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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

On-the-Record Presentation

March 30, 2006  
Jefferson City, Missouri  
Volume 3

In the Matter of the Joint )  
Application of Aquila, Inc, )  
d/b/a Aquila Networks - MPS )  
and Aquila Networks - L&P )  
("Aquila"), The Empire District )  
Gas Company ("EDG") and the )  
Empire District Electric )Case No. GO-2006-0205  
Company ("EDE") for an Order )  
Authorizing the Sale, Transfer )  
and Assignment of Certain )  
Assets to EDG and in Connection )  
Therewith Certain Other )  
Related Transactions )

KENNARD L. JONES, Presiding  
REGULATORY LAW JUDGE  
JEFF DAVIS, Chairman,  
CONNIE MURRAY,  
STEVE GAW,  
ROBERT M. CLAYTON, III,  
LINWARD "LIN" APPLING,  
COMMISSIONERS

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## 1 A P P E A R A N C E S

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1 P R O C E E D I N G S

2 JUDGE JONES: Okay. We can go ahead  
3 and go on the record with the Case No.  
4 GO-2006-0205 in the Matter of the Joint  
5 Application of Aquila, Inc., and The Empire  
6 District Gas and Electric Companies for an  
7 Order Authorizing the Sale, Transfer and  
8 Assignment of Certain Assets and Liabilities  
9 from Aquila to Empire District Gas.

10 My name is Kennard Jones. I'm the  
11 presiding judge over this matter in this  
12 on-the-record presentation at this time.

13 We'll take entries of appearance from the  
14 attorneys that are present. Just state your  
15 name and who you represent, and then we'll have  
16 questions from the Commission.

17 From Aquila?

18 MR. COOPER: Your Honor, Dean Cooper,  
19 appearing on behalf of Aquila, Inc.

20 JUDGE JONES: And Empire District?

21 MR. KEEVIL: Yes. Yes, your Honor.  
22 Appearing on behalf of Empire, Jeffrey A.  
23 Keevil.

24 JUDGE JONES: And Staff of the  
25 commission?

1 MR. BERLIN: Your Honor, Robert S.  
2 Berlin appearing on behalf of the Staff of the  
3 Public Service Commission.

4 JUDGE JONES: Office of Public  
5 counsel?

6 MR. POSTON: Marc Poston, appearing  
7 on behalf of the Office of Public Counsel.

8 JUDGE JONES: And who else is  
9 present? Mr. Fischer?

10 MR. FISCHER: James Fisher, appearing  
11 on behalf of Cornerstone Energy.

12 MR. WOODSMALL: David Woodsmall,  
13 appearing on behalf of Pittsburgh Corning.

14 JUDGE JONES: Anyone else? Okay.  
15 Hearing nothing else, we'll move directly to  
16 questions from Commissioner Gaw.

17 COMMISSIONER GAW: Thank you, Judge.  
18 What I really am interested in, in particular,  
19 and I think I said this the other day, are two  
20 general issues.

21 And the first one has to do with the  
22 impact of this transaction on Empire's credit  
23 -- credit ratings and bond ratings, et cetera.  
24 And I would -- I would like to have someone who  
25 can give me some detail on that available. And

1 I'd ask the parties who that would be to begin.

2 MR. KEEVIL: Yes. Commissioner,  
3 I have with me Mr. Ron Gatz, who is Vice  
4 President of Strategic Development for Empire  
5 and who has been the primary Empire person  
6 involved with this transaction here for that.

7 COMMISSIONER GAW: Thank you,  
8 Mr. Keevil. If -- if I could, Judge, if he  
9 could be sworn so I can ask him some questions,  
10 and we'll go from there.

11 JUDGE JONES: You can stay where you  
12 -- you can stay where you are. Just raise your  
13 right hand and state your name.

14 RONALD GATZ,  
15 being first duly sworn to testify the truth, the whole  
16 truth, and nothing but the truth, testified as follows:

17 EXAMINATION

18 BY COMMISSIONER GAW:

19 JUDGE JONES: Thank you, Mr. Gatz.

20 Q (By Commissioner Gaw) Mr. Gatz, just  
21 preliminarily, would you tell me your position  
22 with Empire, please?

23 A I am the Vice President of Strategic  
24 Development, and I work strategic projects for  
25 Empire.

1 Q Okay. And a little bit about your background,  
2 just very briefly?

3 A Prior to joining Empire, most of my career was  
4 in commercial banking.

5 Q All right. How long have you been with Empire?

6 A Five years.

7 Q Okay. And have you held your current position  
8 for that five-year period?

9 A Yes.

10 Q Okay. What are your general responsibilities  
11 with Empire?

12 A I do strategic projects like this acquisition  
13 project. I assist with contracting of  
14 generating projects, some other strategic  
15 projects like that.

16 Q Okay. In the course of the -- of your  
17 examination of this transaction, did you have  
18 -- have occasion to look at the potential  
19 impact of the transaction on Empire's ability  
20 to -- to receive credit and the cost of credit  
21 that Empire might pay in the future?

22 A Yes, Commissioner. We, with the assistance of  
23 a financial advisory firm, UBS, did not only  
24 preview the transaction with two of the rating  
25 agencies, but we did forecast their belief of

1 the market cost of debt, et cetera.

2 Q Okay. And who is UBS?

3 A UBS Warburg -- it's an investment banking firm  
4 with -- their office is in New York.

5 Q Okay. Is that a firm you've worked with  
6 before?

7 A Yes. There are a normally engaged investment  
8 banking firm.

9 Q Okay.

10 A To assist us with the capital markets.

11 Q All right. Tell me what the recent history of  
12 the ratings that Empire has been given by the  
13 rating agencies.

14 A Standard importers currently has a higher rated  
15 BBB with a negative outlook. Moody & Fitch  
16 have it one notch higher with a stable outlook.

17 Q Okay. What's the one notch, I mean, just for  
18 the record, please? What's one notch about  
19 above BBB?

20 A It would be BBB plus in Standard & Poor's  
21 scheme.

22 THE COURT REPORTER: Excuse me. I  
23 need to plug this in real quick.

24 (Break in proceedings.)

25 Q (Commissioner Gaw) Okay. So in -- in Moody's,

1           what, is there a particular rating -- you said  
2           then after S&P's it would be a BBB plus. And  
3           Moody's -- what does that mean?

4       A     I'm sorry. I don't have -- I don't have the  
5           differences in their scheme memorized.

6       Q     That's okay. If -- if you know, that's --  
7       A     I don't know what it is. I'm sorry.

8       Q     All right. And who else -- then Fitch would be  
9           another one?

10      A     Yes.

11      Q     And what -- what is theirs?

12      A     Theirs is comparable to Moody's, which is one  
13           notch higher than Standard & Poor's.

14      Q     Okay. Is there another one? I thought you  
15           said four a while ago.

16      A     Three.

17      Q     Yeah. That's what I was used to. Okay. So in  
18           -- in regard to the ratings for Empire over the  
19           last two years, let's say, can you -- can you  
20           give me some background on that?

21      A     Standard & Poor's has had Empire on BBB for  
22           that time period. There have been times when  
23           they had the outlook at stable, other times  
24           when it has been negative.

25      Q     Okay. Do you know about Moody's & Fitch?



1           A     They have been mostly stable, and there's been  
2                   no ratings change from either of those agencies  
3                   in that time frame.

4                   In fact, I think Fitch just put out their  
5                   first rating on us in late '05 or early '06.

