

Exhibit No.:
Issue: *Sharing of Merger Savings*
Witness: *Janis E. Fischer*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Rebuttal Testimony*
Case No.: *GR-2004-0072*
Date Testimony Prepared: *February 13, 2004*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

JANIS E. FISCHER

AQUILA, INC.
d/b/a AQUILA NETWORKS-MPS (Gas)
AND AQUILA NETWORKS-L&P (Gas)

CASE NO. GR-2004-0072

Jefferson City, Missouri
February 2004

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI


In the Matter of Aquila, Inc. d/b/a Aquila)
Networks-MPS and Aquila Networks-L&P,)
Natural Gas General Rate Increase)

Case No. GR-2004-0072

AFFIDAVIT OF JANIS E. FISCHER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Janis E. Fischer, being of lawful age, on her oath states: that she has participated in the preparation of the following rebuttal testimony in question and answer form, consisting of 22 pages to be presented in the above case; that the answers in the following rebuttal testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.



Janis E. Fischer

Subscribed and sworn to before me this 10th day of February 2004.



Notary



TONI M. CHARLTON
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF COLE
My Commission Expires December 28, 2004

1
2
3
4
5
6
7
8
9
10
11
12
13

**TABLE OF CONTENTS OF
REBUTTAL TESTIMONY OF
JANIS E. FISCHER
AQUILA, INC. d/b/a AQUILA NETWORKS-MPS (GAS)
AND AQUILA NETWORKS-L&P (GAS)
CASE NO. GR-2004-0072**

PURPOSE OF REBUTTAL TESTIMONY 5

SUMMARY OF CASE ORDERS 7

MASSACHUSETTS GUIDELINES 15

KANSAS CORPORATION COMMISSION ORDER 18

IOWA UTILITIES BOARD RPU-02-5 20

STAFF’S CONCLUSIONS 21

1 **REBUTTAL TESTIMONY**

2 **OF**

3 **JANIS E. FISCHER**

4 **AQUILA, INC. d/b/a AQUILA NETWORKS-MPS (GAS)**

5 **AND AQUILA NETWORKS-L&P (GAS)**

6 **CASE NO. GR-2004-0072**

7 Q. Please state your name and business address.

8 A. Janis E. Fischer, Governor Office Building, PO Box 360, Jefferson City,
9 Missouri 65102.

10 Q. By whom are you employed and in what capacity?

11 A. I am a Regulatory Auditor with the Missouri Public Service Commission
12 (Commission).

13 **Background of Witness**

14 Q. Please describe your educational background.

15 A. I graduated from Peru State College, Peru, Nebraska in December 1979, and
16 received a Bachelor of Science degree in Education (Basic Business) and Business
17 Administration. In May 1985, I completed course work and earned a Bachelor of Science
18 degree in Accounting. I passed the Uniform Certified Public Accountant examination in
19 May 1994 and received my license to practice in March 1997.

20 Q. Please describe your work background.

21 A. Prior to my employment at the Commission, I worked from February 1988
22 through November 1994 as the office and accounting supervisor for the Falls City, Nebraska
23 Utilities Department (Falls City Utilities Department).

Rebuttal Testimony of
Janis E. Fischer

1 I also was employed as a staff accountant with the accounting firm of Cuneo,
2 Lawson, Shay and Staley, PC, in Kansas City, Missouri, from November 1994 through
3 October 1996. Prior to that, I worked from August 1985 to September 1987 as the
4 accountant for the Sac and Fox Tribe of Missouri and in the business office of the Falls City
5 Community Hospital from September 1987 to February 1988.

6 Q. What has been the nature of your duties while employed by the Commission?

7 A. Since I began employment with the Commission in October 1996, I have
8 directed and assisted with various audits and examinations of the books and records of public
9 utilities operating within the state of Missouri under the jurisdiction of the Commission. I
10 assumed my present position of Regulatory Auditor IV in December 2001.

11 Q. Have you previously filed testimony before this Commission?

12 A. Yes. Please refer to Schedule 1, attached to this rebuttal testimony, for a list
13 of the major audits and issues on which I have assisted and filed testimony.

14 Q. With reference to Case No. GR-2004-0072, have you examined and studied
15 the books and records of Aquila Networks-Missouri Public Service (MPS) and Aquila
16 Networks-Light & Power (L&P) relevant to the filing in this case?

17 A. Yes, with the assistance of other members of the Commission Staff (Staff). I
18 have examined the Company's filing, data request responses and prior case proceedings
19 relevant to this case, and in particular with the area regarding which I am providing rebuttal
20 testimony.

21 Q. Have you filed testimony in any other Aquila rate proceeding?

Rebuttal Testimony of
Janis E. Fischer

1 A. Yes. I filed rebuttal testimony on the same topic, merger savings, on
2 January 26, 2004, in Aquila's consolidated electric and steam rate case—Case
3 Nos. ER-2004-0034 and HR-2004-0024.

4 Q. What knowledge, skill, experience, training or education do you have in
5 regulatory matters?

6 A. My knowledge is based upon my work prior to being employed by the
7 Commission and being assigned a variety of issues in a number of Commission cases over
8 the past seven years. Specifically with regard to Aquila cases, I filed testimony in the
9 Aquila, Inc. (when it was called Utilicorp United, Inc.) and St. Joseph Light & Power
10 Company (SJLP) Case No. EM-2000-292 (merger case) and MPS' 2001 general rate increase
11 application designated as Case No. ER-2001-672. I have also filed testimony on the issue of
12 merger savings and tracking of merger costs and savings in the unconsummated merger of
13 UtiliCorp United, Inc. and The Empire District Electric Company in Case No. EM-2000-369;
14 and the unconsummated Western Resources Inc. and Kansas City Power & Light Company
15 merger in Case No. EM-97-515.

