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Rebuttal of Ms. Norma Dunn's paid advertisement in the Journal and the Cass County Democrat 3-16-2006

In Ms. Dunn's 3-16-2006 paid advertisement that appeared in the Journal and the Cass County Democrat concerning the situation involving Aquila's South Harper power plant there are several comments that are stated in a way to misinform or are incomplete of information.

Ms. Dunn is correct in one statement that there are a lot of misperceptions and emotions in this situation. I would like to clarify some of these.

First in Ms. Dunn's opening statement she states that when construction began on South Harper that Aquila believed it had the necessary authority from the MPSC to construct the facility. That is conflicting with the fact that when Aquila was attempting to place the plant at the Camp Branch location Aquila applied to Cass County Zoning Board for a Special Use Permit. This is stated in the paragraph titled Summer 2004. Also in this paragraph the City of Peculiar **DID** invite Aquila to construct a facility near Peculiar. At that time though there was no site selected. Per Mike Fisher's (Peculiar City Administrator) e-mails: Terry Hedrick from Aquila instructed Mike Fisher on site criteria while Mike Fisher searched for an appropriate site within or adjacent to Peculiar City limits. The plan was, if the property was adjacent to the City limits it could easily be annexed into the City. With the land in the City limits then Aquila would not have to apply for County rezoning only City zoning, which Mike Fisher stated was no problem (also discussed in Mike Fisher's e-mails). Mike Fisher was unable to find a willing seller until the South Harper Site **2 miles south of the City limits** was located. This why it could not be legally annexed into the City of Peculiar.

In the Paragraph titled January 2005, I disagree with Ms. Dunn's statement that Cass County Circuit Court agreed that Aquila was exempt from County land use regulations. The Court statement was, "this court specifically makes no conclusions of law regarding interpretation of the word "such" as used in Section 64.235. The Court bases its conclusions of law in this case as follows:" Cass County's Franchise of 1917 does not give Aquila Specific Authority to build a power plant in Aquila's certificated area. Or that Aquila must obtain a Specific Authorization from the MPSC." Ms. Dunn did state that.

In the June 2005 paragraph there is quite a bit of misinformation. The Western Division Court Of Appeals issued a ruling on June 21, 2005 that confirmed the Franchise that Aquila had from Cass County only allowed Aquila to place poles and transmission lines. It also said Aquila's certificate of Convenience and Necessity was not specific permission for Aquila to build the South Harper power plant without permission from Cass County. The decision did not suggest that counties were not allowed by statute to grant utilities Franchises. It only said Cass County had not voluntarily granted Aquila a Franchise to build a power plant. The opinion did not question industry-wide certificates of convenience and necessity or industry wide county franchises as suggested by Ms. Dunn. Ms. Dunn was correct that the ruling dated June 21, 2005 was withdrawn.

FILED

APR 5 2006

Missouri Public Service Commission

Public Hearing Exhibit No. 19
Date 3-20-06 Case No. EA-2006-0309
Reporter _____

In the Paragraph titled July 2005 Ms. Dunn suggests that Cass County invited Aquila to file for Special Use Permit. Per a letter written to Christopher Reitz, Aquila's General Council, on August 16, 2005 by Cindy Reams Martin, Ms. Martin reminds Mr. Reitz that in a letter written July 29, 2005, she advised that the county would and could not make "advance deals" with respect to rezoning applications. Ms. Martin also advised of the obvious, that Aquila has the right, as would any applicant, to *attempt* to secure rezoning for *proposed* developments. Ms. Martin also advised that her 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. This letter dated August 16, 2005 was submitted by Aquila in MPSC case #ea-2006-0309.

In the paragraph titled December 2005, Ms. Dunn was correct in her statements about the Court of Appeals ruling dated December 20, 2005 except for one thing. Ms. Dunn suggested the Court stated that Aquila could retroactively obtain zoning approval from the County or Specific MPSC authorization for the South Harper facility. What was actually stated was "In so ruling, however, we do not intend to suggest that Aquila is precluded from *ATTEMPTING* at this late date to secure the necessary authority that would allow the plant and substation, which have already been built, to continue operating, albeit with whatever conditions are deemed appropriate." This does not mean it has to be awarded, it only means Aquila may apply. Ms. Dunn neglected to state that the Court of Appeals affirmed Judge Dandurand's original order which required Aquila to remove all improvements on the South Harper site that are inconsistent with its agricultural zoning.

In the paragraph titled January 2006, Ms. Dunn states that in a letter to Aquila from presiding Cass County Commissioner, Aquila was advised that the county would only process Aquila's zoning application if the plant was removed. Actually the letter, dated January 5, 2006, reminded Ms. Dunn of Judge Dandurand's original order and that there was still pending litigation involving Cass County, the MPSC and Aquila, the Writ of Review. Mr. Mallory stated, "Thus until the Writ case is disposed, the county's position with respect to its obligation to process a rezoning and/or Special Use Permit application while its zoning authority is being challenged remains as described in the attached letter." (The letter of August 16, 2005, which says that the county cannot accept zoning/special use permit application until litigation is complete.) This letter by Mr. Mallory was submitted as evidence by Aquila in MPSC case #EA-2006-0309.

In February 2006, Cass County sent Aquila notification that it would accept an application for rezoning or special use permit from Aquila at this time. I feel that letter was sent because the litigation was complete and it was now appropriate for the County to accept the application.

Aquila claims it is continuing its efforts to ensure open, honest, fact based dialogue on the South Harper issue. With all of the left out and manipulated information in Ms.

Dunn's article, how can Aquila continue to make this claim? How can Aquila continue to make the claim that they want to be a "Good Neighbor" when they are constantly giving out incomplete and manipulated information. How can they possibly expect the neighbors in the surrounding area to trust them after everything they have put us through?