing this -- reviewing this --  
6 just looking at this testimony. I think it was  
7 my assumption that the transaction had not  
8 occurred.

9 And at the time, at the time the hearing  
10 this came -- this on-the-record presentation  
11 came up, we had just received word of the Court  
12 of Appeals case that had thrown out the Chapter  
13 100 financing. So the question was what  
14 happens if we go ahead and approve this, the  
15 transaction goes through and then the Court of  
16 Appeals case doesn't change? Does the  
17 transaction become -- does it unwind? And the  
18 answer was yes.

19 A And I believe the answer would still be yes.

20 Q What I didn't know is that the transaction had  
21 already occurred, nor does it seem anybody who  
22 was at the hearing that day seems to be aware.

23 The -- the responses from staff witnesses  
24 was that they were not aware that the  
25 transaction had occurred. Your testimony

1 indicates that the transaction had not  
2 occurred. None of the attorneys had corrected  
3 the record. It just -- it's very confusing  
4 going back and looking at this what information  
5 was available, who had it.

6 And in my previous line of questioning, I  
7 was asking was this something that was simply  
8 not communicated internally, or did anyone know  
9 about it?

10 A I think -- I think what occurred is you had  
11 four accounting witnesses, and perhaps we've  
12 learned that we need to focus more on the legal  
13 aspects as well as the accounting.

14 The reason we had accounting experts is  
15 because, up to that time, it was accounting  
16 issues that had been raised by the parties.  
17 Mr. Robertson, Mr. Kiebel, Mr. Rooney and I, I  
18 believe, are all accountants.

19 Q I -- I agree with that statement. But it's --  
20 it's Aquila's application, which asks for  
21 authorization to actually enter into the  
22 transaction, which was already -- had already  
23 been entered into at that time. It had already  
24 occurred, correct?

25 A Not at the time we filed the application.

1 Q What was the date that you have filed the  
2 application?

3 A I believe it was -- it was early December,  
4 either December 1st or 6th.

5 Q Do we have that date?

6 MR. WILLIAMS: December 6th.

7 JUDGE PRIDGIN: I believe it was the  
8 6th.

9 Q (Commissioner Clayton) So you filed it  
10 December 6th and then went ahead and did the  
11 transaction?

12 A Yes.

13 Q Went ahead and closed it --

14 A Yes.

15 Q -- and made all the transfers. And then you  
16 filed your testimony three week later?

17 A It is my -- it is my testimony that -- well,  
18 two weeks later. But it is my testimony that  
19 has caused the confusion. Yes.

20 Q Would you have been the Aquila employee that  
21 would have made the decision to go ahead and  
22 execute the documents entering into the  
23 transaction --

24 A No.

25 Q -- or consummating the transaction?

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1 A No.

2 Q Would that decision have been made in  
3 consultation with you?

4 A No.

5 Q What is your title?

6 A Vice President, Electric Regulatory Services.

7 Q Okay. And Aquila had filed a case requesting  
8 permission. Would it not have been prudent to  
9 ask their VP of Regulatory Affairs whether they  
10 could close out on the transaction?

11 A They probably recognized that that was a legal  
12 question and that I probably couldn't add much  
13 to the discussion. But it -- it is -- it may  
14 -- may have been appropriate to -- to inform  
15 me. I was, as I pointed out, informed on  
16 January 11th.

17 Q Let's -- so -- let's say they ask you the  
18 question on December 29th. Do you say, Go  
19 ahead and close the transaction?

20 A I would say check with our attorneys.

21 Q And that would have been with Mr. Perette,  
22 Leslie Perette, the General Counsel?

23 A Yes.

24 COMMISSIONER CLAYTON: Send it to the  
25 lawyers. Okay. Thank you, Mr. Williams.

1 JUDGE PRIDGIN: Commissioner Gaw?

2 COMMISSIONER GAW: Just a second.

3 FURTHER RECROSS EXAMINATION

4 BY COMMISSIONER GAW:

5 Q Mr. Williams, since you don't seem to recall  
6 whether or not you remembered on September the  
7 21st whether or not this transfer took place,  
8 when did you finally come to that knowledge  
9 subsequent to that day?

10 A It obviously became an issue either at the end  
11 of that hearing or the next day. It was -- it  
12 was quite soon. And so I -- I inquired and  
13 quickly found out.

14 Q And who did you inquire of?

15 A I believe I talked with Mr. Boudreau.

16 Q Well, don't tell me about what your  
17 conversations are with Mr. Boudreau, please.

18 COMMISSIONER GAW: That's all I have.  
19 Thank you.

20 JUDGE PRIDGIN: Commissioner Gaw,  
21 thank you. Mr. Williams, do you have any --  
22 any cross?

23 MR. WILLIAMS: Well, yes.

24 JUDGE PRIDGIN: With that tone, that  
25 leads me to think this might be a good time to

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1 -- to take a break, and we'll -- we'll pick up  
2 with your cross-examination. And then,  
3 Mr. Boudreau, you'll certainly have the chance  
4 to redirect as well.

