

Exhibit No.:

Issues: County Inconsistencies

Witness: Jon R. Empson

Sponsoring Party: Aquila Networks-MPS

Case No.: EA-2006-0309

FILED³

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Before the Public Service Commission
of the State of Missouri

Missouri Public
Service Commission

Surrebuttal Testimony

of

Jon R. Empson

Exhibit No. 2
Case No(s) EA-2006-0309
Date 4-26-06 Rptr RF

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
SURREBUTTAL TESTIMONY OF JON R. EMPSON
ON BEHALF OF AQUILA, INC.
D/B/A AQUILA NETWORKS-MPS
CASE NO. EA-2006-0309**

1 Q. What is your name and position?

2 A. My name is Jon R. Empson, and I am Senior Vice President for Regulated Operations
3 for Aquila, Inc. ("Aquila" or "Company")

4 Q. Are you the same Jon R. Empson that filed direct testimony in this case before the
5 Missouri Public Service Commission ("Commission")?

6 A. Yes, I am.

7 **Executive Summary**

8 Q. What is the purpose of your surrebuttal testimony?

9 A. I will be responding to the testimony given by Mr. Gary Mallory at the March 20, 2006
10 public hearing in Harrisonville, Missouri; the rebuttal testimony filed by Mr. Gary
11 Mallory and the rebuttal testimony filed by Mr. Bruce G. Peshoff. There will be three
12 common themes throughout my surrebuttal testimony. First, Aquila has attempted to
13 work with the appropriate local officials in building the generation and substations
14 needed to serve our customers. Second, on many occasions Aquila received confusing
15 and conflicting information from Cass County. Finally, the current locations of the
16 South Harper peaking facility and related substations are compatible with the Cass
17 County Comprehensive Plan.

18 **Mr. Mallory's Testimony at the Public Hearing & Rebuttal Testimony**

19 Q. Were you present at the March 20, 2006 public hearing at Harrisonville?

1 A. No, I was not. My surrebuttal testimony is based upon a reading of the transcript of that
2 hearing.

3 Q. Do you have any responses to Mr. Mallory's March 20, 2006 sworn testimony at that
4 hearing?

5 A. Yes. In discussing the possibility of Aquila filing a "zoning application" with Cass
6 County in connection with the South Harper facilities, Mr. Mallory stated that he had
7 been "reluctant to really say much about this situation primarily because it might be an
8 indication of us being pre-disposed as to how we would handle it if it did come through
9 the normal channels, coming through the planning and zoning process, planning and
10 zoning adjustment" (Public Hearing Transcript, Case #EA-2006-0309, March 20, 2006,
11 page 202, lines 12-19). He later stated, "So I tell you that so that you know and
12 understand that the Cass County Commission has not made up its mind about Aquila,
13 the plant, where it is, how it's located and so forth" (Emphasis added) (Public Hearing
14 Transcript, page 203, lines 14-18).

15 Q. What also happened on March 20, 2006?

16 A. On the exact same day the Cass County Commission filed with the Missouri Public
17 Service Commission in this case a "Motion to Dismiss Application, or in the
18 Alternative to Impose Conditions on Issuance of Certificate and Motion for Oral
19 Argument." ("Motion"). In that Motion, Cass County said the following:

20 "If the Commission ignores those zoning laws, it will be the County, not
21 the Commission, which will contend with what is left of a Master Plan and
22 piece it back together to account for a colossal (Emphasis added)
23 unplanned for use of property. It will be county residents, who have relied
24 on the strength of the Master Plan in buying, mortgaging and improving
25 their respective properties, who will shoulder unexpected burdens caused
26 by industrial use of a property that was zoned for passive agricultural
27 uses" (Emphasis added) (Motion, page 22).

28 Finally, the Motion states:

1 "The County contends that the Commission could not divine any set of
2 circumstances (Emphasis added) by which to (1) justify Aquila's
3 construction and maintenance of an unplanned and large scale offense to a
4 graduated and progressive plan of land usage and development in Cass
5 County, and (2) overturn the expectations of County governance, County
6 planning and constituent reliance on that planning in favor of the abrupt
7 construction of a land use completely contrary to what has been ordained
8 (Emphasis added) by county regulation" (Motion, page 23).

9 My reading of Mr. Mallory's live testimony before the Commission and the
10 language in the Motion are not consistent.

11 Q. Why do you say the positions are not consistent?

12 A. I am unable to reconcile how the County, in one breath, can say it has not made up its
13 mind and in the next breath classify Aquila's South Harper project as a colossal,
14 unplanned for use of property burdening County residents and no "set of
15 circumstances" can "justify" the project..

16 Q. What did you conclude from this?

17 A. Cass County had made up its mind about the location of the South Harper generating
18 station.

19 Q. Did Aquila ever attempt to file an application for a special use permit for the South
20 Harper generating facility and related substations?

21 A. Yes. As Mr. Mallory stated, Aquila attempted to file special use applications on
22 January 20th, 2006. Aquila Witness Norma Dunn provides more detail in her surrebuttal
23 testimony about the rationale for filing applications at that time. The applications were
24 summarily rejected by the County. Thereafter, on February 1, 2006, after the Judge had
25 made his decision on Aquila's request for a stay, Cass County sent a letter to Aquila
26 stating that it assumed the Company would be filing an application because the
27 Company now needed evidence of local consent.

28 Q. Did Mr. Mallory also state in his rebuttal testimony that there weren't any reasons that
29 Aquila could not file an application now?

1 A. He did.

2 Q. Why didn't Aquila attempt to re-file an application with Cass County after February 1,
3 2006?

4 A. There are several reasons. First, on January 27, 2006, Judge Joseph P. Dandurand
5 found "That Aquila is directed to dismantle the plant in its entirety commencing May
6 31st of 2006 under penalty of contempt of court, ..." (Transcript, Case No.
7 17V010401443, Cass County vs. Aquila, Inc., page 80, lines 7-9). Essentially, Aquila
8 had four months to gain the "necessary authority that would allow the plant and
9 substation, which have already been built, to continue operating, albeit with whatever
10 conditions are deemed appropriate" (Missouri Court of Appeals decision, page 26).
11 According to the County's Zoning Order, the Planning Board has 60 days to make its
12 recommendation to the Board of Zoning Adjustment ("BZA") on an application and
13 then the BZA has another 60 days to act on the recommendation. (Cass County Zoning
14 Order, pages 84-85). While the County had moved faster than these timeframes in
15 recommending denial of Aquila's application for the Camp Branch site, Aquila did not
16 believe that the County would have any motivation to move quickly given its vehement
17 opposition to the South Harper project. Also, Cass County had aggressively argued that
18 the County could not retroactively consider any application from Aquila. Cass County
19 also stated to the Commission that processing an application could take months or
20 more. The 120 day limit for the County would exceed Aquila's available time limit
21 given by the Judge. Also, as discussed earlier, Aquila believed that Cass County had
22 already made up its mind about the project. That belief was subsequently validated by
23 the County's March 20, 2006 Motion. In addition, Commission approval for the plant
24 and substations was needed in any event.

25 Q. Is it your understanding that there is a legal argument in this case about what approvals

1 are required for Aquila to continue to operate the South Harper facility?

2 A. Yes. We have made several filings in this case that detail our position. However, in
3 making the business decision to not file any further applications with Cass County,
4 Aquila considered several other factors. For example, our Counsels had this series of
5 discussions with the Judge during the January 27, 2006 hearing:

6 The Court: "Let me ask you this: while I don't think the Court of Appeals said
7 that you have to go back and get permission from the County,
8 while I believe their directive was your need to get it one place or
9 the other, you said if the PSC gives it to you, that ends it. Is there
10 no appeal process from there?" (Emphasis added.)
11

12 Mr. Youngs: "There is" (Transcript, Cass County vs. Aquila, Inc., page 18, lines 1-7).
13

14 Mr. Reitz: "... because as the Court of Appeals said, the decision about
15 whether this plant should be here or not, at the end of the day, it
16 belongs to the Public Service Commission."

17 The Court: "Or the County. Or the County."

18 Mr. Reitz: "Well, even if the County gives us approval, the Public Service
19 Commission has been told it is your obligation to approve all
20 projects. We still have to go to them for approval" (Emphasis
21 added).

22 The Court: "Yes. That's right. All right" (Emphasis added).

23 Mr. Reitz: "And even if the County said no, the Public Service Commission
24 could still say yes. So in the hierarchy of things, the Public
25 Service Commission has been trusted by the legislature as being
26 the experts in knowing where power plants should be, and the
27 county ..." (Emphasis added).

28 The Court: "That's what I tried to tell them before when they were trying to
29 tell me they weren't. It was up to you to decide, not them to
30 decide. Now, all of a sudden, they are going to agree ..." (Emphasis added).
31

32 Mr. Reitz: "They have been told that."

33 The Court: "... that they are the experts? They have been told that"
34 (Transcript, Cass County vs. Aquila, Inc., pages 28-29, lines 3-25;

1 lines 1-2).

2

3 The Court: "Because what you can count on, Mr. Youngs, I'm not going to say,
4 if I say anything, if I give you a week, I am not going to say that
5 you have until the Public Service Commission does something
6 with this case because that's unreasonable.

7 Has anybody had any discussion with them about what
8 expectations we might have with regard to obtaining some sort of a
9 ruling from them?

