



Exh. 2
Atten

PSC Testimony for EA-2006-0309

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3/20/2006

FILED³
APR 5 2006
Missouri Public
Service Commission

Public
Hearing Exhibit No. 2
Date 3/20/06 Case No. EA-2006-0309
Reporter _____

Oath of Office



I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Missouri, and that I will faithfully and honestly discharge duties as Commissioner, of the Public Service Commission, of the State of Missouri.

•As each of you know, this is the oath each Public Service Commissioner takes when sworn in to office.

•This is the oath we pray you'll uphold as you consider StopAquila.org's motion to dismiss or deny "permission and approval and a Certificate of Public Convenience and Necessity authorizing Aquila to acquire, construct, install, own, operate, maintain, and otherwise control and manage electrical production and related facilities in unincorporated areas of Cass County, Missouri near the town of Peculiar".

•The oath is a commitment that ensures public trust and needed oversight for a myriad of public corporations, not the least of which are utility companies that are granted monopolies to fulfill obligations to serve the public.

•In these United States and in the State of Missouri, monopolies are not granted without ensuring regulation and oversight by the government to protect the rights of individuals, local governments, and those who rely on the holder of a monopoly for goods and services.



StopAquila.org Membership

Every member of StopAquila.org signed a membership form stating that:

As a member of StopAquila.org, I believe that:

- Utility companies must be required to seek and obtain the zoning and permitting from the appropriate local authority as set forth in the Missouri Constitution prior to building facilities specified in the Constitution.
- Utility companies must abide by the rules and regulations of the Missouri Public Service Commission.
- Rate payers should not be asked or required to subsidize facilities that are not truly needed to ensure power. A utility that purposefully divests itself of facilities and contracts for power is not justified in claiming "need" for a new facility if the need appears to be associated with divestiture from existing resources.
- Rate payers should not be required to subsidize the South Harper plant that was built without adherence to applicable Missouri laws, County zoning and permitting, and rules and regulations of the Missouri Public Service Commission.
- The order of Judge Dandurand, that Aquila originally agreed to, requiring that the South Harper plant be dismantled should appeals fail to overturn his judgment should be enforced.
- Aquila management should be held accountable for knowingly failing to abide by the applicable laws set forth in the Missouri Constitution, the County of Cass, and the rules and regulations of the Missouri Public Service Commission.

Within the membership form, people were encouraged to cross out any of the above statements if they did not agree with the statement. Not one of the members of StopAquila.org elected to deselect any part of any of the above statements.

United States Constitution



Excerpt from the Amendment XIV, *Passed by Congress June 13, 1866. Ratified July 9, 1868.*

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- In Aquila's haste to transfer 3 old technology turbines purchased on the unregulated side of their business to the regulated side of the business where they could (and did) request that rate payers help subsidize their past poor management decisions, and take advantage of tax shelter and debt service rates not otherwise available to them, I believe that Aquila in collusion with officials of The City of Peculiar, **deprived the citizens of property without due process of law.**
- While StopAquila.org has previously prepared and submitted testimony that outlines statistics regarding loss of property value that occurs within specified distances from a power plant, my husband and I, and others have real life, concrete experience in loss of property without due process associated with the South Harper plant.

United States Constitution



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- Having previously owned a home in Grandview where an industrial area was established nearby that severely impacted the value of our property, Dave & I spent years – literally – looking for the perfect home that would provide a peaceful, natural environment, yet ensure a wise investment that would maintain or appreciate in value over time.
- We thought that the purchase of our home in Miller’s Point met all of those requirements. The atmosphere was peaceful, nature was plentiful, subdivision restrictions and County zoning in the area would ensure that the value of our property would be protected.
- In December, 2001 we invested approximately a quarter of a million dollars trusting that the peace we sought on our 700 square foot wrap around porch would be money well spent. For the first several years, we were certain that we made the right and perfect choice.