16 I have reviewed the Staff Auditing Department position papers, training manuals and
17 technical manuals dealing with accounting issues in this case. In addition, I have reviewed
18 Commission Report And Orders, testimony and transcripts of recent Commission cases. I
19 have also attended in-house and Commission sponsored training throughout the seven years
20 of my employment with the Commission.

21 In addition to knowledge gained while employed at the Commission, my work at a
22 municipal utility company for over six years has given me additional expertise related to the
23 daily operations of an electric and natural gas utility. A small municipal utility operation

Rebuttal Testimony of
Janis E. Fischer

1 provides employees the opportunity to gain knowledge in many aspects of utility operations.
2 While with the Falls City Utilities Department, I completed water and electric rate reviews,
3 developed procedures for PCB monitoring and disposal, implemented a program to verify the
4 accuracy of remote water meters, supervised office staff and handled customer complaints. I
5 assisted with the acquisition of Falls City's natural gas distribution system from Kansas
6 Power and Light Company, predecessor company of Western Resources, Inc. After the
7 acquisition, I compiled asset records for the natural gas distribution system for the utility,
8 nominated gas supplies for the municipal power plant, negotiated prices for gas purchased
9 from marketers, monitored gas transportation customer loads and billed transportation
10 customers.

11 I was appointed by the Falls City Board of Public Works (Board) in 1990 to the
12 Nebraska Public Gas Agency (NPGA) Board and later was elected Secretary (1993) and then
13 Vice Chairperson (1994) of the NPGA Board. NPGA is comprised of members from
14 Nebraska, Kansas, Iowa and Wisconsin municipal natural gas systems which collectively
15 purchase natural gas and acquire natural gas wells to supply gas to NPGA member municipal
16 gas systems and power plants at reduced costs. As a member of the NPGA Board, I
17 reviewed annual budgets and natural gas purchases for member communities. I participated
18 in management salary negotiations and the development of incentive compensation programs
19 for management and other employee groups. In addition I participated in NPGA's
20 negotiations to purchase gas wells, reviewed terms and conditions for the issuance of revenue
21 bonds and attended meetings with NPGA's lobbyist and future planning sessions.

22 While employed as a staff accountant with Cuneo, Lawson, Shay and Staley, I
23 assisted in various audits, compilations and reviews of corporations and prepared individual

1 and corporate state and federal tax returns. I researched tax issues for international client
2 business operations and interacted with various clients. I completed pension plan audits,
3 health care plan compliance audits for several unions in the Kansas City area, a stock
4 brokerage firm audit and a nursing home audit.

5 In addition, my prior work experience in the area of accounting included assisting in
6 preparing monthly financial statements, reconciling cash receipts to customer payments,
7 completing accounts payable functions and maintaining investment records for a non-profit
8 hospital. While employed as the accountant for the Sac and Fox Tribe of Missouri, my
9 responsibilities included maintenance of all accounting records of federal and state
10 governmental grants and contracts. I compiled monthly financial statements, completed
11 payroll functions and corresponded with the Bureau of Indian Affairs and the United States
12 Department of the Interior on a quarterly basis regarding the status of grants and contracts
13 administered by the Sac and Fox Tribe.

14 **PURPOSE OF REBUTTAL TESTIMONY**

15 Q. What is the purpose of your rebuttal testimony?

16 A. I am responding to the direct testimony of Aquila witness Mr. Vern J. Siemek
17 on the issue of Merger Savings. Mr. Siemek, at pages 12 through 14 of his direct testimony,
18 states:

19 ...[T]here are many recent precedents for sharing the savings
20 from mergers or acquisitions....All acknowledge that the savings
21 created by acquisitions are equitably shared in some ratio between the
22 customers and the shareholders that created the savings.

23 Clearly, many jurisdictions have realized the equity of sharing
24 acquisition-related savings with shareholders to reward the companies
25 and to help offset the costs of accomplishing the transactions that
26 created the savings.

Rebuttal Testimony of
Janis E. Fischer

1 Mr. Siemek then includes quotes from thirteen public utility commission orders
2 issued by ten jurisdictions that allegedly approved sharing of merger savings. I will respond
3 to Mr. Siemek's characterizations of these orders. I will also briefly address a 2002 Aquila
4 rate proceeding in Iowa that included merger savings sharing issues.

5 Q. Did the Missouri Commission approve sharing of merger savings between
6 customers and shareholders in the UtiliCorp United Inc. and St. Joseph Light & Power
7 Company merger, Case No. EM-2000-292?

8 A. No, the Commission did not approve the sharing of merger savings between
9 customers and shareholders. The Commission's Report and Order in Case No. EM-2000-292
10 also included no findings related to rate recovery, the sharing of merger savings, limitations
11 on rate case filings, rate caps, base rate freezes or rate case moratoriums.

12 Q. Have you reviewed the orders cited in Mr. Siemek's direct testimony?

13 A. Yes, I have reviewed all the public utility commission orders cited by
14 Mr. Siemek. My review included reading portions of each order pertaining to merger
15 savings and then reading additional sections that provided explanation of the issues specific
16 to that case, historical overviews of the filings in the case and the commission's explanation
17 of how it reached its decision. I also read the section of each order from which Mr. Siemek
18 quoted.

19 Q. What was the conclusion you reached about the statements made by
20 Mr. Siemek in his direct testimony regarding the sharing of merger savings in other
21 jurisdictions, as quoted above?

