

Exhibit No.:

Issues: Community Issues

Witness: Norma F. Dunn

Sponsoring Party: Aquila Networks-MPS

Case No.: EA-2006-0309

FILED³

MAY 11 2006

Before the Public Service Commission
of the State of Missouri

Missouri Public
Service Commission

Surrebuttal Testimony

of

Norma F. Dunn

Exhibit No. 11
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 NORMA F. DUNN
ON BEHALF OF AQUILA, INC.
D/B/A AQUILA NETWORKS-MPS
CASE NO. EA-2006-0309**

1 Q. What is your name and business address?

2 A. My name is Norma F. Dunn. My business address is 20 W. 9th Street, Kansas
3 City, Missouri.

4 Q. Are you the same Norma F. Dunn who filed direct testimony on behalf of Aquila,
5 Inc. ("Aquila" or "Company") in this proceeding before the Missouri Public
6 Service Commission ("Commission")?

7 A. Yes, I am.

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

9 A. I will respond to testimony provided at public hearings regarding complaints
10 lodged against Aquila relating to allegations of continued operations of the South
11 Harper Peaking Facility, noise, land values, and lack of concern for the
12 community. In response to testimony filed by Cass County witness Bruce
13 Peshoff, I will also discuss the efforts of Aquila to file an application for a Special
14 Use Permit at the South Harper site.

15 Q. What are your responsibilities in regard to the South Harper facility?

16 A. As Senior Vice President of Communications and Stakeholder Outreach, one of
17 my responsibilities is to interact with community members impacted by Aquila
18 operations in a cooperative effort. Aquila is very conscious of the impact its
19 obligation to serve the general public and the impact its provision of service can
20 have on the economic development of a region. At the same time, we are also
21 aware that the generation, transmission and distribution of electric service is

1 sometimes viewed in a negative light by those who live or work within close
2 proximity to our facilities. In regard to South Harper specifically, it has been my
3 role to establish communications with neighboring residents, listen to their
4 concerns and address them to the extent possible.

5 Q. What are some of the actions that have been taken by Aquila as a result of your
6 role?

7 A. We have focused on two areas. First, we tried to increase our involvement with
8 the local residents to address specific concerns about the plant's operations.
9 While the construction project team had always stressed the importance of
10 addressing local issues, we decided to intensify this effort. Second, we looked at
11 ways that we could become more involved in the community to demonstrate the
12 type of good neighbor Aquila is. This involvement is typical for our utility
13 distribution business and was simply extended to the operation of a generation
14 facility.

15 Q. What steps have you initiated with the local residents?

16 A. I have met with families on a one-on-one basis and in small groups and have
17 established a team of employees to help with this effort. Together with the plant
18 manager, we scheduled tours of the plant and held question and answer sessions.
19 We set up a website to provide as much information as possible. We also invited
20 neighbors in to meet with experts that were at the plant conducting emissions and
21 sound testing in order to certify the plant. We have established ongoing
22 community meetings open to all neighbors for the purpose of discussing both
23 concerns regarding the plant and opportunities for improvement within the
24 community. We have worked diligently to address local neighbors' concerns
25 regarding emissions and sound disturbances. In fact, the plant was designed to
26 meet the County's Residential Standards for noise emissions and after receiving

1 complaints from our neighbors, we have embarked on projects to reduce the
2 sound levels even further.

3 Q Can you provide an example of how the plant was designed to ensure that it met
4 County noise emissions?

5 A. Yes. The most obvious example is the height of the exhaust stacks. We increased
6 the height by 20 feet in order to further dampen and disperse the acoustic
7 emissions.

8 In addition, although the Environmental Protection Agency and the Missouri
9 Department of Natural Resources gave South Harper air quality permits regarding
10 emissions, we ordered additional independent testing and have engaged two
11 professors from Kansas University, well renowned experts in their field, to review
12 the findings. These toxicologists have provided expert testimony in numerous
13 court cases and have written a multitude of articles on the effects of toxins on the
14 human body. After reviewing the additional test results, the professors' opinion is
15 that there are no adverse health effects from having the plant located where it
16 currently sits.

17 Q. What other steps has the Company taken?

18 A. Another concern that our neighbors had is the appearance of the plant. In
19 response, we have planted almost 1,200 trees and shrubbery in and around the
20 South Harper Peaking Facility. All plantings are guaranteed and have a specific
21 maintenance program in place to ensure that they will flourish. We consulted
22 with our neighbors on the landscaping and received input from them for
23 landscaping on their own property.