10 Because the facts aren't difficult. They have been hashed over and
11 hashed over. The PSC is either going to vote for you, or they are
12 going to vote against you" (Transcript, Cass County vs. Aquila,
13 Inc., page 19, lines 15-25, page 20).

14 Q. Was there any indication from the Judge that Aquila should be filing with the
15 Commission and not the County for the necessary authority stated by the Court of
16 Appeals?

17 A. Yes. In fact, earlier in the January 27, 2006 hearing, our Counsel had this dialogue with
18 the Judge:

19 The Court: "There are two places for you to go ..."

20 Mr. Youngs: "Correct."

21 The Court: "... back to the County of Cass or back to the PSC."

22 Mr. Youngs: "Right."

23 The Court: "... as far as I'm concerned, and you pretty well know what the
24 County of Cass' answer is, don't you?" (Emphasis added).

25 Mr. Youngs: "Well, I think we do now."

26 The Court: "Their knees aren't buckling. I mean, read the ... I mean ..."

27 Mr. Youngs: "Twenty-six pages."

28 The Court: "It never stopped pulling punches."

29 Mr. Youngs: "That's right."

30 The Court: "They continue to batter. So I think, you know, you probably

1 pretty well assume that avenue is out and you are stuck with the
2 Public Service Commission and what they are going to do for you,
3 if anything" (Emphasis Added) (Transcript, Cass County vs.
4 Aquila, Inc., page 14, lines 7-25; page 15, line 1).

5 It is clear that the Judge believed that filing an application with the Commission was a
6 logical, reasonable option to gain the necessary authority to maintain the operation of
7 the South Harper plant.

8 Q. Did Cass County also indicate that Aquila had the option to file with the Commission?

9 A. Yes. While the County's arguments have flip-flopped over time, Counsel for Cass
10 County made the following statements before Judge Dandurand at the December 7,
11 2004/January 5, 2005 hearing:

12 "If, for some reason the Court is persuaded that 64.235 is ambiguous,
13 which we don't agree that it is, but if the Court is persuaded that it is, has
14 Aquila treating that "nor shall" phrase as an exemption applicable to any
15 applicant satisfied the criteria that would authorize it to be exempt from
16 compliance with the County's master plan? And we don't think that they
17 have, Your Honor.

18 64.235, the "nor shall" phrase, really sets forth three different ways an
19 applicant would be able to impose upon the County -- or excuse me --
20 better stated, would be able to say to the County you do not have the
21 police power authority to regulate zoning or land use for the land I'm
22 going to develop, and those three ways are either a specific authorization
23 and permit or permission from the Public Service Commission by way of a
24 Certificate of Convenience and Necessity for the development ... The
25 second would be an order from the public Service Commission
26 authorizing and permitting that particular development or improvement,
27 and the third would be via compliance with the County", ... (Emphasis
28 added) (Transcript, Cass County vs. Aquila, Inc., CV104-1443, page 11,
29 lines 14-25; page 12, lines 1-16).

30 Later in this same hearing, Cass County Counsel specifically discussed with the
31 Judge how the process would work at the Commission:

32 Ms. Martin: "But if an application is filed—"

1 The Court: "It puts some pressure on them."

2 Ms. Martin: "Well, if an application is filed by Aquila tomorrow with the
3 Public Service Commission, Cass has a right to go down there—"

4 The Court: "Right."

5 Ms. Martin: "--and be heard."

6 The Court: "That's what I said. Put some pressure on them."

7 Ms. Martin: Everybody in this room has an opportunity to be heard. There
8 would still be some collaborative decision-making process that
9 goes into, you know, have you really worked with the local
10 authorities like you should, have you looked at other issues, etc.
11 There would be an opportunity to be heard. Aquila's interpretation,
12 there is never an opportunity to be heard."

13 The Court: "Is it true that the Public Service Commission must grant a public
14 hearing for folks to intervene on a request for a specific
15 authorization?"

16 Ms. Martin: "The procedure of the Public Service Commission absolutely gives
17 a right of intervention to any interested party. Absolutely. And the
18 way their procedures work, when an application is filed, say, by
19 Aquila, for any reason, there is an order issued that is like a
20 scheduling order that has various dates and deadlines, and one of
21 those dates routinely is an intervention cutoff date for any
22 interested party and so, yes."

23 In fact, when you look at a lot of the cases out of both the Public
24 Service Commission and out of the courts where Public Service
25 Commission decisions have come up, there have been intervenors
26 who have the opportunity to go before the Public Service
27 Commission to express their concerns and their reservations."

28 The Court: "Okay."

29 Ms. Martin: "Now, I am going to be honest with you. The county would much
30 prefer that that process occur with the county, but we are going to
31 follow the law. We just think that Aquila has to follow the law,
32 too, and to interpret 64.235 today in a way that writes out the word
33 'specific' then, you know, it basically means they build what they

1 want with no control over the site" (Emphasis added) (Transcript,
2 Cass County vs. Aquila, CV104-1443, pages 175- 177)

3 Q. Is there other evidence that Cass County understands that Aquila has the option
4 to file with the Commission?

5 A. Yes. When Cass County filed its lawsuit against Aquila on December 1, 2004,
6 the Cass County Commissioners' office issued a press release stating:

7 "Cass County is left with no alternative but to file a lawsuit against Aquila
8 to prevent it from building power plants anywhere it pleases without
9 having first secured specific authority or permission to construct the
10 power plant from the county or from the public service commission as
11 required by Missouri Law" (Emphasis added) (Schedule JRE- 1).

12 In this press release, the County itself stated its position that County Counsel
13 had presented to the Judge in the courtroom in January 2005 and publicly
14 announced that Aquila did in fact have two legal options available which
15 included gaining approval from the Missouri Public Service Commission. There
16 was no mention or even an inference by either Cass County Counsel or Cass
17 County Commissioners that the Commission should defer to the County for any
18 land use decision related to the South Harper facilities.

19 Q. Can you summarize why in February of this year Aquila decided to not file an
20 application with Cass County?

21 A. Yes. First, after the Judge extended his stay until May 31, 2006, we had only four
22 months to gain the necessary authorization. The Court said that no matter what we had
23 to have Commission approval so we had a significant time constraint. The County
24 process could have consumed the entire time available.

25 Second, we felt the County had already determined its position which has now been
26 validated by its Motion to Dismiss and filing an application with the County would

1 have been futile and time-consuming.

2 Third, we felt that Judge Dandurand had an understanding that the filing with the

3 Commission was a viable option and was, in fact, what he expected us to do.

4 Fourth, the Commission option was also clearly recognized by County Counsel and the

5 County Commissioners as not only a viable but legal option for Aquila to follow.

6 Finally, both the County and 'StopAquila' had taken the position that the County could

7 not retroactively process a zoning application.

8 Q. On page 13 of his rebuttal testimony, Mr. Mallory discusses the role of Cass County
9 officials in the siting of electric energy generation and transmission facilities. Has
10 Aquila attempted to work with Cass County on siting a power plant?

11 A. Yes. Both directly and indirectly.

12 Q. What do you mean by directly?

13 A. Aquila filed for a special use permit ("SUP") with Cass County on June 14, 2004 in
14 connection with what is known as the Camp Branch location. Prior to filing, Aquila
15 had several meetings with the County Zoning Director, Mr. Wilson, and then Mr. Gary
16 Mallory. While our original intent was to file an application for industrial rezoning,
17 Mr. Wilson and Mr. Mallory recommended that we seek a SUP. (Transcript of Public
18 Hearing, July 13, 2004, Special Use Permit No. 2589, page 14, lines 13-23).

19 Q. What happened with the application?

20 A. Before filing the application, Aquila met with the Harrisonville City Administrator on
21 May 10, 2004, organized a community meeting on May 12, 2004, and a community tour
22 of Aquila's Greenwood generation facility on May 13, 2004. Aquila encountered
23 significant opposition to the Camp Branch location at the community meeting. While
24 we had developed a series of booths for the community meeting to explain all facets of
25 the development, the area residents told us point blank that there was absolutely nothing

1 that we could do to the site that would make it acceptable. They refused to tour the
2 booths and basically shouted down any attempt for us to discuss the plant. The
3 opposition was led by Cass County Judge Collins, a local resident. The opposition
4 attended the July 13, 2004 hearing before the Cass County Planning Board and was
5 supported by the City of Harrisonville. The Planning Board voted 6-0 to recommend
6 denial of the SUP.

7 Q. What was the basis for the recommendation?

8 A. That was an interesting decision. The Planning Board hired a planning consultant that
9 filed a three-page analysis of our application. The recommendation was that the
10 "Planning Board deny the SUP application and recommend that Aquila, Inc. pursue the
11 matter through an Application for Industrial Rezoning" or "If the Board decides to
12 entertain the SUP application, then the facility is generally found to meet the standards
13 of the County zoning ordinance, except for the height restriction" (Emphasis added)
14 (Schedule JRE -2).

15 In reading the transcript of the hearing, the decision appeared to be based upon the need
16 for a zoning change rather than a SUP. The Chairman of the Planning Board stated
17 when voting against the SUP: "I do not feel like it meets the criteria for our future
18 zoning." (Transcript, Cass County Planning Board Hearing, Special Use Permit
19 Application No. 2589, July 13, 2004, page 154, lines 18-25). We were stunned by the
20 decision since Aquila had changed its intention from filing for zoning to a SUP based
21 on Mr. Wilson's and Mr. Mallory's recommendation.