5 MR. BOUDREAU: Thank you.

6 JUDGE PRIDGIN: All right. We'll go  
7 off the record for just a few minutes.

8 (Break in proceedings.)

9 JUDGE PRIDGIN: All right. We're  
10 back on the record. It looks as if we have all  
11 counsel back; is that correct?

12 MR. BOUDREAU: I believe that's  
13 right.

14 MR. WILLIAMS: Yes.

15 JUDGE PRIDGIN: All right. Very  
16 good. Mr. Williams, if you're ready.

17 RE-CROSS-EXAMINATION

18 BY MR. WILLIAMS:

19 Q Good evening, Mr. Williams. How are you doing?

20 A Good evening.

21 Q Earlier, you referenced having received an  
22 e-mail that provided you at least the  
23 opportunity to find that the Chapter 100  
24 financing had been entered into by Aquila. I  
25 believe it was in January 2005; is that

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1 correct?

2 A Yes.

3 Q Who was that e-mail from?

4 A It was from the General Counsel's office, so I  
5 believe it was from Les Perette.

6 Q Do you know if that e-mail was sent to anyone  
7 else other than you?

8 A Yes. It had other circulation, but I don't  
9 know all the parties or --

10 Q Do you recall any of them?

11 A Davis Rooney and I have discussed it. He got  
12 the e-mail as well. Other than that, I don't  
13 know.

14 Q You talked about unwinding the Chapter 100  
15 financing that was closed on December 30th of  
16 2004. I want you to work under the assumption  
17 that that transaction had never occurred and  
18 we're still here in front of the Commission  
19 with a pending application for a Chapter 100  
20 financing.

21 What would be the difference, from  
22 Aquila's perspective, of having a Chapter 100  
23 financing that closes, say, in 2005 as opposed  
24 to a Chapter 100 financing that closes in 2004?

25 A We would have over a million dollars in

1 property taxes added to the rate base, which  
2 would ultimately be paid by our customers.

3 Q And why would that ultimately be paid by your  
4 customers?

5 A Because it would be appropriate to include it  
6 in rates as a part of rate base.

7 Q Is that the company's opinion as to what would  
8 be appropriate?

9 A Yes, it is.

10 Q And it's something the Commission might not  
11 agree with, is it not?

12 A The company -- or the Commission, I guess, is  
13 free to disallow any cost.

14 Q Maybe you've already answered this. But you  
15 indicated, I believe, that at some point during  
16 or after the September 21, 2005 on the record,  
17 that you had internally clarified that the  
18 Chapter 100 had taken place?

19 A Yes.

20 Q Who did you internally clarify that with?

21 A I discussed it with Mr. Boudreau, I believe.  
22 My recollection is fuzzy. I don't know. And I  
23 -- I wanted -- I need to correct something that  
24 I -- I said before. I was asked earlier who  
25 was at the hearing with me. And I said Davis

1           Rooney. He was originally scheduled. And I  
2           have been reminded that because it was a  
3           unanimous stipulation, it wasn't felt that he  
4           would need to testify. So he was not here.  
5           And I believe he was probably at least one, if  
6           not the person we called to verify whether the  
7           transaction had closed.

8           Q     So you contacted Mr. Rooney at least?

9           A     At least. Yes.

10          Q     Anyone else that you recall?

11          A     Not that I recall.

12          Q     And wouldn't unwinding the transaction require  
13                 that the City of Peculiar have ownership of the  
14                 property?

15          A     I suppose that's true.

16          Q     So if the City --

17          A     You can't unwind that didn't happen, I suppose.

18          Q     So if the City of Peculiar never had ownership  
19                 of the property, there would be nothing to  
20                 unwind, would there?

21                         MR. BOUDREAU: Well, I'm going to  
22                         object to the question as argumentative.

23                         JUDGE PRIDGIN: Overruled.

24          A     Could you repeat the question?

25          Q     (By Mr. Williams) If Aquila never effectively

1 transferred title of the property to the City  
2 of Peculiar, there would be nothing to unwind,  
3 would there?

4 A That's -- that's probably true. It's part of  
5 the -- that Chapter 100, those legal  
6 transactions. If they never occurred, then you  
7 would not have to unwind them. So I guess all  
8 the discussion we had about unwinding the  
9 transaction, then, should have given me, and  
10 perhaps others, an indication that -- that the  
11 transaction had occurred.