6           Q     Their first ever?

7           A     First ever.

8           Q     Okay. And in regard to the negative outlook  
9                   that S&P has you on currently, can you tell me  
10                  what the reasons are for the negative outlook,  
11                  according to S&P?

12          A     Yes, sir. The -- the announcements they have  
13                  made give the negative outlook for -- in fact,  
14                  I believe three topics.

15          Q     All right.

16          A     Which is the same communique we got from them  
17                  when we previewed the interest transaction last  
18                  August.

19          Q     Okay.

20          A     The first one is that they considered the  
21                  acquisition of these -- these gas assets to be  
22                  neutral and not a ratable event.

23                  They also considered, though, that the  
24                  larger issues that they were concerned about  
25                  were the full and timely recovery of fuel and

1 purchase power costs and the size of the  
2 capital plan required in the regulatory plan.

3 Q Was that the third thing that you just  
4 mentioned?

5 A That's the third thing. Yes.

6 Q Explain the third for me, please.

7 A The regulatory plan of Empire's that was  
8 approved, I think, about last July.

9 Q Okay.

10 A Provided for participation in IATAN II,  
11 environmental upgrades in IATAN I and Asberry,  
12 et cetera.

13 Q Okay.

14 A And overview now through 2010, that's a half  
15 billion range capital plan.

16 Q How does the -- the capital costs of the  
17 acquisition of the gas company of Aquila --  
18 that Aquila currently owns impacts the outlay  
19 of capital under the regulatory plan or combine  
20 with the impact of that -- of that regulatory  
21 plan's impact -- impact on the company?

22 A We view that as -- as not an added cost or an  
23 -- a higher cost financing.

24 Q And -- and tell me -- explain that for me,  
25 please.

1           A     We assumed that since we are acquiring assets  
2                   and an existing revenue stream that are already  
3                   in rate base effectively, that there is no  
4                   earnings lag; therefore, no deterioration in  
5                   credit quality, and, therefore, no increased  
6                   cost of borrowing as compared to other debt for  
7                   the company.

8           Q     Okay.  What does this do in regard to this  
9                   acquisition in regard to your debt equity  
10                  ratio?

11          A     We have planned the acquisition based upon a 55  
12                  percent debt, 45 percent equity funding, which  
13                  is very similar to Empire's consolidated  
14                  capital position.  Therefore, it is neutral to  
15                  our debt to equity ratio.

16          Q     Okay.  Are you familiar with the needs or  
17                  potential needs for any significant capital  
18                  investment in this system that you're acquiring  
19                  under this proposal?

20          A     Yes, Commissioner.  There is a historical  
21                  capital spending level of about a million and a  
22                  half to \$2 million a year.

23          Q     Okay.

24          A     And it was forecasted by the seller, Aquila, to  
25                  continue at that level.  There is only one

1 material replacement project that's in the  
2 forward capital budget, and it's spread over a  
3 couple of years.

4 We actually forecast capital at slightly  
5 higher levels, anticipating that there may be  
6 some growth opportunities in some of the  
7 markets. But we know of no significant capital  
8 needs in excess of what was projected.

9 Q That particular capital project, can you give  
10 me an idea about the size of it?

11 A It's approximately \$1.6 million to replace a  
12 pipeline into Nevada that is forecasted over a  
13 couple of year period.

14 COMMISSIONER GAW: Okay. I -- I want  
15 to ask Staff witnesses some questions about  
16 this generally I could do now, or I could go on  
17 to the -- the second topic I want to get into,  
18 whichever is easiest.

19 JUDGE JONES: Would this witness  
20 know?

21 COMMISSIONER GAW: I don't know.  
22 Mr. Keevil, in regard to questions in regard to  
23 how gas purchasing will be handled going  
24 forward, will the same witness be the  
25 appropriate witness for that?

1 MR. KEEVIL: Yes, Commissioner.

2 COMMISSIONER GAW: Okay. Let me just  
3 go ahead and --

4 JUDGE JONES: Why don't we stick to  
5 the same topic?

6 COMMISSIONER GAW: That's fine with  
7 me.

8 JUDGE JONES: We'll move to -- does  
9 Staff have a witness?

10 MR. BERLIN: Yes, Judge. Staff's  
11 witness is David Murray.

12 JUDGE JONES: Okay. Mr. Murray?

13 JUDGE JONES: Will you state your  
14 name for the record, please?

15 MR. MURRAY: David Murray.

16 JUDGE JONES: Is your microphone on?

17 MR. MURRAY: David Murray.

18 DAVID MURRAY,

19 being first duly sworn to testify the truth, the whole  
20 truth, and nothing but the truth, testified as follows:

21 DIRECT EXAMINATION

22 BY COMMISSIONER GAW:

23 JUDGE JONES: Thank you.

24 Q (By Commissioner Gaw) State your name again,  
25 please.

1 A David Murray.

2 Q And what do you do, David?

3 A I work in the Financial Analysis Department for  
4 the Staff.

5 Q And what -- what is your role there?

6 A Actually, I was just promoted to the Acting  
7 Financial Analysis Manager --

8 Q All right.

9 A -- this week.

10 Q How long have you worked in -- for the Staff of  
11 the Commission?

12 A Since June of 2000.

13 Q Okay. And your -- your background, your  
14 educational background, please, just very  
15 briefly?

16 A Bachelor's of Science in -- in Business  
17 Administration with an Emphasis in Finance from  
18 the University of Missouri-Columbia, and a  
19 Master's -- MBA from Lincoln University.

20 And I'm currently pursuing my Charter  
21 Financial Analyst designation. I passed the  
22 first test and am moving on to the second  
23 level.

24 Q Okay. Thank you. Have you looked at this  
25 transaction for Staff in regard to the transfer

1 of gas pipeline from Aquila to Empire?

2 A I have looked at the main parts of the  
3 transaction. I just have to explain that John  
4 Keeble was originally assigned to this case,  
5 and he has since left our agency. So I have  
6 done my best to get up to speed on -- on what  
7 has occurred with this transaction.

8 Q Okay. I'm particularly interested in this --  
9 just this very narrow area at this point of  
10 dealing with the potential impact on Empire on  
11 their credit rating going forward on their bond  
12 rights, et cetera.

13 And can -- if you could, give me your view  
14 from Staff's standpoint about the risks that  
15 this transaction imposes or doesn't impose on  
16 Empire.

17 A When -- when I looked at the transaction and  
18 looked at the impact of the transaction on the  
19 main credit metrics that are published by  
20 Standard & Poor's -- you know, you'll have to  
21 understand I usually refer to analysis by  
22 Standard & Poor's because that's who we  
23 subscribe to. That's a service we subscribe  
24 to.

25 I looked at relative impact of the gas

1 acquisition on those ratios. And as was stated  
2 by Empire personnel earlier, UBS also looked at  
3 the relative impact on the ratios. And the  
4 ratios are funds flow from operations to  
5 interest coverage, funds flow from operations  
6 to debt and debt to capital.

7 And when I looked at those ratios -- and I  
8 did it based on the company's projections. I  
9 -- there was a dilutive effect on the funds  
10 flow from operations to interest and funds flow  
11 from operations to debt.

12 But one thing that does need to be taken  
13 into consideration is that Standard & Poor's  
14 views natural gas distribution companies as  
15 having a lesser business risk profile.

16 So when you consider that in looking at  
17 the benchmarks for -- well, I used business  
18 profile of three because that's -- LaCledde is  
19 ranked as at business profile three. I think  
20 Southern Union at one time was a business  
21 profile three. So I think that's, you know, a  
22 fair business profile to look at.

