BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

JOINT APPLICANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Issue Date: June __, 2008

Effective Date: June __, 2008

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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 Related Relief	))))))	**Case No. EM-2007-0374**

APPEARANCES

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REGULATORY LAW JUDGE: Harold Stearley, Regulatory Law Judge

REPORT AND ORDER

I. PROCEDURAL HISTORY

On April 4, 2007, Great Plains Energy Incorporated ("GPE" or "Great Plains Energy"), Kansas City Power & Light Company ("KCPL"), and Aquila, Inc. ("Aquila")(collectively "Joint Applicants"), filed a joint application with the Missouri Public Service Commission ("Commission"). The joint applicants requested authority for a series of transactions whereby Aquila will become a direct, wholly-owned subsidiary of Great Plains Energy.

Following the filing of the joint application, the Commission, on April 9, 2007, issued an Order and Notice that provided notice of the filing of the joint application and notified interested parties that if they wished to intervene they should file an application with the Commission on or before April 30, 2007. Timely applications to intervene were received from City of Kansas City, Missouri ("Kansas City") and Cass County, Missouri, ("Cass County"), Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), AgProcessing, Sedalia Industrial Energy Users Association, Praxair ("Industrial Intervenors"), Frank Dillon, Kimberly Miller, James E. Doll, Randy Cooper, Gary Crabtree, Eric Thompson, and Allen Bockelman ("South Harper residents"), Black Hills Corp. ("Black Hills"), Dogwood Energy, LLC ("Dogwood"), City of St. Joseph, Missouri, ("St. Joseph"), City of Independence, Missouri, ("Independence"), IBEW Local Nos. 814, 695, 1613, 1464, and 412 ("Locals"), and the City of Lee's Summit, Missouri ("Lee's Summit"). On May 15, 2007, the Commission granted these applications to intervene. On July 13, 2007, the National Nuclear Security Administration ("NNSA"), on behalf of itself, the United States Department of Energy ("DOE"), and all other affected Federal Executive Agencies ("FEA") (collectively, "DOE/NNSA"), filed an application for late intervention. DOE/NNSA's intervention was granted on July 27, 2007.

A technical conference and prehearing conference was held on May 23-24, 2007, respectively. On June 5, 2007, the Staff of the Commission, on behalf of the parties, filed a proposed procedural schedule for this case. On June 19, 2007, the Commission issued its Order Adopting Procedural Schedule that set this case for hearing on December 3-7 and 10-14, 2007. Testimony was pre-filed by the various parties and evidentiary hearings were held beginning on December 3 and continuing through December 6, 2007.

On December 6, 2007, the Joint Applicants requested that the Commission recess the hearings to allow time for the development of a revised regulatory proposal and to allow time for the Joint Applicants to meet with the other parties to discuss a comprehensive settlement of the case. This request was granted by the Regulatory Law Judge without objection from any of the parties.

A settlement conference was convened on December 19, 2007. Following the settlement conference, various parties met several times and exchanged settlement proposals. However, no settlement was reached.

On February 25, 2008, the Joint Applicants filed a Motion For Leave To File Additional Supplemental Direct Testimony and Notice of Withdrawal Of Certain Regulatory Plan Requests which was granted. The additional testimony, which was also filed on February 25, modified the Joint Applicants' Regulatory Plan by withdrawing some of the aspects of their proposed Regulatory Plan, including the original proposals related to (1) Recovery of Aquila's Actual Interest Expenses; (2) the Synergy Savings Sharing proposal; (3) Additional Amortizations provisions for Aquila; and (4) the recovery of Aquila Senior Executive Severance Costs as a part of Transaction Costs.

On February 28, 2008, an additional pre-hearing conference was held. Following the filing of pleadings from the parties suggesting proposed procedural schedules, the Commission adopted its Second Order Adopting Procedural Schedule on March 11, 2008, which included the scheduling of evidentiary hearings on April 21-25, April 28-May 2, and May 5-7, 2008.

An evidentiary hearing was held beginning on April 21 and continuing through May 1, 2008. Post-hearing briefs and suggested findings of fact and conclusions of law were filed on June 2, 2008 by various parties.

II. OVERVIEW OF PROPOSED TRANSACTION

In this proceeding, the Joint Applicants request authority for Aquila to merge with a special purpose subsidiary of Great Plains Energy to merge into Aquila, with Aquila being the surviving corporation ("Merger"). The Merger is conditioned on a separate but related transaction occurring first in which Black Hills will purchase Aquila's gas assets in Iowa, Nebraska, Kansas, and Colorado, as well as Aquila's electric assets in Colorado ("Black Hills Purchase"). Following the close of the Black Hills Purchase, the Merger will effectively result in Great Plains Energy acquiring Aquila's Missouri-based utilities, Aquila Networks-MPS and Aquila Networks-L&P. Great Plains Energy will also acquire Aquila's steam operations in St. Joseph, Missouri, as well as its remaining merchant services operations, which primarily consist of the 340 MW Crossroads generating facility in Mississippi and certain residual natural gas contracts.

The Joint Applicants do not propose to consolidate KCPL's and Aquila's service territories. They also do not propose to merge of KCPL and Aquila, or to transfer any Aquila assets to KCPL. KCPL and Aquila will continue to operate as separate and distinct corporations under their respective Commission-approved tariffs. Nonetheless, the Joint Applicants contend that the Merger will result in significant synergy savings by bringing KCPL and Aquila under the common ownership of GPE, and allow for functional integration and operation of the public utilities. The Joint Applicants propose to integrate the operations of KCPL and Aquila to achieve significant synergy savings.

As explained in the Direct Testimony of Great Plains Energy's Chief Financial Officer Terry Bassham, Black Hills will pay Aquila approximately $940 million in cash in consideration for the Black Hills Purchase. That purchase is controlled by the Asset Purchase Agreement ("APA") and the Partnership Interests Purchase Agreement ("PIPA"). The APA controls Black Hills' purchase of Aquila's natural gas assets in Nebraska, Kansas and Iowa. The PIPA controls Black Hills' purchase of Aquila's electric and natural gas assets in Colorado. Following the closing of the APA and PIPA transactions, Black Hills will own and operate the natural gas assets of Aquila in Nebraska, Kansas, Iowa, and Colorado. Black Hills will also own Aquila's Colorado electric assets. <u>See</u> Ex. 1, Bassham Direct at 3-4.

The Merger will occur immediately following the consummation of the Black Hills Purchase. It will be accomplished by Gregory Acquisition Corp. ("Merger Sub"), a Delaware corporation and direct, wholly-owned special purpose subsidiary of Great Plains Energy, merging with and into Aquila, with Aquila as the surviving entity. As a result, Aquila will become a direct, wholly-owned subsidiary of Great Plains Energy, just as KCPL is today. <u>Id.</u> at 6-7.

Upon consummation of the Merger, Aquila stockholders will receive the consideration of stock and cash called for under the Agreement and Plan of Merger. Each share of Aquila's common stock will convert into the right to receive (i) 0.0856 of a share of common stock, no par value, of Great Plains Energy's common stock and (ii) a cash payment of $1.80. Based on Great Plains Energy's closing NYSE stock price of $26.23 on May 30, 2008, the Merger represents a value of $4.05 per share of Aquila common stock. Great Plains Energy will also assume approximately $1 billion of Aquila's net debt and other liabilities. Id. at 8.

The Merger and Black Hills Purchase have already received all of the necessary approvals except from this Commission. Aquila's shareholders approved the transactions on October 9, 2007. The shareholders of Great Plains Energy approved the transactions on October 10, 2007. The transactions did not require the approval of Black Hills' shareholders. The Federal Energy Regulatory Commission ("FERC") approved the transactions on October 19, 2007. Great Plains Energy Inc., 121 FERC ¶ 61,069 (2007). In addition, on August 27, 2007, the Federal Trade Commission announced that it granted early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"). The Iowa Utilities Board and the Nebraska Public Service Commission have approved the Black Hills Purchase. In re Aquila, Inc., Docket No. SPU-07-12 (Iowa Util. Bd., Aug. 31, 2007); In re Aquila, Inc., Application No. NG-0044 (Neb. P.S.C., Oct. 16, 2007).

Since the hearings were adjourned in December, the transactions were also approved by both the Colorado Public Utilities Commission and the Kansas Corporation Commission. See In re Application of Aquila, Inc., Docket No. 07A-108EG (Colo. P.U.C., Feb. 14, 2008); Order Granting Joint Motions To Adopt Stipulation And Agreement And Approving Agreements, In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Aquila, Inc., Docket No. 07-KCPE-1064-ACQ (Kan. Corp. Comm'n, May 15, 2008). Only this Commission's approval is necessary for the proposed transaction to proceed.

III. Synopsis of the Findings and Approval of the Proposed Transaction

The Joint Applicants have argued that this case presents the Commission with a unique opportunity to build upon and expand the successes of Great Plains Energy and KCPL by bringing Aquila into their corporate family. The long-term benefits of Aquila becoming an operating subsidiary of Great Plains Energy, in coordination with KCPL, will result in greater scale operational efficiencies, and rates that over time are expected to be lower than they would be otherwise.

According to the Joint Applicants' position, Great Plains Energy's acquisition of Aquila makes sense for many reasons. First, the geographical service territories of the utilities are adjacent, increasing the potential for economies of scale and improved reliability. Second, Aquila and KCPL are already joint owners of the Iatan 1 generating unit and are partners in the project to build Iatan 2. Third, combining the headquarters and support functions of the two companies, which are both located in the Kansas City area, will be smooth and uneventful. Most importantly, the evidence including written advisory opinions from credit rating agencies indicates that the financial effect of Great Plains Energy's acquisition of Aquila is expected to result in immediate investment-grade credit metrics for Aquila and lower debt costs. This credit rating improvement and Great Plains Energy's financial support will permit Aquila to have greater access to capital markets on more reasonable terms. Finally, the Merger will improve the overall business risk profile of Great Plains Energy, which will benefit the ratepayers of both Aquila and KCPL. The Commission agrees with the Joint Applicants' analysis on the overall benefits of the proposed transaction.

Based upon the competent and substantial evidence discussed herein, the Commission finds that the proposed transaction is not detrimental to the public interest, and in fact, the Commission believes that the evidence in the record supports the finding that the proposed transaction will benefit both KCPL's and Aquila's customers, and is in the public interest.

Revised Regulatory Plan

Initially, the Joint Applicants proposed a Regulatory Plan that included:

1. Aquila Interest Expense. The Joint Applicants requested recovery in future Aquila rate cases of the actual interest expenses incurred by Aquila, including interest expenses that exceeded the cost of investment grade debt;

2. Synergy Savings. The Joint Applicants requested approval of a "sharing proposal" through which synergy savings would be allocated on a 50%/50% basis between customers and shareholders and recovered in future rate cases for the first five years following the Merger;

3. Regulatory Amortizations. The Joint Applicants requested approval of an Additional Amortizations mechanism similar to the mechanism approved for KCPL in Case No. EO-2005-0329 for possible use to maintain investment-grade metrics for Aquila after it achieves that status post-Merger; and

4. Transaction and Transition Cost Recovery. The Joint Applicants requested deferral of certain transaction and transition costs over a five-year period, including the recovery of $16.7 million of severance costs for

Aquila Senior Executives, beginning with the first rate cases following the close of the Merger.

This proposed Regulatory Plan was criticized for various reasons by Staff, OPC, and the Industrial Intervenors in the hearings held in December, 2007. A recess in the hearings was requested by the Joint Applicants in December to allow them the opportunity to revise their proposed Regulatory Plan to mitigate the concerns raised by other parties to this proceeding.

With the filing of their Additional Supplemental Direct Testimony on February 25, 2008, the Joint Applicants have revised their proposed Regulatory Plan and now present the Commission with a proposal that brings Aquila into the corporate family of Great Plains Energy and KCPL on a basis that offers greater protection and more benefits to ratepayers than their original Regulatory Plan proposal. Responding to issues and concerns raised during the December hearings by the parties and Commissioners, the Joint Applicants' additional testimony narrowed the scope of this proceeding by removing the following issues from the case that had been in controversy.

1. <u>Aquila Interest Expense</u>: Joint Applicants do not seek to recover in any future general ratemaking proceeding any interest expense in excess of equivalent investment-grade debt that is currently held by Aquila.

2. <u>Synergy Savings</u>: Joint Applicants do not request a specific synergy savings sharing mechanism, but rather will rely upon the traditional regulatory ratemaking process so that any synergy savings in a test year will be passed through to Aquila and KCPL customers in future rate cases.

3. <u>Regulatory Amortizations</u>: Joint Applicants do not request authority in this proceeding for Aquila to use regulatory or "Additional Amortizations" to maintain the investment-grade credit rating that Aquila anticipates receiving upon its acquisition by Great Plains Energy.

4. <u>Aquila Senior Executive Severance Costs</u>: Joint Applicants will not request recovery in a future rate case of $16.7 million in severance expense related to departing Aquila senior executives. When combining this adjustment with the re-classification of $13.6 million in non-executive severance expense as Transition Costs, the total amount of Transaction Costs that Joint Applicants will seek to recover has been reduced from $95.2 million to $64.9 million, of which $47.2 million is Missouri jurisdictional.

Ex. 37, Bassham Add'l Direct at 2-5.