12 Q Were there any tax ramifications regarding the  
13 combustion turbines in 2004 with regard to  
14 Aquila? Let me ask it a different way. When  
15 the combustion turbines were held by -- was it  
16 AEC or AEQ?

17 A Yet. It may be AEC.

18 Q Aquila Equipment. Let's call it that.

19 A Aquila Equipment.

20 Q A non-regulated affiliate, correct?

21 A Yes. I believe it's AEQ.

22 Q Were there any taxes being paid -- property  
23 taxes being paid on those combustion turbines  
24 while it was --

25 A No. They were held for -- for sale, so they

1           were not subject to property taxes as  
2           construction property.

3           Q     Did that status change in 2004?

4           A     That -- in 2004, that -- that status did change  
5           because the plant was then under construction,  
6           work in progress, and would have then been  
7           subject to property taxes.

8           Q     And whoever owned the property, then, on  
9           January 2001 of 2005 would be assessed for  
10          property taxes for the year 2005; is that not  
11          correct?

12          A     I'm not sure exactly when the payments would  
13          have been made. But, yes. And that's why I  
14          said that you'd have that money going in --  
15          additional money going into the rate base.

16          Q     Well, it's own owned the property on January 1  
17          of a year that -- the tax --

18          A     December 31st, '04 or January 1st, '05. But,  
19          yes, whoever owns the property.

20          Q     And you've talked about the Chapter 100  
21          financing, the 12/30/04 closing agreement and  
22          the unwinding, and there's some -- I guess some  
23          date of December 31, '05 by which Aquila needs  
24          to take some action if it's going to unwind  
25          under that agreement?

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1 A That's correct.

2 Q Could that agreement be extended, that date?

3 A We have been in discussions with the City of  
4 Peculiar to try to extend that agreement. And  
5 it is their position at this point that they  
6 are only willing to do that in return for  
7 additional funds.

8 Q Is that something -- is the additional -- the  
9 amount of the additional funds something that  
10 is HC, or is it something that you can disclose  
11 here?

12 A It's something that I don't know.

13 Q I want to turn your attention to something that  
14 I think we've been a little remiss in  
15 addressing, and that's the stipulation and  
16 agreement. Are you familiar with the terms of  
17 the stipulation and agreement?

18 A I am generally familiar. Actually, I have not  
19 reviewed them for some period of time.

20 Q I note that that the agreement is signed by  
21 Mr. Boudreau on behalf of Aquila. Do you know  
22 who authorized him to execute on behalf of  
23 Aquila?

24 A I did.

25 Q And are you familiar on page 6 of that

1 agreement where it says, Subject to the  
2 commitment set out below, the signatory parties  
3 agree that the Commission should approve  
4 Aquila's request to enter into a sale and lease  
5 back arrangement and for authority to subject  
6 the South Harper station, including the CTs, to  
7 the lien of indenture of trust for the security  
8 of -- for the benefit of the holders of up to  
9 and including 140 million of tax advantage  
10 revenue bonds issued under the authority of  
11 Chapter 100 RSMO, and, further, that these  
12 actions are not detrimental to the public  
13 interest?

14 A That's sounds correct. We did want the  
15 Commission to approve our entry into that  
16 transaction.

17 Q And this agreement is couched in terms of  
18 prospective, is it not?

19 A I'd have to read the exact words.

20 MR. WILLIAMS: May I approach?

21 JUDGE PRIDGIN: You may.

22 A It -- it more than likely is because the  
23 stipulation was prior to December 30th, as I  
24 recall. What it says is, "Subject to the  
25 commitment set out below, the signatory parties

1           agree that the Commission should approve  
2           Aquila's request to enter into a sale and lease  
3           back arrangement."

4                     And I would think that that language would  
5           apply either prospectively or currently.

6           Q     (By Mr. Williams)  And when was this agreement  
7           entered into?

8           A     The 1st day of September, 2005.

9           Q     And would you state, again, Aquila's position  
10          on the -- whether this agreement applies  
11          prospectively only or also retroactively?

12          A     To me, that language would apply to either.

13          Q     Why?

14          A     Because it is asking for approval from the  
15          Commission to enter into a transaction.

16          Q     And wouldn't that presuppose that the  
17          transaction has not yet occurred?

18          A     I don't draw that conclusion.  It goes back to  
19          -- to some of the discussion we had where we've  
20          done transactions in the past.  And maybe a  
21          merger is not the same as this.  But we -- we  
22          asked for approval to enter into a transaction  
23          that has -- has occurred.

24          Q     Did Aquila close its transaction when it  
25          acquired St. Joseph Light & Power Company

1 before it obtained the approval from this  
2 Commission to do so?