22 A. Mr. Siemek implies that there is a wide or general acceptance in other
23 jurisdictions supporting Aquila's position in this case. However, Mr. Siemek refers to public

1 service commission orders from only ten jurisdictions. Considering ten out of fifty-one
2 jurisdictions does not constitute anywhere near the majority of jurisdictions concerning the
3 rate treatment of merger savings. Also, a review of these orders indicated there were
4 significant differences in both the circumstances under which the merger savings sharing was
5 ordered, compared to Aquila's current situation, and that the manner of merger savings
6 sharing was often significantly different than that proposed by Aquila in this proceeding.

7 Q. Did Mr. Siemek base his assertions upon a fair indication of the specifics of
8 each case?

9 A. No. In a deposition of Mr. Siemek dated December 30, 2003, he stated that he
10 just skimmed the orders he quoted from and relied on to support his direct testimony. Of the
11 thirteen orders quoted, eight actually are from contested merger cases or rate cases resulting
12 from mergers; two represent stipulation and agreements accepted by the commissions; one
13 order is from a petition to reduce retail rates; and one order is from a case seeking approval
14 of an alternative form of rate regulation.

15 **SUMMARY OF CASE ORDERS**

16 Q. Do the state jurisdictions cited in the orders quoted by Mr. Siemek face
17 similar situations as Missouri has in ruling on merger and acquisition issues?

18 A. No. Of the ten state jurisdictions quoted, four have proceeded with total
19 deregulation. Three of the states quoted (California, Massachusetts and New York) had
20 utility rates in the top 20 percent in the nation. Several of the state commissions quoted by
21 Mr. Siemek have stated in merger case orders that they promote mergers and acquisitions in
22 an effort to reduce utility rates. Massachusetts, whose commission was quoted four times by

1 Mr. Siemek, has Guidelines and Standards for Acquisitions and Mergers of Utilities
2 (Guidelines) adopted to standardize the approval process.

3 Q. Please comment on the California Public Utility Commission, Case
4 No. A.90-09-043, GTE Corporation, cited on page 12, lines 21-23 of Mr. Siemek's direct
5 testimony.

6 A. The California GTE merger case cited by Mr. Siemek involves telephone local
7 exchange carriers under incentive regulation that include price cap indexing and an economic
8 benefits sharing mechanism. The Public Utility Code of California 854(b)(2) provides that,
9 before authorizing a merger, the Commission shall find that the proposal:

10 Equitably allocates, where the commission has ratemaking authority,
11 the total short-term and long-term forecasted economic benefits, as
12 determined by the commission, of the proposed merger, acquisition, or
13 control, between shareholders and ratepayers. Ratepayers shall receive
14 not less than 50 percent of those benefits.

15 The California GTE merger case is not remotely similar to the merger between
16 Aquila and SJLP because of the differences in the regulatory treatment required by the Public
17 Utility Code of California to that traditionally practiced in Missouri.

18 Q. Please comment on the District of Columbia Public Service Commission,
19 Case No. 951, Baltimore Gas and Electric Company, Order No. 11075 case cited on page 13,
20 lines 1-5 of Mr. Siemek's direct testimony.

21 A. The District of Columbia (D.C.) Commission in the Baltimore Gas and
22 Electric Company case cited by Mr. Siemek approved a four-year base rate cap. The amount
23 of estimated net merger savings (1997-2006) to be shared was \$1.805 billion, of which D.C.
24 ratepayers were to receive 19.1 percent, or \$345 million. The shared savings were to be
25 distributed monthly as a credit to ratepayers over the period of the four-year cap. Total costs
26 to achieve the merger were \$146 million, representing approximately 7.5 percent of the

Rebuttal Testimony of
Janis E. Fischer

1 estimated merger savings. In contrast to the D.C. Commission, the Missouri Commission did
2 not order a rate cap or freeze in the Aquila-SJLP merger case. Nor did this Commission
3 require Aquila to immediately share, reduce rates or otherwise provide any purported
4 benefits resulting from the merger to the customers of either MPS or L&P.

5 Although Mr. Siemek uses ellipses to indicate his omission of words, the quote on
6 page 13, lines 3-5 of his direct testimony is out of context. I have included the quote in its
7 entirety and underlined the text quoted by Mr. Siemek:

8 We believe that the public interest of the District of Columbia will best
9 be served by a plan of merger which includes: (1) A cap on base rates
10 for four years, as opposed to the two and one-half-year freeze
11 proposed by the Applicants (2) A Plan for District ratepayers to
12 recover 75% of the District's share of net merger savings estimated to
13 occur over the period of the four-year cap, as opposed to a 50% share
14 as proposed by the Applicants (3) a credit to be computed annually and
15 distributed monthly to District ratepayers totaling \$94.5 million over
16 the period of the four-year cap. [emphasis added]

17 Nothing was or has been presented to the Staff during Case No. EM-2000-292, Case
18 No. ER-2001-672 (MPS's last electric rate case in Missouri), or in this rate case to indicate
19 that the merger savings in the Aquila-SJLP merger are anywhere near the magnitude of those
20 in the Baltimore Gas and Electric Company case.

21 Q. Please comment on the Louisiana Public Service Commission, Docket
22 No. U-19904, Entergy Corporation, Order No. U-19904 case cited on page 13, lines 7-11 of
23 Mr. Siemek's direct testimony.

24 A. The Louisiana Commission in the Entergy Corporation case cited by
25 Mr. Siemek approved a five-year base rate ceiling and required a tracking mechanism for
26 merger savings, as stated in this quote from the Order:

27 The essential terms of the joint proposal include the following:

Rebuttal Testimony of
Janis E. Fischer

1 1. All fuel savings will be flowed through the fuel clause to
2 ratepayers, subject to any offsets required by the Louisiana Light &
3 Power Company (LP&L) protection mechanism, or a FERC protection
4 mechanism discussed in the next section.

