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Sponsoring Party: Great Plains Energy Incorporated and
Kansas City Power & Light Company
Case No.: EM-2007-0374
Date Testimony Prepared: November 13, 2007

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EM-2007-0374

SURREBUTTAL TESTIMONY

OF

CHRIS B. GILES

ON BEHALF OF

GREAT PLAINS ENERGY INCORPORATED

AND

KANSAS CITY POWER & LIGHT COMPANY

**Kansas City, Missouri
November 2007**

*** [REDACTED] ** Designates "Highly Confidential" Information
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Pursuant to 4 CSR 240-2.135.

SURREBUTTAL TESTIMONY

OF

CHRIS B. GILES

Case No. EM-2007-0374

1 **Q: Please state your name and business address.**

2 A: My name is Chris B. Giles. My business address is 1201 Walnut, Kansas City, Missouri
3 64106.

4 **Q: By whom and in what capacity are you employed?**

5 A: I am employed by Kansas City Power & Light Company ("KCPL") as Vice President,
6 Regulatory Affairs. KCPL is a direct, wholly-owned subsidiary of Great Plains Energy
7 Incorporated ("Great Plains Energy").

8 **Q: What are your responsibilities?**

9 A: My responsibilities include all aspects of regulatory activities including cost of service,
10 rate design, revenue requirements, and tariff administration.

11 **Q: Please describe your education, experience and employment history.**

12 A: I graduated from the University of Missouri at Kansas City in 1974 with a Bachelor of
13 Arts degree in Economics and in 1981 with a Master of Business Administration degree
14 with concentrations in accounting and quantitative analysis. I was first employed at
15 KCPL in 1975 as an Economic Research Analyst in the Rates and Regulation
16 Department. I held positions as supervisor and manager of various rate functions until
17 1988 when I was promoted to Director of Marketing. In January 1993, I returned to the

1 rate area as Director, Regulatory Affairs. In March of 2005, I was promoted to Vice-
2 President, Regulatory Affairs.

3 **Q: Have you previously testified in a proceeding at the Missouri Public Service**
4 **Commission ("Commission") or before any other utility regulatory agency?**

5 A: I have previously testified before both the Commission and the Kansas Corporation
6 Commission ("KCC") on numerous issues regarding utility rates and regulation.

7 **Q: What is the purpose of your testimony?**

8 A: The purpose of my testimony is (i) to address Staff's position that KCPL needs
9 Commission approval to operate in the manner contemplated by the applicants after the
10 acquisition of Aquila by Great Plains Energy; (ii) to clarify the request to waive any
11 affiliate transaction rules related to the operation of KCPL and Aquila; (iii) to address the
12 issues of the Staff and the Office of Public Counsel ("OPC") with extending the
13 provisions of the Additional Amortizations mechanism, currently applicable to KCPL, to
14 Aquila after the acquisition closes and after Aquila achieves investment-grade credit
15 metrics; and (iv) to address issues raised by the City of Kansas City, Missouri ("Kansas
16 City") concerning the possibility of adopting an earnings sharing mechanism in this case
17 and the appropriateness of committing in this case to having KCPL and Aquila file a
18 consolidated rate case.

19 **OPERATION OF AQUILA**

20 **Q: Mr. Schallenberg appears to take the position in pages 2-12 of his Staff Report that**
21 **KCPL and Aquila will be merging or consolidating their systems, and have not**
22 **asked for Commission approval to do so as required by Missouri law. Do you agree**
23 **with Staff's position?**

1 A: No, I do not. There is a merger, but it doesn't involve KCPL. As Mr. Bassham described
2 in his Direct Testimony, the proposed transaction involves the merger of Gregory
3 Acquisition Corp., a special purpose subsidiary of Great Plains Energy, with and into
4 Aquila. Aquila will be the surviving corporation in this merger. After the merger, KCPL
5 and Aquila will be separate subsidiaries of Great Plains Energy. Aquila will continue to
6 own its power plants, its transmission and distribution facilities, and its other assets.
7 Aquila will continue to serve its customers under its separate electricity and steam tariffs.
8 Our joint application appropriately requests authorization for this merger.