United States Constitution



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- The benefits of our decision were clear. We both experienced many significant mental and physical benefits associated directly with our choice to invest in our home that is now approximately a mile from the South Harper plant. Even though the move required each of us to commute about 50 miles per day to and from work, the benefits far outweighed the additional time and financial commitment of the commute.
- Late in 2004, it became clear that our peace, well-being, and property were threatened. Alerted by an article in the Kansas City Star regarding a public forum that Aquila would host about the proposed power plant, I frantically sought to alert other neighbors and encourage their attendance. We sought desperately for a resource that would tell us how and when we could participate in and influence the process.
- My neighbors and I have spent thousands of hours, thousands of dollars, and many sleepless nights ever since that day requesting that our rights as citizens and property owners be protected.

United States Constitution



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- The members of StopAquila.org, formerly known as Neighbors Against Annexation, were exhilarated when the City of Peculiar dropped plans to proceed with what we counseled was a plan to illegally annex Harper Road and the site for South Harper. We were confident that Cass County would allow us due process in the proceedings that we believed would follow surrounding zoning and/or Special Use Permit request for the plant.
- At that time, we had no reason to believe that Aquila would thumb its' nose at the law and at standard practice within the State of Missouri – and probably the United States. We believed that Aquila would apply to Cass County (the appropriate municipality) for zoning or a Special Use Permit since the parcel is in an Agricultural and Residential area.

My real life example that follows is proof that we have, indeed, been deprived of property without due process. It isn't conjecture or about other plants.

- My husband has worked hard his whole life. He's spent nearly 37 years at his current employer providing for our family. He suffers from chronic allergies, Crone's disease, and had to undergo open heart surgery last summer. Heart patients are told that there are three things they must focus on to minimize risk and prolong their lives as they live with Heart Disease: Diet, Exercise, and Stress. Now, more than ever, it is imperative that we seek to minimize stress in our lives.

United States Constitution



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- One way to reduce stress is to retire. As we discussed retirement, Dave indicated that to retire in our current situation would not be an option. He argued that all of the reasons we chose to move to our home and why we valued our home are now gone. Aquila, in building the South Harper plant, took that from us.
- Aquila, in building the South Harper plant, has added incredible stress to our lives. In robbing us of property without due process, they've ruined the peaceful, harmonious atmosphere that we treasured. We decided to look for a new oasis, away from the pollution that exacerbated allergies, and away from the stress that inflames Crone's and encourages further progression of heart disease.
- When we weren't engaged in the battle over the power plant, we began to spend much of our time actively searching for a new home. We found Dave's dream farm, put our house on the market, and put in an offer to purchase the farm contingent on the sale of our home.

United States Constitution



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- The contract on the 80 acre farm outside of Adrian was presented to the sellers and we were told we could expect a counter offer. Our realtor tells us that the night before the offer was to expire, the seller drove by our home. The seller subsequently made no counter offer and stated that the reason they did not counter was because they did not believe we could sell our home in a reasonable period of time because of the power plant.
- If South Harper were not there, or if I was 100% certain that the order to deconstruct would be followed on May 31st, I would have consented to my husband's request to present another offer – one that was not contingent on the sale of our home. Given the grueling ups and downs of this 16 month struggle and surprising turns that keep us in peril, I could not consent to risk everything.
- As the struggle with Aquila has evolved, our rights, our lives, our relationships, and my husband's health has been compromised. The stress over the failed attempt to purchase the farm has been unreal. Dave has suffered unprecedented and severely debilitating Crone's attacks and has been unable to focus on little except how to get that farm.



