



Aquila

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January 12, 2006

VIA HAND DELIVERY

Debra L. Moore
Cass County Counselor
Cass County Courthouse
102 E. Wall
Harrisonville, MO 64701

Cindy Reams Martin
408 S.E. Douglas
Lee's Summit, MO 64063

FILED

MAY 11 2006

Missouri Public
Service Commission

Re: South Harper

Dear Debbie and Cindy,

As discussed, today we filed the enclosed motion with Judge Dandurand requesting permission to continue operating the South Harper plant while we seek county approval through a special use permit. We understand the county has not prejudged whether it believes the plant should ultimately be permitted to operate. Rather, the county has simply sought from the beginning to review the matter. Because the grant of our motion will provide the county that opportunity, we are hopeful that you will support this with the judge.

Also, as we discussed, we will be filing an application with the Public Service Commission next week for specific authorization to operate the plant. This approval will foreclose arguments from other potential litigants that even if county approval is obtained, further approval of the Public Service Commission is required.

Because the Court of Appeals concluded the County's statutory authority to regulate land use contains an exception for utilities and because of the specific "or" language contained in the order, it is my opinion that specific authority from the Public Service Commission does not require further county approval, and alone is sufficient for us to continue to operate the plant. This conclusion is consistent with the Court of Appeals determination to withdraw its initial opinion holding (apparently erroneously) that further county approval is required before the Public Service Commission can provide specific authority. I appreciate that you have another view. Assuming you decide to permit the county to consider the special use application, we will focus our efforts on receiving county approval. Therefore, it will be unnecessary for the three of us to further discuss that difference in the instant case. Nor will it be necessary to revisit the issue in the

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future, because if our application is approved, we will commit to seek county approval for future transmission substations and power plants in Cass County. Other benefits to the citizens of Cass County will be evident from our application or negotiated during the process. Of course we believe that our special use permit should be granted in its own right.

You have identified two preconditions to your willingness to allow the county to process our application. The first is the two of you simply deciding that you will permit the county to consider our special use application. Although I will refer you to the last paragraph of the Court of Appeals decision and the plain language of the County's own land use ordinances, I realize you will not rely on supporting legal memos of our lawyers and therefore will not risk additional confrontation by sharing them with you. Please let me know when you come to your decision.

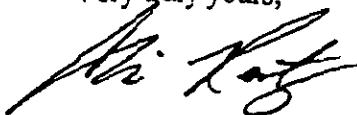
The second precondition you have raised is that the County's appeal of the Public Service Commission's April 7, 2005 order be resolved in the County's favor. I tried to discuss this matter with Mark Comley, however I was told he is out of the office for an extended period. For that reason, I will explore this with you. Because the Court of Appeals held that the order being challenged does not constitute specific authority sufficient for Aquila to operate the South Harper plant, the order cannot be used by Aquila. Further, because a judgment in the county's favor would be a determination that the Public Service Commission acted illegally, without due process and lacked authority to interpret its orders, of course the Public Service Commission could not stipulate to such a judgment. If you are committed to disposing of that appeal, it would be most efficient for the County to dismiss its appeal or stipulate that the appeal has been mooted by the recent order of the Court of Appeals. Aquila would commit not to use that Public Service Commission order as evidence of specific authorization for the South Harper plant. Please let me know if that would be a satisfactory resolution.

Finally, Presiding Commissioner Mallory requested the names of the attorneys that will be involved in this matter. Dale Youngs will continue to represent us in the court process, Jim Swearngen will handle Public Service Commission matters, and Ed Clemmons will handle the special use permit. I will be personally involved in all of these processes and encourage you to call me at any time.

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Debbie and Cindy, Aquila has spent months preparing for the opportunity to present its case to the County Commission. Our application for a special use permit has been completed and is ready to be filed. We are anxious to do that and we look forward to resuming our much valued, and nearly 100-year friendship with the county.

Very truly yours,



Christopher M. Reitz
Senior Vice President, General Counsel and
Corporate Secretary

CMR:dsb
Enclosure

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