9 It is true that much of the benefit to KCPL and Aquila customers from this
10 transaction comes from integrating various KCPL and Aquila functions and activities.
11 Our testimony in this case goes into great detail regarding these synergy opportunities. It
12 is also true that our witnesses have used various labels for this integration – “merger,”
13 “combination,” “consolidation,” among others. Mr. Schallenberg attempts to use these
14 various labels as evidence that KCPL and Aquila will be “merging” or “consolidating,”
15 as those terms are used in Section 393.190.1, RSMo 2000, without having sought
16 authorization from the Commission. However, Mr. Schallenberg and the Staff Report
17 have not shown that the combined activities of KCPL and Aquila fall within the meaning
18 of Section 393.190.1. I have been advised that Mr. Schallenberg's argument is not
19 supported by law. Further, if Mr. Schallenberg's argument were applied to inter-utility
20 arrangements, it would lead to the inescapable conclusion that these arrangements would
21 require Commission approval. This conclusion would be contrary to longstanding
22 practices among Missouri utilities that, to my knowledge, Staff has never before raised an
23 objection to until this proceeding. Such a position would also be contrary to the

1 proposition that utilities have the power to manage and conduct their own business and
2 operations.

3 While the terms "merge" and "consolidate" are not defined in the referenced
4 Section, they are well-defined in Missouri corporate law. For example, Section 351.450
5 describes the effect of a merger where all but one of the corporations involved in the
6 merger ceases to exist. In our transaction there is no merger of KCPL and Aquila,
7 because both companies will continue to exist after the transaction. The same section
8 also describes that a consolidation results in a new company, and that the old companies
9 cease to exist. Again, there is no consolidation because no new company is being
10 formed, and KCPL and Aquila will continue their separate corporate existences. I am
11 sure that the discussion on this topic will move from Mr. Schallenberg and me to the
12 lawyers in briefing this matter.

13 Public utilities have for years co-owned generation and transmission facilities.
14 While there are multiple owners, one utility typically operates and maintains the
15 facilities. Iatan Station is a good example. KCPL, Aquila and The Empire District
16 Electric Company are co-owners of Iatan Unit 1. However, KCPL has been the operator
17 of that unit ever since it went into operation in 1980. KCPL employees operate and
18 maintain the unit. KCPL buys the coal, material and supplies for the unit, and bills its co-
19 owners for their proportionate shares. If Mr. Schallenberg's theory is correct, there has
20 been a "merger" or "consolidation" of a part of KCPL's, Aquila's and Empire's systems
21 at Iatan Unit 1 for 27 years that no one recognized and that the Commission didn't
22 approve. The combined operations of KCPL and Aquila contemplated after the

1 transaction are no different in concept than what KCPL has done for decades for Aquila's
2 and Empire's ownership shares of Iatan Unit 1.

3 **Q: Does Mr. Schallenberg's mischaracterization of the proposed transaction affect his**
4 **analysis of the synergy savings?**

5 A: Yes. As set forth in the Staff Report at page 21, his inaccurate and hyper-technical
6 analysis of the relationship of Aquila and KCPL post-merger has led him to remove all of
7 the synergies and other cost-savings that will be realized by Great Plains Energy's
8 common ownership and operation of the two utilities. Page 43 of the Staff Report
9 similarly argues that because KCPL and Aquila have not requested to merge, Staff has
10 recommended that the Commission find there are no merger synergies to be realized or
11 transition costs to be incurred. Staff's position that \$260 million in synergies must be
12 disregarded is based upon its erroneous factual and legal view of the transaction. The
13 Commission should reject Staff's analysis and consider the synergy savings that will
14 clearly be achieved by Great Plains Energy operating Aquila and KCPL as efficiently as
15 possible.

16 **Q: Mr. Schallenberg asserts at page 17 of the Staff Report that Great Plains Energy**
17 **"influence[s] ... KCPL outside the parameters of independent corporate governance**
18 **... in this case." Do you agree?**

19 A: No, I do not. Mr. Schallenberg's arguments exalt form over substance and demonstrate a
20 lack of understanding regarding the full extent of the fiduciary and statutory duties of
21 KCPL directors, officers and employees. The fact is that Great Plains Energy and KCPL
22 are not independent. They are affiliated companies. I am advised that under corporate
23 law, KCPL directors, officers and employees, owe their fiduciary duties to KCPL's

1 shareholder – Great Plains Energy. KCPL also has a statutory duty to provide safe and
2 efficient electric service at just and reasonable rates to its customers. I believe the
3 evidence demonstrates that the transaction is in the best interests of KCPL’s customers,
4 as well as its shareholder, Great Plains Energy.