23 Q Before you -- before you go on, tell me what  
24 business profile is and what a three rating  
25 means.



1           A     Business profile, it's a -- it's a ranking  
2                     system that Standard & Poor's uses to assess  
3                     the relative business risk associated with --  
4                     with utility companies.

5                     When you get into, you know, energy  
6                     marketing and trading, independent power  
7                     projects, those types of, you know, unregulated  
8                     activities, you tend to go towards the higher  
9                     end of the spectrum, towards the Level 10.

10                    And if you are -- actually, the water  
11                    companies tend to have the lowest business risk  
12                    profile. I don't know many that had have a  
13                    one, but there's quite a few that have a two  
14                    and maybe a three.

15                    And, predominately, most of the natural  
16                    gas distribution utilities that I have seen  
17                    have a business risk profile of three. So it's  
18                    -- it's below average in business risk in the  
19                    utility industry.

20           Q     Which is a good thing?

21           A     Yes.

22           Q     Looking for low risk, it's a good thing?

23           A     Yes. And that allows the company to use more  
24                    leverage in their -- in their capital  
25                    structure. Like I said -- but, of course, it

1 gets a little bit harder to -- to analyze this  
2 once you combine it into a company that has a  
3 business -- business risk profile of six.

4 Q Yes. What is the business risk profile of this  
5 company?

6 A Of Empire, on a consolidated basis, it is still  
7 a six.

8 Q Still a six. Okay. And what's the -- what's  
9 the range on business profile rankings?

10 A One to ten.

11 Q One to ten. Thank you. Okay. Now, in -- in  
12 looking at -- you were -- I interrupted what  
13 you were telling me in regard to your  
14 assessment here. Would you -- could you  
15 continue with that?

16 A The assessment that -- when I reviewed -- when  
17 I tried to separate the -- the gas acquisition  
18 from -- you know, from the consolidated  
19 projected financials because what -- the -- the  
20 analysis that I reviewed just looked at the  
21 ratios on consolidated basis bringing the gas  
22 operations on -- into the -- into the picture.

23 And with the help of actually Matt  
24 McKenzie of Empire District Electric, we broke  
25 those -- we broke the gas operations financials

1 out according to -- you know, according to  
2 their estimates, I guess, from what they looked  
3 at from Aquila's experience with these  
4 operations.

5 And I -- I calculated ratios that are for  
6 a funds flow from operations to debt anywhere  
7 in the ten to eleven range, which is within the  
8 benchmark of BBB company with a business risk  
9 profile of three. It's at the lower end, but  
10 it's within the benchmark.

11 And then for the FFO interest, that was  
12 actually above the benchmark for a BBB.

13 Q What Does that mean to you?

14 A That means that for the business risk of a  
15 natural gas distribution company, it is  
16 consistent with -- with a BBB credit rating,  
17 which is currently Empire's credit rating.

18 Q All right. Now, what I didn't quite understand  
19 was your reference earlier to their business  
20 risk being actually at six before this portion  
21 is factored in. Did I -- did I misunderstood  
22 you?

23 A When I said six, I was referring to Empire  
24 District Electric.

25 Q Yes.

1           A     Empire gas operations -- if Empire District  
2                   Gas, you know, was a stand-alone entity --

3           Q     Yes.

4           A     -- it could have a business risk profile of  
5                   three.

6                   Now, as far as what Standard & Poor's  
7                   does, when this becomes part of -- of the  
8                   consolidated Empire company, whether or not  
9                   they use it as justification to -- to reduce  
10                  Empire's business risk profile to a five, I  
11                  don't know.

12                  There are -- there have been a lot of  
13                  things that I think have occurred in Missouri  
14                  that would -- that would justify Standard &  
15                  Poor's lowering Empire's business risk profile.

16          Q     Okay. By the way, we -- do you know the  
17                  business profile risk of Aquila?

18          A     I believe they are an eight right now.

19          Q     So in regard to this transaction's impact on  
20                  Aquila, is it -- should it be seen as a  
21                  positive or a negative or a neutral?

22          A     For Aquila, I would see it as a positive.

23          Q     And tell me why.

24          A     Because -- because Aquila has a non-investment  
25                  credit rating, they -- you know, for any type

1 of financing that they need to do for working  
2 capital. You know, obviously, there's the  
3 Commission's order that they have to come in  
4 and ask for securitization even just for  
5 working capital facilities.

6 And with -- you know, with the natural gas  
7 distribution business, working capital -- it's  
8 a working capital intensive industry because  
9 they'd have to purchase the natural gas. And  
10 then there's a lag between purchasing and  
11 receiving funds from the customers.

12 So with the -- and then there -- I'm sure.  
13 One of our gas people could explain this in  
14 better detail. But it puts them in a -- you  
15 know, a little more precarious situation with  
16 trying to negotiate on the gas supply.

17 Q So you're telling me even though when you're  
18 seeing this transfer going over to Empire, you  
19 see it potentially neutral or you could -- you  
20 could suggest the possibility of on the  
21 consolidated end of -- of someone saying maybe  
22 it should be moved down from a six to a five,  
23 that -- that that is not a significant factor  
24 of it going the other direction in combination  
25 with other matters in regard to Aquila actually

1           transferring the property?        You understand --

2        A    I understand what you're saying as far as -- or

3           lowering Aquila's business risk profile.

4        Q    Yes.

5        A    I think, just as many of us -- I think the

6           credit rating agencies will hesitate to -- to

7           act on Aquila any time soon.

8        Q    Yes.

9        A    With -- you know, until -- until they see how

10          the execution of these sales goes.

11       Q    But there are other factors, if I hear -- am

12          hearing you correctly, there are other factors

13          in examining how this impacts Aquila aside from

14          the fact that they're selling a revenue stream

15          here that's fairly consistent and normally

16          would be considered a lower business profile

17          risk than the other things that Aquila

18          currently may be dealing with or has dealt with

19          in the past.  The fact that the -- the capital

20          intensive nature of the acquisition of the gas

21          is -- is -- is somewhat problematic for a

22          company like Aquila is a factor in saying that

23          it's neutral or perhaps positive for them to

24          sell it?

25        A    When I -- when I indicate capital intensive, I

1 would distinguish the difference between  
2 long-term capital intensive versus the  
3 short-term capital.

4 And with natural gas distribution, the  
5 short-term needs of capital is -- is much -- is  
6 greater. And I think that that is something  
7 with the company that has liquidity concerns.

8 Q Yes.

9 A A -- you know, that -- that plays a bigger  
10 factor in how you're going to evaluate the  
11 credit worthiness of that company.

12 Q Okay. Pardon me. So Staff -- does Staff  
13 believe that this acquisition is not likely to  
14 have a negative impact on Empire?

15 A Yes.

16 Q All right. And if -- if by chance it does, do  
17 you know what the consequences of that -- or if  
18 the Stipulation addresses -- addresses that  
19 possibility?

20 A I believe the Stipulation doesn't -- I mean, it  
21 addresses the -- the impact of these -- if, you  
22 know, things don't go as planned, the impact  
23 that it may have on some of the agreements that  
24 were made in the electric regulatory plan.

25 But as far as anything -- any -- any

1           consequences to Empire in general, I'm not --  
2           I'm not aware of any.

