
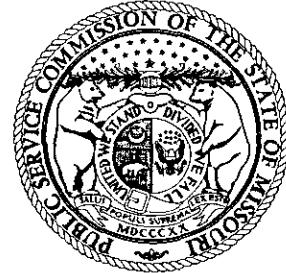


Notice of *Ex Parte* Contact

TO: Data Center
All Parties in Case No. **EA-2006-0309**

FROM: Commissioner Connie Murray 

DATE: May 19, 2006



On May 19, 2006, I received the attached email from Julie L. Noonan regarding Aquila's South Harper power plant. The Commission is currently considering the issues discussed in this document in case **EA-2006-0309** which is a contested case. In contested cases, the Commission is bound by the same *ex parte* rule as a court of law.

Although communications from members of the public and members of the legislature are always welcome, those communications must be made known to all parties to a contested case so that those parties have the opportunity to respond. According to the Commission's rules (4 CSR 240-4.020(8)), when a communication (either oral or written) occurs outside the hearing process, any member of the Commission or Regulatory Law Judge who received the communication shall prepare a written report concerning the communication and submit it to each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the circumstances which resulted in the communication, the substance of the communication, and the relationship of the communication to a particular matter at issue before the Commission.

Therefore, I submit this report pursuant to the rules cited above. This will ensure that any party to this case will have notice of the attached information and a full and fair opportunity to respond to the comments contained therein.

cc: Commissioners
Executive Director
Secretary/Chief Regulatory Law Judge
General Counsel

Anderson, Pam

From: Dale, Cully
Sent: Friday, May 19, 2006 11:42 AM
To: Murray, Connie; Pridgin, Ron
Cc: Anderson, Pam; Pope, Judy
Subject: FW: Ex parte contacts
Attachments: Judge Pridgin Ex Parte-Julie Noonan 050306.doc; Murray Ex Parte from Julie Noonan 050306.doc

OK, so here are the ones that didn't get delivered, and they really are different, so they'll each need an ex parte. I'm going to talk to IT about some easier way to deal with these ex parte contacts. -cully

From: Noonan, Julie L [DEV] [mailto:Julie.L.Noonan@sprint.com]
Sent: Friday, May 19, 2006 11:09 AM
To: Dale, Cully
Subject: RE: Ex parte contacts

Thanks for your response. Please note that the letters for Commissioner Murray and Judge Pridgin are totally different than the letter to Commissioner Appling. Evidently, the web site was not functioning when I originally attempted to submit them. I'm attaching again to this e-mail in hopes that PSC Staff will ensure that they are delivered to the appropriate parties since the web site failed to support the original requests.

Thanks,

Julie Noonan
Office: 913.794.2823 PCS: 816.695.4434

Privileged Communication

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and/or work product and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

From: Dale, Cully [mailto:cully.dale@psc.mo.gov]
Sent: Friday, May 19, 2006 11:05 AM
To: Noonan, Julie L [DEV]
Subject: Ex parte contacts

Dear Ms. Noonan,

I have reviewed the records, and do not see that Judge Pridgin or Commissioner Murray received your e-mail. However, a copy of it was attached to Commissioner Appling's ex parte contact, which was given to Judge Pridgin and Commissioner Murray. If the letter you sent them was the same as the one you sent Commissioner Appling, then they have received it. If you sent a different letter, then it appears they have not received it. I hope this clears the matter up for you.

I thought there was an easier way to file public comments in the case that are easily accessible to all the

5/19/2006

parties in a case and do not require an ex parte notice. I'll look into that and let you know if I find anything that would make the process easier.

Regards,
Cully Dale
Secretary of the Public Service Commission

May 3, 2006

RE: EA-2006-0309 Rush to Judgment

Commissioner Murray:

"Failure to plan on your part doesn't constitute an emergency on my part." Many well known phrases such as this one are so well known because they speak succinctly to fundamental principals. Have you stopped to consider just how ludicrous it is that there is a case EA-2006-0309? This is 2006 and the time for Aquila to ask would have been in 2004.

The case is to consider an application for permission to build, own, operate, etc. a power plant. Asking "permission to...." Is not the same as requesting that you receive a pass after having failed to ask permission to.... In my mind, the laws do not provide the PSC with the authority to consider this case. RSMO specifically prohibits the PSC from expanding its authority beyond that which is granted by law. It would appear to me that the only lame attempt to sidestep this issue is the statute indicating the PSC has an out if they can position something as "substantial compliance". I can understand that some minor missteps and/or unintentional failures with full compliance in some circumstances could fall within this realm. We all know, though, that Aquila's choices and missteps in this case cannot be considered minor or unintentional. If you can figure out how to justify the existence of the case, how can you possibly construe the expedited schedule associated with such a complex matter appropriate?

The applicant pleads for and is granted a timetable that virtually ensures a rush to judgment without allowing adequate time for review of materials, much less the preparation and consideration warranted by the circumstances. Aquila, with a virtual phalanx of high priced lawyers (and deep pockets compared with those that would intercede in the matter) is more than happy to deliver thousands of documents that an army couldn't make it through, much less thoroughly review, research, organize, and build into a case to ensure all matters are appropriately presented and addressed. I'm a member of a group that seeks to intercede in meaningful and thoughtful ways in these proceedings since we are most impacted. We are also least equipped to fund the vast amount of work and preparation the case deserves. We obviously have to maintain our other obligations while all of this is being pushed through in lightening speed.

Aquila has consistently and persistently demonstrated poor planning, poor judgment, poor management, and a lack of appreciation for their responsibilities associated with the monopoly that has been granted to them. They did this to themselves. They thumbed their nose at the law and demonstrated total disregard for the courts, the PSC, the County, the rate payers, and those who they expect should have to live with the consequences of Aquila's actions.

No matter how anyone representing Aquila or the PSC staff tries to spin this, we all know that we are rushing through this case because of Aquila's poor planning. Since you've

committed to this path, please consider your sworn duty to uphold the Constitution of the United States and of the State of Missouri which states that "to give security to these things (including the right of citizens to enjoy the fruits of their labor and not be deprived of property without due process) is the principle office of government."

Although I haven't seen you involved in the majority of this case, I trust from Judge Pridgin's representation that you have been monitoring. I assume that you heard George Lewis testify on Monday that the City of Peculiar does not serve the citizens of unincorporated Cass County. I also assume that you heard today, a high level outline of the process Cass County employs to create and maintain a master plan. You also heard how Cass County ensures due process to citizens through its processes to implement zoning and realization of the master plan. You know that the process is founded in the law and is the way in which citizens of Cass County are assured due process regarding their Constitutional rights related to property.

I implore you to either stop the madness now by stepping up to the appropriate and just decision to deny Aquila's application or immediately require Aquila to seek appropriate zoning or Special Use designation from Cass County prior to additional consideration of the application.

Thank you for your consideration.

Julie L. Noonan