3 A As I understand, the definition that people  
4 have been using about closing is transferring  
5 title, and the answer to that is no.

6 Q Did Aquila close its -- the transaction -- it  
7 sought approval for the acquisition of Empire  
8 before it obtained Commission approval to do  
9 so?

10 A If you're referring to the transfer of title,  
11 the answer is no.

12 Q Are you familiar with the pleading Aquila filed  
13 entitled Response of Aquila, Inc., to Motion to  
14 Stay that was filed on or about September 28th,  
15 2005?

16 A I read it the day before it was filed. I don't  
17 believe I've looked at it subsequently.

18 Q Is there not attached -- I'll try to find the  
19 right one. A response by Aquila to Staff Data  
20 Request No. 33 that's signed by Mr. Davis  
21 Rooney that addresses when -- well, I'll just  
22 read the response, and you let me know if this  
23 is correct or not, if you know.

24 "Current legal title to this equipment is  
25 held by the City of Peculiar in accordance with

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1 the Chapter 100 arrangement. Title was  
2 transferred December 30th, 2004."

3 A I believe that's correct.

4 Q Does this indicate that Mr. Rooney perhaps knew  
5 more than you about what was going on with the  
6 Chapter 100 financing?

7 A I'm certain he probably did in regard to the  
8 closing of documents.

9 Q And didn't that data request indicate that it  
10 was -- the response was provided on March 18th  
11 of 2005?

12 A That's correct.

13 MR. WILLIAMS: No further questions.

14 JUDGE PRIDGIN: Mr. Williams, thank  
15 you. Let me see if we have any redirect.  
16 Mr. Boudreau?

17 MR. BOUDREAU: I don't -- well, I'm  
18 sorry. I don't want to take this out of order.  
19 Does redirect come after any additional  
20 questions from the Bench or --

21 JUDGE PRIDGIN: Normally, it would,  
22 but I don't think -- we may have some more  
23 questions from the Bench later. And let me  
24 also, I guess, clarify and make sure we have no  
25 further questions from the Bench or from

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1 counsel.

2 COMMISSIONER GAW: No. I'm going to  
3 stop. But I didn't know if Mr. Wheatley --  
4 because we -- we intervened after his testimony  
5 -- after his questions. Excuse me.

6 JUDGE PRIDGIN: Mr. Wheatley, no  
7 questions; is that correct?

8 MR. WHEATLEY: I have no further  
9 questions

10 JUDGE PRIDGIN: Thank you.  
11 Mr. Williams?

12 MR. WILLIAMS: I don't have any  
13 further questions at this time.

14 JUDGE PRIDGIN: In that case, Mr.  
15 Boudreau?

16 MR. BOUDREAU: I have no further  
17 questions for Mr. Denny Williams. Thank you.

18 JUDGE PRIDGIN: All right. Thank  
19 you. Is there anything further from the Bench?  
20 Seeing nothing, Mr. Williams, thank you very  
21 much for your time and your testimony. You may  
22 step down.

23 MR. DENNIS WILLIAMS: All right.  
24 Thank you.

25 JUDGE PRIDGIN: I don't think that we

1 have any more Bench questions for Aquila. Let  
2 me see if we have any -- anything for Staff.  
3 And, Mr. Nathan Williams, if you would -- see  
4 if the Commission has any -- any questions or  
5 concerns for Staff. Commissioner Gaw?

6 COMMISSIONER GAW: No.

7 JUDGE PRIDGIN: Commissioner Clayton?

8 COMMISSIONER CLAYTON: No.

9 JUDGE PRIDGIN: Anything further from  
10 counsel before we adjourn?

11 MR. BOUDREAU: No.

12 JUDGE PRIDGIN: Mr. Wheatley?

13 MR. WHEATLEY: Just one housekeeping  
14 matter, your -- Judge. Early in the  
15 proceeding, Commissioner Gaw had asked that --  
16 for a list of citations from the testimony and  
17 pleadings. I want to make sure that -- as I  
18 indicated, that has not been prepared, but I  
19 will need to prepare that. Do I need to  
20 reserve a -- an exhibit number for that or just  
21 file it as a normal filing with the Commission?

22 JUDGE PRIDGIN: I think, if you're  
23 just simply listing citations, I think just as  
24 some sort of pleading, just file it as a normal  
25 pleading and, obviously, copy all counsel of

1 record.

2 MR. WHEATLEY: Thank you very much.

3 JUDGE PRIDGIN: All right.

4 Mr. Williams?

5 MR. WILLIAMS: The only thing I'd  
6 like to do is reiterate Staff's position that  
7 the stipulation and agreement should be  
8 approved prospec -- for a -- prospectively for  
9 Chapter 100 financing, not for the financing  
10 that closed on December 30th of 2004.

