

Exhibit No:
Issues: Aquila Witness – Chris R. Rogers;
RE: Annexation and Site Selection
Witness: Michael Fisher
Type of Exhibit: Rebuttal
Sponsoring Party: City of Peculiar
Case No: EA-2006-0309

Before The Missouri Public Service Commission
Of The State Of Missouri

Rebuttal Testimony
of
Michael J. Fisher

1 Introduction

2 My name is Michael Jon Fisher. I reside at 10901 East 236th Street, Peculiar, MO 64078. I live
3 within approximately one mile of the South Harper Peaking Facility. I am not a direct Aquila
4 customer, but I am cognizant that at least a portion of the electrical energy I purchase and
5 consume from Osage Valley Electric Co-operative is purchased from Aquila.

6
7 However, I am not providing this testimony as a customer of Aquila, but in my professional
8 capacity as the City Administrator for the City of Peculiar. Aquila holds the electric utility
9 franchise for the City of Peculiar and the City and Aquila are business partners in the South
10 Harper Peaking Facility and 203rd Street Substation.

11
12 I have attempted to divide testimony into rationale segments. However, in a business
13 transaction and utility construction of this magnitude, some topics naturally spill into others.

14
15 Recruitment

16 Though it should be clear at this point, it should be pointed out that the City of Peculiar
17 approached Aquila about locating their proposed peak generation facility in Peculiar. Based on
18 media reporting and talking to various sources, it became clear to myself and others that an
19 alternative site, to the Camp Branch location, might be a feasible alternative for Aquila and a
20 viable economic development opportunity for the City of Peculiar.

21
22 Mayor Lewis and I discussed the potential economic benefits for both the City of Peculiar and
23 other taxing jurisdictions if the peaking facility were located in Peculiar. Subsequent to our
24 conversations, I contacted Mark Dawson. Mark is an Economic Development Specialist with
25 Aquila. I discussed the City of Peculiar's potential interest in the peaking facility project. As I

1 recall, our discussion centered on potential financing methods, land use and regulatory items.
2 Mark indicated that Aquila was still involved with the Camp Branch site near Harrisonville and
3 those discussions would have to be concluded before negotiations could begin with Peculiar.
4 He indicated he would schedule a meeting with Terry Hedrick, Aquila's Project Engineer.

5
6 I don't recall the exact date, which I'm sure has been well documented by other parties to these
7 proceedings; however, it was within a short time period. The same basic topics that Mr.
8 Dawson and I discussed, were again covered with Mr. Hedrick. He also reiterated Mr.
9 Dawson's comment that Aquila's Camp Branch initiative would have to be completed before
10 another site could be considered. One potential site was discussed, which was a 160 ± acre
11 site at the northwest corner of Harper Road and YY Highway.

12
13 Two items were pursued at this point, i.e., evaluation of a specific site and scheduling a work
14 session with Aquila representatives and the Board of Aldermen and Planning and Zoning
15 Commissioners. The purpose was to explain and show the City's representatives exactly what
16 a peak generation facility was. The work session was held at Grand Summit Lodge in
17 Grandview. It was publicly announced and the public was welcome to attend. Two or three
18 members of the public attended the meeting, but left before its conclusion. After a brief
19 presentation by Aquila and a question and answer period, a tour of the Greenwood facility was
20 conducted, which included start-up of one of the turbines. Aldermen and the Planning & Zoning
21 Commissioners were given a complete tour of the facility. One turbine was started and
22 continued running during the tour.

23

1 Site Selection

2 The 160 acre site in the northwest quadrant of the City was the site of first choice. It was given
3 a preliminary evaluation. The City's support of the site was for three reasons:

- 4 • The site was within the City limits.
- 5 • The site already had Aquila's existing 69KV line running north-south along its western
6 boundary and a natural gas line that ran diagonal from the southeast to the northwest.
- 7 • The size of the site provided the potential to locate the peaking facility so it would have
8 minimal impact on existing and potential development, and that a significant portion of
9 the site could be used for other public uses.

10 During Aquila's preliminary evaluation of the site, the owner of the property was contacted for
11 two reasons. First, to request permission from the owner for Aquila representatives to enter the
12 property to make an initial environmental assessment. Second, to determine his willingness to
13 discuss sale of the property. Mr. Sparling denied permission for the environmental assessment
14 and indicated quite directly he was not interested in selling. He indicated a selling price that
15 exceeded \$50,000 per acre, which was unreasonable and placed the property out of the
16 running.