Neither Staff, OPC, the Industrial Intervenors nor any other party has filed any responsive testimony opposing or criticizing the Joint Applicants' February 25 proposal. The only formal response to the Joint Applicants' current proposal was Staff's commencement of an investigation into the potential relationship of KCPL's Comprehensive Energy Plan ("CEP") to the acquisition, apparently based on the allegations of anonymous *ex parte* communications filed at the Commission.

In response to Staff concerns regarding the impact upon CEP construction projects, the Joint Applicants' witness Bassham testified that the proposed Merger would not adversely affect KCPL's ability to successfully complete the CEP construction projects, including the construction at the Iatan Generating Station. Tr. 2382-83.

The Commission finds and concludes that the evidence demonstrated that despite pressures on costs and scheduling at the Iatan projects, both the Aquila acquisition and the constructions projects at the Iatan Generating Station and other projects approved in Case No. EO-2005-0329 are being properly managed. Mr. Bassham has testified that a fully vetted reforecast of the Iatan Unit 1 and Unit 2 projects was recently completed. Tr. 2381-82. As discussed herein, the results of the reforecast of costs and schedule have been provided to the Commission, interested parties, and the public in a Form 8-K filing with the Securities and Exchange Commission which included the final results of the reforecast of costs. See Ex. 305.

Based upon competent and substantial evidence, the Commission finds and concludes that there is nothing in the reforecast of the costs at the Iatan Generating Station or in other CEP projects that would prevent GPE and its affiliated public utilities from simultaneously completing the proposed transaction in this proceeding as well as successfully managing the ongoing construction projects of KCPL and Aquila.

Additionally, on April 6, 2008, Great Plains Energy announced that it had entered into a definitive agreement to sell its unregulated subsidiary Strategic Energy, LLC ("Strategic Energy") for $300 million in cash, subject to closing adjustments. The transaction is expected to close in June 2008.[1] Proceeds from the transaction will be used to offset some of Great Plains Energy's anticipated financing needs in 2008. The competent and substantial evidence indicates that the credit rating agencies assumed a lower sales price of $250 million in their evaluation of the Joint Applicants' modified request for regulatory treatment. See Staff Ex. 124 and 125. Their assumption of a

[1] The Joint Applicants informed the Commission in their post-hearing Brief that this transaction closed on June 2, 2008.

lower sales price supports the conservativeness of their conclusion that the Merger will not have an adverse impact on the credit ratings of Great Plains Energy or KCPL. The Commission finds that the sale of Strategic Energy will provide GPE and its affiliated public utilities with more financial flexibility in the future.

The Commission finds and concludes that the competent and substantial evidence in this case demonstrates that the long-term advantage in Aquila's becoming an operating subsidiary of Great Plains Energy, in coordination with KCPL, will result in greater scale operational efficiencies, and that rates over time are expected to be lower than they would be otherwise. As suggested by the Joint Applicants, the geographical service territories of the utilities are adjacent, therefore increasing the potential for economies of scale and improved reliability. Second, Aquila and KCPL are already joint owners of the Iatan 1 generating unit and are partners in the Iatan 2 project, and the joint operation of Iatan generating units 1 and 2 will be further enhanced by the proposed transaction. Third, combining the headquarters and support functions of the two companies, which are both located in the Kansas City area, should be smooth and uneventful, and produce efficiencies which will benefit customers. Fourth, the Commission finds that the financial effect of Great Plains Energy's acquisition of Aquila is expected to result in investment-grade credit metrics for Aquila and lower debt costs. This credit rating improvement and Great Plains Energy's financial support will permit Aquila to have greater access to capital markets on more reasonable terms. Finally, the Commission finds that the Merger will improve the overall business risk profile of Great Plains Energy, which will benefit the ratepayers of both Aquila and KCPL.

Based on a very detailed analysis of the potential merger synergy savings, Great Plains Energy estimates utility operational savings from the transaction at $755 million over ten years, with $305 million occurring during the first five years, 2008-2012. The prospects of Aquila and KCPL working together in a coordinated and efficient fashion, within a financially healthy holding company, will clearly bring benefits to ratepayers over the next several decades. These possibilities have already been recognized by the shareholders of Aquila and Great Plains Energy, who approved the transaction in early October 2007. The Commission finds and concludes that the competent and substantial evidence in the record supports the Joint Applicants' estimate of savings from the proposed transaction.

In order to bring these benefits to KCPL and Aquila ratepayers in a timely fashion, the Commission finds and concludes that it should approve the proposed transaction, as more fully described in this Report and Order, since the evidence shows that the proposed transaction is not detrimental to the public interest. In addition, the Commission finds and concludes that the Joint Applicants' request for the deferral and amortization over a five-year period of certain transaction and transition costs should be approved. Finally, the Commission finds and concludes that the Affiliated Transactions Rule is inapplicable to transactions between two affiliated, regulated public utilities such as KCPL and its sister subsidiary, a newly named Aquila, following the closing of the transaction. Therefore, the Commission finds it unnecessary to grant KCPL and Aquila a specific waiver of the Affiliated Transactions Rule since that rule will not apply to them.

IV. FINDINGS OF FACT

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact in this proceeding. The positions and arguments of all of the parties have been considered by the Commission in rendering this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Great Plains Energy, 1201 Walnut, Kansas City, Missouri, is a Missouri corporation and the holding company for KCPL, a regulated public utility, and for Strategic Energy, a competitive electricity supplier located in Pittsburgh, Pennsylvania. Great Plains Energy is a public utility holding company regulated under the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005.

KCPL is a corporation duly organized and existing under the laws of the State of Missouri, and is located at 1201 Walnut, Kansas City, Missouri. It is engaged in the generation, transmission, distribution and sale of electric energy. KCPL distributes and sells electric service to the public in its certificated areas in the States of Missouri and Kansas, and is an "electrical corporation" and a "public utility" subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes.

Aquila is a Delaware corporation, with its principal office and place of business at 20 W. Ninth Street, Kansas City, Missouri. Aquila is authorized to conduct business in

Missouri through its Aquila Networks-MPS and Aquila Networks-L&P operating divisions and, as such, is engaged in providing electric and steam utility service in Missouri to the public in its certificated areas. Aquila is an "electrical corporation" and a "public utility" subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393. Aquila also has regulated energy operations in the States of Colorado, Iowa, Nebraska and Kansas.

A. LIST OF ISSUES

On April 16, 2008, the Staff filed a list of "non-binding" issues which identifies issues which some or all of the parties believe need to be addressed by the Commission. The Commission will generally utilize this identification of issues for discussing the competent and substantial evidence in this proceeding. However, consistent with the previous evidentiary rulings made in this proceeding, the Commission will not discuss issues related to Issue XI contained in the April 16 List of Issues related to the gifts and gratuity policy of the Joint Applicants, or the allegations made in anonymous letters filed in this proceeding. The Commission continues to believe that such matters are wholly irrelevant to this proceeding, and therefore are not appropriate to be discussed herein.

1. Overview of Current Proposal

An overview of the proposed transaction is addressed above and will not be re-iterated at this point in the Report and Order.

2. Synergy Savings

The Joint Applicants have withdrawn their request for a "sharing proposal" through which synergy savings would be allocated on a 50%/50% basis between customers and shareholders. Instead, they propose to rely upon the natural regulatory lag that occurs between rate cases to retain any portion of synergy savings. See Ex. 37, Bassham Add'l Supp. Direct Testimony at 3-4. However, it is important for the Commission to assess the potential synergy savings that could result from the proposed transaction.

John Marshall, KCPL's Senior Vice President for Delivery, and Robert T. Zabors, a partner in Bridge Strategy Group, LLC, discussed the process used to identify and quantify the non-fuel synergy savings and costs to achieve in detail in their testimony. See Ex. 20, Marshall Direct at 1-8; Ex. 21, Marshall Supp. Direct at 1-22; Ex. 22, Marshall Surrebuttal at 1-11; Ex. 30, Zabors Direct at 2-15; Ex. 31, Zabors Supp. Direct at 1-15.

According to the Joint Applicants' evidence, estimation of the synergies began in July, 2006 following Great Plain's agreement to participate in Aquila's auction process. Since the Merger was publicly announced in February 2007, integration planning efforts expanded to include more than 20 teams and 150 employees of both KCPL and Aquila. See Ex. 22, Marshall Surrebuttal at 3. Prior to the public announcement of the Merger, Bridge Strategy Group facilitated the identification of opportunities to reduce non-fuel operating and maintenance ("NFOM") expenses. Great Plains Energy already had substantial knowledge of Aquila's operations when it began this process since KCPL employees have participated alongside Aquila employees in various Missouri industry and regulatory activities, and KCPL and Aquila are partners in the Iatan 1 and 2 Units. In the mid-1990s, KCPL was involved in merger activities with Aquila, then known as UtiliCorp United Inc.

Managers from Great Plains Energy and KCPL have developed detailed estimates of the resources, expenses, and capital that Great Plains Energy will require to operate Aquila and KCPL. Participants represented the full scope of functions that will be required in a post-transaction environment, and were able to construct a comprehensive view of how the organization will run after the transaction is complete. Executives and key managers developed an overall approach to managing the combined organization, and identified transition steps to achieve the expected synergy savings. Non-fuel expense and personnel costs were allocated between Aquila (post-Merger) and Black Hills. Follow-up discussions with Aquila enabled an even greater degree of precision to be achieved in the estimates of the synergies and savings.

Since the announcement of the Merger, there has also been extensive involvement from both Aquila and KCPL management and employees in integration planning. More than 150 people were involved on integration planning teams and sub-teams. The various teams worked together to determine the incremental resources (expenses, capital, and employee positions) required to operate the companies after the Merger closes. The incremental resources were compared to the baseline Aquila resources to determine the estimated amount of synergies. The synergies from each team were then combined to determine the total estimated synergies resulting from the transaction. See Ex. 31, Zabors Supp. Direct at 5-6; Ex. 22, Marshall Surrebuttal at 3-4.

Robert T. Zabors of Bridge Strategy Group LLC, and nine other witnesses filed testimony on specific synergy issues, ranging from supply chain issues to matters involving generation, transmission and distribution operations. These specific synergy savings will be discussed below.

a. Are the estimates of savings from synergies reliable?

Aquila's utilities are not only adjacent to KCPL's service area, but they also fill in the gap that currently exists between KCPL's East District and the rest of its service territory. As a result, the Joint Applicants have asserted that significant savings opportunities are available soon after the close of the Merger related to integrated operations under common management of many functions within KCPL and Aquila. In addition, Aquila's service areas have strong growth potential. See Ex. 13, Downey Direct at 4.

KCPL's John Marshall and Bridge Group's Robert Zabors discussed the process used to identify and quantify the non-fuel synergy savings and costs to achieve in detail in their testimony. See Ex. 20, Marshall Direct at 1-8; Ex. 21, Marshall Supp. Direct at 1-22; Ex. 22, Marshall Surrebuttal at 1-11; Ex. 31, Zabors Direct at 2-15; Zabors Supp. Direct at 1-15. The evidence indicated that the KCPL/Aquila teams determined the synergies over a five-year period, beginning on January 1, 2008, although the expected closing will now be closer to the August 6, 2008 termination date. Since the majority of the synergies will continue beyond the first five-year period, the synergies were escalated by 3.1% which is the 3-year average of the CPI-U, the consumer price index.

According to the Joint Applicants' evidence, the major components of the expected synergies are as follows:

1. Reductions in operating forecasts of departments ($87 million).

The majority of these savings come from labor and non-labor cost reductions. Labor reductions are the result of actual reductions in payroll that are attributable to position reductions. The non-labor synergies result from economies of scale and the impacts of position reductions. See Ex. 30, Zabors Supp. Direct at 9-10.

2. Reductions in major projects that reduce non-fuel operations and maintenance (O&M) expenses ($33 million).

Facilities consolidation, the sale of Aquila's headquarters building, and the implementation of automated meter reading ("AMR") infrastructure for Aquila customers make up this synergy estimate. KCPL will close overlapping service centers and centralize operations in a new facility and in KCPL's existing Northland facility. The net benefit of this opportunity will be $6.8 million. See Ex. 30, Zabors Supp. Direct at p. 11. The efficiencies gained from consolidating into one headquarters building will create $5.8 million in value from reductions in operating costs and increased efficiencies at Great Plains Energy's headquarters. The value of selling the Aquila headquarters building will be $16.2 million over the four years following the sale at the end of 2008. KCPL also will leverage its experience with AMR and upgrade the Aquila customer base to this level of service with a savings of $4.7 million over five years. Id. at 10-11.

3. Supply Chain Synergies ($131 million).

The total savings from the supply chain is $131 million, with strategic sourcing/procurement accounting for over half of the total savings. This consists of $97.7 million in O&M savings and $33.3 million in avoided costs of capital savings, which is generated from $95.5 million in avoided capital expenditures. See Ex. 6, Buran Supp. Direct at 3. The integration will lead to procurement savings and more effective use of contracted services in operations. It will also enable cost-effective investments in centralization of physical storage and better management of inventory. These savings include opportunities to leverage increased purchasing scale, best practices, and increased scope, *i.e.*, sharing of material, equipment, and labor, where appropriate. See Ex. 6, Buran Supp. Direct at 2-27.