United States Constitution

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- We decided to keep our house on the market in hopes of a quick offer. Our realtor received a call from a potential buyer. They had numerous questions about the power plant and when the realtor answered the questions, the potential buyer had no interest in pursuing.
- In a second instance, our realtor was contacted by a buyer's agent. She answered many questions about the home and after conferring with the potential buyer, the buyer's agent scheduled an appointment to see our home. Prior to the visit, the buyer's agent requested that our agent fax the Seller's disclosure. Since Dave & I are honest, law abiding citizens, we responded honestly to the portion of the disclosure requiring us to state any conditions in the surrounding area that may impact property value. I stated it in as positive a light as possible to item 13b... "Power plant approximately 1 mile away to be removed May 31, 2006". After review of the disclosure and response to a litany of questions regarding the power plant, the potential buyer canceled the appointment.
- The farm that we wanted to purchase was not available to us because of South Harper. Potential buyers declined to pursue interest in our property because we were honest about South Harper. And now, I'll have to tell my husband that, once again, his dreams have been dashed. Someone else has a contract to purchase "our farm".

United States Constitution



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- I'll leave it to the others and to the lawyers to outline all of the details of the specific statutes and supporting cases outlining how due process rights should have been respected **PRIOR** to Aquila beginning and completing construction of South Harper.
- Thankfully, the government of Cass County takes it's duties seriously when it comes to fulfilling their obligation to afford citizens due process prior to considering situations that will result in deprivation of property. While StopAquila.org is absolutely committed to prevailing, we certainly don't possess unlimited resources. We are grateful to the County for pursuing justice.

Members of StopAquila.org have been deprived of property without due process of law specifically related to Aquila's actions in owning, constructing, and operating South Harper.

State of Missouri Constitution



Excerpt from Missouri Constitution, Article I Bill of Rights

Section 2. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

Section 10. That no person shall be deprived of life, liberty or property without due process of law.

- The Bill of Rights within the Missouri State Constitution speaks strongly to natural rights of persons and to government responsibility in protecting those rights.
- Section 2 indicates that the primary purpose of government is to give security to the "...natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry;..."
- Section 10 restates the sentiments found within the United States Constitution. It isn't confusing or unclear. It doesn't imply that some people have rights or that Corporations have rights. Section 10 clearly states that **NO person** shall be deprived of life, liberty, or property without due process of law.

State of Missouri Constitution



Excerpt from Missouri Constitution, Article I Bill of Rights

Section 2. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

Section 10. That no person shall be deprived of life, liberty or property without due process of law.

- If Aquila had abided by the law and sought zoning or Special Use Permit from Cass County, I'm confident that the County would have provided all of us the opportunity to be heard and would have considered our testimony in the matter prior to making a decision.
- Certainly there remains the possibility that in such a situation, Cass County could have allowed the zoning change or may have authorized a Special Use Permit. Had that transpired, I wouldn't have been happy, but I also wouldn't have been deprived of property without due process.

State of Missouri Constitution



Excerpt from Missouri Constitution, Article I Bill of Rights

Section 2. That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

Section 10. That no person shall be deprived of life, liberty or property without due process of law.

- Members of StopAquila.org are also appreciative that the Courts of this state have confirmed our contentions and have supported the laws of the State of Missouri.
- The Appellate Court confirmed that the City of Peculiar denied citizens' rights in entering the 100 bond agreement without a vote of qualified electorate.
- The Circuit and Appellate Courts have confirmed TWICE EACH that Aquila constructed a plant without the legal authority to do so. The Appellate Court did NOT overturn the decision or permanent injunction issued by the Circuit Court. Aquila has been ordered to deconstruct the plant beginning May 31st.

We are counting on you not to force us back into the courts to prove what has already been proven. We are counting on you to support the intent and letter of the law pertaining to the Bill of Rights within the Constitution of the State of Missouri.

Duties as Commissioner of the MO PSC



In addition to supporting the United States and Missouri Constitutions, Commissioners of the Missouri Public Service Commission are bound to faithfully and honestly discharge the duties of Commissioner.