5 2. There will be a five-year rate ceiling at Gulf States Utilities
6 Company's (GSU's) current base rates.

7 3. A tracking mechanism will be established to measure O&M
8 savings. The tracker will be based on a benchmark of projected O&M
9 costs, reflecting a 1992 normalized level of costs, increased in each
10 year by the Consumer Price Index and one-half of GSU's sales growth.
11 Savings will be the difference between the normalized O&M expense
12 in any future year and the benchmark.

13 4. The company will be permitted to include 60 percent of the
14 O&M savings actually achieved in any year as a cost of service item to
15 reduce the amount of any rate decrease.

16 5. There will be an annual cost of service review. A rate rider
17 will be used to reduce rates below the current level--entitled "merger
18 savings credit".

19 6. The company may request a rate increase after the fifth year,
20 but may not include shared savings as a cost of service item to support
21 the rate increase.

22 7. The rate cap is subject to "force majeure" and the sharing
23 formula contains special provisions, which are explained in the joint
24 regulatory proposal.

25 Q. Please comment on the Nevada Public Service Commission, Docket
26 No. 98-7023, Nevada Power Company, case cited on page 13, lines 13-18 of Mr. Siemek's
27 direct testimony.

28 A. The Nevada Commission in the Nevada Power Company merger case
29 approved a three-year rate freeze after which time a general rate case would determine if
30 resulting merger savings were adequate to allow recovery of costs associated with the
31 merger. The Nevada Commission also included these terms and conditions in its Compliance
32 Order:

1 Before the merger shall be considered fully and finally approved,
2 Nevada Power Company and Sierra Pacific Power Company shall take
3 the following actions, consistent with the terms and conditions of this
4 Compliance Order: (a) file individual rate cases to establish actual
5 revenue requirements pursuant to NRS 704.986 and the regulations
6 adopted by this Commission, which revenue requirements shall be
7 frozen for a period of three years; (b) unbundled costs by
8 functionalizing and allocating costs of services as ordered in Docket
9 Nos. 97-11018 and 97-11028; (c) divest generation assets as specified
10 in a plan of divestiture filed with the Commission.

11 Q. Does Mr. Siemek accurately represent the Nevada Public Utilities
12 Commission's decision in the Nevada Power Company Docket No. 98-7023 case?

13 A. No. The costs of the merger of Nevada Power Company with Sierra Pacific
14 Power Company as stated throughout the Order, were only marginally below the estimated
15 merger savings. Therefore the Commission's main concern was to hold ratepayers harmless:

16 Given the uncertain benefits associated with this merger, the
17 Commission finds that it is not appropriate to place on ratepayers the
18 risk that they will have to pay for merger costs without receiving
19 merger benefits. Utility management designed the transaction,
20 arranged the terms and incurred the costs. The Joint Applicants have
21 not persuaded the Commission that the transaction will enhance the
22 Joint Applicants' ability to fulfill their legal obligation to serve
23 ratepayers at reasonable cost. Rather, it appears that the Joint
24 Applicants entered into the transaction to advance their competitive
25 interests. That goal is not necessarily inconsistent with the public
26 interest, but it is not one for which ratepayers of the Joint Applicants'
27 noncompetitive services should bear risks. Under these circumstances,
28 the risk that merger savings will be insufficient relative to merger costs
29 is a risk that should be borne by the company's shareholders. The
30 Commission therefore will establish a procedure that affords the
31 shareholders a reasonable opportunity to recover these costs, upon a
32 showing that merger savings are sufficient to justify these costs.

33 Q. Is Mr. Siemek's use of a quote on page 14, lines 17-19 of his direct testimony
34 from the Kentucky Public Service Commission, Case No. 98-474, Kentucky Utility
35 Company (KU), appropriate for demonstrating that the Kentucky Commission has allowed
36 the sharing of acquisition-related savings to offset merger-related costs?

Rebuttal Testimony of
Janis E. Fischer

1 A. No. The case was intended to determine the alternative form of rate
2 regulation to be used by KU. The Kentucky Commission in merger Case No. 97-300
3 directed KU and Louisville Gas and Electric Company (LG&E) to file their respective
4 detailed plans to address future regulation by September 14, 1998, or by the consummation
5 of the merger, whichever was later. Beginning on page 18 of the Case No. 98-474 Order, a
6 discussion of earnings sharing mechanisms (ESMs) and their use when an industry is
7 beginning the transition from a monopolistic industrial structure to a more competitive
8 structure can be found. A discussion of the Commission’s optional ESM plan continues on
9 page 21 of the Order. Mr. Siemek’s quote is taken from this section of the Order. Case
10 No. 98-474 had nothing to do with the merger of KU and LG&E, Case No. 97-300. The
11 quote included in Mr. Siemek’s direct testimony refers to the Commission’s optional
12 earnings sharing mechanism (ESM) plan, not the sharing of merger savings. The ESM was
13 not intended to include merger savings.

14 Q. Do you have any comments regarding Mr. Siemek’s use of the Iowa Utilities
15 Board, Docket No. RPU-91-6, IPS Electric, a Division of Iowa Public Service Company case
16 on page 14, lines 21-32 of his direct testimony?

17 A. Yes. Mr. Siemek does not actually quote from this case. According to his
18 response to questions in his deposition on December 30, 2003, he relied upon his Iowa
19 counsel for the statements made in his direct testimony. The RPU-91-6 case was filed by the
20 Consumer Advocate Division of the Iowa Department of Justice as a request to reduce rates
21 for IPS Electric. The 30 basis points allowed for “management efficiencies” adjusted the rate
22 of return from 9.81 percent to 9.93 percent. A direct quote from the Order indicates that
23 Mr. Siemek is mistaken:

1 It is important to note that the management efficiency rules were
2 adopted prior to any utility mergers taking place in Iowa. The benefits
3 which flow from appropriate mergers were not specifically
4 contemplated nor addressed as appropriate for consideration in making
5 a management efficiency award.