Specific integration projects that reduce purchased power expense or increase revenue will result in additional savings of $54 million over five years. Optimizing the operation of Aquila's Sibley Unit 3 by utilizing KCPL's coal plant expertise and outage management experience is expected to deliver 30 MW of capacity that will reduce purchased power expenses by $17 million over five years. Utilizing the economies of scale in the gas fleet and Aquila expertise to improve combustion turbine operations will capture $3.1 million in synergies. KCPL will use its experience with boiler tube failure improvement to deliver improved performance resulting in $5.6 million in value. KCPL's experience and infrastructure in energy efficiency will add incremental value to the Aquila customer base returning $13 million over five years. Teams will leverage KCPL coal plant and outage experience to improve operations at Sibley Units 1 and 2, with a savings of $1.6 million. KCPL's experience, processes, and tools will also be used to improve heat rates, saving $0.6 million. Aquila's skills, intellectual property, and processes to enhance billing processes will capture $12.8 million. The net impact of these projects is to reduce purchased power or increase revenue by approximately $54 million over the first five years. See Ex. 30, Zabors Supp. Direct at 9-12.

4. Synergies Identified In Operating Functions.

(a) Delivery Function.

Delivery functions consist of Distribution, Transmission, Energy Solutions, Customer Service and Information Technology. In these areas, the synergies come from (1) synergies in Distribution operating expenses generated from the economies of scale of combining two similar operations in adjacent service territories, and (2) synergies from integrating five existing service centers into two locations. See Ex. 21, Marshall Supp. Direct at 12.

The greater Kansas City metropolitan area of the post-merged organization will be managed as a single district. The operations of the existing Aquila Liberty and Platte City service centers will be combined into KCPL's Northland facility. The existing service center operations in Lee's Summit, Blue Springs, and Dodson will be similarly integrated into a new facility to be built along the I-470 corridor near Lee's Summit. The necessary capital investments to achieve this result will be offset by the elimination and sale of replaced facilities. See Ex. 21, Marshall Supp. Direct at 12. This effort over the 2008-2012 timeframe will deliver operating synergies of $6.8 million, 45% of which is generated from lower facility O&M costs. The remaining 55% is expected to accrue from a reduction in contractor needs on facilities being eliminated. Id. at 13.

Transmission synergies will come from combining similar operations in adjacent service areas. Scale economies will allow the post-merged organizations to reduce one five-man contract service crew. In addition, subject to regulatory approvals, KCPL and Aquila may join the same regional transmission organization ("RTO") in the future. See Ex. 21, Marshall Supp. Direct at 13.

Energy Solutions offers the potential for cost reductions, but more importantly will be the function leading key integration projects that expand KCPL's capabilities and practices in energy efficiency, eServices and other areas to Aquila's customers. These programs will improve customer interaction with Aquila and provide customers with ways to better manage and monitor their energy use. See Ex. 21, Marshall Supp. Direct at 14. In addition, KCPL will leverage its existing AMR experience to develop an infrastructure with the Aquila service territory. KCPL will also use its eServices infrastructure to accelerate Aquila's move to a more accurate, more responsive customer experience. See Ex. 21, Marshall Supp. Direct at 15; Ex. 5, Bryant Supp. Direct at 1-9.

Customer service will also recognize synergies in the following areas: (1) As Aquila has more automation than KCPL, the merged organization will leverage Aquila's technology and expertise to increase call center automation and deliver productivity efficiencies; (2) The Energy Solutions eServices initiative will leverage existing KCPL technology and process expertise to general Non-Fuel O&M expense savings in the customer service area by decreasing call volumes and associated labor needs as Aquila customers migrate to more convenient electronic self-service alternatives via the Internet; (3) Labor efficiencies generated from economies of scale will be achieved by merging similar operations of the two companies. See Ex. 21, Marshall Supp. Direct at 16.

Information technology ("IT") will achieve synergies in the following areas: (1) Application portfolio rationalization; (2) Integration of the telecom and data networks, and moving to KCPL's privately owned network model; (3) Centralization of the production and disaster recovery Data Center facilities of the combined companies, including service, disk storage and core networking infrastructure; (4) Combining the Aquila and KCPL Energy Management Systems ("EMS") into the new KCPL EMS that will be implemented in 2008; and (5) Combining the Aquila and KCPL IT organizations, resulting in a manpower reduction. See Ex. 21, Marshall Supp. Direct at 16-17; Ex. 27, Tickles Supp. Direct at 2-6.

(b) Supply (Plant Operations and Energy Resource Management).

As discussed by KCPL Senior Vice President of Delivery John Marshall, Great Plains Energy will achieve new operational synergies by taking advantage of the expertise that KCPL and Aquila each have in such areas as coal plant operations, gas turbine operations, outage management, and reduced non-fuel O&M expenses. See Ex. 21, Marshall Supp. Direct at 18.

(c) Support (Facilities, Finance and Accounting, and Human Resources).

Integration of facilities will reduce costs as the companies will have a single headquarters building at 1201 Walnut, and Raytown will be the customer service campus with call center, billing and related functions. See Ex. 21, Marshall Supp. Direct at 20.

In the Finance and Accounting functions, synergies will be achieved primarily from eliminating redundancies and duplicate functions and processes. External audit fees will be substantially reduced. It is anticipated that of the 113 accounting and finance positions currently at Aquila, 55 positions will be needed in 2009. Id. at 21.

In the Human Resources function, synergies will also come from eliminating redundancies and duplicate functions. Systems will be standardized with best practices and technologies adopted. It is anticipated that of the 32 Human Resources positions currently at Aquila, 10 positions will be needed in 2009. By 2012, however, it is anticipated that only 2 incremental positions will be part of the Human Resources organization. The decrease in personnel will be driven by migrating to a different operating model enabled by technology. Id. at 21.

(d) Organizational and Management Benefits.

(1) Administration and Staff.

Following the Merger, the footprint of Great Plains Energy's utilities will be expanded into a larger contiguous service area covering over 18,000 square miles, serving nearly 800,000 customers.

Michael J. Chesser will remain Chairman of the Board of Great Plains Energy and KCPL, as well as Chief Executive Officer ("CEO") of Great Plains Energy. William Downey will remain the President of Great Plains Energy and KCPL, as well as the Chief Operating Officer of Great Plains Energy and CEO of KCPL. Following the Merger, Mr. Downey will become President and CEO of Aquila. The Merger will not alter the membership of the Boards of Directors of Great Plains Energy or KCPL. Great Plains Energy corporate headquarters will remain at 1201 Walnut. Once the Merger is finalized, Aquila corporate employees will relocate to Great Plains Energy's existing offices and facilities. See Ex. 13, Downey Direct at 3-4.

Similarly, with the exception of two Aquila high-level managers -- Jim Alberts and Scott Heidtbrink -- who have accepted offers of employment from Great Plains Energy and KCPL, there will be little or no change in the senior management team of Great Plains Energy and KCPL as a result of the Merger. There are no planned reductions in current union employees at Aquila, but Great Plains Energy and KCPL anticipate eliminating approximately 355 overlapping corporate positions on Day 1. See Ex. 31, Zabors Supp. Direct at p. 11.

Although Great Plains Energy and KCPL expect to retain the majority of the employees working in Aquila's Missouri operations, including all plant, transmission and distribution operations personnel, they plan to (i) eliminate duplicative or overlapping administrative positions, and (ii) convert the retained Aquila employees to either Great Plains Energy or KCPL employees. Great Plains Energy Services, Inc. ("GPES"), a wholly-owned subsidiary of Great Plains Energy, and KCPL will provide human resources, legal and accounting services to Aquila. See Ex. 1, Bassham Direct at 7. Almost 900 Aquila positions will be included in the combined company. Over the first five years the number will drop to 843 positions, as transitional roles are not needed and integration projects yield results. See Ex. 21, Marshall Supp. Direct at 9.

(2) Labor.

KCPL intends to pursue negotiations that will result in the integration of the Aquila employees represented by IBEW Local Nos. 695 and 814 into KCPL's three existing bargaining units. KCPL is committed to working with the IBEW regarding Aquila's union employees, as well as with KCPL's bargaining units. Great Plains Energy believes that by combining staff and labor personnel it will have more flexibility in aligning employees with customers' needs and will provide better service. Union employees will also have expanded opportunities and options in their work locations and assignments. Id. at 10-11.

5. The Criticisms of the Joint Applicants' Estimates of Synergies

As explained above, the Joint Applicants have presented extensive, detailed testimony regarding the expected synergies and cost savings that are expected to result from the integration of the Aquila and KCPL operations.

While Staff, OPC and the Industrial Intervenors witnesses have addressed the synergy savings issue in their testimony, none of these witnesses have performed an independent analysis of the likely level of synergies that will be achieved by the proposed transaction and operational integration of KCPL and Aquila. See Tr. 1820, 1665, and Ex. 300, Brubaker Rebuttal at 4. As a result, the Commission is unable to rely upon their analysis to determine an alternative level of cost savings that will result from the proposed transaction.

Staff witness Schallenberg testified that Staff did not review the specifics of the expected synergies because Staff believes that synergies can only occur if a formal merger or consolidation of KCPL and Aquila occurs, which is something that the Joint Applicants have not asked to do under Section 393.190. See Tr. 1820-23, 1844-49. Staff also argues that because its views the Joint Application as effectively seeking the merger or consolidation of Aquila and KCPL without requesting approval under the statute, any claimed synergies may be disregarded by the Commission without further analysis. See Ex. 100 Schallenberg Rebuttal and Staff Report at 11-12, 43-44. After carefully considering Staff's analysis, the Commission rejects Staff's position on this issue.

The Commission concludes that Staff's position is contrary to law and must be rejected. In order for a merger or consolidation to occur under Missouri corporate law, two entities must combine to form one entity. The only merger is the "Merger" – the merging of a special purpose subsidiary of Great Plains Energy into Aquila, with Aquila being the surviving corporation. KCPL and Aquila are not merging or consolidating. Both will remain separate entities with separate tariffs, separate rates, and separate generation and distribution assets. "Merge" and "consolidate" are not defined in the Chapter 393, so the Commission must look to other sources for guidance. Under Missouri law any two "domestic corporations may merge into one of the corporations ....". See § 351.410 (emphasis added). Similarly, any two "domestic corporations may consolidate in a new domestic corporation ...." See § 351.415 (emphasis added). Thus, Missouri corporation law does not support Staff's view that KCPL and Aquila are merging or consolidating.

Although none of the opposing witnesses provided an independent "bottom-up" analysis of the expected synergies that will result from the operational integration of KCPL and Aquila, Staff, OPC and Praxair witnesses have criticized the other aspects of the estimates of synergies: (1) Operating costs of the "merged" utility companies should not be adjusted for inflation by applying the Consumer Price Index [Ex. 100, Staff Report at 77-80]; (2) Uncollectible expense should not be excluded from the costs for the Customer Service function of the "merged" utilities [Ex. 100, Staff Report at 79]; (3) KCPL's estimates of synergy savings from the proposed "Merger" are overstated or too aggressive [Ex. 200, Dittmer Rebuttal at 36-39; Ex. 300, Brubaker Rebuttal at 9-11]; and (4) Enabled synergies should be excluded from the total pool of synergy savings that the applicants propose for sharing between customers [Ex. 200, Dittmer Rebuttal at 12-16].

The Commission finds that none of these criticisms are valid or supported when evaluated in the light of the factual record and accepted regulatory policy principles. See Ex. 19, Kemp Surrebuttal at 1-15. The Commission finds that the use of the CPI to calculate real synergy savings is conservative because it understates the level of inflation in the non-labor portion of non-fuel O&M expense, and because it compares total costs, not unit costs. See Ex. 19, Kemp Surrebuttal at 7.

With regard to Staff's criticism of the exclusion of uncollectible accounts from the Customer Service expense figures, Mr. Kemp testified that it is proper to exclude them from his analysis because they are more properly characterized as a contra-revenue item, not an expense item, and because they are more closely related to the level of fuel and purchased power costs than non-fuel O&M expenses. Id. at 9. The Commission accepts Mr. Kemp's analysis on this point, and rejects Staff's criticism regarding the exclusion of uncollectible accounts.

As explained above, OPC witness Dittmer made little attempt to evaluate the overall estimates of the synergy savings or the reasonableness of the methods for estimating synergies provided by the Joint Applicants. See Ex. 200 Dittmer Rebuttal at 35-36; Tr. 1666. Mr. Dittmer argued instead that there were certain "enabled" savings that, in his opinion, should be excluded from the analysis of synergy savings in this case. However, for the reasons already explained herein, the Commission does not accept OPC's analysis on this point.

Mr. Dittmer's assertion that the "enabled" synergy savings should be removed from any analysis that evaluates the benefits of the Merger is misplaced. As Mr. Kemp explains, both "created" and "enabled" synergy savings are unlocked by the Merger, and both require management initiative and action before they can be realized. See Ex. 18, Kemp Supp. Direct at 13. The Commission finds that while the distinction between such synergies is not always clear-cut, all of these savings are a direct result of the Merger and the subsequent operational integration of KCPL and Aquila.

Perhaps more importantly, the Commission finds that even if the overall synergies savings were reduced by the amount of "enabled" synergies identified by Mr. Dittmer, the remaining synergy savings would nevertheless exceed the transaction and transition costs needed to complete the proposed transaction.

Industrial Intervenor witness Brubaker argued that the synergy estimates should not be considered because they are above the median of industry experience. See Ex. 300 Brubaker Rebuttal at 10-11. The Commission also rejects this suggestion. As Mr. Kemp explains in his testimony, the synergies should be expected to be above the industry average since KCPL and Aquila are in close proximity and the potential for synergies is substantially greater than in other transactions. See Ex. 19, Kemp Surrebuttal at 10-12.