3           Q     Okay.  Speaking of that regulatory plan, is it  
4           your understanding that -- that Empire will  
5           have a significant amount of capital to -- to  
6           utilize in participating in that regulatory  
7           plan with the electric plant --

8           A     Yes.

9           Q     -- as has been contemplated?

10          A     Yes.

11          Q     How does expending money on this acquisition  
12          play into and interrelate with the same time  
13          having to -- or the same time frame having to  
14          come up with capital for that plant?

15          A     Well, definitely there's a -- there's a timing  
16          concern because of the fact that -- that you do  
17          have, you know, already on the horizon a  
18          significant capital expenditures.

19                    I -- I think most people are -- are aware  
20          that I have concerns about Empire's dividend  
21          payout ratio, especially if -- you know,  
22          especially if you plan on making significant  
23          capital expenditures to improve the system.  
24          They take away the reliance on natural gas and  
25          then also make a gas acquisition.



1                   But as far as Empire's inclination to  
2                   issue new equity, when they pay out that equity  
3                   through the dividend, Empire has shown a  
4                   willingness to issue the equity to -- to repair  
5                   that equity deterioration that they receive  
6                   when they pay out more than they earn.

7                   But there's no doubt that if -- you know,  
8                   if you're looking at a strategy of -- of maybe  
9                   getting into acquisitions and needing to --  
10                  dispensing of the amounts of money on -- on  
11                  capital expenditures that, you know, in my  
12                  opinion, it would be wise to retain more of  
13                  your earnings so you would have that in order  
14                  to invest in those projects.

15                  For example, Southern Union, who is a very  
16                  aggressive acquisition company, doesn't --  
17                  until -- until last year did not pay a cash  
18                  dividend at all. They just paid a stock  
19                  dividend to retain that cash for their  
20                  acquisition strategies.

21                  We're talking about much larger  
22                  transactions with them, of course, though.

23                  Q    Sure. So is -- is it Staff's opinion that this  
24                  acquisition coupled with the acquisition -- or  
25                  excuse me -- the -- the outlay of -- of monies

1           for the regulatory plan that involves the coal  
2           project is not problematic for Empire going  
3           forward?

4           A     Based on current projections, yes.

5           Q     Okay. Is there anything that would impact your  
6           opinion of that in regard to those projections  
7           that -- that you could note for me?

8           A     Just as with any pro formas, these are all  
9           based on estimations as to what the growth is  
10          going to be. The growth that I looked at in  
11          the UBS analysis was -- was quite conservative.

12          Q     Okay.

13          A     And there's a rate moratorium in effect until  
14          2009, so there is not any increase in revenues  
15          due to anticipated increase in rates in the pro  
16          formas that I reviewed.

17                     So the -- the only items that I can think  
18          of that, you know, may impact the realization  
19          of the -- of the projections are, of course,  
20          weather and any expenses that, you know, for  
21          whatever reason, are higher than what -- than  
22          what we're expected.

23                     And I believe Empire has also built in  
24          some corporate allocation savings to the extent  
25          that they can achieve those. You know, that,

1           -- you know, that may play a factor.

2           Q     So you believe that the pro forma projections  
3                 are a safe thing for the Commission to rely on  
4                 in deciding whether or not this transaction  
5                 should be approved?

6           A     I -- yeah. I think their growth projections  
7                 are quite reasonable as far as what I've looked  
8                 at.

9           Q     Okay.

10                         MR. KEEVIL: Commissioner, if I could  
11                         just jump in here real quick?

12                         COMMISSIONER GAW: Absolutely.

13                         MR. KEEVIL: If you're going to get  
14                         into the details of that UBS analysis --

15                         COMMISSIONER GAW: HC.

16                         MR. KEEVIL: Yeah. I believe that's  
17                         HC.

18                         COMMISSIONER GAW: Just let me know  
19                         if we get close to getting into those numbers.  
20                         I'm not sure I'm trying to go down that road,  
21                         really.

22                         MR. KEEVIL: Okay.

23           Q     (By Commissioner Gaw) And the -- it is -- is  
24                 it also your opinion that this acquisition will  
25                 not interfere with Empire's ability to complete

1 the regulatory plan?

2 A Yes.

3 COMMISSIONER GAW: Okay. Let me ask  
4 Public Counsel's witness.

5 JUDGE JONES: Okay. Can you state  
6 your name, please, for the record?

7 MR. TRIPENCY: Russell Tripency.

8 JUDGE JONES: Will you raise your  
9 right hand?

10 RUSSELL TRIPENCY,  
11 being first duly sworn to testify the truth, the whole  
12 truth, and nothing but the truth, testified as follows:

13 DIRECT EXAMINATION

14 BY COMMISSIONER GAW:

15 JUDGE JONES: Thank you. You may be  
16 seated.

17 Q (By Commissioner Gaw) State your name again,  
18 please.

19 A Russell Tripency.

20 Q What do you do, sir?

21 A I'm the Chief Utility Accountant for the  
22 Missouri Office of Public Counsel.

23 Q How long have you worked for Public Counsel?

24 A Twenty-two years.

25 Q All right. A little educational background

1 real quick.

2 A I am a Certified Public Accountant and received  
3 my Bachelor's from -- in Accounting and Finance  
4 from the University of Missouri-Columbia.

5 Q Okay. Thank you. Can you -- just generally,  
6 if you could, Mr. Tripency, I think you've been  
7 in here when I've been asking these questions  
8 generally, haven't you?

9 A Yes, I have.

10 Q Can you -- can you give me a Public Counsel's  
11 perspective in regard to their view of any risk  
12 to credit ratings of the -- of Empire going  
13 forward in regard to this acquisition?

14 A I concur with what David said earlier in  
15 response to your question. I do not understand  
16 why Standard & Poor's has Empire on a negative  
17 watch outside of personal opinions on Standard  
18 & Poor's work on Missouri companies.

19 As far as the credit risk to Empire, I'm  
20 more concerned with the credit risk and the  
21 effect on the customers. And the Stipulation  
22 and Agreement contains provisions that Empire  
23 and Aquila will not agree that any adverse  
24 effects will not flow through to the customer.

25 And I also believe based on my analysis

1 and review that this is one of these situations  
2 where they're -- actually both companies will  
3 be in better shape after the transaction.

4 Empire is picking up a significant  
5 property that provides adequate cash flow, as  
6 David discussed earlier. And Aquila will be  
7 able to shed debt and improve their balance  
8 sheet on a going forward basis to be able to  
9 serve their electric customer -- remaining  
10 electric Missouri customers.

11 And I guess it's -- it's kind of been  
12 pointed out, but from the customer standpoint,  
13 at least gas customers, they'll be moving from  
14 a non-investment grade company to an investment  
15 grade company, which can only benefit the  
16 service to those customers.

17 COMMISSIONER GAW: Okay. Any -- any  
18 of the other parties have anything that they  
19 want to say in regard to this general line of  
20 questions? No one -- no one's volunteering, so  
21 -- that's all I have on this line of questions,  
22 Judge, if you want to -- if you want me to  
23 continue or --

24 JUDGE JONES: Yes.

25 COMMISSIONER GAW: Okay. I'd like to

1 get a little information in regard to what will  
2 occur going forward on -- on gas purchasing.

3 Mr. Keevil, if your -- if your witness  
4 wishes to -- wishes to address that.

5 CONTINUED TESTIMONY OF RONALD GATZ

6 BY COMMISSIONER GAW:

7 Q Generally, what I'm interested in is some  
8 detail on who it is that's going to make the  
9 decisions going forward on gas purchasing.