24 Aquila also made a commitment to those residents living closest to the plant, that
25 we would purchase their property if they were not satisfied with our efforts to
26 address their concerns. There are neighbors who chose not to stay and work with

1 us on these issues. As a result, Aquila has purchased four homes and one vacant
2 lot that are adjacent to the property line of South Harper. These properties were
3 purchased at appraised value or above, two homes have sold near appraised
4 values and the other two and the vacant lot are currently held for sale.

5 There are several projects we have undertaken to improve the community. We
6 have paved 243rd Street, South Harper Road along the eastern portion of our
7 property, 241st Street and Overfelt Road to the southwestern end of our property
8 boundary line. These roads were previously white gravel roads and increased the
9 area pollution tremendously.

10 Q. What projects have you initiated to support the community?

11 A. Twenty-one fire hydrants were added with plans to add an additional two hydrants
12 in the area. A new waterline was added and these changes increased ratings for
13 the West Peculiar Fire District to top rankings nationwide. In addition, the county
14 will now have five new tornado sirens as a result of a project that was started at
15 one of our community meetings. There are other group projects in place to equip
16 four baseball fields with lights and new lights are being installed by Aquila at a
17 local football field.

18 Q. How would you characterize your efforts?

19 A. In part, they have been successful. Over 250 letters of support for the continued
20 operation of the South Harper Peaking Facility at its existing location have been
21 received and filed with the Commission in this proceeding. Along with expected
22 dissent at the public hearings, there also was a good amount of support expressed.
23 Of course, I recognize that in a matter as emotive as this, it is impossible to satisfy
24 everyone. Still, one of my greatest frustrations is the criticism lodged against our
25 best efforts. It seems that every action taken to mitigate the impact on one
26 individual is disparaged by another.

1 Q. Can you provide examples?

2 A. Certainly. I mentioned that Aquila agreed to purchase four homes and one vacant
3 lot from nearby neighbors who chose to leave the area. While this satisfied the
4 particular individuals involved, at least one witness at the first public hearing
5 complained that Aquila was trying to buy off the opposition. In contrast to that
6 testimony, Aquila has received other complaints that we did not offer to buy
7 homes that were farther removed from the South Harper site. For example, Brad
8 and Debra Thompson reside on Lucille Lane and I spoke with Mr. Thomson
9 numerous times about issues surrounding the plant. Mr. Thomson wanted Aquila
10 to purchase their home, but I indicated we could not because the home was
11 outside the corridor we had identified as being closest to the plant. Aquila did
12 provide some landscaping and trees to the Thomson property at no cost, however,
13 in order to better screen the plant site. The reaction to our decision not to
14 purchase the Thomson home was included in Letters to the Editor of the Belton
15 Star-Herald which I have attached as Schedule NFD-1. These letters are typical
16 of some of the communications I have received directly. Although Aquila has
17 provided trees in order to screen the property on 13 homes, including the
18 Thomsons, a complaint was lodged that we would not build them a barn.

19 Q. Given your decision to purchase some properties, is it your opinion that real estate
20 values in the area have been negatively impacted as suggested by a number of
21 individuals at the public hearings?

22 A. No. In this regard, some public witnesses have misinformed the Commission.

23 Q. Please explain.

24 A. It is my understanding that home sales in the area remain robust. Aquila has
25 already sold two of the four homes it purchased. The first, appraised at \$340,000
26 and listed at \$339,900, sold for \$335,000 or 98.5% of its appraised value. The

1 second, appraised at \$295,000, was listed for \$285,000 and sold for \$273,000 or
2 92.5% of its appraised value. In both cases the sales value was higher than what
3 the original owner had paid for the property.

4 In addition, Aquila has, at the request of area homeowners, had a number of
5 pieces of property appraised. The results of these appraisals are that homes, in
6 general, are rising dramatically in value. For example, one particular 40 acre tract
7 of land with a home on it was appraised in September 2005 for approximately
8 \$340,000. That same piece of land was reappraised in February 2006 at
9 \$490,000. The appraisal was revised based on recent sales of like parcels of land
10 in the area.

11 Q. Are there other examples of misinformation that have been presented at the public
12 hearings?

13 A. Yes. Some statements made at the public hearing, while technically correct, are
14 misleading. For example, a reference was made at one of the hearings that Aquila
15 had promised to make numerous fixes to the plant to minimize even further the
16 noise emanating from the plant, but that we were not continuing with that work.
17 However, Aquila is under a court order not to operate the plant absent specific
18 approval from the Commission, and it would be nonsensical to make additional
19 improvements to the facility ahead of a Commission order. We have stated
20 publicly and will state again now that if the facility is approved, we will complete
21 the improvements. These improvements include but are not limited to installing
22 sound walls around the generator step-up transformers, turbine air inlet silencers
23 and mechanical package ventilation silencers-all of which have been paid for and
24 are in storage, as well as sound enclosures for the Electro Hydraulic Controls and
25 replacing exhaust fans in the plant work shop with an air condition.