5 Mr. Schallenberg purports to provide several examples of Great Plains Energy’s
6 “operation outside the parameters of independent corporate governance.” These claims
7 have no merit. For example, at page 4 of his Staff Report Mr. Schallenberg notes that
8 KCPL is not a signatory to the merger agreement. However, KCPL has no reason to be a
9 signatory because it has no rights or obligations under the merger agreement. Mr.
10 Schallenberg states that there is no “contract or agreement authorizing KCPL employees
11 to provide services” to Great Plains Energy. While there is no *written* agreement, none is
12 required either under contract law or the Commission’s affiliate transaction rules. We
13 strive to comply in all respects with the Commission’s affiliate transaction rules.

14 Mr. Schallenberg also states at pages 17-18 of the Staff Report that neither KCPL
15 nor Aquila are parties to the Transition Services Agreement. This is true, but Mr.
16 Schallenberg fails to note that, through the merger with Gregory Acquisition Corp.,
17 Aquila will assume that company’s obligations and essentially become a party to the
18 contract.

19 Finally, Mr. Schallenberg notes at page 17 of the Staff Report that there is no
20 written agreement between KCPL and Great Plains Energy regarding services to be
21 provided to Black Hills Corporation (“Black Hills”) under the Transition Service
22 Agreement, or between KCPL and Aquila. As Staff knows, and as shown in our
23 testimony, KCPL employees continue to work with Black Hills and Aquila employees on

1 planning for operations when the transaction closes. We anticipate that when the details
2 regarding operations and the services to be provided by KCPL to Aquila and Black Hills
3 are completed post-closing, we will formalize them in written agreements.

4 **AFFILIATE TRANSACTION RULES WAIVER REQUEST**

5 **Q: Staff objects to the Joint Application's request for a waiver from the affiliate**
6 **transaction rules for transactions between KCPL and Aquila. What is the reason**
7 **for the waiver request?**

8 **A:** The affiliate transaction rules are premised on asymmetric pricing to prevent a public
9 utility from subsidizing its affiliates. Therefore, goods and services provided by a public
10 utility to *any* affiliate are to be priced at the higher of market value or the cost to the
11 public utility in providing the goods and services. Conversely, goods and services
12 provided by *any* affiliate to a public utility are to be priced at the lower of market value or
13 the cost to the public utility in providing the goods and services to itself. In this way, the
14 public utility should be indifferent as to whether it sells or receives goods and services
15 from an affiliate or a third party.

16 This concept is appropriate where the transactions involve a public utility and an
17 unregulated affiliate. However, if both parties are public utilities subject to the affiliate
18 transaction rules, the rationale underlying the rules doesn't apply because the utilities
19 already are subject to Commission regulation. In such a utility-to-utility situation, the
20 asymmetric pricing mechanism is also unworkable. If a public utility is to provide a
21 service to an affiliated public utility, the public utilities are on the opposite sides of the
22 asymmetric pricing requirements. The synergies contemplated by Great Plains Energy in
23 this transaction are premised on the ability of KCPL and Aquila to exchange goods and

1 services at cost. To the extent the asymmetric pricing dictated by the affiliate transaction
2 rules prevent KCPL and Aquila from doing so, the synergies will be reduced to the
3 detriment of the utilities' Missouri customers.

4 That is why the Joint Application requested a waiver from the affiliate transaction
5 rules for transactions between KCPL and Aquila. KCPL explained in a data request
6 (reproduced on page 65 of the Staff Report) that the intention of the parties is to price
7 non-power transactions between the two utilities at cost, and power transactions pursuant
8 to applicable FERC rates. The applicants, therefore, seek a waiver as requested in the
9 Application and in accordance with the data request response.