17

18 I had a couple of conversations with Chris Rogers from Sega Engineering regarding other
19 potential sites. Part of our discussions centered around sites of suitable size and partially
20 around sites that met one or both of two conditions, i.e., a gas line or an electric transmission
21 line close. One of the potential sites was the current location of the peaking facility, the Bremer
22 property. It met the criteria well, as it met three conditions:

- 23 • Transmission line (69KV) was on-site.
- 24 • Gas was available immediately east and adjacent to the potential site at the Southern
25 Star Gas Compressor station.

- 1 • Site was large enough to accommodate the turbines, on-site sub-station, ancillary
2 facilities and room for a buffer area.

3
4 I made the initial contact with George and Maxine Bremer. I explained to George that the City
5 was assisting Aquila with their search for a suitable site for the peaking facility. George said he
6 thought I might be calling given Aquila's lines were already on-site and natural gas was next
7 door. I asked Mr. Bremer if he or any of his neighbors might be interested in selling land to
8 Aquila. He said he didn't know, but he would ask and call me on Monday. As I recall, Mrs.
9 Bremer was not interested at the time. I indicated to George that any sale was voluntary and
10 totally the seller's decision. Mr. Bremer called me the following Monday and stated that none of
11 his neighbors wished to sell, but that he and Mrs. Bremer were willing to talk to Aquila. I
12 contacted Terry Hedrick and indicated the Bremer's willingness to discuss a sale. At this point
13 forward, any negotiation between the Bremer's and Aquila was handled between the two
14 parties, their respective attorney's and advisors. I do not have any specific knowledge of the
15 final terms of the sale between Aquila and the Bremer's. I presume it was favorable to both
16 parties as the sale was finalized.

17
18 Financing & Annexation

19 Before discussing too much about these two topics, I would like to address the numerous
20 comments about the number and frequency of email correspondence between Terry Hedrick,
21 Aquila Project Engineer, and myself. Personally and professionally, I take their numerous
22 mentions of Mr. Hedrick's and my numerous and frequent discussions as a compliment. To
23 have been business partners on a \$150 million project without such constant and frequent
24 communication would have been negligent on both of our parts.

1 From the beginning of the City's discussion and negotiations with Aquila, we knew and
2 understood the deadline they faced, with the approaching expiration of their purchase power
3 agreement with Calpine. This time limit certainly weighed on everyone's mind. It was one
4 reason for the frequent conversations, i.e., to assure as the project moved forward that nothing
5 was left undone.

6 It would appear that Aquila, the Public Service Commission and the City of Peculiar each
7 understood the financial ramifications of purchase power agreements. Simply the cost is higher.
8 The PSC has previously encouraged Aquila to produce more of its own power. To purchase
9 power would have meant a higher cost for customers, with less control over the production.

10

11 The initial plan was for the City and Aquila to follow a course of action that would result in the
12 Bremer property being voluntarily annexed into the City of Peculiar, and following the provisions
13 of State of Missouri statutes, the City would designate the Bremer site for public utility use.
14 Doing so would not change the underlying zoning. It is my understanding that Cass County
15 could not use this provision. The City's reasoning behind this course of action was two-fold.
16 First, by not rezoning the property, the City would not be setting a precedence of establishing
17 the area as a potential industrial area, light or heavy, in the future. The only permitted use
18 would be for a public utility. It was to be limited to use by Aquila for a peaking facility. Second,
19 the course of action allowed by State Statute was a more streamlined course of action than the
20 City's normal procedure for rezoning. Though the timetable established by the City provided for
21 approval by both the Planning and Zoning Commission and the Board of Aldermen, State
22 Statute provided that only the Planning Commission's approval of Aquila's development plan
23 was required. Though this process was halted, all public notices had been provided to the
24 public, including publishing in the local print media.

25

1 Annexation of the Bremer site was a two-step process. The City of Peculiar would need to
2 complete two annexations. First was the annexation of Harper Road from 227th Street to the
3 south boundary of the proposed site. This would provide the required 15% contiguity required
4 by State Statute. Both were proposed as voluntary annexations.