11 COMMISSIONER CLAYTON: Can I ask a  
12 question?

13 JUDGE PRIDGIN: Commissioner Clayton?

14 COMMISSIONER CLAYTON: Regarding that  
15 position, Mr. Williams, does that mean that  
16 Staff would support, say, for example, the  
17 Commission approves the transaction looking  
18 forward, that could -- could Aquila basically  
19 cancel all the documents that have been  
20 executed and just re-execute new documents? Is  
21 that what that means?

22 MR. WILLIAMS: As long as there was  
23 no substantial change to the transaction, which  
24 had the December 30 of the '04 execution date.  
25 Say, for example, it became December 30th of

1 '05. Staff -- that's what Staff is saying  
2 should go ahead and occur.

3 COMMISSIONER CLAYTON: Does Staff  
4 have a position on Aquila's -- the statement  
5 that was made earlier by the other Mr. Williams  
6 about making a decision one way or the other by  
7 December 19th?

8 MR. WILLIAMS: No. Staff doesn't  
9 have a position on that. I mean, he's raised  
10 issues that we haven't considered.

11 COMMISSIONER CLAYTON: Is there a --  
12 a -- in terms of -- from the perspective of the  
13 ratepayer which circumstance would be in their  
14 best interest?

15 MR. WILLIAMS: I'm sure Staff will  
16 impute the Chapter 100 financing having closed  
17 properly in 2004. And it will end up hurting  
18 the company the longer there is a delay in  
19 properly doing the Chapter 100 financing.

20 And our position is that the current  
21 transaction that closed on December 30th, '04  
22 is void. It's like it never occurred at all  
23 from a legal perspective.

24 COMMISSIONER CLAYTON: Okay. Thank  
25 you.

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1 JUDGE PRIDGIN: Commissioner Gaw?

2 COMMISSIONER GAW: Is Staff  
3 suggesting that we approve a -- this -- this  
4 stipulation now based upon it being a unanimous  
5 stipulation?

6 MR. WILLIAMS: The stipulation of a  
7 non-unanimous stipulation that became unanimous  
8 by operation of -- of rule. The Staff believes  
9 that there has been no material lack of  
10 forthcoming by Aquila that affects the terms of  
11 the stipulation and agreement.

12 COMMISSIONER GAW: So Staff doesn't  
13 believe that it's problematic for Aquila to --  
14 to not disclose to this Commission that this  
15 transfer of the South Harper facility had been  
16 done on the legal records of Cass County in  
17 December of '04?

18 MR. WILLIAMS: I'm not sure what you  
19 mean by problematic. The Staff believes it was  
20 a void transaction.

21 COMMISSIONER GAW: And void isn't  
22 important to the stipulation? The voidness of  
23 it is not important? The fact that they went  
24 ahead and closed the transaction out getting  
25 permission from this Commission is not

1 important, not material?

2 MR. WILLIAMS: From Staff's  
3 perspective, we're looking for a benefit for  
4 the ratepayers to flow through from a Chapter  
5 100 financing. We still think that's what  
6 should be done. The problem is, in our view,  
7 Aquila didn't have the authority to go forward  
8 at the time it went forward with the  
9 transaction.

10 COMMISSIONER GAW: Well, they're not  
11 going to bear any consequence for that under  
12 Staff's position, are they?

13 MR. WILLIAMS: Oh, I think they're  
14 going to have a few consequences from having  
15 entered into a void transaction.

16 COMMISSIONER GAW: Such as?

17 MR. WILLIAMS: They've got to deal  
18 with the City of Peculiar. They're going to  
19 have to straighten out the mess they've  
20 created. And they're going to end up --

21 COMMISSIONER GAW: And that's not --  
22 that's something that Staff doesn't feel is --

23 MR. WILLIAMS: Well, there's more to  
24 it than that.

25 COMMISSIONER GAW: -- an issue?

1                   MR. WILLIAMS: They're also going to  
2 incur some property taxes that they would have  
3 otherwise have avoided.

4                   COMMISSIONER GAW: Where does the  
5 court case stand currently dealing with the  
6 citing issue?

7                   MR. WILLIAMS: Still pending a  
8 decision from the Court of Appeals as far as I  
9 know.

10                  COMMISSIONER GAW: All right. Now,  
11 if that decision ends up being much the same as  
12 the earlier decision and result, what does that  
13 do to this transaction?

14                  MR. WILLIAMS: I don't think they  
15 would have had the lawful authority to go  
16 forward with it, probably.

17                  COMMISSIONER GAW: So that would have  
18 been something that would have happened --  
19 would have been contemplated to have happened  
20 in the future back in September that could have  
21 caused an unwinding of this transaction, would  
22 it not?