After carefully reviewing the competent and substantial evidence in the whole record, the Commission finds and concludes that the Joint Applicants' general approach to estimating synergies is consistent with industry practice, and is more detailed and better supported than most transactions. See Tr. 1062-65 (Kemp); Ex. 18, Kemp. Supp. Direct at 12-14. In addition, the evidence indicates that the estimated synergies are modestly above the industry average, in light of the adjacent territories and historical relationship of KCPL and Aquila. The Commission finds that the Joint Applicants' estimates of synergies appear reasonable on a stand-alone basis and are in the range that would be expected on the basis of comparable transactions in the utility industry. See Ex. 18, Kemp Supp. Dir. at 18-22.

Based upon evidence in this case, the Commission finds that the Joint Applicants' estimates of the synergies that will result from the operational integration of

KCPL and Aquila are reasonable and are expected to afford substantial benefits to customers.

b. Could any of the synergy savings be achieved by KCPL or Aquila on a stand-alone basis absent the acquisition/consolidation/integration?

The competent and substantial evidence indicates that the Joint Applicants have taken care to separate synergies that may be achievable in their stand-alone capacities from the synergy savings that are unlocked by the Merger. As both KCPL President William H. Downey and Bridge Group's Wallace Buran have testified, the synergies that result from the Merger are not related to savings from stand-alone operations, and are rather a direct result of the companies working together. See Ex. 13, Downey Direct at 4-5; Ex. 6, Buran Supp. Direct at 10-11.

OPC witness Dittmer suggested that "enabled" savings should be excluded from the analysis by the Commission since he believes such savings could be achieved absent the proposed transaction. See Ex. 200, Dittmer Rebuttal at 27-37. However, the Commission does not accept this analysis. During cross-examination, the evidence indicated that much of Mr. Dittmer's analysis was based upon the unrealistic premise that the "enabled" savings identified by Mr. Dittmer could occur, even if the proposed transaction was not completed. See Tr. 1668-75 (Dittmer); See also Tr. 1419-23 (Zabors). The Commission is not willing to rely upon this premise in its analysis. The Commission is not convinced that many of the programs cited by Mr. Dittmer as "enabled" savings are likely to be achieved, absent the completion of the proposed transaction.

Perhaps more importantly, the Commission has concluded that the distinction between "created" and "enabled" savings is not helpful to its analysis of the proposed transaction. See Tr. 1415-16 (Zabors). Under the Joint Applicants' revised Regulatory Plan, any savings in a test year whether classified as "created" or "enabled" will be passed through to customers in future rate cases. The Commission has therefore concluded that the distinction between "created" and "enabled" savings is not helpful or necessary for purposes of this analysis.

c. Are any of the identified synergy savings dependent on KCPL and Aquila integrating their operations?

The Commission finds and concludes that many of the benefits to KCPL and Aquila customers from the proposed transaction come from integrating various KCPL and Aquila functions and activities. However, as a legal matter, under the Joint Applicants' proposal, Aquila will continue to own its own generation, transmission and distribution facilities, as well as other utility plant. Aquila will continue to serve its customers under its separate electricity and steam tariffs. See Ex. 15, Giles Surrebuttal at 3. Aquila and KCPL will not jointly dispatch their units without first obtaining the regulatory approvals necessary to do so. The Commission concludes that the fact that KCPL and Aquila will integrate their operations does not require any regulatory approvals not already requested in this proceeding. See 39, Giles Add'l Supp. Direct at 1-3. However, the Joint Applicants stated in their testimony, that if the Commission ultimately determined that some additional regulatory authorization is required, the Joint Applicants were requesting such relief in their Joint Application. Specifically, in paragraph (k) of the Joint Application, Joint Applicants requested that the Commission issue an order "Granting such *other relief as may be necessary and appropriate to accomplish the purposes of the Merger* and this Joint Application, and to consummate the Merger and related transactions in accordance with the Agreement and Plan of Merger and this Joint Application." (emphasis added)

Staff, OPC and the Industrial Intervenors have argued that the Joint Applicants have not properly requested authority to integrate the operations KCPL and Aquila following the close of the proposed transaction. (Staff Br. at; Public Counsel Br. at; Industrial Br. at) After reviewing the Joint Application and the accompanying testimony in this proceeding, the Commission does not agree with the positions being espoused by Staff, OPC and the Industrial Intervenors on this issue.

Realizing synergy savings is clearly a "purpose of the Merger" and integrated operations are clearly "necessary and appropriate to accomplish" that purpose, the Commission concludes that the Joint Applicants have requested the authority to integrate the operations of KCPL and Aquila to produce substantial synergy savings following the close of the Merger. However, the Commission also believes that operational integration of KCPL and Aquila given the proposed common ownership does not require specific authorization from the Commission under Chapters 386 and 393 other than what the Joint Applicants requested on their Application and on the additional testimony incorporated by reference in the Application. The Commission concludes that such operational integration of KCPL and Aquila is in the public interest, and will result in substantial savings to customers. Therefore, the Commission believes it is appropriate to encourage the operational integration of KCPL and Aquila, and hereby approves the operational integration of KCPL and Aquila following the close of the Merger of GPE and Aquila.

d. Is it likely that the actual synergy savings exceed the sum of the transaction, transition and incremental interest costs that the Joint Applicants propose to recover over the first five (5) years following the merger/merger/consolidation? If not, is the proposed merger not detrimental to the public interest?

The Commission finds and concludes that the competent and substantial evidence demonstrates that the total utility operational synergies that are expected to result from the proposed transaction are $305 million over the first 5-year period. In addition, the evidence indicates that the proposed transaction is expected to produce substantially more savings to customers over a longer period. According to Great Plains Energy's evidence, the total utility operational synergies created would total $755 million through year 10. On a Missouri jurisdictional basis, the total synergies are equal to $549 million for 10 years, with $222 million expected during the first 5 years. See Ex. 37, Bassham Add'l Supp. Direct at 3.

The Joint Applicants' witness Zabors testified that there was approximately $50 million of synergies related to employee reductions, and an additional $30 million related to the sale and closing of the Aquila headquarters building and other facilities. These two areas of synergies alone nearly equal the expected transition and transaction costs. See Tr. 1417 (Zabors).

The Commission finds and concludes that the actual utility operational synergy savings will substantially exceed $90 million, the sum of the $47.2 million in Missouri Transaction Costs and $42.8 million in Missouri Transition Costs. As noted above, the

Joint Applicants are no longer requesting to recover Aquila's incremental interest costs on outstanding debt.

3. Transaction Cost Recovery

a. Should Transaction Costs be directly charged to ratepayers through cost of service amortizations? Would the proposed merger be detrimental to the public interest if the Commission did so?

The Joint Applicants have requested that $64.9 million in Transaction Costs ($47.2 Missouri jurisdictional) be analyzed by the Commission as it reviews the costs and benefits of this transaction, and that recovery of these costs should be considered in a future rate case. See Ex. 37, Bassham Add'l Supp. Direct at 5 and Ex. 2, Bassham Supp. Direct at 8; Ex. 31, Zabors Supp. Direct at 14-15. Great Plains Energy is not requesting recovery of any acquisition premium or adjustment. See Ex. 29, Wright Direct at 3; Tr. 1300-01 (Bassham).

Staff, OPC, and other parties have opposed the inclusion of any of the transaction costs in rates, arguing that such costs should be borne by shareholders. See Staff Br. at __; Public Counsel Br. at __.

The Commission finds that, although state commissions have split on whether to allow the recovery of Transaction Costs in rate cases, the general rule is: "The costs occurred in effecting the purchase, if ordinary, necessary, and overall not in excess of book value of the assets, should be allowed as acquisition costs." See L.S. Goodman, The Process of Ratemaking at 783 (1998). The Transaction Costs of $64.9 million clearly do not exceed the book value of Aquila's assets.

In the past Staff has concurred with the request of merging utilities to amortize Transaction and Transition Costs over time. In 1997 Staff agreed with Union Electric Co. in its Merger with Central Illinois Public Service Co. that "[a]ctual prudent and reasonable merger transaction and transition costs (estimated to be $71.5 million) shall be amortized over ten years beginning the date the merger closes." In re Union Elec. Co., 6 Mo. P.S.C. 3d 28, 176 P.U.R. 4th 201 (Mo. P.S.C., Feb. 21, 1997).

However, in this case Staff opposes any inclusion in rates of Transaction Costs based upon a narrow application of accounting terminology. KCPL witness Lori Wright testified that the Joint Applicants did not request authorization to recover the acquisition premium of approximately $135 million, which she viewed as a "component of goodwill associated with the Merger." See Ex. 29, Wright Direct at 3. She went on to state that the applicants "are requesting recovery of the transaction costs component of goodwill over a five-year period ...." Id. As the controller of KCPL and Great Plains Energy, Ms. Wright made clear that Great Plains Energy is required to use purchase accounting methods to record the Merger. She stated: "The excess of the purchase price, including transaction costs, over the fair market value of the net identifiable assets is recorded as goodwill. Examples of the transaction costs include investment banker fees and legal fees." Id. at 4. See Ex. 30, Zabors Direct at 14; Ex. 31, Zabors Supp. Direct at 14-15.

However, this is not the kind of "goodwill" as has been defined by the courts in reviewing regulatory cases. The Supreme Court has defined goodwill as "that element of value which inheres in the fixed and favorable consideration of customers, arising from an established and well-known and well-conducted business." Los Angeles Gas & Elec. Corp. v. Railroad Comm'n, 289 U.S. 287, 313 (1933); Des Moines Gas Co. v. Des

Moines, 238 U.S. 153, 165 (1919). As a leading commentator on regulatory principles has stated: "To include goodwill in the rate base would involve circular reasoning; its value depends on a utility's earnings, which, in turn, depend on the rates established by the Commission. Its inclusion, therefore, would permit the capitalization of expected future earnings. Goodwill has not been accepted for purposes of ratemaking." See Charles F. Phillips, Jr., The Regulation of Public Utilities, 351 (1993).

Regardless of the accounting protocols, the Commission finds that the Transaction Costs incurred in this proceeding are best viewed as "costs to achieve" which were necessary to ensure that a merger process was effective, synergy savings are achieved, and that the Merger is completed. See Ex. 29, Wright Direct at 3. These costs are discussed in detail in the Direct and Supplemental Direct testimony of Robert T. Zabors. See Ex. 30, Zabors Direct at 12; Ex. 31, Zabors Supp. Direct at 14-15 and Sched. RTZ-10.

Transition costs are now estimated to be $58.9 million ($42.8 million Missouri jurisdictional). See Ex. 37, Bassham Add'l Supp. Direct at 5. These costs will be incurred to integrate Aquila and KCPL operations. Without incurring these costs, the companies could not achieve the estimated synergies, while maintaining or improving system reliability for Aquila's and KCPL's customers. See Ex. 3, Bassham Surrebuttal at 3. These costs include third party expenses to support the integration from legal, human resources, information technology, and other process perspectives. No party has opposed the deferral and amortization of transition costs in this proceeding.

The Commission will authorize KCPL and Aquila to defer Transaction and Transition costs and be amortized over five years. The Commission finds that

Transaction and Transition costs are necessary expenses for the completion of the proposed Merger and the operational integration of KCPL and Aquila. The Commission will give consideration to their recovery in future rate cases. At that time, the Commission will expect that KCPL and Aquila demonstrate that the synergy savings exceed the level of the amortized Transaction costs as well as the respective Transition costs included in the test year cost of service expenses in future rate cases.

4. Affiliate Transaction Rule Waiver/Variance

a. Should GPE/KCPL and Aquila be granted a waiver/variance from the provisions of the affiliate transactions rule under 4 CSR 240.015 as it might pertain to transactions between Aquila and KCPL? Will the proposed Merger be not detrimental to the public interest if the Commission does so?

b. Have GPE/KCPL and Aquila complied with the Commission's rules regarding a request for a waiver or variance from the affiliate transactions rule, such as the requirement regarding making a showing of good cause?

c. Have GPE/KCPL and Aquila provided adequate details for there to be clarity respecting what provisions of the affiliate transactions rule that GPE/KCPL and Aquila are seeking relief from?

In this proceeding, the Joint Applicants have argued that the Affiliate Transaction Rule does not apply to transactions between KCPL and Aquila. In the alternative, the Joint Applicants have requested a waiver from the Affiliated Transactions rule to the extent it would inhibit transactions between KCPL and Aquila after the close of the transaction. See Ex. 39, Giles Supp. Direct at 3-4; Ex. 15, Giles Surrebuttal at 7-8. The Joint Applicants have pointed out that the asymmetrical pricing provisions inherent in the Affiliated Transactions rule are impossible to comply with for transactions between regulated public utilities. Id.

Staff has suggested that the Affiliate Transaction rule should apply, and that no waiver should be granted at this time. Staff has argued that the request for waiver is unnecessary and is beyond the scope of the proceeding since the Joint Applicants have not requested authority to consolidate KCPL and Aquila. See Ex. 200, Schallenberg Direct and Staff Report at 64-67. In addition, the Staff has recommended that the Commission reject the Joint Applicants' request for a waiver from the provisions of the Affiliated Transactions rule. Id.