6 Mr. Siemek asserts that “[t]he incentive management award effectively gave IPS
7 Electric a means to share in the synergies created by the merger via a higher return on
8 equity.”

9 Q. Do you have any comments regarding the use of the New York Public Service
10 Commission, Case No. 01-M-0075, Niagara Mohawk Holdings, Inc., quoted on page 14,
11 lines 12-15 of Mr. Siemek’s direct testimony?

12 A. Yes. This was a stipulated case in which a provision was “that the proposal is
13 explicitly conditioned upon our acceptance of it in its entirety.” The New York Commission
14 Staff noted that the proposal was offered as a complete package that was fair and equitable
15 overall and that no term should be viewed in isolation. The proposal included a write-off of
16 \$851 million of expected stranded costs, which along with expected merger savings produced
17 a significant up-front electric rate reduction. A more comprehensive statement appears at
18 pages 6-7 of the New York Commission Opinion:

19 In addition to reflecting the treatment of stranded costs, the rate
20 reductions also reflect the assignment to ratepayers of 50% of the
21 electric portion of the forecast efficiency gains and synergy savings
22 (net of costs to achieve) agreed to by the parties. Synergy savings over
23 the term of the plan are set at about \$130 million per year, allocated 62
24 percent to New York, and efficiency gains are set at \$60 million per
25 year, allocated 100 percent to New York. The imputed levels flow to
26 ratepayers regardless of whether they are achieved in fact; the
27 treatment of savings in excess of the imputed levels is discussed
28 below.

1 While the New York case related more to an incentive plan rather than to a merger
2 savings sharing plan, a key element to the Opinion was that customers received rate
3 reductions immediately. That certainly was not the case with the Aquila-SJLP merger.

4 Q. Do you agree with Mr. Siemek's inclusion of a quote on page 14, lines 7-10, of
5 his direct testimony from the Illinois Commerce Commission, Case No. 00-0476, Illinois-
6 American Water Company, Order dated May 15, 2001, as a comparison to the Aquila-SJLP
7 merger?

8 A. No, I do not. Again, Mr. Siemek has taken a portion of an Illinois
9 Commission Order and quoted it out of context. A more complete quote with the portion
10 used by Mr. Siemek underlined follows:

11 The Commission concludes that the shared savings plan (SSP) should
12 be rejected for several reasons. First, the SSP would allow the
13 opportunity to recover the Acquisition Adjustment from ratepayers.
14 The SSP would inappropriately require ratepayers to compensate
15 Illinois-American for its decision to pay approximately \$66.6 million
16 over book value for Citizens' utility assets. The Commission views
17 the Acquisition Adjustment as a merger transactional cost that is not
18 directly associated with the utility's provision of service. The
19 Acquisition Adjustment is a cost associated with the "business end of
20 the deal". Accordingly, the Acquisition Adjustment is not recoverable
21 from ratepayers under the standard recently followed by the
22 Commission in Docket Nos. 98-0555 (Ameritech/SBC) and 98-0866
23 (GTE/Bell Atlantic).

24 The next issue to be addressed is the allocation of Acquisition savings.
25 Section 7-204(c) of the Act provides that the Commission shall not
26 approve a reorganization without ruling on the allocation of savings
27 resulting from the proposed reorganization. In its Orders in Docket
28 Nos. 98-0855 (Ameritech/SBC) and 98-0866 (GTE/Bell Atlantic), the
29 Commission concluded that there should be a 50/50 sharing of net
30 merger savings between ratepayers and shareholders. In this case,
31 there are no costs approved for netting against savings. The
32 Commission believes that a fair treatment in this case of the savings
33 attributable solely to the Acquisition is a 50/50 sharing between
34 shareholders and ratepayers. The Commission shares the concerns
35 expressed by Staff and IWC regarding the difficulty in measuring
36 Acquisition savings. Illinois-American has not presented a specific

1 methodology for quantifying Acquisition savings. The Commission
2 believes that it would be unworkable to litigate the appropriate
3 quantification methodology in the next rate proceeding. Therefore,
4 Illinois-American is required to file, within 90 days of the date of the
5 Order in this proceeding, a petition seeking approval of a specific
6 methodology for quantifying Acquisition savings. [Emphasis added]

7 Q. Did you review the petition seeking approval of a specific methodology for
8 quantifying acquisition savings filed in response to the Illinois Commission Order?

9 A. Yes, I did. The Illinois-American Water Company case is not applicable to
10 the Aquila-SJLP merger case. Expenses recorded during 1998 served as the base year for
11 determining acquisition savings. The Illinois Commission set out the methodology for
12 calculating the acquisition savings in the prior cases listed in the quote above. A schedule
13 provided in Case No. 02-0690 included calculations for acquisition savings/sharing by
14 district in five categories of costs: (1) labor and labor-related; (2) management fees; (3) rate
15 case expense; (4) non-Citizens [Illinois-American Water Company acquired Citizens Lake
16 Water Company (Citizens)] rate area long-term debt; and (5) Citizens rate area long-term
17 debt. Savings in these five categories only were eligible for sharing.

18 **MASSACHUSETTS GUIDELINES**

19 Q. Are the facts surrounding the utility merger cases in Massachusetts relied on
20 by Mr. Siemek to support Aquila's merger savings sharing proposal similar to the facts in
21 this case?