22 Q. What happened next?

23 A. The Planning Board forwarded its unanimous recommendation to the Board of Zoning
24 Adjustments ("BZA"). We met internally to determine the next steps that we should
25 take. We basically had three choices: hope that the BZA would overturn the 6-0

1 recommendation of the Planning Board; exercise our right to build the plant without
2 County zoning; or find another site.

3 Q. What do you mean that you could exercise your right to build the plant without County
4 zoning?

5 A. Aquila had always maintained that given the existing Commission certificate to serve
6 Cass County, we did not need zoning approval to build the plant and related substations.
7 Our Counsel had so advised the Cass County Planning Board during the Camp Branch
8 SUP application hearing on July 13, 2004. However, we had hoped that we could work
9 with the County, the city and surrounding land owners and not have to exercise what we
10 understood to be our legal right.

11 Q. If you did not need any County zoning approval, why did you apply?

12 A. Aquila was attempting to work with the County and the local residents to reach a
13 consensus. However, given the complete unwillingness for any of the local residents to
14 even listen to the presentations and the emphatic statement that we could do absolutely
15 nothing to gain support, we had to rely upon the County SUP process to argue our case.

16 Q. Why did you delay the BZA meeting and later withdraw the SUP application?

17 A. I asked my project personnel to gain an understanding from Mr. Mallory on the action
18 that the BZA might take. The BZA consists of the three Commissioners, including Mr.
19 Mallory as Chairman. Since Mr. Mallory had recommended that we file for a SUP
20 rather than rezoning and the consultant had stated that our facility generally met the
21 SUP standard, we were hopeful that he would support approval. Mr. Glenn Keefe, the
22 Operating V.P. for Aquila's Missouri Electric operations, and Mr. Dave Kreimer, the
23 project lead on the SUP application met with Mr. Mallory on July 23, 2004.

24 Q. What advice did Mr. Mallory give Aquila?

25 A. He told us that he could not support the application and the vote was 3-0 against us.

1 During Mr. Mallory's April 17, 2006 deposition, he confirmed that he had told Mr.
2 Keefe and Mr. Kreimer that the Aquila application had "as much chance as a snowballs
3 chance in hell" of being approved by the BZA. He also stated that he had not read
4 either the Aquila application or the Cass County consultant's report evaluating the
5 Aquila application in reaching his conclusion. His conclusion was based solely on the
6 belief that there was too much community opposition.

7 Q. What decision was then made?

8 A. While Aquila had been pursuing the SUP from Cass County for Camp Branch, we were
9 approached by other communities that were interested in locating the facilities. Based
10 upon Mr. Mallory's statement, we decided to delay that decision while we quickly
11 reviewed the potential for alternative sites that had a supportive, welcoming spirit.

12 Q. When did this review of alternatives begin?

13 A. While we had been approached by these communities before the County Planning
14 Board decision, we did not start any detailed meetings until early August, following the
15 meeting with Mr. Mallory.

16 Q. Did you explain to the alternative communities what you expected?

17 A. Yes. Besides the normal, physical site requirements presented by Aquila witness Chris
18 Rogers in his direct testimony, we asked that all land use issues be addressed so that we
19 could avoid the problems we encountered with Camp Branch.

20 Q. Is that what you meant earlier when you said that Aquila was also indirectly involved
21 with the County?

22 A. Yes.

23 Q. Can you explain how the city of Peculiar intended to comply with your request?

24 A. Yes. The City of Peculiar ("Peculiar") had a two-staged plan. First, Peculiar was going
25 to annex a portion of South Harper Road from its city limits to the southern border of

1 the peaking plant site. Then it was going to annex the actual land site. Mr. Fisher, City
2 Administrator for Peculiar, has provided detailed testimony on this process.

3 Q. What progress was made by Peculiar?

4 A. (1) On August 20, 2004, Mr. Fisher sent a letter to Mr. Mallory concerning the
5 annexation of a portion of South Harper Road (Schedule JRE -3).

6 (2) On September 10, 2004, notice was given by Peculiar for a public hearing
7 scheduled for September 28 to discuss the annexation.

8 (3) On September 16th, 2004, Cass County passed a resolution "requesting that the
9 city of Peculiar annex "... the identified segment of South Harper Road leading to
10 our plant location (Schedule JRE-4).

11 (4) On September 28th, the Peculiar Board of Aldermen gave 1st reading unanimous
12 approval for the road annexation.

13 Q. Are you aware of any concerns raised by Cass County about this annexation plan of
14 Peculiar being inconsistent or incompatible with the County's Comprehensive Plan?

15 A. I am not. Mr. Fisher's rebuttal testimony confirms that Mr. Mallory was well aware of
16 Peculiar's annexation plans and that Peculiar did not receive any objection from Cass
17 County for pursuing its annexation plan to support the construction of the South Harper
18 peaking plant. Mr. Mallory confirmed this knowledge during his April 17, 2006
19 deposition and further confirmed that he did not raise any land use concerns to Peculiar
20 because, assuming the annexation went forward, it would be the city's issue, not the
21 County's. This apparently despite the fact that even after the annexation there would be
22 residents of unincorporated Cass living near the plant. I find it inconsistent for the
23 County to now, in this case before the Commission, express this concern for local
24 residents when the County expressed no concern for its residents when Peculiar was
25 going to annex the South Harper site. It appears that the County was willing to abandon
26 its concern about the residents of unincorporated Cass County that lived near the
27 planned annexation site for the plant if Peculiar completed the annexation, even though

1 the residents had "relied on the strength of the Master Plan in buying, mortgaging and
2 improving their respective properties."

3 Q. Are there other inconsistencies with the County's involvement in this matter?

4 A. Yes. On September 21, 2004, our project consultant, SEGA, sent an e-mail concerning
5 the site grading permit to Mr. Mallory stating the following:

6 Per our conversation this afternoon, you requested a rough grading plan
7 drawing of Aquila's South Harper Peaking Facility (originally called the
8 Bremer Site) in order to get a feel for what the project entails. The
9 attached drawings, all in Pdf format, are:

10 (1) Drawing C350 – Erosion Control, Grading and Drainage Plan (this
11 was submitted with the NPDES report).

12 (2) Drawing C300 – Site Grading Plan - North

13 (3) Drawing C301 – Site Grading Plan - South

14 Attached as Schedule JRE-5, is the Drawing C300 which shows the actual placement of
15 the turbines on the site.

16 Q. Did Mr. Mallory respond?

17 A. Yes. He sent an e-mail back on September 22, 2004 saying, "We'll take a look at these
18 and get back with you tomorrow." On September 24, 2004, SEGA sent a reminder e-
19 mail to Mr. Mallory to see if additional information was needed and Mr. Mallory
20 responded that "I have everything I need. I will discuss with everyone Monday and e-
21 mail you. I do not see any problem" (Emphasis added).

22 Q. Did Mr. Mallory respond on Monday?

23 A. No, he didn't. SEGA then sent another e-mail on Tuesday, September 28, 2004 to
24 check on the status. On Wednesday, September 29, 2004, Mr. Mallory responded to
25 SEGA that "We have reviewed the information that you sent. We have no problem
26 with it. We do not require a grading permit." Mr. Mallory then formally sent a letter to
27 SEGA stating: "Please accept this correspondence as official confirmation that Cass

1 County does not require a grading permit for the Aquila South Harper Peaking Facility.
2 I sincerely appreciate receiving the information you sent regarding the site. If you
3 require anything further, please do not hesitate to give me a call."

4 A. I have attached as Schedule JRE-6 and Schedule JRE-7 the string of e-mails with Mr.
5 Mallory and the official letter.

6 Q. What was your reaction to Cass County's endorsement of Peculiar's annexation plan
7 and the grading permit decision?

8 A. At a minimum, I felt we were receiving implicit support for the location of the South
9 Harper Peaking Facility on the proposed site. If there were land use compatibility
10 concerns, I would have expected some hint of concern from Cass County and Mr.
11 Mallory. I could not see how the County could differentiate between the impact on area
12 residents if the site were annexed by Peculiar or not annexed by Peculiar. The planned
13 use was the same. The potential impact was the same. I had assumed that Cass County
14 recognized the compatibility of the site compared to the adjacent, existing natural gas
15 compressor station and the existing transmission lines. It was only during Mr.
16 Mallory's April 17, 2006 deposition that I learned that the County believed that when
17 the annexation was completed, Peculiar assumed the responsibility for any problems.

18 Q. What happened to Peculiar's plan to annex the road and site?

19 A. At the October 19, 2004, Peculiar Board of Aldermen meeting community resistance
20 came in force. Then on October 23, 2004 Peculiar Board of Alderman decided to drop
21 the plans for annexation.

22 Q. Why did Peculiar drop the annexation plan?

23 A. We received a letter from Mike Fisher dated October 26, 2004, stating it was "based on
24 their collective opinion that most likely a long and costly legal battle would ensue, and
25 that neither the city nor Aquila wished to expend funds on such an endeavor, nor delay

1 the peaking facility while the legal arguments were heard" (Schedule JRE-8).

2 Q. What happened next?

3 A. Obviously, we were very disappointed that the annexation did not take place. However,
4 we were also encouraged that the County had not raised any concerns as they processed
5 the annexation request and grading permit. Therefore, we decided to have a planning
6 discussion with Mr. Mallory about our intentions to proceed to build the South Harper
7 facilities using our existing Commission certificate in Cass County and the zoning
8 exemption. We held that meeting on November 5, 2004.