1 Other allegations are just blatantly false. For example, at two of the public
2 hearings, witnesses testified that the South Harper Peaking Facility was operating
3 as recently as several weeks ago. As indicated in the surrebuttal testimony of
4 Aquila witness Chris Rogers, the South Harper plant last operated on December 6,
5 2005. This was further documented in records provided by Aquila at the request
6 of Staff witness Leon Bender, which are referenced in his rebuttal testimony. It
7 is likely that the noise to which residents are referring and complaining about is
8 from the pre-existing natural gas compressor station owned by Southern Star
9 which is adjacent to South Harper. This is not a new issue. As early as August
10 2005, after having received complaints from a nearby resident of noise out of the
11 South Harper facility, that resident in an e-mail to me verified that the sound
12 instead had been coming from the gas compressor site:

13 Email dated August 30, 2005 11:59 PM:

14
15 OK, 11:00 p.m. need to be up @ 4:30 a.m. but can't sleep
16 because of the screech I hear from across the road. OK, get
17 out of bed, get in the truck, go down the road to determine
18 the origin, and find it's Southern Star. Come home, ring
19 them up in Owensboro, KY and RIP the poor guy that has
20 no clue what is happening in Peculiar, MO and accept that
21 he will find a reason for the racket and shut it off.
22

23 My simple point is that during the past 17+ yrs. of living
24 here, I HAVE NEVER HAD A REASON TO COMPLAIN
25 ABOUT THE COMPRESSOR STATION until a few
26 months ago. It seems there are at least two snakes in the
27 grass here (I hear they travel in pairs.)
28

29 John, two nuisance lawsuits may be more appropriate.
30

31 Sorry to a degree, but when someone screws with with (sic) my
32 livelihood, I doubt I shall take it lying down.
33 FRANK DILLON
34

35 Q. Why would a natural gas compressor station operate so early in the morning?

1 A. Aquila does not own any natural gas compressor stations, however, it is our
2 understanding that these facilities will begin to operate several hours ahead of
3 anticipated demand for natural gas in order to "pack" or further pressurize the
4 pipeline. We understand that this particular compressor station serves a wide
5 geographic area for Southern Star. As the Commission is aware, there is an
6 acute coal shortage at power plants across the country. This has resulted in a
7 number of coal conservation efforts which include using natural gas to
8 generate more electricity than normal.

9 Q. Have you been surprised by other public testimony by Mr. Dillon regarding
10 this matter?

11 A. Yes.

12 Q. In what regard?

13 A. At the third public hearing held in Harrisonville, Mr. Dillon testified that
14 generally he had no issues with the Southern Star Natural Gas Compressor
15 Station:

16 "I've heard and read comments about well, Southern Star is over there
17 and they make a lot of racket. I've been there for 18 years, for the
18 most part until probably the last year you didn't hear anything out of
19 that gas plant unless it was below zero. You know, there has not been
20 a day below zero this year. I think they upgraded their plant to service
21 the Aries Plant, so on occasion you will hear them running over there,
22 but you really have to – if I'm outside, I have to strain to hear them
23 running. They have done some obnoxious things, I mean lightning
24 struck one night and there was a gas flame going up in the air it kicked
25 off one of their relief valves. That was about 4:30 in the morning. For
26 the most part, I have no issue with them."

27 However, Mr. Dillon apparently has had concerns about the natural gas
28 compressor station in the past.

1 Q. What leads you to believe this?

2 A. Mr. Dillon signed a letter dated March 23, 2000, along with a number of
3 other individuals who identified themselves as Affected and Concerned
4 Property Owners. The letter, addressed to the Secretary of the Federal Energy
5 Regulatory Commission and copied to several public officials, raised concerns
6 in regard to the compressor station. The letter addressed issues including
7 safety, houses shaking, annoying noise, property values, lack of berms and
8 landscaping, air pollution, the need for paved roads, and possible soil or
9 atmospheric contamination resulting in strange growth rings.

10 Q. You indicated that you would address the topic of an attempt by Aquila to file an
11 application for a Special Use Permit for the South Harper Peaking Facility site, as
12 referenced by Cass County witness Bruce Peshoff at page 19 of his testimony.