22 A. No. The Massachusetts Department of Public Utilities (DPU) (the
23 predecessor to the Department of Telecommunications and Energy (DTE)) Guidelines and
24 Standards for Acquisitions and Mergers of Utilities (Guidelines) dated August 3, 1994,
25 defines the DTE's position related to utility mergers:

1 ...In light of concerns over high utility rates which in part may be the
2 result of duplicative facilities, functions, and services among
3 Massachusetts utilities, the Department has sought to reexamine its
4 current policy towards mergers or acquisitions and determine whether
5 the public interest may better be served by specific policy changes that
6 enhance efficient delivery of utility services in Massachusetts.

7 ...The Department believes that cost-effective mergers are one of
8 several means by which utilities may be able to reduce their cost of
9 service, improve service reliability, and enhance their financial
10 strength. [Emphasis added]

11 Massachusetts is a high cost per kilowatt-hour state (U.S. Department of Energy
12 statistical data). States that have high costs may be compelled to adopt policy in an attempt
13 to reduce rates and improve economic development opportunities in their states. Missouri is
14 not considered a high cost state and is not in same situation as Massachusetts and such other
15 states.

16 Mr. Siemek, on page 13, lines 20-25 of his direct testimony quoted from the Eastern
17 Enterprises (Eastern) acquisition of Essex County Gas Company (Essex) Order dated
18 September 17, 1998. The applicants presented evidence of an estimated \$47.1 million
19 acquisition premium, related to the earnings per share dilution that would be experienced by
20 Eastern shareholders. The DTE considered the factors in the Guidelines in assessing rate
21 treatment of merger savings. Essex is a small gas local distribution company at the end of an
22 interstate pipeline system. The DTE stated in its Order that Essex would be increasingly
23 challenged to respond to a competitive market dominated by larger utilities and that
24 ultimately the ratepayers would be losers if the merger did not take place. With respect to
25 effect on rates, the DTE stated:

26 The resulting net savings, and alternatives to the merger, the
27 Department found that approval of a 10-year freeze of base rates will
28 yield benefits to Essex's ratepayers and results in just and reasonable
29 rates. Further, the Department recognized that the proposed merger
30 would provide Essex's ratepayers with guaranteed savings in gas costs

1 that would be unavailable absent the merger. Based on our evaluation
2 of the Rate Plan, the Department also concludes that the five percent
3 rate reduction and 10-year rate freeze, in conjunction with the
4 opportunity for Eastern's shareholders to recover the costs associated
5 with the merger, represents a fair allocation of the benefits between
6 shareholders and ratepayers.

7 Significant among the specifics of the Massachusetts decision was a 10-year rate
8 freeze and an immediate rate reduction. This is a completely different circumstance than
9 what this Commission encountered with the Aquila-SJLP merger and Aquila's present
10 proposal. A condition of the approval was finding the Eastern/Essex transaction to be
11 "consistent with the public interest" or a "no net harm" standard. Under the Guidelines, the
12 extent to which recovery of the acquisition premium is permitted depends on the "no net
13 harm" analysis.

14 Q. Have there been other Massachusetts merger cases where the Guidelines were
15 applied?

16 A. Yes, the Guidelines were applied to another merger case in Massachusetts that
17 Mr. Siemek quotes. Mr. Siemek quoted on page 13, lines 42-45 of his direct testimony the
18 Colonial Gas Company (Colonial), DTE Case No. 98-128, Order dated July 15, 1999. In that
19 case, the DTE decided that a ten-year base rate freeze and a 2.2 percent reduction in the
20 burner tip price of gas for Colonial ratepayers was appropriate. A base rate freeze holds the
21 base rate to the same constant level of charge over the period the freeze is in effect. This is
22 in contrast to a base rate cap that only limits the maximum base rate to the current base rate
23 charge.

24 As of the date of this rebuttal testimony, none of these companies to which
25 Massachusetts applied its Guidelines have completed a rate case proceeding to determine

1 actual merger savings. While the DTE's Guidelines set standards for Massachusetts's utility
2 mergers, the standards are not applicable to the present Missouri rate case.

3 **KANSAS CORPORATION COMMISSION ORDER**

4 Q. Please comment on the Kansas Corporation Commission (KCC), Docket
5 No. 99-WPEE-818 RTS, UtiliCorp United, Inc., Order relied on by Mr. Siemek on page 14,
6 lines 2-5 of his direct testimony to support the merger savings sharing proposal.

7 A. The KCC required that Aquila demonstrate that quantifiable savings were
8 created by the acquisition of Centel before it would allow recovery of the acquisition
9 premium. The acquisition premium was determined to be \$56 million and the merger
10 savings that the KCC approved Aquila to apply to the acquisition premium in the
11 proceedings was \$2,350,000.

12 Q. Please summarize the details of the acquisition from Centel.

13 A. On September 27, 1991, in Docket No. 175,456-U, the KCC allowed
14 UtiliCorp to acquire the electric assets of Centel subject to stipulated conditions. Centel's
15 assets were transferred to UtiliCorp at or about net book value. However, Centel's eight
16 percent ownership interest in Jeffrey Energy Center was transferred to Wilmington Trust and
17 leased back to UtiliCorp. Aquila operates the former Centel properties as its West Plains
18 division. The stipulation in Docket No. 175,456-U set a two-year rate moratorium, a
19 reduction in UtiliCorp's initial rate tariffs, a refund to retail ratepayers within the West Plains
20 service territory and prohibited UtiliCorp from seeking rate recovery of any acquisition
21 premium beyond the level of savings generated by the acquisition. UtiliCorp did not propose
22 a method for identifying and quantify savings in the initial acquisition case. UtiliCorp
23 presented little evidence of cost savings apart from general and administrative cost reductions

1 in its prefiled testimony in Docket No. 175,456-U. The determination of any acquisition
2 premium, the recovery of such costs and the issue of an appropriate measuring mechanism
3 for the merger savings were deferred until the UtiliCorp's next rate case. UtiliCorp then filed
4 a rate increase case in Kansas for its West Plains properties designated as Docket
5 No. 99-WPEE-818-RTS.