9 Q. Who participated in the meeting?

10 A. Aquila had Keith Stamm, Chief Operating Officer; Glenn Keefe, Operating Vice
11 President for Missouri Electric; and two attorneys. Mike Fisher represented Peculiar,
12 and Mr. Gary Mallory and Counsel represented Cass County.

13 Q. What was the outcome?

14 A. While we explained our position, the County listened but did not react. We asked them
15 to consider the short time we had to complete the construction of the facilities in order
16 to meet the growing electricity requirements in Cass County and to support the plant.
17 We received our answer on December 1, 2004 when Cass County filed a lawsuit against
18 Aquila to stop construction. On January 5, 2005, Judge Dandurand made his decision
19 from the bench granting the temporary injunction requested by Cass County but that the
20 temporary injunction would be suspended when Aquila posted a \$350,000 bond.

21 Q. Why did Aquila proceed with the construction, given the temporary injunction?

22 A. It was a difficult decision. However, we have an obligation to serve our customers.
23 The 500 MW capacity contract was expiring June 2005, and we had to have
24 replacement power. As Aquila witness Boehm testified in this case, building the South
25 Harper Peaking Plant was the lowest cost option to meet our customers' power needs.

1 We reviewed our position and concluded that the Commission had already provided the
2 necessary authority for us to build the plant. Aquila's position about its specific
3 authority was reconfirmed by the Commission on April 7, 2005 when the Commission
4 issued an order stating "that Aquila has specific authority under its existing certificates
5 to construct and operate the South Harper Facility and Peculiar Substation, both of
6 which are fully contained within Aquila's certificated area." (Order Clarifying Prior
7 Certificates of Convenience and Necessity, Case No. EA-2005-0248, page 7). We
8 believed that the Courts would eventually confirm our position, so we proceeded with
9 construction.

10 **Rebuttal Testimony of Bruce G. Peshoff**

11 Q. Do you agree with Mr. Peshoff's testimony on page 8, lines 1-2, that "... the plant and
12 substation were erected without any participation by the public"?

13 A. No. Aquila had a public meeting with the Peculiar Mayor and Board of Alderman
14 about this project on August 21, 2004 and received input from them. While this
15 meeting was noticed to the public, only two people attended. The Mayor and Board
16 also toured the Aquila's Greenwood power plant. On September 7, the Peculiar Board
17 of Aldermen during its regular session approved an agreement with Aquila for the
18 construction of a 315-megawatt power plant. On September 14, 2004, Aquila made a
19 presentation to the Peculiar Chamber of Commerce, followed again with an open house
20 at Greenwood. On October 11, 2004, Aquila sponsored a public information meeting
21 in Peculiar, followed the next day with an open house at Greenwood. While we met
22 with significant resistance at the October 11th public information meeting, we continued
23 to modify the project design to address concerns about the visual impact, noise, health
24 and safety. The Commission also had a public hearing on March 15, 2005 and Aquila
25 used this input in making changes in construction operations and design.

1 Q. Do you agree with Mr. Peshoff's testimony on page 7, lines 28-30, that the "... plant
2 and substation were constructed prior to any governmental body review"?

3 A. I do not. It is interesting that Mr. Peshoff underlined the word "any" in his statement.
4 Obviously, Aquila had worked closely with the city of Peculiar and, as Mike Fisher
5 stated in his direct testimony, (Fisher Direct, page 10, lines 10-20), Peculiar found the
6 proposed land use acceptable. It is important to remember that this site is only about
7 two miles south of the Peculiar city limits, is located in a multi-use tier, and is within
8 Peculiar's future annexation area. Input from the city should be an important
9 consideration which appears to be the County's position given the earlier discussed
10 endorsement of Peculiar's annexation plan for the South Harper site.

11 Q. Does Mr. Peshoff acknowledge the importance of community involvement?

12 A. Yes. On page 23, lines 12-13 of his rebuttal testimony, Mr. Peshoff says:

13 "Communities generally are afforded considerable latitude when
14 considering discretionary requests, such as for special use permits,
15 rezonings, and variances."

16 Q. Have you experienced a case where the County references or did give deference to a
17 community?

18 A. Yes. Mr. Michie, Cass County's consultant planner, made the following statement
19 during the Aquila hearing on the Camp Branch SUP application that was denied by the
20 Cass County Planning Board:

21 "So our finding was that because this site is in both the County's quote,
22 unquote, urban service area that your county plan designates as a place for
23 the city of Harrisonville to grow and to provide cost effective services,
24 and is also in the city of Harrisonville's future annexation area, that this is
25 a site where the Planning Board needs to look at those longer term big
26 picture land use questions in the context of a future zoning change, not a
27 Special Use Permit." (Emphasis added) (Transcript, Cass County Planning
28 Board Hearing, July 13, 2004; page 132 lines 19-25; page 133, lines 1-7).

29 The Camp Branch site was about 1.5 miles north of the City of Harrisonville's

1 city limits. Also, the county zoning order states that the "County shall coordinate
2 with affected cities when considering proposed zoning district boundary
3 amendments in Urban Service Tiers and Mixed Use Tiers near cities." (page 23,
4 #7).

5 Q. Where is the South Harper plant site located in Cass County relative to the County's
6 Comprehensive Plan designation?

7 A. Mr. Peshoff states on page 29, lines 18-21, in reference to SUP application that Aquila
8 had attempted to file on January 20, 2006:

9 "The application correctly identifies the area for the Peaking Facility as
10 being located in a Multi-Use Tier, but does not identify why a power plant
11 is an appropriate use within such a tier."

12 Q. What is a multi-use tier?

13 A. The Cass County Comprehensive Plan defines it as follows:

14 "There are areas near towns and cities and along paved highways and
15 thoroughfare roads where non-agricultural development, such as
16 commercial and industrial uses, and residential development that is denser
17 than 20-acre lots, is encouraged. Large-scale development is allowed,
18 including commercial and industrial zoning, provided there are provisions
19 for direct access to paved roads" (Emphasis added) (Cass County
20 Comprehensive Plan Update 2005, page 25).

21 Q. What about the substation location that is also being addressed in this docket?

22 A. The location of the substation is not directly discussed by Mr. Peshoff but is
23 part of his general discussion on pages 28-30 of his rebuttal testimony. I have
24 attached to my testimony as Schedule JRE- 9 a revised portion of our SUP
25 application for the substation that was rejected on January 20, 2006. This
26 schedule describes the location of the substation. Again, the substation is
27 located within a multi-use tier. Aquila worked with the Grand Oaks subdivision
28 developer and the twenty current residents to design the substation to address

1 local concerns. The subdivision was just north of this location and to the best of
2 my knowledge, those residents are still satisfied with the design and operation
3 of the substation. There were also four other residents in the area and Aquila
4 received letters of support from three of those residents.

5 Q. What are the implications of being in a multi-use tier designation?

6 A. Again, referring directly to the same Comprehensive Plan on page 2:

7 "The Plan serves as the basis for zoning decisions. If applications for
8 zoning changes are in accordance with the plan they are presumed to be
9 reasonable ... The Master Plan is the official policy guide for the
10 development of Cass County."

11 Q. How does Mr. Peshoff characterize a Comprehensive Plan?

12 A. His testimony makes several references, a few of which are as follows:

13 "Planning can be defined as the process of applying forethought to solve
14 or avoid potential problems" (page 5, lines 11-12).

15
16 "Good planning is critical to growth management, helps reduce conflict,
17 benefits developers and the public, and promotes fairness" (page 5, lines
18 17-19).

19 "Planning is an integral element of good management. Management
20 needs to anticipate events; it is weak if it merely responds to them" (page
21 5, lines 23-25).

22
23 "Without some assurance that their property will be protected from
24 incompatible uses and that its value will be retained, there is no reason for
25 individuals to maintain or improve their property investment" (page 10,
26 lines 28-30).

27 Q. How do you respond to these comments?

28 A. Mr. Peshoff does not explain what a multi-use tier designation means and why the
29 South Harper peaking facility and related substations are not consistent with a multi-
30 use tier designation. As I explained earlier, large scale industrial developments are by
31 definition compatible with a multi-use tier designation. Also, the current zoning of the
32 South Harper peaking plant site is agricultural within the multi-use tier. The Cass

1 County Zoning Order defines electric power generation as an acceptable land use on
2 agricultural land with a special use permit. Aquila's South Harper project, by Cass
3 County's own plan, is deemed appropriate and reasonable for this location given the
4 multi-use tier designation. Aquila witness Mark White is providing a more detailed
5 review of the land use issues in his surrebuttal testimony. If the County had a different
6 opinion, it could have expressed its concerns when Peculiar filed its intent for
7 annexation or Aquila requested a grading permit. The County chose to be silent in
8 those early stages.

9 Q. Do you agree with Mr. Peshoff that Aquila has not always taken the position it is
10 exempt from county zoning requirements?

11 A. I do not. First, Mr. Peshoff confuses the actions of Aquila's merchant subsidiary in a
12 partnership with Calpine to build a nonregulated commercial generation plant and the
13 Aquila utility division building a regulated generation plant. Aquila has never argued
14 that a nonregulated merchant plan is exempt from county zoning. On the other hand,
15 Aquila has consistently maintained that a generation facility built by a regulated utility
16 pursuant to a Certificate of Convenience and Necessity issued by this Commission, is
17 exempt from county zoning. Mr. Peshoff can read the transcript from the Cass County
18 Planning Board hearing held on July 13, 2004, pages 49-50 and pages 135-139 where
19 Aquila's Counsel clearly explained our position.