13 Were you the Aquila representative who attempted to file that application?

14 A. Yes, I was.

15 Q. Did County representatives encourage Aquila to make that filing?

16 A. Yes, Mr. Gary Mallory did.

17 Q. Please explain.

18 A. On November 22, 2005, I was invited to a meeting in Harrisonville, MO
19 organized by Gary Mallory to discuss an Economic Development Board he was in
20 the process of organizing. In early December 2005, Mr. Mallory asked me if I
21 would be interested in being Vice-Chairman for the organization. I said I would
22 and was voted in by members. We have been having monthly meetings and I
23 participate fully as a member of the organization and as Vice-Chair of the Board.

1 On December 29, 2005, immediately after our Board meeting I met with Mr.
2 Mallory in his office. I told him what I was doing out in the community to try to
3 correct issues and concerns that we were having with neighbors around the plant.
4 He said he had heard about my work and was pleased about it. He said he had
5 heard good things about it. He also said that we should stop with all the litigation
6 and resolve this issue. I told him I was anxious to do that. He told me we should
7 do the right thing and file for zoning with the county. I said I agreed and that I
8 would work on that. I also told him that we would stop the litigation on our side
9 and not pursue the Supreme Court route. He said he was confident we could
10 resolve our issues. I gave him my word that we would try.

11 Q. How would you describe your relationship with Cass County officials?

12 A. Cass County representatives have always been very cordial, but have, at various
13 times, sent out mixed signals and left me puzzled as to their intentions.

14 Q. Can you provide examples?

15 A. Yes. Encouraged by Mr. Mallory's comments, at my direction Aquila formed a
16 team to expeditiously work on a special use permit application. This is no small
17 undertaking, but as noted by Cass County Witness Peshoff, we completed in a
18 short period of time a document that was in full compliance for review by the
19 Planning Board.

20 On January 4, 2006, I went to see Mr. Mallory in his office to show him a press
21 release I was going to issue that day. I told him we were not going to pursue a
22 review of the Court of Appeals decision with the Supreme Court and that we
23 would file with the County for approval. I verified with him that a Special Use
24 Permit was what was needed. I told him we were going to work very hard to get
25 all these issues resolved. He said he was glad about that and that the county

1 would do whatever the judge told them to do. I told him I understood and that I
2 was looking forward to getting all these issues resolved.

3 The next day, however, I received a fax from Gary Mallory with a confusing letter
4 from him to me with an attachment. Although earlier encouraged by Mr. Mallory
5 to keep an open line of communications, in that letter he stated that all
6 communication between Aquila and the County were to be restricted to counsel
7 for the parties.

8 The attachment, which is included as Exhibit NFD-2, was a copy of a letter dated
9 August 16, 2005 from Cindy Reams Martin to our General Counsel, Chris Reitz,
10 which among other things indicated that an application would not be accepted for
11 several reasons, including that the facilities had already been constructed; nor,
12 could the County accept a zoning application until the Missouri Public Service
13 Commission withdrew the writ case pending before Judge Dandurand in the Cass
14 County Circuit Court. We informed Cass County that we were not in a position to
15 tell the Commission anything, let alone tell the Commission to withdraw from a
16 court case challenging one of its rulings.

17 About a week before the applications were complete, Aquila's zoning counsel, Ed
18 Clemmons, went to the County zoning office and in discussions with the Director
19 of Zoning and the County Counselor Debbie Moore, received information
20 regarding the number of copies of applications to be filed, along with
21 requirements for diagrams, maps and exhibits. No hint or indication was given
22 that the County would not accept our application. On January 19, 2006, my
23 assistant called the county offices to indicate I was on my way to deliver the
24 applications. She was told they would not wait for me past 4:30 because that was
25 when the office closed. I arrived at 4:35 p.m. too late to file the applications. I
26 returned the next day to file the application and was again told that no one in the

1 zoning office was available to accept the application. However, Ms. Moore came
2 to speak with me. She indicated that Aquila had put the County in a difficult
3 position with its filing and that they could not accept the application. I was
4 shocked to later find that the County's outside counsel had called our attempt to
5 file the application brinkmanship and a public relations ruse as evidenced by the
6 fact that it was delivered by Aquila's Senior Vice President of Public Relations.
7 Mr. Mallory had told me that filing the application would be the right thing to do
8 and I had given him my word that Aquila would do so. I delivered the
9 applications to the county offices because I was going to personally provide a
10 copy to Mr. Mallory and because of the personal commitment I had made.
11 Schedule NFD-3 is the letter I had prepared to include with his copy.

12 Q. Is there anything that suggests to you that Aquila would receive less than a fair
13 hearing if an Application were made with the County at this time?