23                  MR. WILLIAMS: Yes.

24                  COMMISSIONER GAW: And the particular  
25 bonding authority issue that is also before the

1 Court of Appeals, what's its status?

2 MR. WILLIAMS: From what Aquila said,  
3 and I know no more than that, other than a  
4 decision has been issued by the Court of  
5 Appeals. And it's my understanding that a  
6 request to the Court of Appeals for re-hearing  
7 or transfer has been denied.

8 COMMISSIONER GAW: And that  
9 particular decision concludes that the issuance  
10 of the bonds by the City of Peculiar on this  
11 particular transaction that we have before us  
12 here is also void before reason that the --  
13 authority was not given by the voters in the  
14 City of Peculiar. Is that accurate?

15 MR. WILLIAMS: It says that the  
16 transaction that occurred -- purportedly  
17 occurred December 30th was void for that  
18 reason.

19 COMMISSIONER GAW: Yes. So that  
20 decision was also at least around, maybe not  
21 final, but around and contemplated to have  
22 become potentially final in September when this  
23 hearing last held on this subject case before  
24 us, correct?

25 MR. WILLIAMS: I believe so.

1                   COMMISSIONER GAW: And that was  
2 another event that could have, I assume, you  
3 tell me if I'm wrong, caused the unwinding of  
4 this transaction prospectively from September  
5 21st of this year, correct?

6                   MR. WILLIAMS: Certainly.

7                   COMMISSIONER GAW: So there were at  
8 least two events outstanding that would have  
9 caused -- could have caused the unwinding of  
10 this matter other than this Commission's  
11 approval or disapproval of the actual matter  
12 that was in front of us on this case, correct?

13                  MR. WILLIAMS: Certainly.

14                  COMMISSIONER GAW: Now, what was --  
15 what was Aquila's initial request for relief in  
16 this case that's before us?

17                  MR. WILLIAMS: Principally, they  
18 asked for authority to engage in the Chapter  
19 100 financing and they asked for valuation of  
20 the combustion turbines that they transferred  
21 from their affiliate. And as I recall,  
22 initially, they asked for some kind of a  
23 prudence finding, which they withdrew later in  
24 connection with the CT transfer.

25                  COMMISSIONER GAW: And the

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1 stipulation that is filed that you agreed to,  
2 you've already pointed out clearly  
3 contemplates, at least in Staff's opinion, the  
4 future transfer?

5 MR. WILLIAMS: Correct.

6 COMMISSIONER GAW: Not a past  
7 transfer?

8 MR. WILLIAMS: Yes.

9 COMMISSIONER GAW: Isn't that a  
10 relevant and material item in the stipulation  
11 that is not correct, at least arguably?

12 MR. WILLIAMS: I think someone  
13 perhaps could take that argument. But it's  
14 Staff's position that the purported transaction  
15 is void, so it has no force and effect  
16 whatsoever. And Staff's view --

17 COMMISSIONER GAW: Well, it has some  
18 effect, doesn't it, because there are people in  
19 the world that go to look at the Recorder's  
20 office and City of Peculiar -- or excuse me --  
21 for the County of Cass who will be informed  
22 that the legal title, if they look in there, is  
23 actually resting currently with the City of  
24 Peculiar; isn't that true?

25 MR. WILLIAMS: I think there's a

1 cloud on the title, sure.

2 COMMISSIONER GAW: But it's not  
3 necessarily evident to someone who goes and  
4 does a title search in the County of Cass, is  
5 it?

6 MR. WILLIAMS: No.

7 COMMISSIONER GAW: So at least on the  
8 surface, those who are not aware of this case  
9 in Cole -- not even in Cole County Circuit  
10 Court. It's an administrative agency. That, to  
11 the world, a notice appears to be that City of  
12 Peculiar, not the -- not Aquila, Inc., owns  
13 this property because of a transfer that  
14 occurred December 30th in 2004, correct?

15 MR. WILLIAMS: Sure.

16 COMMISSIONER GAW: That's all I have.  
17 Thank you.

18 JUDGE PRIDGIN: Commissioner, thank  
19 you. Mr. Boudreau?

20 MR. BOUDREAU: If I might -- and just  
21 addressing one question I think that  
22 Commissioner Gaw put to my witness that I think  
23 I'm in a better position to answer than the  
24 within was. And I think -- I think it was you,  
25 Commissioner Gaw, that asked could these two

1 cases have been filed separately. And the two  
2 issues, the affiliate transfer and the Chapter  
3 100 financing. And it may have been another  
4 commissioner.