10 **Q: What is your response to the objections to the waiver request as stated on pages 64-**
11 **67 of the Staff Report?**

12 **A:** Staff objects to the waiver on the ground that it's premature, arguing that KCPL and
13 Aquila need to adopt a merger plan. As explained earlier in my testimony, Staff's
14 assertion that there is or should be a "merger" or "consolidation" between KCPL and
15 Aquila is wrong.

16 Staff also asserts that the Joint Application doesn't comply with the waiver
17 requirements. We believe that Staff's Report and my testimony do provide an adequate
18 basis for the Commission to consider the request.

19 **ADDITIONAL AMORTIZATIONS PROVISION FOR AQUILA**

20 **Q: Please describe the purpose of the Additional Amortizations provision contained in**
21 **the Regulatory Plan of KCPL, approved by the Commission in Case No. EO-2005-**
22 **0329.**

1 A: The Additional Amortizations provision is intended to *maintain* KCPL's and Great Plains
2 Energy's investment-grade credit rating during the construction of (i) environmental
3 facilities at KCPL's LaCygne and Iatan 1 generating plants; (ii) wind generation; and
4 (iii) the new Iatan 2 plant. Given the amount of capital required to fund this large
5 construction program, KCPL would have been downgraded to below investment grade
6 upon announcement of these investments absent some assurance that KCPL and Great
7 Plains Energy would have sufficient funds from operations to maintain investment-grade
8 credit during the construction period. Since any future increases in rates are dependent
9 on the unpredictable outcome of future rate cases and decisions relative to return on
10 equity, the Additional Amortizations mechanism will provide sufficient cash flows to
11 convince rating agencies to maintain the companies' investment-grade credit.

12 **Q: Is Aquila a partner with KCPL in any of these facilities?**

13 A: Yes, Aquila is a partner at both Iatan 1 and Iatan 2.

14 **Q: Did Aquila have a similar provision in either a regulatory plan or some other**
15 **agreement to provide some assurance they could maintain investment-grade credit?**

16 A: No. Aquila was below investment grade at the time the decision was made to invest in
17 additional facilities at the Iatan generation site. As a result, there was no reason for a
18 provision to keep Aquila at investment grade.

19 **Q: Both OPC witness Trippensee and Staff witness Schallenberg object to applying the**
20 **Additional Amortizations provision to the Aquila facilities after the acquisition**
21 **because the KCPL Regulatory Plan included other provisions related to KCPL's**
22 **overall investment strategy. Do you agree with OPC and Staff?**

1 A: No, I do not. Although the Additional Amortizations provision was one piece of an
2 overall Stipulation and Agreement entered into by the signatory parties and approved by
3 the Commission in 2005, this provision stood independent from the other provisions of
4 the Stipulation with one exception. The exception is that the deduction to rate base for
5 Additional Amortizations should remain in place for ten years, notwithstanding any
6 changes in the law. I agree that this provision should also be part of the Additional
7 Amortizations mechanism that should be applied to the Aquila facilities post-closing.

8 The purpose of the Additional Amortizations in the 2005 Stipulation is to keep
9 KCPL and Great Plains Energy investment grade during this current period of
10 construction. Mr. Trippensee lists some of the other provisions of that Stipulation on
11 page 8 of his Rebuttal Testimony. With the exception noted above, not a single item
12 listed is relevant to this goal of maintaining investment-grade credit during construction.

13 Once acquired by Great Plains Energy, Aquila will achieve investment-grade
14 credit metrics. Although Mr. Cline testified to this fact in his Direct Testimony, Staff
15 continues to ignore or overlook this critical element of the transaction and takes the
16 position that Great Plains Energy is requesting to use the Additional Amortizations
17 provision to *attain* an investment-grade credit rating for Aquila. This is not the case. The
18 Additional Amortizations provision requested for Aquila is to *maintain* investment-grade
19 credit metrics once Aquila reaches that status. Great Plains Energy believes that it would
20 be unwise and inconsistent for the Commission to approve the use of this mechanism in
21 2005 so that KCPL and Great Plains Energy could maintain their investment-grade status,
22 only to deny that same treatment for an expected investment-grade quality Aquila, which
23 is a partner of KCPL in the construction of Iatan 2. After the acquisition, Aquila will

1 satisfy the credit metrics for investment-grade status. However, given the amount of
2 capital required to fund construction of Iatan 2, it is unlikely that the Commission will
3 grant a return on equity in future rate cases to generate sufficient funds from operations to
4 maintain Aquila's investment-grade credit quality. Therefore, the Commission should
5 extend the Additional Amortizations treatment to Aquila in order to avoid the undesirable
6 result of Aquila losing investment-grade credit metrics.