14 A. Company witness Jon Empson addresses this issue in more detail in his
15 surrebuttal testimony. However, there has been a recent event that has caused me
16 to question the type of hearing Aquila would receive.

17 Q. Please explain.

18 A. Throughout the course of these proceedings there have been concerns expressed
19 from individuals on both sides of the issue regarding personal security. Early on,
20 some residents spoke of intimidation by Aquila's outside security patrols, which
21 we investigated and ensured, to the extent such instances had occurred, that they
22 would cease. More recently, there have been allegations of harassment of
23 individuals who spoke in favor of the South Harper facility. I mentioned earlier
24 the community meetings we hold that are open to all neighbors, both supporters
25 and opponents. While control has been maintained at these meetings, we have
26 experienced vicious verbal altercations, hand gestures, suggestions that Aquila

1 personnel should be shot, and inappropriate e-mails and phone messages. At one
2 community meeting a group of men threatened to throw food in the face of one of
3 our supporters. Others have reported instances of vandalism after testifying in
4 support of the plant.

5 In response to these incidents, we invited a member of the Cass County Sheriff's
6 Department to attend a meeting that we were holding in preparation for the next
7 community meeting. We asked for a speaker to brief us on methods to handle
8 safety issues or concerns. Unfortunately, the Major in the department we spoke
9 with indicated that he needed to run this past Cass County's legal department
10 because of the County's stance against Aquila in general and that he did not feel
11 they would want a member of the Sheriff's Office speaking in a role that could be
12 interpreted as supportive of Aquila. Apparently after checking with the County
13 legal staff, the Major called back to state that no one from that department would
14 be sent for the safety discussion. When the County's legal department has
15 become more concerned with the public appearance of their stance against Aquila
16 than they are with the safety issues of their own residents, it does give one pause
17 to wonder whether a fair hearing could ever be achieved.

18 Q. Does this conclude your pre-filed surrebuttal testimony?

19 A. Yes, it does.

MRS. THOMSON'S FIRST LETTER

**Letter To Editor (Belton, MO)
Belton Star-Herald Star Herald – 01-19-2006**

Dear Editor:

I just picked up our copy of The Star Herald from the post office. I must comment on your front page Aquila article.

We reside at 24005 S. Lucille Lane, Peculiar. Our house is about one-quarter mile from Aquila's power plant. The picture on your front page article is what we see from our property.

Norma Dunn's comment that, "We have met personally with individual homeowners and community groups to address their concerns completely enrages me.

I have never met with Norma Dunn or any representative from Aquila. Aquila has never contacted me about any concerns I have. I have personally presented several questions to Norma Dunn via e-mail that she has not responded to.

Our block, Lucille Lane, is where Aquila has purchased the Manning and Patton homes. These are our next door neighbors. Aquila has also purchased other properties that abut to our property. Aquila also required every seller to sign a confidentiality agreement. What does Aquila have to hide? Why are they picking and choosing which properties they are willing to purchase? Why are they even purchasing these homes in the first place? Our neighborhood is turning into a ghost town.

Any "community outreach" Aquila has made is directed to the people of the city of Peculiar, not their "South Harper neighbors." They have done nothing for the people that live within walking distance of the power plant, except plant some trees. You should know that Aquila now owns more than half of the properties they continually brag about planting trees on. That sure does us "South Harper neighbors" a lot of good.

Aquila is not a good neighbor and has never tried to be.

Debra Thomson
Peculiar

MY RESPONSE

Dear Editor:

I am puzzled by Debra Thomson's January 19, letter to the editor. In that letter she states:

"I have never met with Norma Dunn or any representative from Aquila. Aquila has never contacted me about any concerns I have. I have personally presented several questions to Norma Dunn via e-mail that she has not responded to."

In fact, I personally met with Mrs. Thomson's husband at their home on September 14, 2005. During that visit, I brought the landscaper we are using on this project to meet with Mr. Thomson. On September 20, 2005, we began planting trees on their property with input from Mr. Thomson. In total, 63 trees were planted on their property for a total cost of \$28,000. Our landscaper spoke with Mr. Thomson at least five times during this period. Additionally, I corresponded with Mr. Thomson via phone and email numerous times during the month of December 2005 regarding many issues. Finally, during January 2006, I spoke to Mr. Thomson on the phone and I personally delivered an aerial map of the area to their home. While it is apparent that Mr. and Mrs. Thomson do not agree with Aquila's policy on purchasing homes, it is disappointing that Mrs. Thomson would make representations that can only be construed as misleading or incorrect.