5
6 The City of Peculiar sent a letter to the Gary Mallory, Cass County Presiding Commissioner,
7 and requested that the City be allowed to annex Harper Road as described in the previous
8 paragraph. I personally made Mr. Mallory aware of the request and the reason for the
9 annexation. The Cass County Commissioners approved the Annexation Petition. In fact, they
10 approved it twice because the legal description in the first petition contained a small error.
11 *Basically, Cass County has previously approved the City's annexation of a two-mile section of*
12 *Harper Road for the purpose of locating the South Harper Peaking Facility on the Bremer*
13 *Property.*

14
15 In the fall of 2004 and after Aquila had closed the purchase of land from the Bremer's, they
16 requested a grading permit from Cass County. In writing, Aquila was told they did not need a
17 grading permit. This is subsequent to the City's request to annex Harper Road, and after the
18 City's notification that annexation of Harper Road had been dropped by the City. Again,
19 knowing the City and Aquila's plan for the site, Aquila was told they did not need a grading
20 permit. Again, the County knew of the purpose and did not object to the proposed land use.
21 Subsequent to this request Aquila requested a permit to construct an entry to the site. Again,
22 they were provided approval by Cass County.

23

1 Each of the above actions, strongly reinforce the fact that Cass County knew of Aquila and the
2 City's intent for the site, continued to provide approvals for the development, but did not request
3 land use compliance.

4
5 All of the City of Peculiar's notices for annexation for both Harper Road and the Bremer site
6 were publicly advertised. Advertisements were placed in local newspapers, notices were
7 displayed at City Hall, advertised on Channel 7 the public access channel and included in the
8 Board of Aldermen agenda, which are also distributed to the print media and posted.
9 Annexation does not require individual notification to either adjacent property owners or those
10 within a certain distance, as a rezoning requires.

11
12 Aquila scheduled a public hearing to explain the proposed peaking facility. This meeting was
13 publicly advertised and well attended. This meeting was the first evidence of significant
14 opposition to the proposed peaking facility. Opposition was expressed to both the City's
15 annexation of Harper and the peaking facility. A significant amount of the concern was
16 expressed about not being notified by the City of the plans. All of the required notices for the
17 annexation of Harper Road and the Bremer property had been published.

18
19 The City's legal counsel advised that the City could proceed with the Chapter 100 financing
20 without annexing the property. Foreseeing a potential additional delay in a challenge to the
21 annexation (Harper Road and the Bremer property) the City chose not to proceed with the
22 annexations, but to proceed with the Chapter 100 financing. Again, one of the City's primary
23 reasons for recruiting Aquila and doing a Chapter 100 financing arrangement was the potential
24 financial benefit to the taxing jurisdictions.

25

1 The City and Aquila proceeded to complete the Chapter 100 financing. The Circuit Court ruled
2 in the City's favor regarding the financing, without any stipulations. The City and Aquila
3 proceeded to close the Chapter 100, which was closed and all documents recorded in Cass
4 County on December 28, 2004. There was not an appeal filed to the Circuit Court's ruling
5 before the closing.

6
7 Closing by the end of 2004 meant that there would be an additional PILOT payment in 2005 for
8 work in progress. This extra PILOT payment was distributed to the different taxing jurisdictions.
9 None was retained by the City.

10
11 The Chapter 100 financing was structured so there is not any financial risk to the City. In brief,
12 the bond payments are only made from Aquila's lease payments and the City does not have any
13 obligation to make bond payments if Aquila does not. If there is a default on the bond payments,
14 the collateral (peaking facility and substation) belong to the City. If the records are checked, the
15 South Harper Peaking Facility and the 203rd Street Substation are titled to the City of Peculiar.

16
17 Two items should be pointed out at this point. **FIRST**, when the City was negotiating with Aquila
18 and moving down the annexation path two items were negotiated with Aquila. A building permit
19 fee was negotiated and the City wanted to have an inspecting engineer with power plant
20 experience to monitor the work in progress. The City believed its staff did not have the
21 experience to monitor a project of the complexity of the peaking station. Additionally, and like
22 Cass County the City's building codes did not cover such construction. Peculiar and Cass
23 County operate under the same International Building Code.

24

1 **SECONDLY**, Cass County accomplished the Chapter 100 financing for the Calpine plant in
2 Pleasant Hill. However, this Chapter 100 financing was completed under the old Chapter 100
3 rules, which allowed Cass County to first negotiate the amount of PILOT to be paid under the
4 Chapter 100 financing and second to determine which other taxing jurisdictions, if any, would
5 share in the PILOT distribution and to what amount. The PILOT payments on the Calpine deal
6 were back end loaded and are just now beginning to make PILOT payments of significance to
7 the County. The spreadsheet, attached as **SCHEDULE 1** below, shows the PILOT payment
8 distribution before and after Pleasant Hill annexed the facility into its city limits.