10 Is it internal? External? And what do  
11 you anticipate in regard to additional staff  
12 needs? And then we'll go from there.

13 A Commissioner Gaw, Empire has extensive and  
14 already existing experience actually procuring  
15 and getting gas, and we would expect to use  
16 that existing --

17 Q And that comes from the fact that you have --  
18 you purchased gas in gas turbines for your  
19 electric business; is that correct?

20 A That's correct.

21 Q All right.

22 A So we already have a staff and expertise  
23 providing that function. What we do not have  
24 currently that's more unique to the LDC is  
25 someone who is used to doing short and

1 long-term forecasting and the reliability type  
2 daily work on an LDC system and someone who is  
3 experienced at managing the operational  
4 processes daily for transport customers,  
5 aggregators, energy marketing companies, et  
6 cetera. That is expertise that we intend to go  
7 to the market and hire and have in-house.

8 Q Okay. All right. How many people will you  
9 need when you're finished with this -- with the  
10 additional staff?

11 A We originally planned for a total gas service  
12 staff of three.

13 Q Okay.

14 A And that is consistent with how it's currently  
15 staffed at Aquila.

16 Q All right. Now, Aquila has access to -- or  
17 did, if I recall, some -- some particular  
18 portion of the company that have done, I guess,  
19 acquisitions for other -- other entities. Am I  
20 correct about that?

21 A I'm sorry. I don't understand the question.

22 Q That's all right. I'll ask Staff in a little  
23 bit. I may -- I may not be correct.

24 Let me ask you in regard to what you're  
25 going to do going forward. The -- when you say



1           that you don't have anybody do short and  
2           long-terms forecasting, there you're talking  
3           about predictions of how much gas that you --  
4           you should need?

5           A    Long-term -- long-term would be the forecasting  
6           for seasonal purposes year to year and --

7           Q    Yes.

8           A    -- and future growth needs, et cetera --

9           Q    Okay.

10          A    -- versus the short-term would be on more of a  
11          daily basis based on weather changes.

12          Q    Okay.

13          A    You know, making decisions daily to inject  
14          levels off out of storages, et cetera, and keep  
15          balancing in place and working with all of the  
16          transport customers, et cetera, that -- that  
17          figure into that balancing.

18          Q    Okay.

19          A    So that's more of a daily operational and  
20          reliability issue.

21          Q    Do you all currently utilize storage in your  
22          use of gas for -- for your turbines?

23          A    We do. Not on an every-day and long-term  
24          basis. But, yes, we do utilize storage.

25          Q    Okay. And, generally, your purchases for gas

1           for those turbines, how is it done as far as  
2           the amount of acquisitions during particular  
3           times of the year? Just generally. I'm not  
4           talking about volumes.

5           A    We do forecasting as -- as you would in this  
6           LDC.

7           Q    Yes.

8           A    We obviously have a generating plan with fuel  
9           and purchase power runs. And, therefore, we --  
10          we both buy physical gas and use financial  
11          instruments to hedge price in case that there  
12          would be spot market fill-in needs. And we do  
13          that by month and period on a future forecasted  
14          basis. And we hedge as much as five and longer  
15          years out.

16          Q    Okay. How much -- do you have a general plan  
17          about -- in -- in that regard as to how much  
18          gas you tried to buy five years, four years,  
19          three years, two years, one year, six months  
20          out?

21          A    There is a very defined risk management policy  
22          that we find.

23          Q    Okay.

24          A    Or that we follow in general. There is a range  
25          of expected hedging, which gets to a high of 80

1           percent in the current year, 60 percent one  
2           year forward, 40 percent two years forward, et  
3           cetera.

4           Q     All right.

5           A     And those are ranges and guidelines.  But the  
6           Risk Management Committee has oversight and  
7           views that monthly.  And it's -- it's a very  
8           active ongoing process.

9           Q     Okay.  And when you -- when you're not  
10          utilizing interim -- energy adjustment or a  
11          fuel adjustment provision, you have financial  
12          incentive to make -- to ensure that you get the  
13          best possible deal on your gas purchases for  
14          your gas turbines, correct?

15          A     We have a financial incentive to serve our  
16          customer's lowest cost, yes, sir.

17          Q     Do you have a financial incentive for your  
18          shareholders as well, though, at the -- outside  
19          of the times when you have fuel adjustment  
20          clauses or interim energy charges?

21                   I'm not trying to get into that right now.  
22          But when you're just dealing with -- with your  
23          fuel costs being built into rates, you have an  
24          incentive to try to maximize your efficiencies  
25          on gas purchases?

1           A     Yes, sir.

2           Q     And what I'm -- what I'm -- was going to ask  
3                    you is whether or not that -- that -- that --  
4                    those individuals that have been working on  
5                    those purchases will also be working on gas  
6                    purchases for the -- for this LDC if it's  
7                    acquired?

8           A     Our current plan is for those people who  
9                    actually procure and place purchasing orders  
10                   now --

11          Q     Yes.

12          A     -- and who do the risk management oversight  
13                   will manage the procurement and hedging, but  
14                   they will do that based on volumes and -- and  
15                   recommendations of the long and short term  
16                   forecasting. So they will work together.

17          Q     Yes. Yes. Okay. But they -- they will --  
18                   those people who have some experience there  
19                   will be a part of this team?

20          A     Absolutely.

21          Q     All right. Are your supplies in any way  
22                   inter-related here on the -- on the gas  
23                   transmission lines that serve your gas turbines  
24                   and those that would be serving this -- this  
25                   territory that -- that these gas customers will

1 be in?

2 A No, they are not.

3 COMMISSIONER GAW: That's what I  
4 thought. Okay. Now, if I could ask Staff's  
5 witness. Thank you, sir.

6 JUDGE JONES: Please state your name  
7 for the record.

8 MR. SOMMERS: My name is David  
9 Sommers.

10 DAVID SOMMERS,  
11 being first duly sworn to testify the truth, the whole  
12 truth, and nothing but the truth, testified as follows:

13 DIRECT EXAMINATION

14 BY COMMISSIONER GAW:

15 JUDGE JONES: Thank you. You may be  
16 seated.

17 Q (By Commissioner Gaw) State your name, please.

18 A David Sommers.

19 Q What do you do, Mr. Sommers?

20 A I am the manager of the Procurement Analysis  
21 Department at the Commission?

22 A All right. And how long have you held that  
23 position?

24 A For approximately 12 years.

25 Q All right. And you've looked at the -- at the

1           advisability of this transaction in regard to,  
2           at least in part, what Empire's ability will be  
3           to -- to purchase gas for its customers if it  
4           acquires the system?

5           A     Yes, I have.

6           Q     All right. Tell me what you found in that  
7           regard, just generally.

8           A     Generally speaking, I found that Empire does  
9           have extensive experience in actually  
10          nominating or ordering the gas supply.

11                     They have experience -- experience on  
12          Southern Star in terms of negotiating  
13          transportation agreements and administrating  
14          those agreements.

15                     I reviewed their hedging plan and found  
16          that it was a detailed, fairly comprehensive  
17          hedging plan.

18          Q     Is this the hedging plan for the LDC or the  
19          hedging plan that they utilize for their  
20          electrics?

21          A     They have not prepared a hedging plan for the  
22          proposed LDC. This is the hedging plan for  
23          their electrics.