7 **Q: Can you provide an example of why the provisions listed by Mr. Trippensee on page**
8 **8 of his Rebuttal Testimony are not relevant to Aquila?**

9 A: Yes, I can. KCPL decided to pursue a comprehensive energy plan in 2004 that dealt with
10 a wide range of issues related to generation construction; environmental compliance;
11 demand response, energy efficiency and affordability programs; rate design; and other
12 issues. KCPL sought to enter into a stipulation and agreement to formalize the agreement
13 of the signatory parties that these investment decisions were correct and the time to
14 commit to them was proper. In contrast, the applicants in this proceeding only ask that
15 when Aquila achieves investment-grade quality post-closing, the Additional
16 Amortizations mechanism be employed to preserve that status. The Commission clearly
17 possesses the authority to permit Aquila to utilize this provision in future rate cases.

18 **Q: Does the Staff Report indicate other reasons why the Additional Amortizations**
19 **mechanism should not be authorized for Aquila?**

20 A: Yes, Staff lists four reasons on pages 61 through 63 of its report. The argument is that
21 amortizations would be used to subsidize Aquila's non-regulated activities. This is
22 simply wrong. As I previously stated, the purpose of the amortizations is to provide
23 some assurance that Great Plains Energy and Aquila will maintain investment-grade

1 credit quality during the construction at Iatan 1 and 2. Aquila will meet the metrics
2 required for an investment-grade credit rating subsequent to the close of the acquisition,
3 and the Additional Amortizations provision would only be relevant in future rate cases to
4 *maintain* Aquila's credit quality. The only reason Additional Amortizations would be
5 needed is for continuing funding of operations, primarily the financing of construction
6 activities at Iatan 1 and 2. Staff's second argument is that the Additional Amortizations
7 would not be used to support acknowledged prudent improvements in infrastructure. The
8 Staff Report on page 62 states: "The additional amortizations in the separate KCPL and
9 Empire regulatory plans were designed to serve this purpose." However, as is obvious,
10 the construction of Iatan 2 and the environmental equipment upgrades at Iatan 1 are the
11 same prudent improvements for Aquila, just as they are for Empire and KCPL. Empire,
12 Aquila, and KCPL are partners in each of the Iatan generation units. To my knowledge,
13 Staff has never alleged that these improvements, while prudent for KCPL and Empire,
14 are imprudent for Aquila.

15 I would like to note that on page 63 of the Staff Report there is the following
16 statement, "The additional amortization is designed to provide the supporting economics
17 of this acquisition of Aquila and related merger of the Aquila and KCPL systems and
18 operation by providing assurance that the rating agencies need not be concerned about
19 that reliability of the ** [REDACTED]

20 [REDACTED] **"

21 This statement is incorrect. In fact, the Additional Amortizations mechanism has
22 nothing to do with the reliability of the synergy estimates in this proceeding or whether
23 KCPL and Aquila actually achieve the estimated synergies. Only to the extent synergies

1 are non-cash would they have any impact on Additional Amortizations. I am not aware
2 of any synergies in this proceeding that are non-cash related.

3 On page 63 of the Report Staff argues that the joint applicants have provided no
4 evidence that Aquila needs an Additional Amortizations mechanism in order to provide
5 safe, adequate and reliable electric service. As noted above and elsewhere in the direct
6 testimony of KCPL and Great Plains Energy witnesses, Aquila is currently below
7 investment grade but will become investment grade subsequent to the acquisition. The
8 Commission should embrace policies that promote strengthening utilities when a
9 reasonable proposal, such as utilizing the Additional Amortizations mechanism, is
10 proposed in the context of this transaction. The purpose of the Additional Amortizations
11 is to *maintain* investment-grade credit for Great Plains Energy, KCPL, and Aquila
12 subsequent to close of the transaction and during the construction of Iatan 1 and 2.