9
10 Much has been said about the location of the peaking facility and its alleged intrusion on a
11 residential area. The plant is located in zoning classification Cass County calls multi-tiered.
12 Allowable uses are commercial, industrial and large lot residential. The Southern Star Gas
13 Company, which is zoned industrial, is located adjacent to the South Harper Peaking facility
14 immediately to the east. Residential areas surrounding the Harper facility are the large lot
15 residential, which the Cass County zoning designation indicates is a compatible use with
16 commercial and industrial. Located as it is, the South Harper facility has less impact on the
17 surrounding large lot homes than it would if located closer to any particular city's population
18 center. Additionally, it is compatible with the Southern Star Gas Company, its neighbor.

19 Finally, it is an allowable use in Cass County's designated multi-tier zoning classification.
20 It is also located near the growth center of Cass County. During 2005, Belton, Raymore and
21 Peculiar constructed 798 homes. Cass County is the fastest growing county in the metropolitan
22 area. The growth does not appear to be slowing in northern Cass County, which supports the
23 location of the peaking facility in Peculiar.

24
25

1 Aquila Co-operation

2 As previously mentioned, the City of Peculiar considers Aquila a member of its business
3 community and a business partner with the City. Aquila has honored its agreements with the
4 City. They have made the two scheduled PILOT payments. They were made on time.
5 Complaints during construction were addressed on a regular basis. They routinely talked to
6 contract haulers and changed routing at the City's request to lessen the impact on households
7 affected by construction traffic. At Cass County's request they paved 243rd and 241st Street.

8
9 They recognized that the perception of surrounding neighbors varied and have responded
10 accordingly. They have installed an irrigated, landscaped berm along the north boundary to
11 provide visual screening. They have either landscaped or offered to landscape individual
12 parcels to screen the potential view of the peaking facility. They have purchased homes from
13 households who did not wish to stay in the area. Aquila has made a reasonable effort, in a co-
14 operative manner to mitigate concerns.

15
16 Regulatory Compliance

17 Aquila has obtained all required environmental approvals for construction and operation of the
18 peaking facility. The facility has been certified to operate commercially, which it did during the
19 summer of 2005. The plant meets or exceeds all environmental requirements. Much has been
20 said and purported regarding emissions from the turbines. It seems to have been lost that air
21 quality is monitored via a closed system directly monitored by the EPA.

22
23 Much of the disagreement has centered on whether or not Aquila is subject to Cass County's
24 land use regulations. The Calpine peaking facility is often cited as an example of a generation
25 facility that not only sought, but actively sought Cass County land use approval. The significant

1 difference is the Calpine plant is a non-regulated facility or market plant. As such, it is like any
2 other manufacturing facility seeking approval to do business. It is not any different from Wal-
3 Mart seeking approval to build and do business. It does not have an exclusive right to serve a
4 franchise area granted by the State of Missouri.

5
6 The South Harper Peaking Facility is a regulated utility facility. This means Aquila has an
7 exclusive right to serve its franchise area. It also means it has incumbent liabilities and
8 responsibilities within the franchise area, i.e., to provide adequate generation, transmission and
9 redundancy for both. Respectively, both the Commission and the utilities it regulates have
10 operated, until the 8th District Appeals Court ruling, under the same premise. Build as needed.

11
12 Aquila has been portrayed as a bit of a bull in a china shop regarding the South Harper Facility.
13 However, as mentioned previously the Commission has also labored under the same rules.
14 The PSC, rightly or wrongly, has not become involved in approving site for generation or
15 transmission. PSC involvement has been restricted to approval after construction and
16 determining how much of the construction cost will be allowed in the rate structure. Aquila
17 moved forward on the South Harper Facility assuming the rules had not changed, i.e., specific
18 local approval was desired, though not required.

19
20 The 8th District Appeals Court has essentially changed the operating rules for both the utilities
21 and the Public Service Commission. The Court indicated that a utility must either receive local
22 approval to resolve the land use issue or receive a Specific Certificate of Convenience and
23 Need for a facility. The Court's wisdom is apparent in realizing approval at the local level for
24 additional utility facilities, especially a generation facility, might, at best, be difficult to obtain,
25 thereby providing the option for the Public Service Commission to make the decision and

1 remedy a local land use dispute. Contained within their decision, it would appear the Court has
2 granted the Commission new authority and responsibility. Authority and responsibility that I'm
3 sure will be assumed reluctantly and for good reason.