24          Q     Okay. Thank you for that clarification. Go  
25          ahead.

1           A     And I also noted what's been discussed earlier,  
2                     that they don't have specific experience in  
3                     forecasting gas supplies for an LDC for a  
4                     arranging the supply for an LDC for forecasting  
5                     peak day for a LDC, for managing LDC type  
6                     storage arrangements.

7           Q     Okay.  So -- and what was -- what was Staff's  
8                     recommendations in regard to -- to that, just  
9                     very quickly?  I'm not trying to get into a lot  
10                    of detail.

11          A     We really worked on three areas.  First of all,  
12                    we wanted to make sure that there were  
13                    stipulation protections in the Stipulation and  
14                    Agreement.

15                    And, basically, that related to Aquila and  
16                    Empire's commitment that there would be no  
17                    detriment regarding the quality of service or  
18                    the rates.  And, also, that prudent reviews  
19                    would still be in full force.

20          Q     All right.  In regard to this staffing issue  
21                    and the difference in the expertise that Aquila  
22                    has had access to for purchasing gas and what  
23                    currently exists with Empire, would you please  
24                    compare and contrast that for me?

25          A     Currently, Aquila runs its gas operations out

1 of Omaha, Nebraska. And they've done so for  
2 many years. They have experience operating  
3 LDCs in many different states, Michigan,  
4 Minnesota, Iowa, Nebraska, Colorado, Kansas,  
5 Missouri.

6 Their individuals have typically been  
7 assigned to particular states and particular  
8 interstate pipelines, so they tend to have  
9 institutional knowledge, and there is also some  
10 backup capability in Omaha, Nebraska.

11 Q All right. And how many -- how many staff  
12 people do they have in that office?

13 A I'm not familiar with the exact numbers that  
14 they have. If I remember correctly, I think  
15 perhaps seven or eight individuals, but Aquila  
16 has representatives here who could give you an  
17 accurate on that, sir.

18 Q Okay. All right. What -- what does -- we've  
19 -- do you agree with what Empire testified to  
20 that they currently have in regard to gas  
21 purchasing staff?

22 A Yes.

23 Q All right. Now, does Staff have any concerns  
24 about Empire's plans in regard to adding staff  
25 in order to ensure that the gas purchasing



1 expertise that Empire will have access to will  
2 not be less than what the -- what Aquila had  
3 access to?

4 A I believe that Empire's plan is reasonable, as  
5 they've set it out. They have a fairly  
6 detailed transition agreement, which gives them  
7 access to Aquila personnel who have performed  
8 the -- the various tasks in the past.

9 And that agreement goes through at least  
10 March of 2007 with an opportunity to extend, if  
11 necessary, an additional three months. So a  
12 lot their plan will rest upon the  
13 implementation and the tone of -- tone at the  
14 top, which is very important. If there's a  
15 commitment at the very highest levels to make  
16 it work, I think the way they've got it set out  
17 is reasonable.

18 Q Is it -- is it as good as what they currently  
19 have access to at Aquila? Is it as good as the  
20 current expertise at Aquila?

21 A In conjunction with the transition agreement,  
22 as long as that's in place, I would say yes.  
23 And, certainly, the capability of getting to  
24 where Aquila is at right now, I think a  
25 reasonable plan is in place --

1 Q All right.

2 A -- if you hire qualified personnel and give  
3 them the training that they need.

4 Q Okay. So if the plans are fulfilled and the  
5 individuals that are hired have this sufficient  
6 level of expertise, you believe that that's --  
7 that's a fair substitute for what is -- is  
8 currently in existence at Aquila in regard to  
9 this LDC?

10 A Yes, sir.

11 COMMISSIONER GAW: Okay. Just ask  
12 Public Counsel's witness briefly if they  
13 generally agree or have any disagreements with  
14 any of those statements from Empire or from  
15 Staff.

16 MR. TRIPENCY: We would agree with  
17 the statements that have been made.

18 COMMISSIONER GAW: Okay. Anyone else  
19 have anything on this that you want to say?  
20 I'd ask Aquila just very, very quickly if --  
21 and just briefly back on the other subject  
22 matter how Aquila believes this transaction  
23 impacts them financially and -- and in regard  
24 to their -- their credit outlook. And I don't  
25 know if you want to answer that or not, Mr.

1 Cooper.

2 MR. COOPER: I don't want to.

3 COMMISSIONER GAW: If you want to  
4 have something somebody else do it --

5 MR. COOPER: Let me talk just for a  
6 second with my folks if I could.

7 COMMISSIONER GAW: Sure.

8 (Discussion off the record.)

9 MR. COOPER: Commissioner, I think  
10 about as far as we can go with that at this  
11 point is that the sale of these properties is  
12 certainly part of Aquila's restructuring plan,  
13 as I think most of the Commission is aware.

14 It's -- it's one piece of a much larger  
15 restructuring plan. I don't think we can -- we  
16 can pull out this piece certainly here today  
17 and try to analyze what impact that would have  
18 overall on -- on the company's credit ratings.

19 COMMISSIONER GAW: Okay. So it's  
20 difficult to assess it at this point?

21 MR. COOPER: Certainly on a -- on a  
22 business unit by business unit basis. Yes.

23 COMMISSIONER GAW: Just -- just  
24 generally, as far as Aquila corporation is  
25 concerned, is Aquila at all concerned that it

1           could have any negative impact?

2                         MR. COOPER: Well, I think -- I think  
3           the answer is similar to what I just said.  
4           This is certainly a step that -- that Aquila  
5           believes is moving it towards -- back towards  
6           an investment grade situation. How that will  
7           play out, we can't tell you that.

8                         COMMISSIONER GAW: Are there -- I  
9           know you're -- I know you have to answer  
10          questions and we can't predict the future and  
11          -- but are there any indications that have been  
12          given to Aquila from any sources that would  
13          indicate that there are potential negative  
14          impacts for this sale on Aquila?

15                        MR. COOPER: Commissioner, I think I  
16          probably should -- should talk to other folks  
17          than -- than just the folks I have with me --

18                        COMMISSIONER GAW: I see.

19                        MR. COOPER: -- Before I try to  
20          answer that question. I mean, we could answer  
21          based upon the knowledge of -- of the folks who  
22          are -- that are with me here today. But I  
23          hesitate to do so because I don't know that --  
24          that we have the full range of background here  
25          today --

1 COMMISSIONER GAW: Okay.

2 MR. COOPER: -- that would be  
3 required to answer that question.

4 COMMISSIONER GAW: That's all right.

5 MR. COOPER: So if you would like for  
6 us to get back to you, we certainly can.

7 COMMISSIONER GAW: I don't want to  
8 belabor this. I'll ask Staff if they would --  
9 if they could answer that question for me.

10 MR. BERLIN: Commissioner Gaw, I'd  
11 have as to ask Staff witness Murray, and  
12 he's --

13 COMMISSIONER GAW: He's on his way up  
14 here. If he could just come up to the mic real  
15 quick.

16 CONTINUED EXAMINATION OF DAVID MURRAY

17 BY COMMISSIONER GAW:

18 A The -- the main things I can tell you about  
19 that is -- is how S&P has reacted to the sales,  
20 and I addressed this a little bit earlier --

21 Q (By Commissioner Gaw) I know you did.

22 A -- as far as the sale of the gas operations.  
23 One of the -- you know, the positive things  
24 that is seen with -- and they are talking about  
25 the gas operations and the aggregate that

1           they're selling is that it -- it will eliminate  
2           a lot of the working capital needs that Aquila  
3           has.

