

Exhibit No. :
Witness : Bruce G. Peshoff
Type of Exhibit : Surrebuttal Testimony
Party : Cass County, Missouri
Case No. : EA-2006-0309

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Missouri Public
Service Commission

CASS COUNTY, MISSOURI

Case No. EA-2006-0309

SURREBUTTAL TESTIMONY

OF

BRUCE G. PESHOFF

Leawood, Kansas
April 18, 2006

Exhibit No. 24
Case No(s) EA-2006-0309
Date 4-26-06 Rptr xf

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.

STATE OF Kansas)
COUNTY OF Johnson) ss.

1. My name is Bruce G. Peshoff.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my personal knowledge, information and belief.

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

My Commission expires:

11/15/2009

SURREBUTTAL TESTIMONY OF BRUCE G. PESHOFF

1

2
3 **Q: PLEASE STATE YOUR NAME.**

4 **A:** My name is Bruce Gregory Peshoff.

5

6 **Q: ARE YOU THE SAME BRUCE PESHOFF WHO FILED REBUTTAL**
7 **TESTIMONY IN THIS MATTER?**

8 **A:** Yes, I am.

9

10 **Q: WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

11 **A:** In his rebuttal testimony, Mr. Warren Wood has discussed the process that Aquila
12 followed to select the site for the South Harper generating plant and the Peculiar
13 Substation and I will address that testimony. I also will address issues raised
14 within the affidavit filed by Mr. Mike Fisher.

15

16 **MR. WOOD'S TESTIMONY**

17 **Q: AT PAGES 6 THROUGH 19 OF HIS REBUTTAL MR. WOOD**
18 **DISCUSSES A SITE DETERMINATION PROCESS AND THEN**
19 **COMPARES THAT PROCESS TO THE ONE UTILIZED BY AQUILA IN**
20 **SELECTING THE SITE FOR THE SOUTH HARPER PLANT AND THE**
21 **PECULIAR SUBSTATION. DO YOU AGREE WITH HIS ANALYSIS?**

22 **A.** I agree that from a regulatory perspective, the siting process Mr. Wood describes
23 has validity but it understates the importance of local land use impacts. From a
24 land use planning perspective, the siting process Mr. Wood describes is

1 inadequate. In addition, Mr. Wood is evaluating the site location assuming the
2 plant and substation have already been built. My recommendation is that the site
3 selected by Aquila for the peaking plant and substation must be evaluated under
4 the assumption that neither has been erected. Additionally:

- 5
6 • He references proximity but does not define it. The two-sides of
7 proximity (pros and cons, risks and returns) is precisely the sort that the
8 development review process attempts to resolve to assess how proximity
9 should be resolved.

- 10
11 • He references reviewing potential sites to determine suitability (a term
12 referring to the ability or feasibility of a site to accommodate a proposed
13 use, not the compatibility of that site and use with adjacent and future
14 uses).

- 15
16 • He refers to communication with and addressing concerns of residents, but
17 that is precisely the tact not taken for the South Harper site.

18
19 **Q: WHY IS MR. WOOD'S SITING PROCESS INADEQUATE?**

20 **A:** There are numerous reasons, most of which can be derived from the opinions I
21 expressed in my rebuttal testimony. In addition, Mr. Wood's rebuttal testimony
22 provides additional support for those, and the following, opinions:

23

- 1 • Mr. Wood does not take into account the degree to which the geographical
2 area of Cass County, whether incorporated or unincorporated, already is
3 home to generation facilities. With the inclusion of the South Harper
4 facility, Cass County will be in the minority of counties in Missouri with
5 numerous (and proximate) power plants within its borders. Before the
6 South Harper site can be approved for the construction, there should have
7 been a determination that Cass County is not being overburdened by
8 power generating plants and also, that other sites where generating plants
9 are built cannot be expanded or serve as the site for a peaking facility.

- 10
11 • The evaluation of potential sites referenced at page 14 of Mr. Wood's
12 rebuttal, and identified by the matrix in the schedule, is limited primarily
13 to site suitability, rather than an assessment methodology that explicitly
14 included an assessment of land use compatibility factors.

