

COUNTY COMMISSION
CASS COUNTY

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Gary Mallory
Presiding Commissioner

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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.

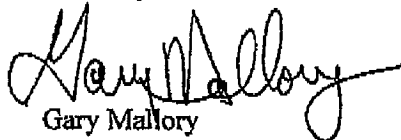
You have also indicated to me that Aquila intends to file a special use permit application for the plant and substation, though both have already been constructed in violation of the law. On August 16, 2005, the County's attorneys directed a letter to Aquila's general counsel advising of the County's 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.

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Respond to:
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August 16, 2005

VIA FACSIMILE 467-9611

Christopher Reitz
General Counsel
Aquila, Inc.
20 West 9th Street
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.

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

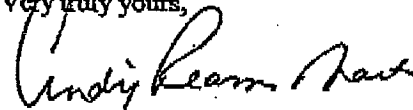
Christopher Reitz
August 16, 2005
Page 3

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