20 Q. Are there other misstatements of fact in Mr. Peshoff's testimony?

21 A. Yes. On page 18, lines 28-29, Mr. Peshoff states that the application for the Camp
22 Branch site was changed from a zoning application to a special use permit based upon
23 Darrell Wilson's recommendation. That change in application was based upon the
24 recommendation of both Mr. Wilson and Mr. Gary Mallory, the presiding
25 Commissioner of Cass County. On page 19, lines 22-27, Mr. Peshoff ignores the fact

1 that the County's planning consultant stated that the Camp Branch SUP application
2 generally met the standards of the county zoning ordinance, it was not just Aquila's
3 claim.

4 Q. Mr. Peshoff offers alternative locations for Aquila to consider "... where industrial
5 zoning and uses might be appropriate." How do you respond?

6 A. First, I found it interesting that even though our current site is in a multi-use tier
7 designation, with an "encouraged" industrial use listing, he did not include it.
8 Second, this is absolutely the first time that the County has ever offered any alternatives
9 for us to consider. Even though we only had two weeks to prepare this surrebuttal
10 testimony, I asked Chris Rogers, Aquila's witness on site selection in this case, to
11 assemble a team to conduct a quick overview of the proposed locations. His findings
12 are contained in his surrebuttal testimony.

13 **Conclusion**

14 Q. Would you please summarize your testimony?

15 A. First, contrary to what Cass County would have the Commission believe, the County's
16 position throughout this process has been inconsistent on zoning and land use issues. It
17 has always appeared that the goal of the County was to have the South Harper facilities
18 torn down regardless of the "factual path" as to how Aquila has reached this point in
19 time and the impact this would have on the public interest as a whole. The key facts are
20 as follows:

21 (1) The city of Peculiar had intended to annex the South Harper location and the
22 County had effectively endorsed the annexation and projected land use. This preceded
23 any legal action the County chose to take.

24 (2) The County, after a week of deliberation, and with full knowledge of the intended
25 land use, officially notified Aquila that no grading permit was needed. Aquila

1 immediately initiated grading for the plant. These actions preceded any legal action the
2 County chose to take.

3 (3) The South Harper site is within a multi-use tier which clearly allows, in fact
4 encourages, industrial land uses.

5 (4) The city of Peculiar, the closest city to the site, has supported the use of the site
6 for the development of a power plant.

7 (5) The site is within Peculiar's area for planned annexation.

8 (6) The city of Lake Annette, located two miles south of the plant, supports the
9 location for the plant.

10 (7) A natural gas compressor station has been located on this same section of land for
11 over 50 years, an industrial land use.

12 (8) Aquila has maintained a 40-acre buffer zone north of the site, adjacent to the
13 residential development and has done extensive work to further reduce visual, noise
14 and environmental impacts.

15 Second, contrary to what the County would have this Commission believe, at all times
16 throughout this process the Company has acted in a manner consistent with the
17 Commission's long-standing policy concerning the construction of facilities within
18 certificated areas. When the Court of Appeals held that this policy was wrong and that
19 Aquila needed specific authority from the Commission for the involved facilities, the
20 Company filed the application which is the subject of this case as suggested by the
21 Court.

22 Finally, it is important to note what issues in this case have been apparently eliminated
23 by the lack of rebuttal testimony filed by the intervenors. For example, there does not
24 appear to be any real question that Aquila needs the power generated by the South
25 Harper facility. Nor does there appear to be any issue concerning the Company's

()
1 qualifications from an operational and financial standpoint to own and operate the
2 South Harper generating plant and the related substations. There also appears to be no
3 issue concerning the economic feasibility of the South Harper plant and substation
4 facilities.

5 Q. Does that conclude your testimony?

6 A. Yes it does.

Cass County Commission

GARY L. MALLORY
Presiding Commissioner
Email commissioner@casscounty.com

JIM MEARA
Associate Commissioner Dist. 2
Email commissioner@casscounty.com

Jan Cantrell, Administrative Assistant
102 E. Wall, Harrisonville, Mo 64701
Phone (816) 380-8155 Fax (816) 380-8156

JON H. SEABAUGH
Associate Commissioner Dist. 1
Email commissioner@casscounty.com

NEWS RELEASE December 1, 2004 11:20 A.M.

Aquila has made it clear to representatives of Cass County that it believes it is not required to secure necessary zoning or other approvals from Cass County for the substation and power plant it is constructing in unincorporated Cass County. As such, Cass County is left with no alternative but to file a lawsuit against Aquila to prevent them from building power plants anywhere it pleases, without having first secured specific authority or permission to construct the power plant from the County or from the public service commission as required by Missouri Law. Presiding Commissioner Gary Mallory stated, "If everyone else is required to comply with county zoning regulations, so should utility companies such as Aquila." He further stated "the lawsuit will be filed today".

For information concerning or regarding this news release, please contact Gary L. Mallory at 816-380-8160.

BUCHER, WILLIS & RATLIFF
CORPORATION**MEMORANDUM**

TO: Cass County Planning Board
FROM: Bucher, Willis & Ratliff Planning Advisory Consultant
SUBJECT: Aquila, Inc application for Special Use Permit for development of a power peaking gas plant at 235th Street north of the city of Harrisonville.
DATE: July 13, 2004 Public Hearing **Project #** 2004-035

Background:

The subject application for a Special Use Permit (for the July 13, 2004 Public Hearing) is for a gas peaking plant—as described in their June 2004 application (see 3-ring bound application with tabs A through P and related submittals)—on a 35.12 acre parcel in unincorporated Cass County in an A-Agricultural zoning district. Surrounding land uses are agricultural and low-density residential on parcel also zone A-Agricultural zoning district. Following are staff findings and recommendations for the Planning Board to consider when making written findings certifying that adequate provision has been made for the standards in Article VIII of the county zoning order. If the Board votes to so certify, then it could recommend approval of the Special Use Permit application to the County Board of Adjustment; or if not, then to recommend denial of the application.

Staff Findings—Standards for Issuance of Special Use Permits Subsection C of Article VIII :

Under the new planning statutes for 1st class counties applicable to the Cass County Planning Board, the county Board of Adjustment considers granting special use permits. As per Article VIII of the county zoning order, the permit can be considered by Board of Adjustment only after receiving a recommendation from the Planning Board on the following:

- a. The location and size of the proposed use in relation to the site and to adjacent sites and uses of property; and the nature and intensity of operations proposed thereon.

The proposed use is buffered by deep setbacks, fencing and landscaping. In relation to the site and adjacent sites and land uses, the proposed use is therefore made more suitable than if there were no such proposed site improvements.

The intensity of operations is industrial, though external impacts are apparently minimal: no dust after construction; no odors; and noise is proposed to be within sound levels for residential-compatible uses: less than 60 dBA.

The nature of the use is what should be carefully considered by the Board relative to land use planning policies of the Comprehensive Plan and zoning regulations of the county. The land is zoned A-Agricultural which is for farming uses and low-density residences.

■ ENGINEERS ■ PLANNERS ■ ARCHITECTS ■

JUL 01 '04 16:08 FROM:

T-754 P.03/04 F-519

Schedule 2

2 of 3

BWR - MEMORANDUM (CONTINUED)

July 1, 2004 - Page 2

The county plan indicates the site in the city of Harrisonville "Urban Service Tier." The intent of the plan for such an area is as follows:

Urban density is encouraged where "Urban Residential" growth can be served cost-effectively by city services or by a community system of shared water and sanitary sewers, built to standards that are compatible with the neighboring city—with or without annexation. They are shown on the "Land Use Tier Map" around established urban areas where the cities have indicated an ability to extend utilities. Policies for development under County control are as follows:

Zoning: The County encourages urban-density zoning classifications, including commercial and industrial zoning where designated on the Land Use Tiers Map as Commercial or Planned Mixed-Use.

Roads: Paved hard surfaced roads for subdivisions.

Waste Water Treatment: Provided through a community system built to county standards, compatible with city standards. Individual on-site septic systems should not be allowed in cases where city services are provided, planned for, or may be cost-effectively extended in a timely manner. In other cases, individual on-site septic systems may be allowed provided, however, that easements are dedicated for future sanitary sewer trunk mains and road rights-of-way alignments are indicated for future major streets, as demonstrated and provided by the developer at the request of the County.

(Cass County Comprehensive Plan Update—June, 2003)

Based on the "Urban Service Tier" designation it is our recommendation that Cass County handle this application as a rezoning matter, rather than as an application for a SUP in an A-Agricultural District. The county should decide whether this industrial use is the type of industry best suited for the site in the Urban Service Tier given long-range plans of both the county and the city of Harrisonville; rather than the narrow question of whether this proposed use "fits" the site.

- b. **Accessibility of the property to police, fire, refuse collection and other municipal services; adequacy of ingress and egress to and within the site; traffic flow and control; and the adequacy of off-street parking and loading areas.**

The property is accessible to all these services, which is why the Urban Service Tier is intended for non-agricultural uses. Whether or not this is the appropriate non-ag use at this site is best addressed through an application and public hearing for rezoning to an industrial zoning district classification.