5 COMMISSIONER GAW: I'm not sure I  
6 did.

7 MR. BOUDREAU: Somebody asked that  
8 question. And speaking from the attorney that  
9 packages these and files with the Commission,  
10 the explanation I would offer is that -- that  
11 my general practice has been that when you have  
12 a number of issues that deal generally with the  
13 same subject matter, I'll tend to put them into  
14 one package and file them simply because it  
15 gives better context.

16 You can file all these things separately  
17 and then it makes it a little bit more  
18 difficulty, I think, for not only me, but I  
19 think the Commissioners to connect the dots as  
20 to how one case connects to other connects to  
21 another. And I thought that it actually was --  
22 my hope is that's of some assistance to kind of  
23 package them to the extent practicable. So  
24 that's why that was done. I'm sorry I can't  
25 recall who asked the question but --

1                   COMMISSIONER GAW: Mr. Boudreau, I  
2                   don't recall asking that particular question.  
3                   Although, in this case, I will suggest to you  
4                   that I would have loved to have seen some dots  
5                   connecting to this Commission the actual  
6                   transfer of these assets in -- on December the  
7                   of 2004.

8                   It would have been extremely helpful to  
9                   have seen somebody say something about that  
10                  issue in the -- in the course of this whole  
11                  case up to when it was finally disclosed  
12                  subsequent to September the 21st.

13                  MR. BOUDREAU: Commissioner Gaw, I  
14                  completely understand where you're coming from.  
15                  And it gives me no satisfaction to -- to -- to  
16                  be put through it or to put you through this.  
17                  And -- and as I pointed out at the beginning --

18                  COMMISSIONER GAW: I understand that.

19                  MR. BOUDREAU: Clearly, I could have  
20                  done my job somewhat better in terms of making  
21                  sure that I understood with clarity all of the  
22                  different pieces of the puzzle. And I didn't  
23                  do that. And to the extent it's my failing and  
24                  I apologize to the Commission and to the -- the  
25                  other parties to this case.

1                   COMMISSIONER GAW:  Someone from  
2                   Aquila knew all of the facts that were involved  
3                   in this case in regard to what -- what was done  
4                   moving forward with a legal transaction  
5                   internally, someone new that.  And more than  
6                   one individual had to have known it, and it  
7                   wasn't disclosed to us.

8                   And I assume the legal trans -- the legal  
9                   matters involving that transfer were done  
10                  in-house or with Kansas City counsel.  I'm not  
11                  sure who -- I'm not sure what -- why those  
12                  individuals did not relay that on.  But I'm not  
13                  asking a question.  I'm just speaking from my  
14                  own standpoint.  I'm not asking you to answer  
15                  that.  Thank you.

16                  MR. WILLIAMS:  If I may?

17                  JUDGE PRIDGIN:  Thank you,  
18                  Commissioner.  Mr. Williams?

19                  MR. WILLIAMS:  I'd just point out  
20                  that Staff it is not taking the position as to  
21                  whether the Commission should go forward with  
22                  an order approving the stipulation and  
23                  agreement and granting Aquila the authority,  
24                  whether it be done before or after some pending  
25                  court cases.

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1                   COMMISSIONER CLAYTON: Okay. Can I  
2 ask one question?

3                   JUDGE PRIDGIN: Commissioner Clayton?

4                   COMMISSIONER CLAYTON: Mr. Nathan  
5 Williams, you've been involved -- have you been  
6 involved in this Aquila matter in the South  
7 Harper facility and the bonding issue from the  
8 beginning?

9                   MR. WILLIAMS: I've been involved in  
10 this case from the beginning.

11                   COMMISSIONER CLAYTON: This case from  
12 the beginning. So is that a no, you haven't  
13 been involved in the other cases?

14                   MR. WILLIAMS: I wasn't involved in  
15 the 248 case.

16                   COMMISSIONER CLAYTON: Okay.

17                   MR. WILLIAMS: Although I was made  
18 aware of it.

19                   COMMISSIONER CLAYTON: Were you aware  
20 of the declaratory judgment action involving  
21 this matter?

22                   MR. WILLIAMS: Are you talking about  
23 the Stop Aquila action?

24                   COMMISSIONER CLAYTON: Well, there  
25 were two actions that were filed before Judge

1 Dandurand, I understand. One was appealed up  
2 affirming his decision that there was for the  
3 proper zoning authority. The second is this  
4 DW5000 case that has unwound or suggested that  
5 bonds are not valid without a public vote.  
6 Were you -- when -- were you involved in the  
7 Circuit Court level of this case?

8 MR. WILLIAMS: I had some awareness  
9 of it. I was directly involved in it.

10 COMMISSIONER CLAYTON: When did you  
11 become aware of it? When did you -- when did  
12 you achieve your awareness?

13 MR. WILLIAMS: It was fairly early on  
14 in the Circuit Court level.

15 COMMISSIONER CLAYTON: Okay. And did  
16 you ever seek to intervene or did you ever  
17 approach the Commission to intervene and  
18 monitor the progress of this case?