I can be reached at 816-467-3143.

Norma F. Dunn
Senior Vice President
Aquila, Inc.

MRS. THOMSON'S FINAL RESPONSE

**Star Herald
Letter to Editor
Feb. 2, 2006**

Dear Editor:

I would like to thank Norma for making my point about Aquila. Not only did Norma overlook my questions again, she did exactly what we have come to expect of her. She talked about "trees."

I would also like to thank Norma for confirming the fact that she has never talked or met with me. I am positive that she could not pick me out of a crowd of three. I guess Norma believes that having a few conversations with my husband about "trees," eliminated the need to address my questions and concerns.

By the way Norma, where is our barn? Or does Aquila only provide improvements to properties they intend to purchase?

When Aquila is ready to answer questions, we're ready to listen. Then again, we wouldn't be exchanging letters to the editor if Norma was willing to talk about anything more than trees, would we?

**Debra Thomson
Peculiar**

CASS COUNTY COMMISSIONER'S

EMAIL-COMMISSIONER@CASSCOUNTY.COM

FACSIMILE TRANSMITTAL SHEET

| | | | |
|---------------|--------------|-------------------------------------|----------------|
| TO: | NORMA DUNN | FROM: | GARY MALLORY |
| COMPANY: | | DATE: | 1-5-06 |
| FAX NUMBER: | 816-467-9143 | TOTAL NO. OF PAGES INCLUDING COVER: | 6 |
| PHONE NUMBER: | | SENDER'S REFERENCE NUMBER: | PHONE 380-8155 |
| RE: | | YOUR REFERENCE NUMBER: | FAX-380-8156 |

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

Norma
Info regarding discussions
were recently had.
Any questions, please
call.
Gary

COUNTY COMMISSION**CASS COUNTY**

102 E. Wall

Harrisonville, MO. 64701

commission@casscounty.comGary Mallory
Presiding Commissioner(816) 380-8160
Fax (816) 380-8156

January 5, 2006

VIA FACSIMILE (816/467-9143)Norma Dunn
Senior V.P. Corporate Communications
Aquila
20 West 9th Street
Kansas City, MO 64105

Re: Cass County, Missouri v. Aquila

Dear Norma:

Over the last few days, you have been in communication with me, advising that Aquila intended to abandon its appeal of the lawsuit filed by the County. In that lawsuit, the County secured a Permanent Injunction against construction and operation of the South Harper Plant and the Peculiar Substation. Judge Dandurand stayed the Injunction, but only pending appeal of the Injunction by Aquila. The Judge ordered any improvements inconsistent with agricultural zoning to be removed once the appeal was over.

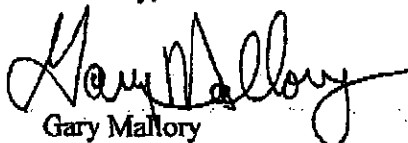
You have also indicated to me that Aquila intends to file a special use permit application for the plant and substation, though both have already been constructed in violation of the law. On August 16, 2005, the County's attorneys directed a letter to Aquila's general counsel advising of the County's position with respect to its obligation to process an application for special use permit and/or for rezoning so long as legal challenges to the County's zoning authority over the South Harper Plant were pending. That letter, a copy of which is attached for your reference, also advised of the County's view with respect to Aquila's obligation to comply with Judge Dandurand's Judgment entered January 11, 2005 if the appeal was dropped or otherwise completed.

In the meantime, there is still a pending Writ of Review case, filed by the County, as a result of the Public Service Commission's issuance of an Order which purported to declare that previous orders issued by the PSC gave Aquila whatever authority was required to construct the South Harper Plant in Cass County. That Writ case is also pending before Judge Dandurand. Aquila intervened as a party in that case, in support of the Public Service Commission's position. That case was stayed by agreement of the parties, pending the outcome of Aquila's appeal of the County's Injunction. It is the County's belief that the Court of Appeals' December 20, 2005 Opinion will require the issuance of an order and judgment in the County's favor in the Writ case.

The County has directed its lead counsel in the Writ case, Mark Comley, to prepare the necessary pleadings or orders by which to conclude the Writ case on the terms I just described. However, unless and until the parties agree to a final disposition in the Writ case or until Judge Dandurand enters an order that is final and unappealable in the case, the County's jurisdiction to enforce its zoning ordinance against construction of a power plant is still being challenged, both by the Public Service Commission and by Aquila. Thus, until the Writ case is disposed, the County's position with respect to its obligation to process a rezoning and/or a special use permit application while its zoning authority is being challenged remains as described in the attached letter.