6 Q. What were the merger savings issues in the subsequent KCC rate case, Docket
7 No. 99-WPEE-818-RTS?

8 A. UtiliCorp attempted to persuade the KCC to classify as "merger savings" as
9 many cost reductions it had experienced as possible. Of the eight categories of "merger
10 savings" UtiliCorp presented to the KCC, only one was approved partial treatment as a
11 "merger savings." The following excerpts from the January 19, 2000, KCC No. 10, Order on
12 Application specifically address the merger savings issues in the West Plains case:

13 Page 7, 17. The Applicant identified seven areas of claimed savings to
14 support the recovery of the acquisition premium and submitted that the
15 savings greatly exceeded any acquisition premium paid to Centel.
16 Staff and CURB examined each area of claimed savings and
17 contended that the Applicant failed to show a nexus between the
18 claimed savings and the Centel acquisition...

19 Page 8, 18. The largest claimed savings is based upon the position that
20 the Applicant was entirely responsible for the reduced coal costs at the
21 Jeffrey Energy Center... It appears that the primary reason for coal
22 cost savings is Western's motivation to lower its coal costs and that the
23 Applicant benefited from Western's efforts... Moreover, the Applicant
24 failed to carry its burden of proof with respect to these claimed savings
25 and failed to establish that the coal cost savings would not have been
26 created but for the Centel acquisition.

27 Page 9, 20. ...The third source of claimed savings is a Power Plant
28 Matrix Agreement, which resulted in staff reductions and increasing
29 plant capacity factors... The evidence does not show that these savings
30 would not have been realized but for the Centel acquisition or that the
31 savings related to a sharing of personnel with West Plains... It appears
32 that this type of employee reduction was in line with prudent utility
33 management.

1 Page 9, 21. The fourth source of claimed merger savings is power
2 plant savings from efficiency programs recently implemented by the
3 Applicant in 1998. Similarly, the Applicant claimed savings in a
4 general work force reduction implemented by the Applicant four years
5 after the Centel assets were acquired. It appears from the evidence
6 that these types of claimed savings are the result of good utility
7 management and consistent with industry standards. The evidence
8 does not establish that these recent corporate changes and restructuring
9 efforts were related to the Centel acquisition.

10 Page 11, 24. The final claimed cost savings is a general work force
11 reduction implemented by the Applicant starting in 1995. This
12 reduction is said to involve 60 positions and is claimed to reduce costs
13 by over \$4.6 million... It appears that the workforce reductions were
14 the result of general economic changes in the electric industry that
15 were forcing all electric utilities to make such work force reductions.

16 Page 11, 25. ...In addition, the Commission notes that West Plains
17 initially failed to provide adequate evidence and testimony to
18 document their claimed savings and this failure unfortunately
19 complicated and prolonged these proceedings. [Emphasis added]

20 **IOWA UTILITIES BOARD RPU-02-5**

21 Q. Have you reviewed the 2002 testimony of Mr. Siemek in Aquila's Iowa
22 Utilities Board (IUB) Case No. RPU-02-05?

23 A. Yes, I have. Mr. Siemek addressed this case in his deposition on
24 December 30, 2003. Mr. Siemek proposed in the IUB Case No. RPU-02-05 that the Iowa
25 Board allow Aquila to retain certain cost savings resulting from the Aquila-SJLP merger case
26 related to economies of scale. In other words, any reallocation of corporate costs resulting in
27 a net decrease in expense to Iowa would be attributed to the Aquila-SJLP merger.
28 Mr. Siemek proposed that only 75 percent of reductions in costs due to the allocation of
29 shared services to Iowa be reflected in the cost of service to ratepayers. The other 25 percent
30 would be retained by Aquila.

31 Q. What did the IUB decide in Case No. RPU-02-05?

1 A. A settlement was reached in Case No. RPU-02-05. Aquila in its application
2 asked for a permanent rate increase of \$9.3 million. The settlement approved by the IUB
3 approved an annual revenue increase of approximately \$4.25 million, less than half of the
4 amount initially requested by Aquila. The IBU did not address the merger savings sharing
5 issue in its Order.

6 **STAFF'S CONCLUSIONS**

7 Q. Do the cases cited by Aquila to support the Company's merger savings
8 sharing proposal indicate that other states have adopted the sharing of merger savings under
9 similar circumstances to the Aquila-SJLP merger?

10 A. No. As can be seen from the above review of the merger cases cited by
11 Aquila as identified by Mr. Siemek in his direct testimony, they generally do not show
12 similar facts and circumstances surrounding the merger of Aquila-SJLP. Many of the other
13 state commission orders relied on by Mr. Siemek concern rate moratoriums and several
14 involved immediate rate reductions. These considerations are not relevant to the Aquila-
15 SJLP merger. Aquila did not reduce rates as part of the merger. The Commission did not
16 impose a rate freeze on Aquila. Aquila has been free to file for rate increases as soon as
17 Aquila believed it was necessary, as evident by its 2001 MPS rate increase filing and its
18 filing on July 3, 2003, in these cases and its filing on August 1, 2003, for a rate increase for
19 Aquila's natural gas operations in this state, Case No. GR-2004-0072.