In resolving this issue, the Commission notes that the Commission's Affiliate Transaction Rule, 4 CSR 240-20.015, was enacted in 2003 with a "purpose" section that states:

> **This rule is intended to prevent regulated utilities from subsidizing their non-regulated operations.** In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record-keeping requirements applicable to any Missouri Public Service Commission (commission) regulated electrical corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in section 386.754, RSMo. Supp. 1998, by the General Assembly of Missouri). **The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities.** [emphasis added]

Despite the fact that 20.015(1)(A) broadly defines "affiliate" as an entity that controls or is controlled by, or is under common control with a regulated electrical corporation, the Commission finds and concludes that text of the rule shows that it is only applicable to transactions between a regulated electrical corporation and an unregulated affiliate. For example, Section 2.015(1)(H) defines "preferential service" as "information or treatment or actions by the regulated electrical corporation which places the affiliated entity at an unfair advantage over its competitors." Regulated electrical corporations do not have traditional competitors. Thus, the purpose of the Rule is to prevent a regulated electrical corporation from sharing information that would help an unregulated affiliate.

Similarly, Section 20.015(2)(E) and (F) both are premised on the concept that "information" and "marketing materials" are provided by a regulated electrical corporation to an affiliate that is not regulated by the Commission. Likewise, Sections 20.015(4) and (6) concerning records and access to records require that a regulated electrical corporation keep its records separate from those of its affiliates and make those records available to the Commission.

Since both Aquila and KCPL will continue to be regulated electrical corporations after approval of the transaction, the Commission concludes that each will be subject to the Commission's recordkeeping requirements. The Commission will have, as it does today, full access to both entities' records. The rule was clearly designed to give the Commission access to the records of unregulated entities, just as the Commission now has full access to the records of regulated electrical corporations.

In keeping with the objective of the Rule, the Commission has stated that "[t]he purpose of the affiliate transaction rules is to prevent cross subsidization, in which a conglomerate including a regulated entity seeks to shift the costs of its unregulated activities to its regulated customers." In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 17, Report and Order on Rehearing at 38 (2005). Because Aquila and KCPL will both be regulated electrical corporations after the transaction is completed, the Commission concludes that the transactions between

KCPL and Aquila do not involve the cross-subsidization that this rule was intended to prohibit.

The Affiliate Transaction Rule, as explained in the surrebuttal testimony of KCPL witness Chris Giles, has asymmetrical pricing requirements which are designed to make a regulated utility indifferent to purchasing or selling goods to an unregulated affiliate. While the Commission believes that this provision makes sense if a transaction involved KCPL and an unregulated affiliate, it does not make sense when both parties are regulated electrical corporations. See Ex 39, Giles Surrebuttal at 7. In this case, since KCPL would be on one side of a transaction and Aquila on the other side, it would be impossible to comply with the rule. Id. For example, if Aquila sold KCPL an item with a fair market value of $15 and a fully distributed cost of $10, KCPL as the buyer would be required by Section 20.015(2)(A) to pay Aquila $10, the lower of the fair market value or the fully distributed cost. However, Aquila could only sell the item to KCPL at $15, the higher fair market value. Thus, the transaction could not occur under this interpretation of the Rule.

Since the synergies are premised on the ability of KCPL and Aquila to exchange goods and services at cost, the Rule would actually prevent benefits from accruing to Missouri ratepayers. The literal application of the Rule in this case prevents synergies from occurring between KCPL and Aquila, and actually increases costs to ratepayers.

Since the Commission has concluded that that the Affiliate Transaction Rule does not apply to transactions between regulated affiliates, it is unnecessary to address the KCPL and Aquila request for a waiver of the entire rule as it pertains to transactions between them. As shown above, the asymmetrical pricing requirements of the rule would prevent Aquila and KCPL from taking advantage of the synergies between the two companies. This analysis would constitute "good cause" for the waiver, however. In addition, the prevention of duplicative and unnecessary regulatory requirements would constitute "good cause" for the waiver of these sections of the rule if the rule applied to such transactions between regulated public utility affiliates.

5. Service Quality

a. Can service quality problems resulting from a merger/consolidation/acquisition of a works or system necessary or useful in the performance of duties to the public preclude the merger/consolidation/acquisition from being not detrimental to the public interest?

b. Has GPE/KCPL taken adequate measures to ensure that its proposed post-consolidation/post-merger/post-acquisition operations will not be detrimental to the public interest by precluding service quality issues arising from the consolidation/merger/acquisition?

In this proceeding, Staff has raised concerns that the proposed transaction could adversely affect the quality of service of KCPL and Aquila. See Ex. 200, Schallenberg Rebuttal and Staff Report at 68-77. The Joint Applicants, on the other hand, have presented evidence that quality of service will be expected to achieve Tier 1 status after the close of the transaction. See Ex. 16, Herdegan Direct at 12. In addition, the Joint Applicants recommend customer service performance reviews at regular intervals by the Commission Staff to ensure that there is no adverse impacts upon customer service. See Ex. 17, Herdegan Supp. Direct at 17-22.

While issues of service quality can affect post-acquisition operations of a utility, the Commission finds and concludes that the Joint Applicants have taken the necessary steps to assure customers and the Commission that service will not deteriorate. Staff's concerns in this case arise from the 1994 acquisition of the Missouri gas assets of Western Resources, Inc. by Southern Union. Although an acquiring utility must be alert to potential service quality issues, the Commission finds that the problems cited in Staff's report that followed a merger that occurred almost 15 years ago are not directly relevant to this case.

Moreover, the testimony of KCPL Vice President of Customer Operations William Herdegen explains the steps that will be taken to ensure that reliability will not be adversely affected by the Merger. See Ex. 16, Herdegan Direct at 16; Ex. 17, Herdegan Supp. Direct at 17-22. The evidence indicates that KCPL and Aquila have reviewed both companies' management structure, practices, technology and the use of the field workforce to ensure that both companies can reach and maintain Tier 1 performance objectives. According to this testimony, the Joint Applicants' strategy is to adopt the KCPL organization design to minimize change as much as possible for combining the two companies' customer service functions. Teams were formed using subject matter experts from each company based on the current KCPL functional areas in the customer service organization as the baseline. See Ex. 17, Herdegen Supp. Direct at 17. In this way all work was accounted for at Aquila and properly mapped into the KCPL organization. As a result of this analysis, 124 incremental positions will be added to KCPL's customer service team after the transaction is complete. This number represents the sum of the allocation from Aquila's Central Service team to its Missouri electrical properties, plus the direct cost areas of meter reading, customer service personnel and the customer relations team. In addition, with the potential for additional customer questions for the nine months following the Merger, an additional 12 employees will be retained in the Care Center to respond to these expected inquiries. Id. at 18.

The evidence also demonstrates that KCPL has reached an agreement with Aquila's Jim Alberts to lead Customer Service operations for both companies. According to the testimony of the Joint Applicants, Mr. Alberts is a key reason for Aquila's successful and award-winning customer service operations. KCPL expects that he will be able to use his experience to deliver high service levels. See Ex. 22, Marshall Surrebuttal at 12.

To maintain the strong levels of performance historically demonstrated by both Aquila and KCPL, Commission will adopt the Joint Applicants' recommendation that KCPL and Aquila review customer service performance at regular intervals with the Staff, OPC and other interested parties to ensure that service will continue at current levels. See Ex. 17, Herdegen Supp. Direct at 21.

6. Transmission and RTO/ISO Criteria

a. Have Applicants demonstrated that the proposed transaction is not detrimental to the public interest even though they have not addressed the rate and other impacts of their intent to have Aquila participate in the Midwest ISO rather than SPP?

In this proceeding, Independence has argued that it is necessary for the Commission to address the rate impacts of the Joint Applicants' intent to have Aquila participate in the Midwest ISO rather than the Southwest Power Pool ("SPP"). In particular, Independence has asserted that the Commission should require the Joint Applicants to provide analysis of the rate impacts of the Merger, impacts of joint generation dispatch, and the impacts of Aquila's participation in the Midwest ISO as compared to SPP. See Ex. 1300, Mahlberg Rebuttal at 8.

The Joint Applicants have argued, however, that it is unnecessary and premature to require the Joint Applicants to evaluate the potential impacts of Aquila's RTO status. Aquila has an application pending before the Commission in Case No. EO-2008-0046, regarding the transfer functional control of its transmission facilities to Midwest ISO or another RTO. The evidentiary hearing in that case concluded April 15, 2008. In addition, the Joint Applicants have suggested that the evidence in this proceeding indicates that the Merger will have no direct impact on KCPL's or Aquila's RTO status. KCPL is a full member of the Southwest Power Pool ("SPP"). See Ex. 25, Spring Surrebuttal at 1. KCPL's participation in the SPP has been approved by this Commission, the Kansas Corporation Commission ("KCC"), and FERC. Any change to KCPL's RTO status would require the approval of those commissions.

Because the Commission is currently considering Aquila's RTO status, the Commission concludes that it would be improper to require the applicants to address the potential impacts of Aquila's RTO status in this proceeding.

b. Have Applicants demonstrated that the proposed transaction is not detrimental to the public interest even though they have not addressed the rate and other impacts of potential joint dispatch of the combined companies' generation resources, including the impacts on transmission and interconnection availability?

As mentioned above, Independence has also argued that the Commission should evaluate the rate and other impacts of potential joint dispatch of the combined companies' generation resources in this proceeding. See Ex. 1300, Mahlberg Rebuttal at 8.

The Joint Applicants have argued that it is premature to require the Joint Applicants to evaluate the potential impacts of joint dispatch. The Joint Applicants are not proposing to dispatch jointly the Aquila and KCPL generation fleets, and will retain the utilities' respective control areas. See Ex. 11, Crawford Direct Testimony at 5. In addition, the Joint Applicants have pointed out that any future decision to dispatch jointly would be subject to regulatory review, at which time a record would be fully developed concerning the impacts of such action. See Ex. 25, Spring Rebuttal at 4.

The Joint Applicants pointed out that in the FERC proceedings, Docket Nos. EC07-99-000 and EL07-75-000, Independence asked FERC to require KCPL and Aquila to quantify the impacts of joint dispatch before being permitted to merge. In its order approving the merger, FERC denied the request, reasoning:

> Independence's argument that the Commission cannot reasonably conclude that proposed transaction presents neither horizontal nor vertical market power issues without analyzing the possibility of joint dispatch of KCP&L's and Aquila's generation is misplaced. First, our analysis focuses on merger-related effects on competition, and there is no evidence in the record that KCP&L and Aquila plan to engage in joint economic dispatch following the merger.

> Second, even if KCP&L and Aquila do pursue a joint economic dispatch agreement, Applicants have shown that the merger will not adversely affect competition. Regarding horizontal market power, Applicants' analysis shows that the combination of KCP&L's and Aquila's generation will not materially increase market concentration using the AEC measure, indicating that the merger will not harm competition in the relevant market; thus, even if Applicants do engage in joint dispatch, the merger will not create or enhance the ability to exercise market power.
>
> Further, if KCP&L and Aquila do pursue a joint dispatch agreement, they will need to file an operating agreement with the Commission, at which time Independence will have the opportunity to participate in the proceeding and protect its interests. Therefore, we will not require a further analysis of the effect of joint dispatch or condition section 203 approval on Applicants not engaging in joint dispatch, as proposed by Independence.

Great Plains Energy Inc., 121 FERC ¶ 61,069 at Para. 36 (2007).

The Commission concludes that Independence's concerns regarding transmission and interconnection availability in this proceeding are misplaced. KCPL and Aquila fulfill specific obligations set by FERC Orders 888 and 890 regarding open-access, non-discriminatory transmission service to customers. Following the Merger, KCPL and Aquila will continue to provide transmission service through an Open Access Transmission Tariff ("OATT").

Independence also raised this issue before FERC, arguing that KCPL and Aquila had not adequately evaluated the impact of the Merger on transmission availability as part of their market power analysis in support of their application. FERC held as follows:

> We find that the Applicants have shown that the proposed transaction will not adversely affect competition. Regarding the horizontal combination of generation capacity, Applicants' analysis shows that for all relevant geographic markets, there are no screen failures for AEC, the relevant measure in this case, indicating that it is unlikely that the transmission will harm competition. In addition, the Black Hills Acquisition will not result in the consolidation of generating assets in any relevant market. Given that

> the proposed transaction does not materially increase the merged firm's market share or market concentration, we conclude that it is not likely to create or enhance Applicants' ability to exercise market power in any wholesale electricity markets.
>
> Regarding the vertical combination of upstream transmission and natural gas assets with downstream generating capacity, Applicants have shown that the proposed transaction will not create or enhance the ability or incentive to use control of upstream assets to harm competition in downstream wholesale electricity markets. We reach this conclusion because: (1) Applicants' transmission facilities will be operated pursuant to an OATT, thus ensuring that they cannot be used to frustrate competition in wholesale electricity markets; and (2) there is no overlap between Applicants' natural gas transportation assets and downstream electric generation capacity in any relevant wholesale market. We discuss the specific issues raised by protestors below.
>
> Independence argues that Applicants fail to show that Independence will not be affected by decreased transmission availability. However, it does not offer any evidence that less transmission will be available to it. Applicants' transmission system is subject to a Commission-approved OATT, which ensures open access to the transmission system.
>
> Regarding merger-related increases in vertical market power, we are not persuaded by Independence's argument. Applicants' transmission facilities are currently and will continue to be operated pursuant to an OATT, thus ensuring that they cannot be used to frustrate competition in wholesale electricity markets.