- c. **Utilities and services, including water, sewer, drainage, gas, and electricity, with particular reference to location, availability, capacity and compatibility.**

Utilities are available, such as water for cooling during power production; and indeed, it is the very location of the gas and overhead electric lines that bring the applicant to this

JUL 01 '04 16:08 FROM:

T-754 P:04/04 F-519

Schedule 2

3 of 3

BWR - MEMORANDUM (CONTINUED)

July 1, 2004 - Page 3

site. But the land use planning question of utility extensions for urban uses in the Urban Service Tier is the larger question the Planning Board should consider—again, most appropriately in context of an industrial rezoning application. The SUP application simply asks whether the proposed use "fits" the site; whereas the larger rezoning application asks whether it fits the long-term needs of the urbanizing county in context of the county's plans and the city of Harrisonville's plans.

- d. The location, nature, and height of buildings, walls, fences, and other improvements; their relation to adjacent property and uses; and the need for buffering or screening.

The applicant proposes to buffer the site, as discussed. Height restrictions are violated by the application as they apply to the A-Agriculture District; whereas in the I-1 Light Industrial and I-2 Heavy Industrial Districts, height limits extend to 75 feet—the very height proposed for the lightning towers. The proposed 50-foot heights of principal structures in the gas peaking plant would be within the height limits required in the I-1 Light Industrial and I-2 Heavy Industrial Districts.

- e. The adequacy of required yard and open space requirements and sign provisions.

Required yard setbacks are more than met by the deep setbacks proposed.

- f. The general compatibility with adjacent properties, other properties in the district, and the general safety, health, comfort and general welfare of the community.

The general compatibility test is critical and can best be addressed, again, in context of a rezoning application to an I-1 Light Industrial or I-2 Heavy Industrial District. Then the Board can make a recommendation as to whether the application meets the intent of the county Comprehensive Plan for the Urban Service Tier and, since the site is in the Harrisonville city Urban Service Tier (and city-designated "Intent to Annex" area), whether it meets long-term city planning objectives for the community and the region—not just for this single 35.12 acre parcel.

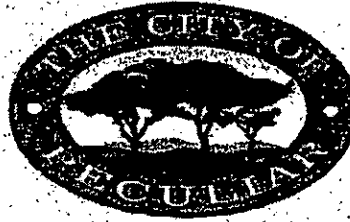
Staff Recommendation:

1. BWR consulting staff recommends the Planning Board deny the SUP application and recommend that Aquila, Inc. pursue the matter through an application for industrial rezoning. The county should decide whether this industrial use is the type of industry best suited for the Urban Service Tier given long-range plans of both the county and the city of Harrisonville; rather than the narrow question of whether this proposed use "fits" this particular parcel of land.
2. If the Board decides to entertain the SUP application, then the facility is generally found to meet the standards of the county zoning ordinance, except for the height restriction.

End of Memorandum

Schedule 3
1 of 1

George G. Lewis, Mayor
Aldermen:
Bryan Barcomb
Jerry Harper
Ernest Jungmeyer
Rhonda Langston
Gene Thraillhill
Mark Wansing



City Administrator
Michael J. Fisher

Chief of Police
Dean Kelly

City Clerk
Nora Dodge

August 20, 2004

Honorable Gary Mallory
Presiding Commissioner
Cass County Commission
102 East Wall
Harrisonville, MO 64701

RE: Annexation of a portion of Harper Road

Dear Mr. Mallory:

The City of Peculiar anticipates annexing certain properties in the near future. Annexation of a section of Harper Road would assist the City in that action and relieve the County of maintenance responsibilities. The portion of Harper Road the City of Peculiar would like to obtain from Cass County is:

- Beginning at the intersection of Harper Road and 227th Street and running south to its intersection with the south boundary of the quarter section of the Northeast quarter section, of Township 45, Range 32W.

The Board of Aldermen appreciates your assistance with this matter. If you need additional information, please do not hesitate to contact me.

Cordially,


Michael J. Fisher,
City Administrator

A.H. MIKE FISHER

Certified Copy of Record

STATE OF MISSOURI, }
County of Cass, } ss.

In the County Commission of Cass County, Missouri, at the July Term, 2004, held on the 16th day of September, 2004, amongst others, were the following proceedings:

CASS COUNTY, MISSOURI
RESOLUTION NO. 04-06 (as amended)
Annexation of Certain Cass County Roads
September 16, 2004

NOW, THEREFORE BE IT RESOLVED BY THE COUNTY COMMISSION OF CASS COUNTY:

The Cass County Commission in official session on September 16th, 2004 did, amongst other things, petition the City of Peculiar, Missouri, requesting that the City of Peculiar annex the following described road in Cass County:

- A. Annexation of a portion of Harper Road as follows:
- Beginning at the intersection of Harper Road and 227th Street and running south to its intersection of Harper Rd with the South Boundary of the Northeast Quarter of the Northeast Quarter of Section 32, Township 45, Range 32 West.

UPON ANNEXATION OF THE ABOVE DESCRIBED ROADS, THE CITY OF PECULIAR ASSUMES TOTAL RESPONSIBILITY FOR THE MAINTENANCE AND UPKEEP OF THE ABOVE ROADWAY.

IN TESTIMONY WHEREOF WE HAVE HEREUNTO SET OUR HAND IN THE COUNTY OF CASS THIS 16th DAY OF SEPTEMBER, 2004.

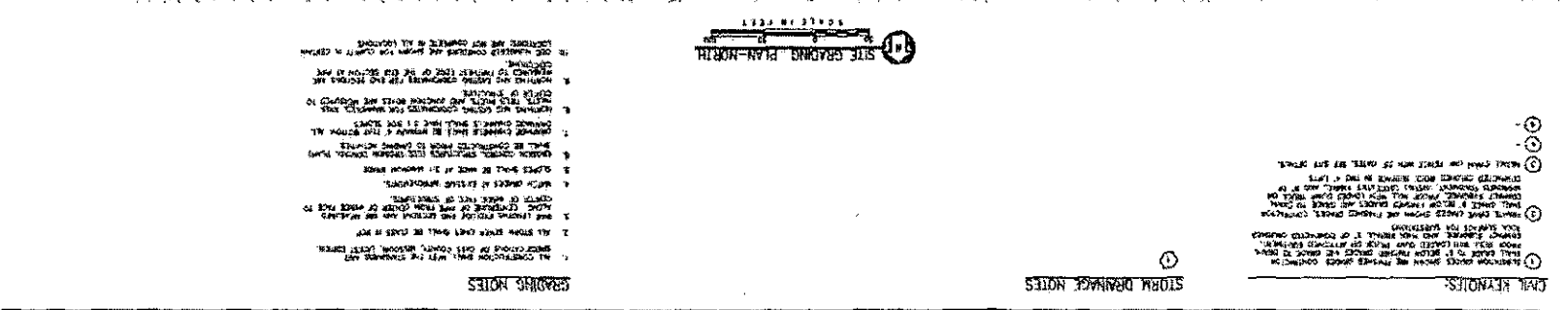
[Signature] Gary L. Mallory, Presiding Commissioner
[Signature] Jon H. Sasbaugh, Associate Commissioner #1
[Signature] Jim Meaux, Associate Commissioner #2

A true copy from the Records of Said Court

WITNESS my Hand and the Seal of said Court, this 16th

Day of September, 2004.

[Signature] Janet Burlingame, County Clerk
By: *[Signature]* Jon Cantrell, Administrative Assistant



JRE 5 1 of 1

Bill Romines, Jr.

JRE 6
1 of 4

From: Mike Blake [mblake@segainc.com]
Sent: Monday, October 04, 2004 10:50 AM
To: Chris R. Rogers; Hedrick, Terry
Cc: Bill Romines; Pam J. Moser; 'Gary Mallory'
Subject: FW: 04-0112/PER/Grading Permit

Terry and Chris,

Attached is the formal letter from Gary Mallory verifying that no grading permit is required for the South Harper Peaking Facility.

If you should have any questions, please do not hesitate to give me a call.

Sincerely,
Michael Blake
Civil Engineer
mblake@segainc.com
Sega Inc.
16041 Foster, P.O. Box 1000
Stilwell, KS 66085
913-681-2881 phone
913-681-8475 fax
<http://www.segainc.com>

Chris and Terry,

According to Gary Mallory, there is no grading permit required for the South Harper Peaking Facility to proceed. We are clear to start moving "dirt." See email below.

If you should have any questions, please do not hesitate to give me a call.

Sincerely,
Michael Blake
Civil Engineer
mblake@segainc.com
Sega Inc.
16041 Foster, P.O. Box 1000
Stilwell, KS 66085
913-681-2881 phone
913-681-8475 fax
<http://www.segainc.com>

10/6/2004

-----Original Message-----

From: Gary Mallory [mailto:commission@casscounty.com]**Sent:** Wednesday, September 29, 2004 1:43 PM**To:** 'Mike Blake'**Subject:** RE: 04-0112/PER/Grading PermitJRE 6
2 of 4

Mike,

We have reviewed the information that you sent. We have no problem with it. We do not require a grading permit.
Gary

-----Original Message-----

From: Mike Blake [mailto:mblake@segainc.com]**Sent:** Tuesday, September 28, 2004 6:10 PM**To:** 'Gary Mallory'**Cc:** Pam J. Moser**Subject:** RE: 04-0112/PER/Grading Permit

Gary,

I am just checking on the status of the grading permit. Let me know, when you get a chance.