I ask that further communications with respect to this matter, particularly as relate to the legal proceedings, be directed through your counsel to the County's counsel. Mark Comley is lead counsel for the County with respect to the Writ action. Cindy Reams Martin is lead counsel for the County with respect to the Injunction litigation. Debbie Moore, as our County attorney, is also available to discuss either matter with counsel at any time. Also, please advise whether Aquila's legal representation for these two matters remains the same.

Sincerely,



Gary Mallory
Presiding Commissioner

Attachment

cc: Cindy Reams Martin, Esq.
Mark Comley, Esq.
Debra L. Moore, Esq.

Law Offices of
CINDY REAMS MARTIN, P.C.
A Professional Corporation

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*Admitted in Missouri and Kansas

August 16, 2005

VIA FACSIMILE 467-9611

Christopher Reitz
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Mail Stop Code 3-128
Kansas City, MO 64105-1711

Re: Cass County, Missouri v. Aquila, Inc., Case No. CV104-1443CC

Dear Chris:

Since the time of our meeting on Friday, July 22, 2005 and my letter to you of July 29, 2005, I have learned that certain of Aquila's employees have been in contact with officials employed by Cass County making inquiries about the process to apply either for rezoning of, or for a special use permit for, the South Harper Plant and/or the Peculiar Substation. In my letter to you of July 29, 2005, written to respond to your overtures of possible settlement, I advised that the County would and could not make "advance deals" with respect to rezoning applications. Though I advised you in the letter of the obvious, that Aquila has the right, as would any applicant, to attempt to secure rezoning for proposed developments, my letter certainly did not suggest an agreement to allow Aquila to file a rezoning or special use permit application while Aquila's appeal is pending, or as a means of remedying Aquila's current zoning violations, remediation of which is, at this time, controlled by the Court's January 11, 2005 Judgment.

As Debbie and I explained to you in our meeting, and as I explained to you in my July 29, 2005 letter, the County is not able, nor willing, to take any action that unilaterally modifies, alters, amends or impacts the existing Judgment. That Judgment permanently and mandatorily enjoined construction and operation of the South Harper Plant and the Peculiar Substation. Though the Court granted Aquila a stay from the effect of the Judgment, it did so pending appeal only. To remedy Aquila's zoning violations, the Court's Judgment directed that all improvements inconsistent with agricultural zoning be removed should Aquila's appeal prove unsuccessful. No other means of remediation was requested, or ordered by the Court.

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Aquila did not request at trial, and the Judgment does not reflect or include, any right, in the event of an unsuccessful appeal, to delay removal of the illegal improvements pending attempts by Aquila to remediate the zoning violations through a rezoning or a special use permit application. Rather, the Court's Judgment plainly requires remediation of the zoning violations by removal of the offending improvements.

At trial, and on appeal, Aquila has steadfastly taken the position that it is exempt from the obligation to comply with the County's Zoning Ordinance and master plan. If Aquila attempts to file an application for rezoning and/or a special use permit for the South Harper Plant and the Peculiar Substation while its appeal of the Judgment remains pending, the County will not be able to accept or entertain the application. Such an application, by its nature, would necessarily assume the authority of the County to regulate land use for the South Harper Plant and the Peculiar Substation. Yet, Aquila's legal position on appeal is that the County has no such authority. The County is not obligated, nor even authorized, to entertain or process an application for rezoning or for a special use permit when the County's zoning authority remains the subject of pending litigation.

If Aquila dismisses its appeal, rendering the Court's Judgment final and nonappealable, and rendering final the determination that the County does, in fact, have proper zoning authority over the South Harper Plant and the Peculiar Substation, then any application Aquila may file for rezoning and/or for special use permit after such dismissal will be considered, consistent with the Zoning Ordinance, and consistent with the Judgment, as a request for rezoning or a special use permit for a proposed improvement. However, Aquila will remain obligated to comply with the Court's Judgment, which requires remediation of the existing zoning violations by removal of the illegal improvements. The County is not permitted to ignore the Judgment, or to unilaterally modify its terms, by permitting remediation of existing zoning violations in a manner other than as directed by the Court.