Great Plains Energy Inc., 121 FERC ¶ 61,069 at Para. 34, 35 and 37 (2007) (*footnotes omitted*).

The Commission finds and concludes that FERC considered the same arguments Independence raises in this proceeding and concluded that the Merger did not create any transmission availability concerns. No further action is necessary by this Commission to address this issue.

c. **Commission approval of the Joint Application be conditioned upon Aquila being required to join and operate its generation and transmission facilities under the auspices of the Southwest Power Pool (SPP) Regional Transmission Organization (RTO) with KCPL within four (4) months of approval of the merger?**

In this proceeding, Dogwood and MJMEUC have argued that the Commission should condition the approval of the proposed transaction upon Aquila being required to join and operate its generation and transmission facilities under the auspices of the SPP RTO with KCPL. See Ex. 700, Janssen Rebuttal at 9; Ex. 800 Grotzinger Cross-surrebuttal at 4.

The Joint Applicants, on the other hand, have argued that a full and thorough record is being developed in another proceeding (i.e. Case No. EO-2008-0046) concerning the benefits and costs associated with Aquila's RTO status. In particular, the Joint Applicants suggested that there will be extensive evidence concerning the relative cost-benefit analyses of Aquila joining MISO, SPP, or reverting back to a stand-alone transmission provider. As a result, the Joint Applicants recommend that the Commission decline to consider Aquila's RTO status in this case, and instead permit the record in Case No. EO-2008-0046 to fully develop. See Ex. 25, Spring Rebuttal at 2-3.

After considering the various arguments and evidence of the parties in this proceeding, the Commission has concluded that it should not condition its approval of the Merger on Aquila being required to join SPP, particularly in light of Aquila's Case No. EO-2008-0046. A full evidentiary record has been developed in that case concerning the benefits and costs associated with Aquila's RTO status. Such evidence is critical for the Commission's evaluation of which RTO, if any, would best serve Aquila and its customers. SPP and Midwest ISO are both active participants in the Aquila case, as are Independence and Dogwood Energy LLC. However, neither SPP nor Midwest ISO are parties to this case.

Moreover, in response to essentially identical arguments, FERC refused to condition its approval of the Merger on Aquila being required to join SPP. FERC found as follows:

> We will decline the protestors' request to condition our section 203 authorization on the Applicants joining a particular RTO. When necessary, the Commission conditions merger authorization in order to address specific, merger-related harm; but no such harm has been identified in this proceeding. Moreover, the Applicants' future RTO status is unclear at this time and therefore, there is no baseline against which to assess merger-related changes to rates.

Great Plains Energy Inc., 121 FERC ¶ 61,069 at P 50 (2007). FERC carefully considered Independence's assertions concerning the different cost structures of SPP and Midwest ISO, which are the same issues raised here by Independence and Dogwood Energy. Just as FERC declined to condition the Merger on a particular RTO status for KCPL or Aquila, this Commission will also do so.

d. Should Commission approval of the Joint Application be conditioned upon Aquila and KCPL being required to consolidate their balancing authority areas within six (6) months of approval of the Merger?

Similarly, Dogwood has argued that the Commission should condition the approval of the proposed transaction upon Aquila and KCPL being required to consolidate their balancing authority areas. See Ex. 700, Janssen Rebuttal at 11-14.

The Joint Applicants have pointed out that this issue is relevant to the Commission's evaluation of Aquila's RTO status in Case No. EO-2008-0046. In addition, SPP is presently evaluating consolidating Balancing Authority operations within its footprint. Given the significance of these activities, the Joint Applicants have recommended that the Commission decline to direct KCPL and Aquila to consolidate their Balancing Authority operations in this case. While KCPL continues to support SPP in its development of a fully operational, consolidated Balancing Authority market function with the anticipation of participating in such region-wide consolidated Balancing Authority services given the determination of an appropriate level of operational efficiencies and benefits to its customers, the Joint Applicants have argued that it would be premature and potentially redundant for KCPL and Aquila to pursue consolidation of their Balancing Authority operations. See Ex. 25, Spring Rebuttal at 6-7.

After considering the various arguments and evidence of the parties in this case, the Commission has concluded that it should not condition its approval of the Merger on KCPL and Aquila consolidating their balancing authority areas within a specific time. This Commission is presently evaluating Aquila's RTO status in a separate proceeding. Moreover, SPP is presently evaluating consolidating balancing authority operations within its footprint.

Until these matters are resolved, the Commission believes it would be premature and potentially redundant for KCPL and Aquila to pursue consolidation of their balancing authority operations. The Commission therefore declines to accept the recommendation of Dogwood to require the consolidation of the Balancing Authority operations of KCPL and Aquila in this proceeding.

7. **Municipal Franchise**

a. Should Commission approval of the Joint Application be conditioned upon the negotiation of a single, unitary franchise between KCPL/Aquila and the City of Kansas City within nine (9) months of the Commission's approval of the Merger?

Kansas City has requested that the Commission abrogate its Franchise Agreement with KCPL as a condition of approving the Merger. See Ex. 400, Cauthen Rebuttal at 3-4, 10-11. St. Joseph has generally concurred in Kansas City's recommendation on this issue. See St. Joseph Br. at .

In the Rebuttal Testimony of City Manager Wayne Cauthen, Kansas City sets forth its reasons why it believes it is desirable to extinguish the Franchise Agreement and negotiate a franchise agreement that has a term limit. Kansas City suggested that it lacks adequate guidance in determining who pays the costs associated with relocations, line extensions and under-groundings. See Ex. 400, Cauthen Rebuttal at 3-4, 10-11.

The Joint Applicants have opposed this recommendation on a number of grounds. First, KCPL argues that there is a valid and binding contract that sets forth the rights and obligations of each signatory to the Franchise Agreement. KCPL has repeatedly declined to re-negotiate its Franchise Agreement with Kansas City. By asking the Commission to condition approval of the proposed Merger on KCPL's willingness to sign away its contractual rights under the Franchise Agreement, the Joint Applicants assert that Kansas City is asking the Commission to impair KCPL's rights under the Franchise Agreement in contravention of law. Second, KCPL's tariffs address requests for relocations and line extensions, and disputes in this area with Kansas City have been limited. Third, the Joint Applicants suggest that Kansas City is under a mistaken impression that KCPL has asked the Commission to approve a merger between KCPL and Aquila, and in reality, KCPL and Aquila will continue to maintain separate corporate entities and control areas for the foreseeable future. As a result, the Joint Applicants argue that discussions regarding the propriety of consolidating franchise agreements are premature. Finally, the Joint Applicants argue that the proposed Merger will not result in any changes that will have an adverse effect on Kansas City. See Ex. 22, Marshal Surrebuttal at 13-17.

The Commission finds that the evidence indicates that in 1881 Kansas City and KCPL's predecessor-in-interest entered into a valid and binding Franchise Agreement that sets forth the respective parties' rights and obligations. In addition, the evidence indicates that for decades the City has urged KCPL to terminate the Franchise Agreement and negotiate an agreement of a limited term. Although it has considered these requests, KCPL has refused to alter its rights and obligations under the Franchise Agreement because its benefits and protections for KCPL customers and shareholders outweigh the inducements offered by Kansas City.

Such issues are addressed by KCPL's Commission-approved tariffs. For example, if Kansas City or any other municipality asks KCPL to relocate its facilities that are located in a private easement, Kansas City pays the relocation costs. If the facilities are located on public rights of way, any changes are done at KCPL's expense. See Section 15.08, Changes and Removal, Municipal Lighting Service, KCPL General Rules and Regulations, P.S.C. Mo. No. 2 (Tariff Sheets 1.51-52) (1989). See also id., Section 10.03(e)(v), Underground Distribution System in Residential Subdivisions.

Within the context of Kansas City's efforts to encourage existing businesses to expand their operations and to attract other businesses, the Commission believes that the primary purpose of these tariffs is to ensure that KCPL's customers do not subsidize the development costs of private entities and that existing rates and service levels are maintained. See May Dep't Stores Co. v. Union Elec. Light & Power Co., 107 S.W.2d 41, 49 (Mo. 1937)("May Dep't Stores").

The Missouri Supreme Court has held that establishing reasonable rates for public service falls within the police power of the state. May Dep't Stores, 107 S.W.2d at 49; State ex rel. City of Sedalia v. PSC, 204 S.W. 497, 498-99 (Mo. 1918)("Sedalia"). The Missouri Constitution commands that "[t]he exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individual or the general well-being of the state." See Missouri Const., § 5, art. 12; Sedalia at 498. This prohibition is not limited to private corporations. The Supreme Court also has concluded that the legislature cannot "authorize a municipal corporation to make a contract abridging or limiting ... the police power." See State ex rel. Kansas City v. PSC, 524 S.W.2d 855, 859 (Mo. 1975)(police power cannot be hindered or frustrated by contracts between individuals, companies or governmental subdivisions); State ex rel. Kansas City Pub. Serv. Co. v. Latshaw, 30 S.W.2d 105, 108 (Mo. 1930)(Legislature cannot authorize municipal corporations to make contracts with utilities regarding rates that prevent the state from establishing reasonable rates); Sedalia at 497.

The Commission finds that the Kansas City Franchise Agreement does not contain a limitation on its duration. Under Missouri law, a franchise agreement that does not specify a period of duration is a grant in perpetuity. Missouri Pub. Serv. Co. v. Platte-Clay Elec. Cooperative, 407 S.W.2d 883, 889 (1966); State ex rel. McKittrick v. Missouri Pub. Serv. Corp., 174 S.W.2d 871, 879 (Mo. 1943); State ex rel. Chaney v. West Missouri Power Co., 281 S.W. 709, 714 (Mo. 1926). Perpetual franchise agreements are grants of property rights protected from impairment by the Contract Clauses of the United States and Missouri Constitutions. See U.S. Const., art. I, § 10; Missouri Const., art. I, § 13.

The Commission finds and concludes that it lacks authority under Missouri and federal law to abrogate the existing Franchise Agreement between KCPL and Kansas City, and any such action would not be in the public interest.

In the absence of a finding by the Commission that the Franchise Agreement frustrates or hinders the proper exercise of its police power, the Commission concludes that it cannot grant Kansas City's requested relief without impairing KCPL's contractual rights. XO Missouri, Inc. v. Maryland Heights, 256 F. Supp. 2d 966, 974 (E.D. Mo. 2002)("XO Missouri").

The Commission finds that the continued operation of the Franchise Agreement in no way frustrates or hinders the Commission's ability to exercise the State's police power. In addition, Kansas City has failed to introduce any credible evidence into the record upon which the Commission could base a decision to abrogate the Franchise Agreement, or condition the proposed Merger on KCPL's "willingness" to relinquish its rights under the Franchise Agreement. Kansas City has merely argued that it wants a better deal. Kansas City has failed to introduce into the record any credible evidence that the Franchise Agreement, after governing the relationship between Kansas City and KCPL for 126 years, now threatens the Commission's ability to protect the health, safety and general welfare of the citizens of Missouri.

> Legislatures and municipalities cannot, in the exercise of assumed police powers, violate [franchise agreements], and overthrow vested rights . . . . The limit to the exercise of police power in these cases must be this: The regulations must have reference to the comfort, safety or welfare of society; they must not be in conflict with any of the provisions of the [franchise agreement]; and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the [franchise agreement] confers. In short, they must be police regulations in fact, and not amendments of the [franchise agreement] in curtailment of the corporate franchise. [XO Missouri, 256 F. Supp. 2d at 974, quoting State ex rel. City of St. Louis v. Laclede Gaslight Co., 14 S.W. 974, 980 (1890).]

It appears to the Commission that Kansas City is attempting to enlist the Commission to help it avoid its contractual obligations. An order conditioning approval of the proposed Merger on KCPL's "willingness" to replace its Franchise Agreement with an agreement that provides less protection to KCPL's customers would unlawfully impair KCPL's rights and be contrary to the public interest. Accordingly, the Commission finds and concludes that it should reject Kansas City's request condition the proposed Merger upon KCPL's agreement to re-negotiate a Franchise Agreement with Kansas City.

St. Joseph also supported the City of Kansas City, and requested similar relief regarding the re-negotiation of its existing franchise with Aquila. For the reasons stated above, the Commission declines to grant the St. Joseph its request to condition the approval of the Merger upon the negotiation of a new franchise with the City of St. Joseph or any of the other relief requested by St. Joseph in this proceeding.

8. Quality of Service Plan and Earnings Sharing Mechanism

a. Should Commission approval of the Joint Application be conditioned upon requiring KCPL/Aquila to file an application for a Quality of Service Plan within 90 days of the Commission's final decision in this proceeding?

In this proceeding, the City of Kansas City, Missouri has requested that the Commission condition the approval of the Joint Application upon requiring KCPL and Aquila to file an application for a Quality of Service Plan within 90 days of the Commission's final decision in this proceeding. See Ex. 401, Hix Rebuttal at 5-6, 9-10.

The Joint Applicants have opposed this recommendation. KCPL witness John Marshall points out that the Staff already reviews the very performance measures mentioned by Kansas City witness Hix as part of its Cost of Service report when KCPL files a rate case. For example, in KCPL's last rate case, the Staff reviewed five years of data for System Average Interruption Frequency Index ("SAIFI"), System Average Interruption Duration Index ("SAIDI"), Customer Average Interruption Frequency Index ("CAIDI"), and Momentatry Average Interruption Frequency Index ("MAIFI"), and found no evidence of long term trends that should be cause for concern by the Commission. See Ex. 22, Marshal Surrebuttal at 19.