Thank you,
Mike

Michael Blake

Civil Engineer

mblake@segainc.com**Sega Inc.**

16041 Foster, P.O. Box 1000

Stillwell, KS 66085

913-681-2881 phone

913-681-8475 fax

<http://www.segainc.com>

-----Original Message-----

From: Gary Mallory [mailto:commission@casscounty.com]**Sent:** Friday, September 24, 2004 2:21 PM**To:** 'Mike Blake'**Subject:** RE: 04-0112/PER/Grading Permit

Mike,

I have everything I need. I will discuss with everyone Monday and e-mail you. I do not see any problem.
Gary

-----Original Message-----

From: Mike Blake [mailto:mblake@segainc.com]**Sent:** Friday, September 24, 2004 1:51 PM**To:** 'Gary Mallory'**Cc:** Pam J. Moser**Subject:** RE: 04-0112/PER/Grading Permit

10/6/2004

Gary,

JRE 6 3 of 4

I am just following up to make sure that you were provided enough information for the grading permit. If there is anything that I can do to help, please do not hesitate to give me a call.

Have a good weekend.

Sincerely,

Michael Blake

Civil Engineer

mblake@segainc.com

Sega Inc.

16041 Foster, P.O. Box 1000

Stillwell, KS 66085

913-681-2881 phone

913-681-8475 fax

<http://www.segainc.com>

-----Original Message-----

From: Gary Mallory [mailto:commission@casscounty.com]

Sent: Wednesday, September 22, 2004 2:40 PM

To: 'Mike Blake'

Subject: RE: 04-0112/PER/Grading Permit

Mike,

We'll take a look at these and get back with you tomorrow.

Gary

-----Original Message-----

From: Mike Blake [mailto:mblake@segainc.com]

Sent: Tuesday, September 21, 2004 5:11 PM

To: commission@casscounty.com

Cc: Bill Romines; Chris R. Rogers; Pam J. Moser; Hedrick, Terry

Subject: 04-0112/PER/Grading Permit

Mr. Gary Mallory,

Per our conversation this afternoon, you requested a rough grading plan drawing of Aquila's South Harper Peaking Facility (originally called the Bremer Site) in order to get a feel for what the project entails. The attached drawings, all in .pdf format, are:

1. Drawing C350 - Erosion Control, Grading and Drainage Plan, this was submitted with the NPDES report.
2. Drawing C300 - Site Grading Plan - North
3. Drawing C301 - Site Grading Plan - South

After review, let's discuss what needs to be done in order to get the grading permit process moving.

10/6/2004

JRE 6
4 of 4

I appreciate you working with us on expediting this phase of the project.

If you should have any questions, please do not hesitate to give me a call.

Sincerely,
Michael Blake
Civil Engineer
mblake@segainc.com
Sega Inc.
16041 Foster, P.O. Box 1000
Stillwell, KS 66085
913-681-2881 phone
913-681-8475 fax
<http://www.segainc.com>

10/6/2004

Cass County Commission

GARY L. MALLORY

Presiding Commissioner

Email commission@casscounty.com

JRE 7

1 of 1

JIM MEARA

Associate Commissioner Dist. 2
Email commissioner@casscounty.com

Jan Cantrell, Administrative Assistant

102 E. Wall, Harrisonville, Mo 64701
Phone (816) 380-8155 Fax (816) 380-8156

JON H. SEABAUGH

Associate Commissioner Dist. 1
Email commissioner@casscounty.com

October 4, 2004

Sega Inc.

Attn: Mike Blake

16041 Foster

PO Box 1000

Stilwell, KS 66085

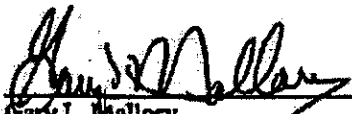
Dear Mr. Blake,

Please accept this correspondence as official confirmation that Cass County does not require a grading permit for the Aquila South Harper Peaking Facility.

I sincerely appreciate receiving the information you sent regarding the site.

If you require anything further, please do not hesitate to give me a call.

Sincerely,


Gary L. Mallory
Presiding Commissioner

Schedule 8

1 of 2

George G. Lewis, Mayor
Aldermen:
Jim Antonides
Bryan Barcomb
Jenny Harper
Ernest Jungmeyer
Rhonda Langston
Mark Wansing



City Administrator
Michael J. Fisher

Chief of Police
Dean Kelly

City Clerk
Nora Dodge

October 26, 2004

Glenn Keefe
Operating Vice President
Missouri Electric
Aquila, Inc.
10700 East 350 Highway
Raytown, MO 64138

Dear Mr. Keefe:

The purpose of this letter is to clarify the City of Peculiar's position relative to the South Harper Peaking Facility and the discussed Chapter 100 Tax Exempt financing mechanism through the City. The Mayor and Board of Aldermen thought this communication all the more important in light of their decision not to pursue the annexation of either South Harper Road or the Bremer property.

The Board's decision not to pursue the annexations was based on their collective opinion that most likely a long and costly legal battle would ensue, and that neither the City nor Aquila wished to expend funds on such an endeavor, nor delay the peaking facility while the legal arguments were heard.

Though not pursuing the annexation, Mayor Lewis and the Aldermen are committed to continuing to work with Aquila staff on the Chapter 100 Tax Exempt financing for the peaking facility. Their commitment remains firm because of:

- Economic benefit to the Ray-Pec School District and the other taxing jurisdictions. Ray-Pec is facing unprecedented growth and a need to continue expanding its facilities. While the additional funding through the Chapter 100 will not replace the District's funds from bonds, it will significantly supplement them.
- The additional generation and transmission upgrades will significantly increase the reliability of the electric distribution system for Peculiar and Cass County.

Schedule 8


2 of 2

Glen Keefe
October 26, 2004
Page Two of Two

- The presence of the peaking facility in Peculiar will be a positive, intangible benefit for attracting and retaining manufacturing to Peculiar.

These and other reasons are the basis for the Mayor and Board of Aldermen's continued support for the South Harper Peaking Facility and completing the Chapter 100 Tax Exempt financing for the project.

Sincerely,



Michael J. Fisher,
City Administrator

CC: Mayor Lewis
Board of Aldermen



Aquila

**SPECIAL USE PERMIT
APPLICATION**

1.0 SPECIAL USE PERMIT APPLICATION

1.1 REQUEST FOR SPECIAL USE PERMIT

Aquila, Inc. (Aquila) has prepared a Special Use Permit (SUP) application and is submitting it on behalf of itself, as lessee and operator, and the City of Peculiar, Missouri (City) as owner.

Aquila, on behalf of the City, requests a SUP for an electric service facility pursuant to Article 8 – Special Use Permits, Cass County, Missouri Zoning Order Subdivision Regulations dated February 1, 2005, Appendix A, Group 49, SIC No. 491, Electric Services and Power Generation – including wind systems. This Zoning Order was adopted under the authority granted by R.S.Mo. 64.211 (and 64-905) et. seq. as amended. According to the Zoning Order, Appendix A, Electric Services & Power Generation (Group No. 49, SIC Code 491) is a permitted use on property zoned as an Agricultural District (A), as long as a SUP is obtained. The subject property is currently zoned as “A”. The SUP is being requested for the 345 and 161 kilovolt (kV) substation known as the Aquila Peculiar 345kV Substation (Facility). The Facility is located approximately one-half mile west of 71 Highway and one-half mile south of the intersection of 203rd Street and Knight Road in Cass County (Figure 1-1). A detailed project description is located in Section 2.0 of this application.

While City is the owner of the Facility as of the date of this application, it is possible ownership may change during Cass County review of this application due to action by the Missouri courts concerning a Chapter 100 bond transaction. If the courts ultimately find the Chapter 100 bond transaction to be invalid, ownership of the Facility will revert from City to Aquila.