15
16 **Q: HOW DOES TIMING PLAY INTO MR. WOOD'S PROCESS?**

17 **A:** This was a project with a schedule that was not going to be delayed by process,
18 outreach, consensus or compliance. This was a process that had Aquila acting not
19 only as its own tariff administrator, as noted at page 12 of Mr. Wood's testimony,
20 but, paraphrasing, as its own zoning administrator. As identified at page 16, the
21 process to "move forward" happened very quickly, from an informal meeting
22 with the Peculiar Chamber of Commerce on September 14, 2004 to the

1 mobilization of construction equipment on October 14, 2004. Aquila's outreach
2 was limited to a news release and a public information meeting at a private club.
3

4 In his testimony, at page 18, Mr. Wood indicates that working with the
5 community and property owners would have delayed site selection. Well, quite
6 simply, that is part of the process. Difficult and/or unique projects typically take
7 longer to plan, engineer and construct than a run-of-the-mill strip center or
8 residential subdivision. Assisting with the learning curve for local officials and
9 stakeholders is part of the "trusted neighbor" concept to which he refers. This
10 does not imply that communities are not cognizant of timing needs (timing is a
11 typical component; virtually all development proposals have a temporal
12 component) or the needs for intensive uses (such as power plants, which Cass
13 County has clearly supported in the past). Similarly, utility applicants should be
14 cognizant of the timing process for approval (both technical and political) of
15 development proposals.
16

17 **Q: ARE THERE OTHER SITES WHERE A PEAKING FACILITY COULD**
18 **BE CONSTRUCTED IN CASS COUNTY USING MR. WOOD'S**
19 **ANALYSIS?**

20 **A:** Yes. Using points of analysis in Mr. Wood's testimony, it appears to me that the
21 Aries site is as justified for the peaking facility proposed by Aquila as South
22 Harper. I also will point the Commission to Page 7 of Schedule BGP-3 (Map 5)
23 of my rebuttal testimony. This map was provided to supply the Commission with

1 an overview of other industrially zoned areas in Cass County that could possibly
2 be approved for electric power generation. This would depend upon Cass County
3 Planning Board approval but industrially zoned areas are ones where the least
4 objection can be meaningfully posed against intensive uses of property such as a
5 power plant.

6
7 **Q: DO ALL OF THE MAPS ATTACHED TO YOUR REBUTTAL**
8 **TESTIMONY SHOW THE LOCATION OF INDUSTRIAL DISTRICTS IN**
9 **CASS COUNTY.**

10 A. No they do not. In this respect, Page 7 of Schedule BGP-3 (Map 5) best identifies
11 other locations that could accommodate industrial development and I should
12 clarify what is illustrated by the other maps. For ease, I will simply refer to the
13 maps as they were labeled at the top of each map. Maps 1 and 2 identify the land
14 use tiers from the 2005 Plan. The 2005 Plan maps can help identify, countywide
15 and close-up, the issues raised by Aquila's application (which incorrectly refers to
16 the 2005 tiers rather than the 2003 tiers). This map also depicts the multi-use-tier
17 that Mr. Fisher seems to be referring to in his affidavit and I will discuss this later
18 in my testimony. The 2003 Plan is the document that should control. The 2003
19 Land Use Tiers Map (as labeled) is attached to this document as Schedule BGP-
20 4. Maps 3A and 4A include aerial imagery that identifies land uses within a 1-
21 mile radius of the plant and substation, respectively. Maps 3B and 4B identify
22 zoning within a 1-mile radius of the plant and substation, respectively. Maps 3A,

1 3B, 4A and 4B are important tools when considering land use and zoning
2 compatibility issues and were provided and are consistent with my analysis.
3

4 **Q: DOES MR. WOOD COMPARE THE PROCESSES USED BY OTHER**
5 **JURISDICTIONS TO SITE POWER PLANTS AS PART OF HIS**
6 **EVALUATION OF THE SOUTH HARPER SITE?**

7 **A:** No, he does not. He does not cite to any rules or regulations of this Commission
8 in making his analysis and I will assume that the Commission does not have any.
9 In my opinion, it is eminently reasonable to examine the rules of departments,
10 commissions and boards of sister jurisdictions as part of the Commission's review
11 of the siting decision in this case. In my rebuttal testimony I referred to the siting
12 standards and policies of several states and by footnote directed the parties to web
13 sites for the applicable state boards or departments. I have relied on the
14 information supplied on the websites and the information from Schedule BGP-2
15 and the other sources described in my rebuttal testimony, including the records
16 Cass County and its planning board, in rendering my opinions and conclusions for
17 the Commission in this case and in my field, I, along with other planners, consider
18 this information reliable.
19

20 **Q: AT PAGE 23 OF HIS REBUTTAL TESTIMONY, MR. WOOD**
21 **MENTIONS A MEMORANDUM FROM BUCHER, WILLIS & RATLIFF**
22 **CORPORATION (BWR) WHICH ACTED AS PLANNING CONSULTANT**
23 **FOR THE CASS COUNTY PLANNING BOARD. WHAT IS THE**