Chris, Debbie Moore has advised me that you have contacted her, by phone, to inquire about the County's "position" on Aquila's apparent intent to pursue a rezoning or special use application, and she has indicated that, from your messages, you are questioning whether the County has "changed its position." The County's position has, throughout this ordeal, remained 100% consistent. It has always expected Aquila to follow the law. In the first instance, that meant securing rezoning for the South Harper Plant and the Peculiar Substation. Having failed to do that, the County now expects Aquila to comply with the Judgment. That is an expectation independent of, and not in lieu of, any efforts Aquila may choose to undertake, once litigation is no longer pending, to apply for rezoning or a special use permit. Moreover, the County has consistently advised it will not compromise its requirement that Aquila comply with the law in exchange for money or other consideration. The County's obligation to its citizens demands nothing less. Your suggestion in your phone message to Debbie that the County has "changed its position" demonstrates a misinterpretation of our meeting and of my July 29, 2005 letter, and further reflects a lack of appreciation for the fact that there is a Judgment in place imposed by a Court of law, not by my client, that mandates certain conduct by Aquila. My client has never suggested that it has any desire, let alone ability, to "rewrite" the Judgment to allow Aquila the

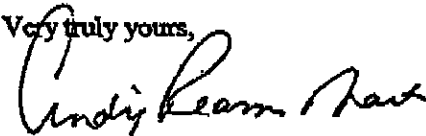
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benefit of a remedy Aquila failed to request from the Court at the time of trial, and that the Court has thus never authorized.

Chris, of late, all of Debbie's and my communications with Aquila have been with you as Aquila's counsel. As I have commented to you before, I certainly recognize that as General Counsel, you are an attorney empowered to act as a representative for your client in communications with opposing counsel. However, I would appreciate receiving clarification whether outside counsel is being kept apprised of our communications, and whether I am to be copying them on correspondence with you.

Please advise should you have any questions.

Very truly yours,



Cindy Reams Martin

CRM/jdd

cc: Debbie Moore
Mark Comley
Gary Mallory

Dear Mr. Mallory:

Aquila, Inc. is pleased to file applications for a Special Use Permit for the South Harper Peaking Facility located on 24400 South Harper Road, Peculiar, MO 64078 and for the 345 kV Substation Project located on 8901 East 203rd Street, Peculiar, MO 64078.

We respectfully request that Cass County's Planning Board review and recommend approval of these applications to the Cass County Commission.

We understand that the road to get us to this point has been difficult. We also understand that decisions that were made early on in this process could have been handled better. We come before the Commission to commit to work with you and the County on ensuring that South Harper is and continues to be a good neighbor.

We have worked diligently to address local neighbors' concerns regarding emissions and sound disturbances. In fact, the plant was designed to meet the County's Residential Standards for noise emissions and after meeting with our neighbors, we found that those standards were not good enough so we have embarked on projects to reduce the sound levels even further.

In addition, although the Environmental Protection Agency gave South Harper an air quality permit regarding emissions, we ordered additional testing and have engaged two professors from Kansas University, well renowned experts in their field, to review the findings. These toxicologists have provided expert testimony in numerous court cases and have written countless articles on the effects of toxins on the human body. After reviewing the additional test results, the professors' opinion is that there are no adverse health effects from having the plant located where it currently sits.

Another concern that our neighbors had is the appearance of the plant. We have planted over 1,188 trees and shrubbery in and around the South Harper Peaking Facility. All plantings are guaranteed and have a specific maintenance program in place to ensure that they will flourish. We consulted with our neighbors on the landscaping and received input from them for landscaping on their own property.

There are neighbors who chose not to stay and work with us on these issues. As a result, Aquila has purchased 4 homes and one vacant lot. These properties were purchased at appraised value and are currently held for sale.

Mr. Mallory, we have been having one-on-one meetings with neighbors to address their concerns. We also have held monthly group meetings with our neighbors who reside within a 3-mile radius, where we provide information, offer tours and answer their questions. We have a current website for our neighborhood and its use by the community continues to increase.

There are several projects we have undertaken to improve the community. We have paved 243rd Street, South Harper Road along the eastern portion of our property, 241st Street and Overfelt Road to the southwestern end of our property boundary line. These roads were previously white gravel roads and increased the area pollution tremendously.

21 fire hydrants were added with plans to add an additional 2 hydrants in the area. A new waterline was added and these changes increased ratings for the West Peculiar Fire District to top rankings nationwide. In addition, the county will now have 5 new tornado sirens as a result of a project that was started at one of our community meetings.

There are other projects group projects in place to equip 4 baseball fields with lights and new lights are being installed by Aquila at a local football field.

We will continue working with the community on new projects that are identified in our meetings.

Please accept these applications with our commitment to continue working with the County and with the community on projects to the benefit of all. You have my word that we will be a good neighbor.


Sincerely,

Norma F. Dunn

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.

[illegible]

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


Norma F. Dunn

Subscribed and sworn to before me this 17th day of April, 2006.

Lana S. Johnson
Notary Public

January 8, 2009