4                     And I -- I think -- like I said, I think  
5           it's -- you can't compare Aquila to Empire when  
6           you're looking at gas operations for one versus  
7           the other just because of the fact that  
8           Aquila's a non-investment grade.

9           Q       Yes. You think that -- do you know of any  
10           indications out there from any of the credit  
11           rating agencies that indicate that this  
12           transaction would be viewed as negative for  
13           Aquila?

14           A       I -- I can't think of any -- any credit rating  
15           agencies that -- I just looked at Standard &  
16           Poor's. So that's all I can really speak of as  
17           far as, you know, their comments. And I don't  
18           recall any negative -- you know, negative  
19           reaction --

20           Q       Okay.

21           A       -- at this point in times.

22                     COMMISSIONER GAW: And -- all right.  
23           And does anyone else have any information in  
24           this room that's a party or witness for a party  
25           that would indicate anything other than that?

1 No one's speaking up. I'm assuming that that  
2 means that they do not. That's all I have,  
3 Judge. Thank you very much

4 JUDGE JONES: Thank you,  
5 Commissioner.

6 COMMISSIONER GAW: Thank you for the  
7 parties' participation and help.

8 JUDGE JONES: Commissioner Murray, do  
9 you have any questions?

10 COMMISSIONER MURRAY: I have no  
11 questions.

12 JUDGE JONES: Commissioner Clayton?

13 COMMISSIONER CLAYTON: No questions.

14 JUDGE JONES: Commissioner Appling?

15 COMMISSIONER APPLING: No questions.

16 JUDGE JONES: Mr. Chairman?

17 CHAIRMAN DAVIS: Just a couple.

18 EXAMINATION OF DAVID MURRAY

19 BY CHAIRMAN DAVIS:

20 Q Mr. Murray, are you familiar with a -- the --  
21 with the report that S&P issued last week on  
22 fuel and purchase power cost recovery?

23 A I -- I saw that they released their report, but  
24 I have not had a chance to read it as of this  
25 point in time.

1 Q Would it surprise you to learn that they listed  
2 six companies as, quote, considerably exposed  
3 to po -- to potential cash flow volatility and  
4 that those of those companies are here present  
5 before us, Empire District Electric and Aquila,  
6 Incorporated?

7 A No. That wouldn't surprise me.

8 Q So it wouldn't surprise you to learn that  
9 primary reason for that is a perceived lack of  
10 a fuel adjustment mechanism?

11 A Yes. And, actually, I think this has been  
12 discussed somewhat in one of the recent S&P  
13 reports that was released specifically on  
14 Empire.

15 One of -- they went through three -- you  
16 know, three main considerations that they have  
17 in evaluating Empire, and the first one being  
18 the gas acquisition.

19 My understanding is they put Empire on  
20 credit watch with negative implications because  
21 of the announcement of the gas acquisition.  
22 But they had concerns about -- with the -- the  
23 success of the fuel adjustment clause or lack  
24 thereof that's being worked out in Missouri.

25 And then, also, they were concerned about



1 the -- the capital intensive expenditures that  
2 Empire's going to have over the next few years  
3 giving credit to the regulatory plan, though.

4 CHAIRMAN DAVIS: Okay. No further  
5 questions.

6 COMMISSIONER GAW: Judge, I've got a  
7 follow-up just briefly now because I've got --  
8 there's -- that confused me a little.

9 CONTINUED EXAMINATION OF MR. MURRAY:

10 BY COMMISSIONER GAW:

11 Q Mr. Myer (sic), did you -- you said that they  
12 -- they put Empire on negative credit watch  
13 because at least initially because of this  
14 acquisition?

15 A That's correct.

16 Q Help me understand what that means, if it's not  
17 a factor.

18 A And I had to call S&P's analyst to try to get  
19 some -- I was just as confused as you when I  
20 saw the -- the report that removed them from  
21 credit watch with negative implications and put  
22 them on BBB with a negative outlook because in  
23 the -- you know, in the most recent report,  
24 which I believe was February 13th, they  
25 indicated that they -- after meeting with

1 management of Empire and after looking at the  
2 -- the projections of the -- the financials  
3 with the gas operations consolidated with  
4 Empire's electric operations that they -- that  
5 they believed that that was the funds flow from  
6 the gas operations were going to be consistent  
7 with what they would expect for gas operation  
8 for -- to maintain an investment rate credit  
9 rating.

10 I had a conversation with Gary Jebson, who  
11 is the analyst, that is currently following  
12 Empire. And his -- you know, his response was  
13 that they were already strained, that their  
14 financial ratios were already strained even  
15 before they -- the gas acquisition was  
16 announced.

17 So any time some type of event that occurs  
18 that is unexpected, they will put them on  
19 credit watch. But they may have a whole, you  
20 know -- a whole line of things that they've  
21 been thinking about for some time.

22 And that was my impression is that they  
23 also had those other concerns and they were  
24 just going to evaluate that and -- and they  
25 decided to keep them on a negative outlook.

1           But they did not indicate that the negative  
2           outlook was because of the gas acquisition.

3           Q     So is it -- so were they on negative outlook  
4           before the announcement of the gas -- of the  
5           gas acquisition?

6           A     No.

7           Q     And the only thing that changed was the  
8           acquisition?

9           A     That's the only thing that changed.

10          Q     All those other factors were there are there  
11          before, correct?

12          A     Exactly. They were already there. And that's  
13          -- talking to Standard & Poor's can be  
14          interesting at times. That was the -- the  
15          rationale that I received when -- when I  
16          discussed this with Gary Jebson, Standard &  
17          Poor's.

18                         MR. KEEVIL: Commissioner Gaw, could  
19          we address that?

20                         COMMISSIONER GAW: Sure. Sure.  
21          Sure. And I didn't mean to belabor this. I'm  
22          sorry. Go ahead.

23                         CONTINUED EXAMINATION OF RONALD GATZ

24                         BY COMMISSIONER GAW:

25          A     Commissioner, I was in the room at New York at

1 Standard & Poor's and Moody's previewing that  
2 transaction.

3 In that trip in mid August, we previewed  
4 several things. It was their first view of  
5 Empire's recast financial projections after the  
6 rate case finished.

7 Q (By Commissioner Gaw) Yes.

8 A It was their first view and most informed  
9 update on the regulatory plan. And then it  
10 was, of course, a preview of the potential  
11 acquisition and -- and done in advance of -- of  
12 going to our board to seek approval to make the  
13 acquisition.

14 Q Okay.

15 A And the feedback at that time was that though  
16 the regulatory plan was considered a very  
17 positive thing --

18 Q Yes,

19 A -- the sheer size of the capital expenditures  
20 involved with row ten would have the big  
21 impact.

22 Q Yes.

23 A The biggest concern they addressed was the lack  
24 of fuel and purchase power recovery until a  
25 fuel mechanism were actually implemented.

1 Q Yes. Of course, we all know how heavily  
2 dependent Empire is on gas for fuel. So it  
3 does have more of an impact than some others.

4 A And then -- and then, lastly, they advised us  
5 that it is normal for them to frequently put  
6 any acquiring company on credit watch at the  
7 time of an announcement because it's the  
8 transactions are often closed with short-term  
9 debt, with long-term debt and equity and then  
10 later refinancing the transaction.

11 Q Yes, sir.

12 A So they generally put them on credit watch  
13 until they see that the equity is raised in  
14 accordance with our capital plan.