After considering the arguments and evidence in the record, the Commission finds and concludes that it will not condition its approval of the Merger on KCPL and Aquila filing a Quality of Service Plan.

First, the Commission finds that there is no credible evidence in the record that such a quality of service plan is warranted. Second, the Commission Staff already receives and reviews much of the information Kansas City would have KCPL and Aquila provide. As a result, the Commission finds that such a plan is unnecessary. The Staff already reviews the very performance measures mentioned by its witness, Mr. Hix, as part of the Staff's Cost of Service report when a utility files a rate case. In KCPL's last rate case (ER-2007-0291), the Staff reviewed five years of this data and found no evidence of long-term trends that should be cause for concern by the Commission. Because the Staff regularly reviews reliability data and can take action should the data indicate a problem, Mr. Hix's proposal is unnecessary since this issue is already being considered in rate cases, and the Commission will therefore not condition the Merger on upon this proposal.

b. Should Commission approval of the Joint Application be conditioned upon establishment of an Earnings Sharing Mechanism that returns to customers excess earnings of KCPL/Aquila above an authorized level?

Kansas City also requested that the approval of the Joint Application be conditioned upon the establishment of an Earnings Sharing Mechanism that returns to customers excess earnings of KCPL and Aquila above an authorized level. See Ex. 401, Hix Rebuttal at 6-8.

The Joint Applicants opposed this recommendation since an earnings sharing mechanism is not appropriate in the current environment in which both KCPL and Aquila have major construction programs underway, and there will be a need to file rate cases in the year after the transaction closes. It is expected that rate increases will be needed to recover the cost of new facilities as they are placed in service, combined with increasing fuel costs and other increasing operations and maintenance expenses. Such costs are expected to exceed the total estimated synergies of the acquisition during the next several years. Earnings sharing mechanisms have been utilized when cost of service is expected to be flat or declining. However, the Joint Applicants do not expect that this will be the case under their existing construction programs, and there will be no excess earnings to share. See Ex. 15, Giles Surrebuttal at 13-15.

After reviewing the competent and substantial evidence on this issue, the Commission finds and concludes that it should not condition its approval of the Merger on KCPL and Aquila establishing an Earnings Sharing Mechanism. The Commission believes it would be inappropriate to condition approval on such a mechanism. KCPL and Aquila are currently engaged in major generation construction programs. Both companies also have the continued need to raise additional capital, beyond the current construction of facilities, to meet environmental regulations. See Ex. 15, Giles Surrebuttal at 13.

These infrastructure programs will require both Aquila and KCPL to file rate cases with the Commission requesting revenue increases in the year after the transaction closes, regardless of how the synergies are ultimately shared between customers and shareholders. See Ex. 15, Giles Surrebuttal at 13-14. The Commission finds that these rate increases are likely to be needed to recover the costs of new facilities as they are placed into service, combined with fuel costs and other operations and maintenance expenses. According to Joint Applicants' testimony, such costs are expected to exceed the total estimated synergies of the acquisition during the next several years. Id. at 14. However, the Commission recognizes that the synergies resulting from the Merger and the operational integration of KCPL and Aquila should result in smaller increases in rates in future rate cases than would have been required absent the transaction. In other words, contrary to the premise underlying the City's proposal, the Commission would not expect that there will be excess earnings to share in the current increasing cost environment. Id. The Commission will have the opportunity to consider that assertion in future rate cases. For the foregoing reasons, the Commission concludes that it should reject Kansas City's request for an Earnings Sharing Mechanism in this proceeding.

9. Future Rate Case

a. Should Commission approval of the Joint Application be conditioned upon requiring KCPL and Aquila to file a comprehensive rate case with respect to the merged operations within three years of the Commission's approval of the Merger?

In this proceeding, Kansas City has also requested that the Commission condition the approval of the Joint Application upon requiring KCPL and Aquila to file a comprehensive rate case with respect to the "merged" operations within three years of the Commission's approval of the Merger. See Ex. 401, Hix Rebuttal at 5.

The Joint Applicants have opposed this recommendation since the Joint Applicants are not proposing to merge KCPL with Aquila. See Ex. 22, Marshall Surrebuttal at 16.

After considering the competent and substantial evidence in this proceeding, the Commission finds that it is unnecessary to add this condition to its approval of the Merger. Kansas City's request would require the merger or consolidation of KCPL and Aquila, something that is not contemplated by the Joint Applicants in this case. Great Plains Energy, the parent company of KCPL, is requesting approval to acquire Aquila. Aquila will retain and continue to operate under its Commission-approved tariffs. KCPL and Aquila will maintain separate generation, transmission, and distribution systems.

The Commission believes it would be premature at this time to set a date when it might become appropriate to merge or consolidate KCPL or Aquila. As such, the Commission will not adopt Kansas City's request in this proceeding.

10. Additional Amortization/Credit Worthiness

a. Is the credit worthiness of KCPL and Aquila as a result of the Great Plains Energy acquisition of Aquila dependent on the expectation that the Commission will authorize a regulatory plan similar to that contained in the KCPL Stipulation and Agreement in Case No. EO-2005-0329 subsequent to Commission authorization of Great Plains Energy's acquisition of Aquila?

If yes, will KCPL's credit worthiness be negatively affected if Aquila is unable to obtain such a regulatory plan?

As discussed above, the Joint Applicants have also withdrawn their request for consideration of a regulatory or "Additional Amortizations" mechanism in this case. The Joint Applicants continue to believe that an amortization provision similar to the provision contained in KCPL's 2005 Stipulation and Agreement, approved by the Commission in Case No. EO-2005-0329, would be appropriate and beneficial to Aquila's customers. However, Joint Applicants intend to initiate discussions after the closing of the Merger with interested parties in an effort to develop a regulatory plan for Aquila that might include such an amortization provision. See Ex. 37, Bassham Add'l Supp. Direct at 4.

Other parties have suggested that the Commission needs to address the legality and reasonableness of the Additional Amortization mechanism at this time since it may possibly become an issue in the future, citing the State ex rel. Ag Processing v. Public Service Commission, 120 S.W.3d at 736 (Mo. App. 2003). The Commission disagrees.

Unlike the *Ag Processing* case in which the public utility had requested recovery of the acquisition premium in a future rate case, the Joint Applicants have no request pending before the Commission with regard to a future Aquila regulatory plan or a request for an Additional Amortization provision for Aquila. As Mr. Bassham has testified, if the acquisition of Aquila is approved, the Joint Applicants intend to initiate discussions with interested parties to develop a regulatory plan for Aquila that might include a regulatory amortization provision as part of that regulatory plan. See Ex. 37, Bassham Add'l Supp. Direct at 4.

However, since there is no request in this proceeding for an Aquila regulatory plan, the Commission does not believe that it would be appropriate to address this issue. There is no "expectation" regarding what any future regulatory plan for Aquila, if agreed upon and approved by this Commission, would contain. The Commission concludes that inquiry into such matters would constitute pure speculation and would not be relevant to the request that is pending before the Commission.

b. Is the current expected cost and schedule outcome related to KCPL's Comprehensive Energy Plan infrastructure commitments in Case No. EO-2007-0329 an indication of Great Plains Energy's and KCPL's ability to complete the acquisition of Aquila in a manner that is not detrimental to the pubic interest?

In this proceeding, Staff sought to inquire into the current expected cost and schedule related to KCPL's Comprehensive Energy Plan. Staff called five witnesses from KCPL and Aquila (i.e. Stephen Easley, Brent Davis, Terry Foster, James Rose, and Max Sherman) to elicit testimony on the expected cost and schedule changes related to KCPL's Comprehensive Energy Plan. Tr. 2647-2875.

In addition, witnesses Downey, Bassham and Cline testified regarding these matters. Mr. Bassham, in particular, explained in camera session the preliminary results of KCPL's reforecast of project costs and schedule at the Iatan Generating Station. See Tr. 2380-83. He also testified that any issues arising from the current reforecast being conducted regarding Iatan Units 1 and 2 will not negatively affect the ability of Great Plains Energy to acquire Aquila. See Tr. 2382-83 (Bassham) Subsequently, Great Plains Energy and KCPL filed on May 7, 2008 its Form 8-K with the Securities and Exchange Commission and a press release which publicly disclosed the results of the reforecast process at the Iatan Generating Station. See Ex. 305.

The Form 8-K and the press release contained the following summary of the results of the reforecast of costs and schedule at the Iatan Generating Station:

Iatan Project Update

KCP&L has completed a cost and schedule update for the Iatan 1 environmental project and the Iatan 2 coal plant construction project. This updated assessment was driven by several factors, including (a) the combined projects reaching a milestone of 70% - 75% of the engineering work completed; (b) the integration of the Iatan 2 "Balance of Plant" schedule and quantity estimates from Kiewit Industrial Corporation into the master schedule and budget; and (c) continued challenging construction market trends, including rapidly escalating costs for construction materials and services, the level of global investment in power production facilities, the decline in the value of the U.S. dollar, and constrained labor availability.

KCP&L recently completed the update and key results were as follows:

- Based on the top end of the new estimate ranges, the combined increase in projected costs of the Iatan 1 environmental project and the new Iatan 2 unit is approximately 19 percent.
- Compared to the previous estimate of $837 million - $914 million issued in December 2006, KCP&L's approximate 55 percent share of the total projected cost of Iatan 2 has increased to a range of $994 million - $1.051 billion, with the top end of the range representing a 15 percent increase. Excluding approximately $47 million of certain items not typically included in a cost per kilowatt (kW) calculation, the cost of Iatan 2 is estimated to range from $2,083 / kW to $2,204 / kW.
- The in-service date for Iatan 2 continues to be the summer of 2010.
- KCP&L's 70 percent share of the projected cost of the Iatan 1 environmental project has increased to a range of $330 million - $350 million. This represents an increase of 33 percent compared to the top end of the previous range estimate of $255 million - $264 million for Iatan 1 included in KCP&L's December 2006 projection of Total Environmental Retrofits under its Comprehensive Energy Plan.
- The in-service date for the Iatan 1 project is now expected to be February 2009 compared to the previous estimate of year-end 2008.

The Form 8-K also included the following statement from Bill Downey, President and Chief Executive Officer of KCPL:

> "Though we are seeing cost increases in the Iatan projects, they are in line with what the industry as a whole is experiencing," commented Bill Downey, President and Chief Executive Officer of KCP&L. "The updated assessment reflects our intent to manage the cost of the projects prudently while, at the same time, holding as closely as possible to the original schedule. We continue to believe that when in service, Iatan 2 will be competitive with other coal plants under construction and will serve our region well for years to come."

Ex. 305 at 2-3; and attached press release at 2-3.

The Commission finds that the Joint Applicants have adequately explained the reforecast process, and the Commission believes that the GPE/KCPL are addressing the cost increases and schedule changes that are occurring at the Iatan Generating Station. In addition, the Commission finds that no party to this proceeding has provided credible evidence that the current reforecast of costs and schedule at Iatan Units 1 and 2 will negatively affect the ability of Great Plains Energy to acquire Aquila.

Based upon the competent and substantial evidence in the record, the Commission finds and concludes that the current cost and schedule changes at the Iatan Generating Station and other CEP projects are not expected to negatively affect the ability of Great Plains Energy to acquire Aquila. In addition, the Commission finds that no competent and substantial evidence has been presented by any party that demonstrates that it would be detrimental to the public interest to approve the proposed transaction in this proceeding while the construction projects at the Iatan Generating Station are being completed.

c. Is KCPL's credit worthiness affected by Great Plains Energy's decision not to seek recovery from Missouri ratepayers of any of the debt repurchase costs of Aquila's existing debt that Great Plains Energy will refinance post-closing?

The Joint Applicants have withdrawn their request that the Commission permit recovery of Aquila's actual debt interest costs in a future rate case. Instead, they propose to follow -- as recommended by Staff, OPC and other parties -- the debt cost recovery procedure that the Commission used in Aquila's recent Missouri rate cases. See Ex. 2, Bassham Add'l Supp. Direct at 2.

For purposes of ratemaking, this means that any non-investment grade Aquila debt will be assigned an investment-grade interest rate for comparable debt. Id. at 2-3. Aquila will not request in any future rate case recovery of (a) the cost of refinancing any non-investment grade debt or (b) the additional interest cost above any investment-grade debt that is related to Aquila's non-regulated operations. Id. at 3.

Great Plains Energy expects Aquila to receive an investment-grade credit rating after the Merger closes. See Ex. 2, Bassham Add'l Supp. Direct at 3; Ex. 9, Michael W. Cline Add'l Supp. Direct at 4. After Aquila receives such a credit rating, Great Plains Energy proposes that any new Aquila debt issued in the future would receive the same expense recovery as any other utility debt. See Ex. 2, Bassham Add'l Supp. Direct at 3.

Since the Joint Applicants have withdrawn their request for recovery of the actual interest costs of Aquila, the Commission will not address this issue in this proceeding. The Commission will review the proper ratemaking treatment of Aquila interest costs in future Aquila rate cases.