4
5 However, the Court also perhaps realizes the Commission is the best and most knowledgeable
6 agency to make such determinations. They alone have a long, established record of
7 involvement, interaction and analysis of the utility companies, the Commission know the utilities
8 strengths and weaknesses and are positioned to make decisions that will be fair for the
9 companies and equitable for consumers.

10
11 The City of Peculiar is asking the Commission to embrace the new authority and responsibility
12 from the 8th District Court of Appeals, to remove the emotion from the decision and to remain
13 mindful that:

- 14 • The Commission has agreed that Aquila has a need within its certificated area for the
15 additional generation capacity.
- 16 • The Commission has strongly encouraged Aquila to develop more of its own generation
17 capacity and reduce its dependence upon purchase power agreements.
- 18 • Stated Aquila should have built more capacity (+500MW) at the South Harper Facility.
- 19 • Agreed on the cost of the turbines to be included in Aquila's rate structure going forward.
- 20 • Indicated that the South Harper location is a good site.

21 *Therefore, the City of Peculiar respectfully requests the Public Service Commission accept the*
22 *new responsibility given to it by the 8th District Appeals Court and grant Aquila a Specific*
23 *Certificate of Need and Convenience for the South Harper Peaking Facility and 203rd Street*
24 *Substation.*

25

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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.

Case No. EA-2006-0309

County of Cass)
)
State of Missouri) ss

AFFIDAVIT OF MICHAEL FISHER

Michael Fisher, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony entitled "Rebuttal Testimony of Michael Fisher"; that said testimony was prepared by him and under his direction and supervision; that if inquiries were made as to the facts in said testimony, he would respond as therein set forth; and that the aforesaid testimony is true and correct to the best of his knowledge, information and belief.

[Signature of Michael Fisher]
Michael Fisher

Subscribed and sworn to before me this 4 day of April, 2006.

[Signature of Notary Public]
Notary Public

My Commission expires:
02/02/10



SCHEDULE 1

Distribution of PILOT payments

note: annexation completed Dec.'03 so payment schedule altered
 New calculations are noted in **BLUE**

	Annual Fixed Payment	Under Current Agreement			Per Agreement if Annexed into the City			
		County	District	Other PS's	County	City	District	Other PS's
6/30/1999	-	-	-	-	-	-	-	-
6/30/2000	-	-	-	-	-	-	-	-
6/30/2001	-	-	-	-	-	-	-	-
6/30/2002	-	-	-	-	-	-	-	-
6/30/2003	200,000	100,000	70,000	30,000	100,000	-	70,000	30,000
6/30/2004	200,000	100,000	70,000	30,000	90,000	10,000	70,000	30,000
6/30/2005	200,000	100,000	70,000	30,000	80,000	20,000	70,000	30,000
6/30/2006	200,000	100,000	70,000	30,000	70,000	30,000	70,000	30,000
6/30/2007	800,000	400,000	280,000	120,000	240,000	160,000	280,000	120,000
6/30/2008	800,000	400,000	280,000	120,000	200,000	200,000	280,000	120,000
6/30/2009	800,000	400,000	280,000	120,000	160,000	240,000	280,000	120,000
6/30/2010	800,000	400,000	280,000	120,000	120,000	280,000	280,000	120,000
6/30/2011	800,000	400,000	280,000	120,000	80,000	320,000	280,000	120,000
6/30/2012	1,300,000	650,000	455,000	195,000	65,000	585,000	455,000	195,000
6/30/2013	1,300,000	650,000	455,000	195,000	65,000	585,000	455,000	195,000
6/30/2014	1,300,000	650,000	455,000	195,000	65,000	585,000	455,000	195,000
6/30/2015	1,300,000	650,000	455,000	195,000	65,000	585,000	455,000	195,000

6/30/2016	1,300,000	650,000	455,000	195,000		65,000	585,000	455,000	195,000
6/30/2017	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2018	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2019	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2020	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2021	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2022	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2023	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2024	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2025	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2026	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2027	1,320,000	660,000	462,000	198,000		66,000	594,000	462,000	198,000
6/30/2028	1,320,000	660,000	462,000	198,000	-	66,000	594,000	462,000	198,000
	<u>27,140,000</u>	<u>13,570,000</u>	<u>9,499,000</u>	<u>4,071,000</u>		<u>2,257,000</u>	<u>11,313,000</u>	<u>9,499,000</u>	<u>4,071,000</u>
No 27-28	24,500,000	12,250,000	8,575,000	3,675,000	-	2,125,000	10,125,000	8,575,000	3,675,000