- The duties of Commissioners of the PSC are many and it is my assumption that the Commission must rely heavily on recommendations from Staff, the Office of the Public Counsel, and the filings and testimony of the monopolies the Commission is charged with regulating.
- It is also my assumption that the Commission has at its disposal, knowledge of
 - Revised Statutes of the State of Missouri
 - Case law surrounding oversight of utilities
 - Court orders specifically pertaining to this case
 - Historical PSC practices when Special Certificates of Need and Necessity were granted in the State of Missouri
 - At least some awareness of practices regarding authorization for power plant siting outside of the State of Missouri
 - Testimony from rate payers and citizens
- Finally, I assume that to become a Commissioner of the PSC, you were deemed to possess the ability to reason and use common sense within the confines of the authority granted to you to make appropriate decisions in the oversight of public utilities in general and in this case in particular.

Duties as Commissioner of the MO PSC



In addition to supporting the United States and Missouri Constitutions, Commissioners of the Missouri Public Service Commission are bound to faithfully and honestly discharge the duties of Commissioner.

- I've read (and re-read) Public Service Commission Law, Chapter 386 and the various sections specified in section 386.010. I've cuddled up with Article VI Sections 18 & 27, and topped it off with perusal of Chapter 536 and 4CSR-240.20.

- I don't profess to be the brightest person, but I failed to find any law that provides the Commission authority to:
 - Approve a request for 100 Bond financing when the request was made AFTER the agreement was completed. The law clearly states that the order must be secured from the PSC prior to entering such an agreement. In my mind, that would also require that the request for such order would have to be made PRIOR to entering into the agreement. (RSMO 393.190)
 - Condone a utility to proceed with 100 Bond financing when the municipality (City of Peculiar) denied citizens the right to vote on the issue. The statute is very clear about the requirement for 100 Bond financing to be submitted to a vote of the people. The statute even specifies the ballot language. Additionally, those most impacted by the South Harper plant were denied the right to educate voters and influence the outcome of the vote. (RSMO 393.760)
 - Approve an affiliate transaction for the transfer of turbines if Evidentiary Standards were not met and/or if the value of the turbines did not comply with fair market value (4 CSR 240-20.15). Although I don't have personal knowledge of all circumstances regarding the transaction, I would encourage the Commission to examine the transaction closely.

Duties as Commissioner of the MO PSC



In addition to supporting the United States and Missouri Constitutions, Commissioners of the Missouri Public Service Commission are bound to faithfully and honestly discharge the duties of Commissioner.

- Approve the owning, construction, operation, and maintenance of a power plant AFTER it was constructed. (RSMO 393.170) The language of the statute specifies that the permission and approval of the commission must be approved "first"-PRIOR- to beginning construction. Asking now does not satisfy the law.
- Approve the owning, construction, operation, and maintenance of a power plant without the required consent of the appropriate municipality. (RSMO 393.170) Although City of Peculiar officials and Aquila intended that the city would provide zoning/consent, their plan to illegally annex the property failed. Therefore, the appropriate municipality became Cass County.
- Approve rate increases that include generation BEFORE it is in service and is labeled by Commissioner Gaw as "phantom" and "fictional" in his dissent of the ER-2005-0436. (RSMO 393.135)
- Ignore instances in which a public utility provides misrepresentation to the public or the PSC. Members of StopAquila.org could write a book on all of the misrepresentations that Aquila has made to the public and other entities surrounding the planning, owning, building, and operating of South Harper. (RSMO 386.560)

•What I did find was that:

- (RSMO 536.014) No department, agency, commission or board rule shall be valid in the event that:
 - 1) There is an absence of statutory authority for the rule or any portion thereof; or
 - 2) The rule is in conflict with state law; or
 - 3) The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

Duties as Commissioner of the MO PSC



In addition to supporting the United States and Missouri Constitutions, Commissioners of the Missouri Public Service Commission are bound to faithfully and honestly discharge the duties of Commissioner.