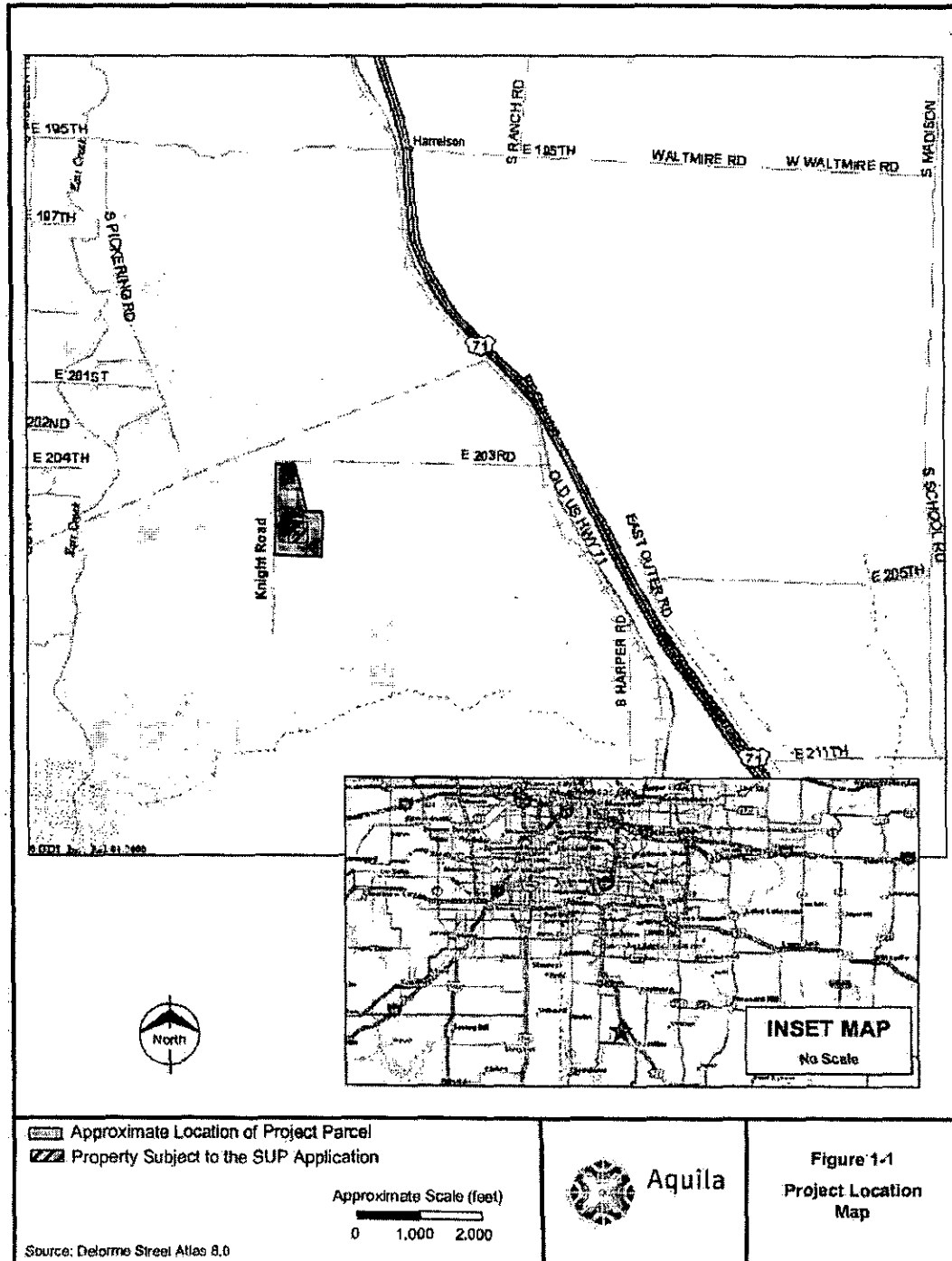
The portion of property for which the SUP is being requested is approximately 7.5 acres and is generally located in the northwest corner of the northwest quarter of Section 5, Township 45 North, Range 32 West (Survey Drawing - Appendix A). The legal description for this 7.5 acre parcel is located on the Survey Drawing in Appendix A. This 7.5-acre property is located within the southern portion of a larger parcel currently owned by the City of Peculiar (Appendix A), which is approximately 55.05 acres. The remainder of the property is not subject to this SUP request as it is anticipated to remain undeveloped, with the exception of the existing transmission lines and gravel access road.

Aquila is also requesting a variance in the height restrictions for the two lightning masts (lightning rods) which are 101 feet tall.



Aquila

**SPECIAL USE PERMIT
APPLICATION**





Aquila

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APPLICATION**

This Special Use Permit application was prepared, vs. a re-zoning application, based on our understanding of Cass County preferences. If the County were to prefer a rezoning application, this application could be amended accordingly. We note that Cass County's Comprehensive Plan Update – 2005 (page 2) states:

“If applications for zoning changes are in accordance with the plan they are presumed to be reasonable. If zoning change requests are not in accordance with the Plan, but are perceived as reasonable, the County should review its planning and regulatory documents and amend either the zoning order or the plan.”

As explained in Section 1.4 below, we believe the request for a special use permit is reasonable when considering the existing land use designation and mix of land uses in the area.

1.2 PURPOSE AND NEED

An electric substation is the electric equivalent of a highway interchange or road intersection with traffic signals – it interconnects transmission and/or distribution lines of equal or varying voltages, thereby tying the grid's transmission line segments together, and allow reliable operation of the transmission network as power moves from generating plants to its ultimate destination (the customer). Transformers are used to connect power lines of different voltages, so that power may flow from one voltage to another. If there is too much traffic (e.g., power flow), switches and circuit breakers are used to isolate the lines and interrupt the flow of power (analogous to use of traffic signals to control traffic at congested intersections or control access to highways). Without substations to protect the grid, a transmission line overload could not be prevented or isolated, the grid could not operate reliably, and reliable electric service to customers would greatly suffer.

The Peculiar 345/161 kV Substation interconnects the existing Aquila 345 kV transmission grid to the existing Aquila 69 kV and upgraded 161 kV transmission grid in northern Cass County. This allows Aquila to construct the 161 kV transmission grid required in this area to support existing load and load growth in the Raymore/Peculiar area for both Aquila's load and the rural electric cooperative load. This also provides additional required support for the existing Aquila 161 kV transmission grid in the Belton/Martin City area. Load growth in northern Cass County has been substantial as new homes and subdivisions have been platted and built, necessitating construction of electric infrastructure to support that growth. This substation is a major part of



Aquila

SPECIAL USE PERMIT APPLICATION

that infrastructure, and is designated critical infrastructure in accordance with various Homeland Security requirements (see Section 2.4).

Grid system stability is necessary to provide continuous electric service to customers of Aquila, such as Whiteman Air Force Base that is located in Missouri. Whiteman Air Force Base is an essential component of our national security and is imperative they have an un-interrupted supply of electricity.

1.3 COMPLETED APPLICATION FORM

A completed and signed Application Form has been included within this application package and is located after page 1-4 of Section 1.0. The required filing fee is also provided.

1.4 LAND USE COMPATIBILITY

The Facility appears to be fully consistent with the existing Multi-Use Tier designation that presently applies to much of the site, and the characteristics specified for that designation, as explained below.

The Cass County, Missouri Comprehensive Plan Update 2005 (Plan - dated February 1, 2005), designates at least the southern portion of the property as a Multi-Use Tier. Multi-Use Tier is defined by the Plan (p. 25) as follows:

"These are areas near towns and cities and along paved highways and thoroughfare roads where non-agricultural development, such as commercial and industrial uses, and residential development that is denser than 20-acre lots, is encouraged. Large-scale development is allowed, including commercial and industrial zoning, provided there are provisions for direct access to paved roads." [Italics added]

The southern portion of the site, and property east, south and west of the site, are designated as Multi-Use Tier on Cass County's Land Use map in the Plan. The southern portion of the site is where the Facility is located. Use of the site for the Facility, as located, appears fully consistent with the Multi-Use Tier definition.

The Facility appears to be consistent with current site and neighboring land uses. The subject property and neighboring properties contain a high-voltage electric transmission line and water supply pipeline. As noted above in Section 1.1, an electric service facility is an acceptable use on



Aquila

**SPECIAL USE PERMIT
APPLICATION**

agricultural zoned lands, which the subject site is currently zoned, subject to obtaining a special use permit.

The Plan also specifies characteristics of the Multi-Use Tier designation on page 28:

"The Multi-Use Tier is representative of development areas within Cass County that exhibit the following characteristics:

- Positioned as *transition areas from urban to rural densities*
- *Located along rural highways, major arterials and intersections, or close enough to such major roads to provide access for more intense levels of non-agricultural traffic, and*
- Predominantly developed for a mix of land uses: residential, industrial and commercial purposes."

The site is consistent with these characteristics. It is located south of recently developed residential properties that are located on or north of 203rd Street. Farmland is south, east and west of the site. Several residences are west of the site. The location is clearly in a transition from rural use to a more urban environment as the area north of the site is being developed. The site is located on and south of 203rd Street, one block from the frontage road (Peculiar Drive) next to Highway 71, a major arterial in that part of the county. Ready access to the property is via a gated entrance driveway. Non-agricultural traffic can access the site via the frontage road to 203rd Street. Land use in the area, as described below, is a mix of residential and agricultural, with the bulk of the property adjacent to the Facility being agricultural.

The northern portion of the property that is not subject to the SUP request currently consists of open agricultural lands and some forested areas associated with two intermittent streams that traverse the property. Surrounding areas are also designated as Multi-Use Tiers by the Plan, although the Grand Oaks Farms residential development immediately north of 203rd Street may be designated as an Urban Service Tier. The remaining portion of the property that is not subject to this SUP application is anticipated to remain as its' current use, agriculture.

Adjacent properties within 100 feet of the Facility property are zoned as agricultural and residential.



Aquila

**SPECIAL USE PERMIT
APPLICATION**

It is believed that construction and operation of the Facility does not adversely impact local infrastructure (roads, schools, etc.) as the majority of the workers are from the region and commute to the Facility from their existing homes.

1.5 CERTIFIED LIST OF PROPERTY OWNERS WITHIN 1,000 FEET

A certified list of property owners within 1,000 feet of the entire 55.05-acre parcel is provided as Figure 1-2.

1.6 TITLE REPORT

Provided in Appendix B.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Application of Aquila,)
Inc. for Permission and Approval and a)
Certificate of Public Convenience and)
Necessity authorizing it 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.)

Case No. EA-2006-0309

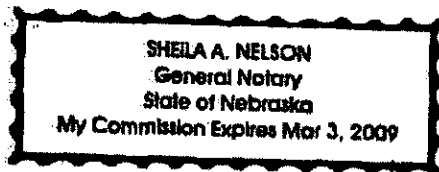
Douglas
County of Jackson)
Nebraska) SS
State of Missouri)

AFFIDAVIT OF JON R. EMPSON

Jon R. Empson, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony entitled "Surrebuttal Testimony of Jon R. Empson;" that said testimony was prepared by him and under his direction and supervision; that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.

Jon R. Empson
Jon R. Empson

Subscribed and sworn to before me this 18th day of April, 2006.



Sheila A. Nelson
Notary Public

My Commission expires:

Mar 3, 2009