20 In short, the cases from other state commissions do not support the merger saving
21 sharing proposal identified in Mr. Siemek's direct testimony and, as such, the Commission
22 should not place any reliance on them.

Rebuttal Testimony of
Janis E. Fischer

1 Q. Did the Staff's review of merger and acquisitions in other state jurisdictions
2 play a significant role in determining the Staff's position on merger related matters in the
3 Aquila-SJLP merger case, Case No. EM-2000-292, MPS's last electric rate case, Case
4 No. ER-2001-672, Aquila's current electric and steam rate increase case, Case
5 Nos. ER-2004-0034 and HR-2004-0024 and the current gas rate proceeding?

6 A. No. The Staff's analysis of merger and acquisition orders in other
7 jurisdictions shows a wide variety of circumstances, proposals and resolutions to issues
8 arising in these transactions. While the commission orders provide historical details of each
9 case, the comprehensive review of documents that would be needed to fully assess the
10 situation throughout the states was not undertaken principally because of the size of the task.
11 My conclusion would be that each merger and acquisition should be viewed on its own
12 merits. As stated earlier in my rebuttal testimony, differences resulting from deregulation,
13 utility rates, quality of service, utility company stability and state requirements imposed by
14 rules and regulations influence state commission decisions. The Missouri Commission
15 should base its decision related to the sharing of merger savings in this case based upon the
16 circumstances specific to this case.

17 Q. Does this conclude your rebuttal testimony?

18 A. Yes, it does.

CASE PROCEEDING PARTICIPATION

JANIS E. FISCHER

PARTICIPATION		TESTIMONY
COMPANY	CASE NO.	ISSUES
Union Electric Company d/b/a AmerenUE	EO-2004-0108	Rebuttal - Affiliated Transactions, Assets/Liabilities
Aquila, Inc. d/b/a Aquila Networks-MPS and Aquila Networks-L&P	ER-2004-0034 & HR-2004-0024	Rebuttal - Sharing of Merger Savings
Osage Water Company	ST-2003-0562 & WT-2003-0563	Rebuttal – EU Operation & Maintenance Agreement, Use of Projected Expenses to Determine Cost of Service for Ratemaking, Utility Plant-Rate Base, Depreciation Expense and Depreciation Reserve
Osage Water Company	ST-2003-0562 & WT-2003-0563	Direct - Test Year, Accounting Schedules, Revenues and Cost of Removal and Salvage
Union Electric Company d/b/a AmerenUE	GR-2003-0517	Direct - Rate Case Expense, Legal Expense, Corporate Franchise Tax, Cost of Removal and Salvage, Pensions and OPEBs
Laclede Gas Company	GR-2002-356	Direct - Pensions and OPEBs, Rate Base Asset, Incentive Compensation
Missouri Gas Energy, Division of Southern Union Company	GR-2002-292	Direct - Pensions and OPEBs, Other Employee Benefits, SERP, COLI Amortization
Missouri-American Water Company	WO-2002-273	Rebuttal - Security Costs, Accounting Authority Order Staff Criteria
Citizens Electric Company	ER-2002-217	Direct - Test Year, Accounting Schedules, Revenues, Purchased Power and Transmission, Other Revenues, Uncollectibles Expense
Union Electric Company d/b/a AmerenUE	EC-2002-1	Surrebuttal - Incentive Compensation
Missouri Public Service, Division of UtiliCorp United, Inc.	ER-2001-672 EC-2002-265	Direct - Pensions and OPEBs, Merger Transition/Transaction Costs, Merger Savings-SJLP, Revenues, Uncollectibles
Missouri Public Service, Division of UtiliCorp United, Inc.	ER-2001-672 EC-2002-265	Rebuttal - Merger Transition/Transaction Costs, Merger Savings-SJLP, Revenues, Uncollectibles
The Empire District Electric Company	ER-2001-299	Direct - Payroll, Pensions and OPEBs, Payroll Related Benefits, Payroll Taxes, Outside Services, Merger Costs, Miscellaneous Expenses True-up Rebuttal – Chemicals, Property Taxes
The Empire District Electric Company	ER-2001-299	Rebuttal - Payroll Expense, Bonuses and Incentive Pay

PARTICIPATION		TESTIMONY
COMPANY	CASE NO.	ISSUES
The Empire District Electric Company	ER-2001-299	Surrebuttal - Payroll Expense, Bonuses and Incentive Pay
The Empire District Electric Company	ER-2001-299	Supplemental Surrebuttal - Incentive Awards
The Empire District Electric Company	ER-2001-299	True-up Direct - Payroll, Payroll Taxes, Payroll Related Benefits
KLM Telephone Company	TT-2001-120	Direct - Revenue Requirement
UtiliCorp United, Inc./ Empire District Electric Company	EM-2000-369	Rebuttal - Merger Savings, Acquisition Adjustment, Tracking of Merger Savings
UtiliCorp United, Inc./ St. Joseph Light & Power Company	EM-2000-292	Rebuttal - Merger Savings, Acquisition Adjustment, Tracking of Merger Savings
Osage Water Company	WA-98-236 WC-98-211	Rebuttal - Financial Viability, Organizational Costs
Western Resources/ Kansas City Power & Light Company	EM-97-515	Rebuttal - Merger Savings, Tracking of Merger Savings, Transaction Costs, Costs to Achieve
Union Electric Company d/b/a AmerenUE	GR-97-393	Direct - Cash Working Capital, Materials/Supplies, Prepayments, Federal/State Income Tax Offset, Purchased Gas Offset, Interest Expense Offset
The Empire District Electric Company	ER-97-81	Direct - Dues and Donations, Advertising, Rate Case Expenses, PSC Assessment, Non-Health Insurance, Miscellaneous Expenses