- We have all heard Aquila attempt to blame the PSC for their actions by reiterating their "belief" that the 1938 Certificate granting them the authority to string power lines also gave them unfettered authority to build anything they want anywhere they want. Funny how beliefs change so quickly. Aquila believed that they needed to obtain Cass County zoning when they built Aries in 2001. Aquila believed that they needed to obtain Cass County zoning in 2004 when they were planning to build Camp Branch in Harrisonville. And, yes, Aquila even believed that they needed to obtain zoning from the City of Peculiar when they thought Peculiar would annex the South Harper site.
- When the PSC was regularly granting Special Certificates of Need and Necessity, PSC practice was to require the utility to provide proof of zoning or Special Use Permit from the appropriate local authorities prior to granting a certificate. If you will be reviving the practice of granting Special Certificates of Need and Necessity to authorize the owning, building, operating, and maintenance of power plants, I would hope that you would utilize the same guidelines you followed previously unless or until laws are changed to require differences in the process.

Duties as Commissioner of the MO PSC



In addition to supporting the United States and Missouri Constitutions, Commissioners of the Missouri Public Service Commission are bound to faithfully and honestly discharge the duties of Commissioner.

- Given the instability of Aquila, you may be concerned that if their request is denied, it could conceivably trigger a chain of events that culminate in Aquila's insolvency. I know that you don't want to subject rate payers to additional risk, however, I suspect that if Aquila were to crumble under the weight of their own poor management decisions and disregard for the law, that another more responsible and responsive company would gladly accept the challenge. While it wouldn't be pretty, such a scenario might provide a much more stable and rate payer friendly environment in the future.
- In a previous case and in the case before you now, you've heard and will hear testimony regarding pollution, noise, misrepresentation, and Aquila's claim of need for power while divesting themselves of generation facilities and contracts. Let me state that I find all of those issues troubling and also worthy of the Commission's careful consideration.

As a member of StopAquila.org and as a citizen who has exhausted entirely too much time, energy, and money in an attempt to cause authorities to make Aquila follow the law and reap the consequences of their own actions and decisions, I implore you to dismiss or deny Aquila's motion.



NIMBY?

Yes, to be sure, one of our arguments is, indeed, not in my back or front yard. Our argument is so much more, though.

Our argument is also:

Not while trampling the 14th Amendment rights acknowledged in the US Constitution.

Not while deselecting the Missouri Constitution Article I Bill of Rights (sections 2 & 10).

Not while ignoring various Revised Statutes of the State of Missouri.

Not while acting in collusion with a government entity to illegally annex.

Not while misrepresenting the status of bond financing to the PSC.

Not while repeatedly misrepresenting issues and actualities to the public.

Not while Aries sits virtually idle less than 20 miles away.

Not while ignoring a permanent injunction by the Circuit Court, confirmed by the Appellate Court, knowingly placing an already unstable company, its shareholders, and rate payers in additional, unnecessary, and unjustifiable risk.

My husband and I could not legally build a deck on our home without the appropriate permissions from Cass County, nor would we try to do so. We certainly couldn't convert the use of the property to anything that isn't consistent with zoning. Why should Aquila be allowed to do so?

If Aquila is allowed a Special Certificate of Need and Necessity after it has already built South Harper, then a dangerous precedent will have been set. Any regulated company could build anything they wanted anywhere they wanted without consent for siting.



Summary

Corporations are in business to make money. Corporations care about what enriches the bottom line and individual executives' financial interests. Corporations abide by the law if compliance enriches the bottom line or if they fear enforcement with penalties for non-compliance that are sufficiently severe to negatively impact the bottom line and/or risks criminal liability.

Aquila is a corporation that struggles financially even though they've been granted a monopoly and profit that should be sufficient to ensure solvency.

Although we believe that the laws Aquila ignored in this case are clear, following the laws might not have produced the results Aquila wanted in the timeframe they wanted. Why follow the laws if you don't fear enforcement and/or severe penalties for failure to follow the laws?

Please don't let Aquila or any companies that would follow suit believe that they can ignore the law without reaping the consequences of their own actions. We pray that you will deny or dismiss the case and consider additional actions to hold Aquila accountable.