15 Q Okay.

16 A And that the integration and operation of the  
17 acquire the company goes off as planned.

18 Q Okay.

19 A So we -- we anticipated credit watch being  
20 issued at the time of the announcement. The --  
21 the change from stable to negative, in our  
22 view, is a combination of those factors.

23 Q Okay. Does it say in here somewhere how much  
24 the -- how much -- this is probably not -- not  
25 a very good question to ask, but generally how

1 much time it takes from the revenue stream that  
2 comes in from this company to pay off what it  
3 -- what it's costing?

4 I know that's not the way things work  
5 generally. But I'm -- there's a revenue stream  
6 here that comes in from this company, and  
7 there's an amount that you're paying. Can you  
8 give me an idea about what the payoff time  
9 frame? If you need to go into HC, into closed  
10 session to do that, that's fine.

11 A A more generic answer I could give you that is  
12 not HC --

13 Q I'm looking for something pretty generic.

14 A The -- according to our evaluation advice --

15 Q Yes.

16 A -- the price is generally considered to be some  
17 multiple of cash flow.

18 Q Yes.

19 A And this is in that range of reasonably  
20 accepted industry multiples.

21 Q Okay. What -- what kind of a range are we  
22 talking about of acceptable?

23 A The -- the mean of the comparable transactions  
24 was in the range of eight times annual EBITDA.

25 Q Okay. And what's acceptable? What range is

1 acceptable?

2 A They have a range in their -- in their  
3 population of -- I believe it's in the low  
4 sevens to high tens.

5 COMMISSIONER GAW: Okay. Okay.  
6 Thank you. That -- that's -- that answers my  
7 question, I think, well enough. That's all I  
8 have.

9 JUDGE JONES: Mr. Chairman?

10 CHAIRMAN DAVIS: No.

11 JUDGE JONES: I don't believe we have  
12 any more questions, so that concludes the  
13 question and answer portion.

14 Now, I realize that there are exhibits  
15 that were marked prior to going on record.

16 MR. KEEVIL: There are, Judge. And  
17 if I could just mention one thing regarding the  
18 transaction closing date, I know this was on  
19 your agenda last week.

20 And just so the Commission is aware, I  
21 don't think this comes as a surprise to any of  
22 the parties, Empire and Aquila are currently  
23 targeting, and Mr. Cooper can correct me if I'm  
24 wrong because I certainly don't want to speak  
25 for Aquila here, targeting a June 1st closing

1 date which would equate basically to -- if we  
2 had an order with an effective date of like May  
3 1st, that would probably be the -- the ideal  
4 from our perspective.

5 It doesn't mean it would have to wait to  
6 May 1st to issue. Certainly, couldn't wait  
7 that late to issue it. Issue it next week, if  
8 you want to, and put a May 1st effective date  
9 on it would be fine.

10 And the reason for that is certainly a  
11 transaction like this, lots of things that need  
12 to be accomplished both before and after the  
13 effectiveness of the regulatory approvals and  
14 everything.

15 And in order to allow the time and get  
16 everything lined up properly -- for example,  
17 just one example, in the Stipulation, there is  
18 a requirement that we provide notice to  
19 customers at least 15 days prior to closing.  
20 That's just an example of the sort of thing  
21 that we'll have to make sure gets lined up once  
22 -- assuming that the deal is approved.

23 So I just wanted to throw that out there  
24 for your consideration.

25 JUDGE JONES: So what you're saying



1 is you all would like a May 1st effective date  
2 regardless of when the order comes out?

3 MR. KEEVIL: Well, from our -- from  
4 Empire, that would be good.

5 COMMISSIONER GAW: On or before or  
6 on? On or before or on, Judge?

7 JUDGE JONES: Right. Could it be  
8 before May 1st? I realize you have things you  
9 need to do before the effective date of an  
10 order.

11 MR. KEEVIL: The only problem there  
12 is, Judge, if you got far enough out, you could  
13 unintentionally perhaps trigger a May 1st  
14 closing if you got further -- too far prior to  
15 May 1st.

16 JUDGE JONES: Well, so --

17 MR. KEEVIL: Under the asset purchase  
18 agreement, the wait --

19 JUDGE JONES: Again, what I'm asking  
20 is are all the parties in agreement that if  
21 there's a May 1st effective date of the Order,  
22 regardless of when the order comes out, you all  
23 are all fine with that?

24 MR. COOPER: It -- as long as there  
25 is sufficient time before between the issue

1           dates and the effective date to provide  
2           probably a week to ten days period between  
3           those two.

4                    JUDGE JONES:  Okay.  And, Staff, did  
5           you have something?

6                    MR. BERLIN:  Staff's not opposed to  
7           that.

8                    JUDGE JONES:  Okay.

9                    MR. KEEVIL:  Let me just interject  
10          here.  No one's going to object if we have more  
11          than ten days effective date.

12                   JUDGE JONES:  Okay.

13                   MR. KEEVIL:  Not as long as the  
14          effective date itself -- like I said, you could  
15          issue it next week and put a May 1st effective  
16          date on it.

17                   JUDGE JONES:  Okay.  And May 1st is  
18          the date that I hear you requesting.

19                   MR. KEEVIL:  Just so you don't  
20          misunderstood me, that would be the effective  
21          date, yes.

22                   CHAIRMAN DAVIS:  Yes.  The effective  
23          date.

24                   MR. KEEVIL:  Right.  That would  
25          effect to a closing date of June 1st because

1           that's what the parties are targeting for the  
2           closing.

3                         CHAIRMAN DAVIS:  Okay.

4                         MR. KEEVIL:  Just to make sure you --  
5           you follow me there.  So --

6                         CHAIRMAN DAVIS:  All right.

7                         JUDGE JONES:  Okay.

8                         CHAIRMAN DAVIS:  Depending on when we  
9           get the transcript back, we'll put this thing  
10          on agenda hopefully maybe next week, first of  
11          the following week.  And then parties can all  
12          show up the at agenda if they have a desire to,  
13          and we can talk about effective dates and all  
14          kinds of other things.

15                        JUDGE JONES:  Okay.  Now, the  
16          exhibits you all have is testimony?

17                        MR. COOPER:  It is.  There are five  
18          pieces of testimony, your Honor, that have been  
19          marked for -- for identification purposes.

20                                 Exhibit 1 is the direct testimony of  
21          Mr. Fleener from Aquila.

22                                 Exhibit 2 is the direct testimony of  
23          Mr. Vancas from Aquila.

24                                 Exhibit 3 is direct testimony of  
25          Mr. Gipson of Empire.

1                   Exhibit 4 is direct testimony of Mr. Gatz  
2                   from Empire.

3                   And Exhibit 5 is direct testimony of  
4                   Mr. Schlisler, who I believe is a consultant.  
5                   And --

6                   MR. KEEVIL: Yes. He's -- he's a  
7                   consultant on behalf of Empire who prefiled  
8                   testimony.

9                   JUDGE JONES: Okay.

10                  MR. COOPER: And we would move for  
11                  the admission of those exhibits.

12                  JUDGE JONES: Are there any  
13                  objections to Exhibits 1, 2, 3, 4 or 5?  
14                  Hearing no objection, Exhibits 1, 2, 3, 4 and 5  
15                  are admitted into the record.

16                  Is there anything else we need to take up  
17                  before we adjourn? Okay. Seeing nothing then,  
18                  we're adjourned. Thank you all.

19                  (The proceedings were concluded at  
20                  1:40 p.m. on March 30, 2006.)

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(Original exhibits were returned to the Commission.)

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