1 **SIGNIFICANCE OF THIS MEMO FROM A PLANNER'S**
2 **PERSPECTIVE.**

3 **A:** The BWR memo, drafted in response to the Camp Branch special use permit
4 application submitted to Cass County by Aquila, contains a significant amount of
5 other relevant information which should be explicitly brought to the attention of
6 the Commission, information which specifically references the difficulties of
7 siting power plants and the process that reviews siting options, including:

- 8
9 • “The nature of the use is what should be carefully considered by the Board
10 relative to land use planning policies of the Comprehensive Plan and
11 zoning regulations.” (BWR Memo, p. 1) This clearly indicates, on the
12 first page of the memo, that very intensive uses, such as the power plant,
13 deserve special, concerted review, a review that ought to be considered by
14 the Board.
15
- 16 • “The County should decide whether this industrial use is the type of
17 industry best suited for the site in the ... Tier given long-range plans of ...
18 the County ... rather than the narrow question of whether this proposed
19 use “fits” the site.” (BWR Memo, p. 2) The memo recognizes that the
20 analysis should be more than site-specific, but should recognize the long-
21 term implications and the nature and impact of the use on existing and
22 future County development. The memo raises the question that the

1 County should consider "whether it fits the long-term needs of the
2 urbanizing county in context of the County's plans." (BWR Memo, p. 3)

3
4 These issues are more substantive than Mr. Wood's inferences that the review of
5 the Camp Branch site was about complying with setbacks, landscaping, noise or
6 odors. The review by the County's planners as superficial as inferred but did
7 identify many of the larger implications relating to how and what type of
8 intensive development should occur in the tiers and at specific sites.

9
10 The Commission also should be reminded that the BWR Memo did not
11 recommend against ever approving the Camp Branch facility or that these types of
12 uses did not belong in Cass County (this was not a NIMBY review; the County
13 did approve the Aries facility just a few years prior). The planning consultant's
14 recommendations did not foreclose the development of the site for a power plant,
15 but identified a process that would be better-suited to resolving both the larger
16 land use implications facing the County and the development needs of Aquila. In
17 fact, the consultant recommended that the preferred course of action would be for
18 Aquila to submit an application for a rezoning rather than for a special use permit.
19 Apparently that was one application too many, so Aquila 'opted out'. The
20 precedence this could set is significant, that utilities or other intensive quasi-
21 public uses, could cherry-pick what municipal regulations with which to comply.

22
23 **MR. FISHER'S TESTIMONY**

1

2 **Q: DID MR. FISHER'S TESTIMONY INDICATE THAT THE CITY**
3 **CONSIDERED SITE-RELATED ISSUES AND, IF SO, WHAT ARE YOUR**
4 **COMMENTS?**

5 **A.** Mr. Fisher's testimony indicates that evaluation of a specific site focused on the
6 site being within the City, having access to electrical and gas transmission lines
7 and that the size of the site would have minimal impact on development. He
8 seems to be inferring, at page 4, that the size of the site (and/or location of the
9 plant within the site) are mitigating factors to its location in the County.
10 Regardless of site size, the use of the site for a power plant is what it is – an
11 intensive industrial use in an area designated for rural uses in the 2003 Plan.
12 Further, questions have arisen whether the site's emphasis on having access to
13 electrical and gas transmission lines are relevant if, as anecdotal evidence
14 indicates, that another gas line is now being used. Though the analysis considered
15 site size to accommodate turbines and other equipment, there is no indication that
16 the consideration of existing land uses was even considered.

17

18 **Q: ARE THERE ISSUES RELATING TO MR. FISHER'S UNDERSTANDING**
19 **OF THE ISSUES, BASED ON HIS REBUTTAL TESTIMONY, THAT YOU**
20 **WOULD LIKE TO ADDRESS? PLEASE EXPLAIN.**

21 **A:** As a professional planner, I grow concerned whenever I learn that a public
22 official, decision-maker or staff member becomes involved in a project to the
23 extent that they become advocates for an applicant seeking approval from the

1 jurisdiction. This is not to say that good projects shouldn't be supported, but that
2 a red flag regarding impartiality and whose best interests are being represented
3 when statements, such as Mr. Fisher's, at page 5, of taking frequent discussions as
4 a personal and professional compliment. Mr. Fisher's role as a city administrator
5 is to critically review development proposals in a critical manner, one that
6 considers the pros and cons of a proposal for the City as a whole, its taxpayers
7 and the city's actions in relation to the region's well-being. As a professional
8 planner, regardless of whom I am representing, I prefer decision-makers to remain
9 impartial and not appear to align themselves either for or against a proposal or
10 project. The proposal should be judged solely on its merits and ability to comply
11 with plans, regulations, rules and policies.