13 **ISSUES RAISED BY THE CITY OF KANSAS CITY, MISSOURI**

14 **Q: In the Rebuttal Testimony of Mr. Robert Hix, on behalf of Kansas City at pages 6-8,**
15 **he proposes that the Commission condition approval of the merger on the Company**
16 **participating in an earnings sharing mechanism. Is an earnings sharing mechanism**
17 **appropriate in this case?**

18 **A:** No such mechanisms are not appropriate. Mr. Hix is clearly not familiar with the current
19 operations of KCPL and Aquila, including the major generation construction programs
20 currently underway for both companies, as well as the continued need to raise additional
21 capital, beyond the current construction of facilities, to meet environmental regulations.
22 These infrastructure programs will require both Aquila and KCPL to file rate cases with
23 the Commission requesting revenue increases in the year after the transaction closes,

1 regardless of how the synergies are ultimately shared between customers and
2 shareholders. These rate increases will be needed to recover the costs of new facilities as
3 they are placed into service, combined with increasing fuel costs and other increasing
4 operations and maintenance expenses. Such costs will exceed the total estimated
5 synergies of the acquisition during the next several years. However, it must be
6 recognized that the synergies resulting from the merger will require a smaller increase in
7 rates than would have been required absent the transaction. In other words, contrary to
8 the premise underlying Mr. Hix's proposal, there will be no excess earnings to share.

9 **Q: Are you familiar with the concept of earnings sharing mechanisms as described by**
10 **Mr. Hix?**

11 **A:** Yes, I am. These mechanisms have been used in other mergers, when cost of service is
12 expected to be flat or declining over the time that the synergies are expected to occur.
13 Absent increases in cost of service, synergies would result in excess earnings above the
14 authorized rate of return. Under such circumstances some state utility commissions have
15 in certain cases adopted an earnings sharing mechanism that required utilities to share
16 synergies between customers and shareholders. Such circumstances plainly do not exist
17 in this proceeding. Therefore, it would not be appropriate for this Commission to
18 condition the merger on a concept that is not relevant to Great Plains Energy's acquisition
19 of Aquila.

20 **Q: On page 4 of his Rebuttal Testimony Mr. Hix recommends that the Commission**
21 **order Great Plains Energy and/or KCPL to file a proposal to integrate financial**
22 **operations and electric system operations of Aquila and KCPL by a certain date.**
23 **Do you agree with Mr. Hix's recommendation?**

1 A: No, I do not. Mr. Hix may not understand the transaction before the Commission at this
2 time. Great Plains Energy, the parent company of KCPL is requesting approval to
3 acquire Aquila and merge it into a subsidiary of Great Plains Energy. Although Aquila
4 will be renamed, it will remain a separate legal entity and a subsidiary of Great Plains
5 Energy. KCPL and the renamed Aquila will maintain separate generation, transmission,
6 and distribution systems until such time as a merger of the renamed Aquila and KCPL
7 may be appropriate. It is premature at this time to set a date when it may become
8 appropriate to merge the two subsidiaries of Great Plains Energy. Any decision by Great
9 Plains Energy in this regard will be largely dependent on future investments required for
10 the two companies and respective rate levels. As pointed out in my testimony above,
11 Great Plains Energy intends to use the integrated work forces of Aquila and KCPL to
12 operate the two companies, from a customer perspective, as one.

13 **Q: Does that conclude your testimony?**

14 A: Yes, it does.

In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc. for Approval of the Merger of Aquila, Inc. with a Subsidiary of Great Plains Energy Incorporated and for Other Requester Relief)
)
) **Case No. EM-2007-0374**
)
)
)

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

1. My name is Chris B. Giles. I work in Kansas City, Missouri, and I am employed by Kansas City Power & Light Company as Vice President – Regulatory Affairs.

2. Attached hereto and made a part hereof for all purposes is my Surrebuttal Testimony on behalf of Great Plains Energy Incorporated and Kansas City Power & Light Company consisting of Fifteen (15) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.

3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.

Ch. B. L.

Chris B. Giles

Subscribed and sworn before me this 13th day of November 2007.

Nicol A. Weng
Notary Public

My commission expires: Feb. 4 2011