19 MR. WILLIAMS: Are you talking about  
20 the -- which case are you referring to?

21 COMMISSIONER CLAYTON: The bond case  
22 with the City of Peculiar, Stop Aquila v. City  
23 of Peculiar.

24 MR. WILLIAMS: I believe I  
25 misunderstood you, then. I didn't become aware

1 of that case until about the time the decision  
2 issued.

3 COMMISSIONER CLAYTON: The appellate  
4 decision?

5 MR. WILLIAMS: Right. I was unaware  
6 that there was --

7 COMMISSIONER CLAYTON: Which was  
8 dated -- well, the hand-down date is October  
9 4th. But I suppose the slip opinion came out  
10 sooner than that. Would you agree with that?

11 MR. WILLIAMS: Sure.

12 COMMISSIONER CLAYTON: Well, I don't  
13 know. I don't --

14 MR. WILLIAMS: It's on or about the  
15 same date.

16 COMMISSIONER CLAYTON: But you didn't  
17 -- did anyone else from the Public Service  
18 Commission staff have any knowledge of this  
19 WD65000 case, StopAquila.org v. City of  
20 Peculiar?

21 MR. WILLIAMS: No, not to my  
22 knowledge. I don't know for certain, though.  
23 I certainly wasn't aware of it until about the  
24 time it was handed down.

25 COMMISSIONER CLAYTON: Was Office of

1 Public Counsel aware of this -- this -- the  
2 existence of this case?

3 MR. WHEATLEY: No, Commissioner.

4 COMMISSIONER CLAYTON: The -- the  
5 Statement of Facts make reference to the fact  
6 that the bonds were issued, but you all didn't  
7 even know about this case being involved?

8 MR. WHEATLEY: (Mr. Wheatley shakes  
9 head.)

10 MR. WILLIAMS: No. Commissioner, I  
11 can assure you not until the afternoon of  
12 September 21 of this year did I have any  
13 knowledge whatsoever that there had been any  
14 closing. I did not see the data request.

15 COMMISSIONER CLAYTON: You didn't  
16 even know about this case? You didn't even  
17 know that this attack on the bonding even  
18 existed, did you?

19 MR. WILLIAMS: Correct. I did not  
20 know.

21 COMMISSIONER CLAYTON: Okay. Thank  
22 you.

23 JUDGE PRIDGIN: Commissioner Gaw?

24 COMMISSIONER GAW: Who reviewed the  
25 stipulation before it was signed?

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1 MR. WILLIAMS: On behalf of Staff?

2 COMMISSIONER GAW: Yes.

3 MR. WILLIAMS: I believe it went  
4 through Division Director approval.

5 COMMISSIONER GAW: Did you review it?

6 MR. WILLIAMS: Yes.

7 COMMISSIONER GAW: Anyone else with  
8 General Counsel's office?

9 MR. WILLIAMS: I don't recall if  
10 Steve Dottheim did or not. I'm sure Dan Joyce  
11 had an opportunity to, either he or Steve.

12 COMMISSIONER GAW: But you were never  
13 informed by anyone in -- in regard to the  
14 status of the title -- or the transfer of the  
15 South Harper facility prior to what you just  
16 informed Commissioner Clayton?

17 MR. WILLIAMS: Correct.

18 COMMISSIONER GAW: Public Counsel?  
19 Same answer from Public Counsel's office about  
20 when Public Counsel was made aware or became  
21 aware, I should say, of the transfer?

22 MR. WHEATLEY: Yes. Let me -- let me  
23 just explain that I was --my employment with  
24 the Office of Public Counsel started August  
25 29th. And the agreement was signed on

1           September 1st. Doug Micheel, who was formerly  
2           with the office, negotiated the terms of the --  
3           of the stipulation and agreement.

4                     But I think it's -- it's safe to say that  
5           as -- as Mr. Nathan Williams indicated, we were  
6           not aware that -- of the -- that the bonds had  
7           been closed in December of 2004 until following  
8           the hearing on September 21st.

9                     COMMISSIONER GAW: Or that the  
10          transfer the real estate had occurred?

11                    MR. WHEATLEY: Correct.

12                    COMMISSIONER GAW: Okay.

13                    JUDGE PRIDGIN: All right. Thank  
14          you, Commissioner. Anything else from the  
15          Bench or from counsel? All right. Hearing  
16          nothing, then we'll adjourn this hearing in  
17          Case No. EO-2005-0156. Thank you very much.  
18          We are off the record.

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