12
13 I also become concerned when key staff appear to be confused about core facts
14 and assumptions. Mr. Fisher indicates, at page 6, the City would "designate"
15 (whatever that means) the site for public utility use and not change the underlying
16 zoning (but that for some reason the County was precluded), and that the only
17 permitted use would be for a public utility. Upon annexation, according to state
18 statute, the property would be zoned as it was in the County (it would be zoned
19 agricultural). The City does not have a zoning district that is limited to only one
20 (1) permitted use, nor a district that only permits a public utility.

21
22 **Q: IN YOUR OPINION WAS THE FINANCING ARRANGEMENT FOR**
23 **SOUTH HARPER UNUSUAL?**

1 **A:** Yes. It is very unusual for a municipality to provide financing for a project that is
2 developed outside of its boundaries (since the decision was made to continue with
3 financing after the annexation proposal was withdrawn). The taxpayers would
4 effectively be subsidizing development that is providing a financial benefit to
5 another (or other) jurisdiction(s). Typically, cities don't even provide water or
6 sewer (assuming the city is the service provider) unless the property owner agrees
7 to annex. For those unique situations where extraterritorial service is provided,
8 rates are typically increased for extraterritorial users. It also is unusual that a city
9 administrator, as Mr. Fisher noted, at page 8, would support approving financing
10 support for a project that would only benefit other taxing jurisdictions and the
11 property owner/applicant. I can't recall examples of other jurisdictions being as
12 magnanimous for extraterritorial development.

13
14 **Q:** **EARLIER YOU MENTIONED THAT THE SITE WHERE THE SOUTH**
15 **HARPER PLANT HAS BEEN CONSTRUCTED IS LOCATED WITHIN A**
16 **MULTI-USE-TIER. HOW DOES THIS AFFECT ANY OF THE**
17 **OPINIONS YOU HAVE RENDERED IN THIS MATTER.**

18 **A:** Yes, this was mentioned on page 10 of Michael Fisher's affidavit. Mr. Fisher also
19 addresses the impact of the South Harper facility on the neighboring areas, which
20 I will comment upon. At the time the application for development of the South
21 Harper plant and Peculiar substation should have been submitted, that is, back in
22 2004, the only documents that would have been reviewed were the 1997 Zoning
23 Ordinance and the 2003 Comprehensive Plan. Though both the Plan and

1 Ordinance were updated in 2005, the plant was not located within a Multi-Use
2 Tier at the time construction began but was located within a Rural Density Tier.
3 Other factors that question Mr. Fisher's understanding of land use planning and
4 zoning and land use compatibility are:

- 5
- 6 • The definitions for tiers did not change from 2003 to 2005, with
7 implications for the appropriateness of the tier for the use proposed;
8
- 9 • His reference to large lot residential as an appropriate transition from
10 rural to urban uses (it is not - large lot residential is a distinctly rural,
11 and inefficient, land use pattern);
12
- 13 • His reference to a tier as a zoning classification (it is not - it is a future
14 land use development designation);
15
- 16 • His reference to County zoning as indicating that large lot residential
17 and industrial are compatible (it does not indicate such);
18
- 19 • His reference that the impact on adjacent properties would be greater in
20 an urban area (urban areas are precisely where more intensive uses are
21 to be located, the alternative is sprawl).
22

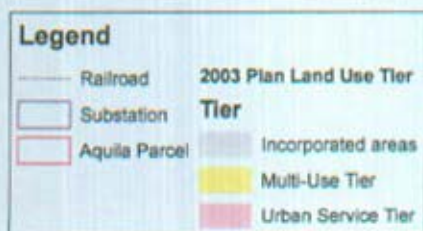
23 None of my earlier opinions are affected by Mr. Fisher's statements.

1

2 **Q: DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

3 **A:** Yes.

Schedule BGP-4

**PLANNING WORKS**

Please use this page as a guide and not a reference document. The actual characteristics for each are approximately listed and provided for illustrative purposes only. With every other year there tends to be some very specific, substantial, noticeable, and sometimes predictable seasonal differences. The number of approved applications for each year is not included in the table. The number of approved units will be available, within a few days.

See Journal of Maritime Law and Commerce, Vol. 12, No. 4, 1981.

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