The competent and substantial evidence demonstrates that the Joint Applicants submitted their revised Regulatory Plan to Standard & Poor's and Moody's for their evaluation of the creditworthiness under certain assumptions, including the assumption that Aquila would not seek recovery from Missouri ratepayers of any of the actual debt costs above those costs of investment grade rated debt. As set forth in the Additional Supplemental Direct Testimony of Terry Bassham and Michael Cline, the Joint Applicants' expect that Great Plains Energy and KCPL will continue to maintain investment grade credit quality after the transaction closes, and that Aquila will become investment grade quality shortly after the transaction closes. See Ex. 2, Bassham Add'l Supp. Direct at 5-6; Ex. 9, Cline Add'l Supp. Direct at 1-4.

Based upon this evidence, the Commission finds and concludes that it is not expected that there will be an adverse impact upon KCPL's credit worthiness as a result of the decision not to seek recovery of the actual cost of Aquila debt above those of investment grade rated debt.

11. Anonymous Allegations Related to the Proposed Acquisition of Aquila.

a. Would the adoption of GPE/KCPL's gift and gratuity practice for Aquila be detrimental to the public interest?

The Commission has already ruled that GPE/KCPL's gift and gratuity policies related to outside vendors are wholly irrelevant to this proceeding. As a result, the Commission will not address this issue in this Report and Order.

b. Does KCPL have adequate control of the Iatan projects to be able to operate the non-dispatch functions of Aquila in addition to those of KCPL in a manner not detrimental to the public interest?

This issue is related to Issues 10(b) and Issue 2 discussed above. The Commission finds that there is no credible evidence in this record that would indicate that KCPL does not have adequate cost controls of the Iatan projects that would adversely affect KCPL's ability to operate the KCPL system in conjunction with the Aquila system to produce substantial efficiencies and economies of scale. In addition, the Commission finds that there is no competent and substantial evidence in the record related to the cost controls of the Iatan projects that indicates that the approval of the proposed transaction in this proceeding would be detrimental to the public interest.

c. **Does the Commission have adequate information to determine whether the public allegations/comments it has received regarding GPE/KCPL are accurate and such conduct in the operation of the non-dispatch functions of Aquila would be detrimental to the public interest?**

The Commission has already determined that the anonymous letters are wholly irrelevant to the issues in this proceeding. In addition, the Commission has previously held that anonymous letters are not credible evidence to be considered in their determination of a contested case. In a recent financing application by KCPL, Case No. EF-2008-0214, an intervenor argued that the anonymous letters were cause for additional scrutiny by the Commission as it considered KCPL's application. The Commission rejected that argument finding that "[a]n anonymous letter not supported by a sworn witness who is subjected to cross-examination constitutes mere hearsay and should not be considered by the Commission in reaching a decision in a contested case." *Kansas City Power & Light Co.*, Order Approving Financing, Case No. EF-2008-0214 (Feb. 24, 2008). That logic applies in this case as well. As a result, the Commission finds it unnecessary to address this issue in this Report and Order.

12. Miscellaneous Legal Issues

a. **Have the Joint Applicants obtained from their boards of directors the authorizations necessary to effectuate actions required to merge, consolidate, combine, or integrate the systems, works and operations of KCPL and Aquila?**

b. **Have the Joint Applicants applied to the Missouri Commission for the authorizations necessary to effectuate the merger, consolidation, combination or integration of the systems, works and operations of KCPL and Aquila?**

c. **What is the legal effect for future Commission cases of the present Commission adopting the proposals contained in the Joint Application filed on April 4, 2007, as modified by the subsequently filed testimony?**

d. **Is the "net detriment" test utilized by the Joint Applicants as the not detrimental to the public interest standard, the criteria required by law for determining whether the proposed acquisition and related transactions are not detrimental to the public interest? Will the proposed merger cause a net detriment to the public interest because the cost of service which rates for Missouri ratepayers of Aquila and KCPL will be established will be higher as a direct result of the merger than the cost of service would be for Aquila and KCPL absent the proposed transaction?**

e. **Does the Affiliate transactions Rule, 4 CSR 240-20.015, apply to transactions between regulated electrical corporations that are wholly owned by the same parent company?**

The Commission will address Issues 12(a)-(d) below. Issue 12(e) has already been addressed in the Commission's discussion of Issue 4 above.

Applicable Legal Standard: Balancing of Benefits and Detriments.

Great Plains Energy, the parent company of KCPL, is requesting approval under Section 393.190 to acquire Aquila by merging a special purpose corporation into a subsidiary of Great Plains Energy into Aquila. Such approval must be granted unless the Merger would be detrimental to the public interest. See 4 CSR 240-3.115(1)(D). Missouri courts have recognized that "the obvious purpose of Section 393.190 is to ensure the continuation of adequate service to the public served by the utility." State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980). "The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest." Id. See State ex rel. City of St. Louis v. PSC, 73 S.W.2d 393, 400 (Mo. 1934).

In Ag Processing, Inc. v. PSC, 120 S.W.3d 732 (Mo. 2003), the Supreme Court reversed a Commission decision under Section 393.190 where the acquisition of St.

Joseph Light & Power Co. by UtiliCorp United Inc. involved an acquisition premium. Although the Commission authorized the merger, it rejected UtiliCorp's proposed regulatory plan under which a portion of the acquisition premium would be recovered in rates, but refused to consider the premium issue in evaluating the merger because it believed this was an issue to be decided in a future rate case. Id. at 735-36. The Supreme Court reversed, finding that the Commission must "consider and decide all necessary and essential issues" such as the acquisition premium "as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public." Id. at 736.

As this Commission recognized in AmerenUE's application seeking approval for the transfer of assets to AmerenCIPS, Ag Processing did not announce a new standard for asset transfers. In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 20, Report and Order on Rehearing at 41 (2005). The Supreme Court restated the long-standing "not detrimental to the public" standard, and required a cost/benefit analysis in which all the benefits and detriments are considered. The Commission also properly noted that Ag Processing did not require it to deny approval simply because there was a risk of future rate increases. Such risk must be considered together with other benefits and detriments to "determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public." Id.

> In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable.

> The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of the service. [In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 20, Report and Order on Rehearing at 49.]

Applying this analysis, the Commission must look at the potential benefits and detriments, and then determine if the transaction results in a net detriment to the public. This net detriment test clearly permits the Commission to weigh costs and benefits, and to make judgments on the extent to which they offset each other. It is consistent with the Supreme Court's directive that the Commission "consider and decide all the necessary and essential issues," and not defer issues with ratemaking impact to a future rate case. *Ag Processing*, 120 S.W.3d at 736.

Given the withdrawal of certain elements of the Joint Applicants' original Regulatory Plan, as discussed herein, the Commission finds that the cost of service for both Aquila and KCPL ratepayers will clearly not be higher as a result of this Merger. By removing the requests for (a) a synergy sharing plan, (b) recovery of Aquila's actual debt costs, (c) request for approval of regulatory amortizations in future Aquila rate cases, and (d) full recovery of Transaction Costs, there is no credible evidence in this case that the Merger will cause rates to rise. To the contrary, there is competent and substantial evidence that indicates that there will be substantial synergy savings that will more than offset the transaction and transition costs of this proposed transaction. See Ex. 37, Bassham Supp. Direct at 3-5.

Requested Authorization from Boards of Directors.

The Staff argues that KCPL and Aquila have failed to file a certified copy of resolutions of their respective boards of directors authorizing the proposed merger or consolidation of KCPL and Aquila as required under 4 CSR 240-3.115. See Ex. 200 Schallenberg Rebuttal and Staff Report at 4. As explained earlier, KCPL and Aquila are not merging or consolidating. The utilities will remain in existence and continue serving their customers under separate tariffs. In addition, the rule cited by Staff contemplates that only one entity will exist at the end of the merger or consolidation, which is not the case here. The Commission finds that the Joint Applicants have received the necessary authorizations for their proposed transaction, including the operational integration of KCPL and Aquila following the close of the proposed transaction.

Legal Effect upon Future Commission Cases.

While the Commission is not able to speculate about future rate increases, it must under the *Ag Processing* decision determine the reasonableness of the risk of future rate increases as it assesses the costs and benefits of the Merger. 120 S.W.3d at 736. However, as a matter of law, it is clear that a future Commission must address in an appropriate rate case whether and in what amount the recovery of such costs may actually occur.

Section 386.490.3 provides that every order or decision of the Commission "shall continue in force ... until changed or abrogated." Thus, Commission orders are always subject to change to meet new and different conditions, as dictated by the public interest. See State ex rel. Jackson County v. PSC, 532 S.W.2d 20, 29 (Mo. 1975).

13. Request For Name Change

In this proceeding, the Joint Applicants have requested that Aquila be authorized to change its name. During the hearings, GPE/KCPL witness John Marshall indicated that the chosen name for Aquila following the Merger is: "KCPL Greater Missouri Operations Company". See Tr. 2221 (Marshall).

In the Staff Report attached to Staff witness Schallenberg's testimony, the Staff recommended that the Commission reject the proposed name change, since at the time of the filing of the Staff Report, no specific name had been chosen by the Joint Applicants. Staff recommended that the Commission require the filing of a name change request at the time Aquila knows the name it wishes to use in the future. See Ex. 200, Schallenberg and Staff Report at 40.

Based upon the competent and substantial evidence in the record, the Commission finds that it is reasonable to authorize Aquila to change its name as requested after completion of the proposed transaction since the name has now been chosen. The Commission will direct that an Adoption Notice and revised tariff title sheet be filed when the new corporate name of Aquila is changed, pursuant to 4 CSR 240-2.060(5).

14. Miscellaneous Uncontested Matters

In their Application, the Joint Applicants have requested that Aquila be authorized to distribute approximately $677 million of the proceeds from the sale of Aquila's non-Missouri properties in a direct or indirect cash distribution to Aquila's shareholders, pursuant to Sections 393.210 and 393.220, as a result of the sale of such properties to

Black Hills. No party has specifically opposed this request. The Commission finds that this request is reasonable and should be granted.

In addition, the Joint Applicants have requested that Great Plains Energy, via the Merger, be authorized to acquire and assume the stocks and bonds, other indebtedness and other obligations of Aquila, all as more particularly described in the Agreement and Plan of Merger. The Commission finds that this request is reasonable and should be granted.

V. CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions:

The Joint Applicants have asked the Commission to approve the Merger–the merger of a Great Plains Energy special purpose subsidiary into Aquila, with Aquila being the surviving company, pursuant to the provisions of Section 393.190 RSMo 2000. In interpreting the requirements of this statute, the Commission and the courts that have reviewed its decisions, have consistently held that a proposed merger must be approved if such approval is in the public interest. This does not mean that the public must receive a benefit from the proposed merger. Instead, the Missouri Supreme Court has established a standard that holds that the requirement that the merger be "in the public interest" can mean no more than that the merger is "not detrimental to the public." *State ex rel. City of St. Louis v. Public Service Commission*, 335 Mo. 448, 459, 73 S.W.2d 393, 400 (Mo. banc 1934). Therefore, the Commission is required to approve this merger if it can be shown that the merger will not be detrimental to the public.

Based upon the Commission's review of the applicable law and its findings of fact, the Commission concludes that the proposed Merger between GPE and Aquila should be approved since it is not detrimental to the public interest. In addition, the Commission concludes that the operational integration of KCPL and Aquila following the close of the transaction, will promote the public interest. The Commission has concluded from the competent and substantial evidence in the whole record that there will be substantial synergy savings from the operational integration of KCPL and Aquila following the merger that will benefit the customers of both KCPL and Aquila, and therefore, the operational integration of KCPL and Aquila should be encouraged and approved by the Commission.

V. ORDERED SECTIONS

IT IS THEREFORE ORDERED:

1. That Great Plains Energy and Aquila are authorized to perform in accordance with the terms and conditions of the Agreement and Plan of Merger, APA, PIPA, and all other transaction-related instruments, and to take any and all other actions that may be reasonably necessary and incidental to the performance of the Merger;

2. That Aquila is authorized to merge with Merger Sub, a wholly-owned subsidiary of Great Plains Energy, with Aquila being the surviving corporation, all as more particularly described in the Agreement and Plan of Merger;

3. That Aquila is authorized to distribute approximately $677 million of the proceeds from the sale of Aquila's non-Missouri properties in a direct or indirect cash distribution to Aquila's shareholders, pursuant to Sections 393.210 and 393.220, as a result of the sale of such properties to Black Hills;

4. That Great Plains Energy, via the Merger, is authorized to acquire and assume the stocks and bonds, other indebtedness and other obligations of Aquila, all as more particularly described in the Agreement and Plan of Merger;

5. That the Regulatory Plan, as modified by the Joint Applicants, and discussed herein, is approved;

6. That KCPL and Aquila are authorized to establish a regulatory asset and amortize into cost of service costs associated with the Merger, including both transaction and transition-related costs, as properly allocated to KCPL's and Aquila's Missouri regulated operations and excluding the non-incremental labor costs of the integration team, over a five (5) year period beginning in the month immediately following consummation of the Merger.

7. That the Merger and other relief sought in this Joint Application are not detrimental to the public interest.

8. That Aquila is authorized to change its name to KCPL of Greater Missouri Operations Company, as requested by the Joint Applicants in this proceeding, that an Adoption Notice and revised tariff title sheet reflecting the new corporate name should be filed with the Commission, pursuant to 4 CSR 240-2.060(5).

9. That it is unnecessary for the Commission to grant KCPL and Aquila a waiver from the affiliate transaction rule, as requested by the Joint Applicants, since the Commission has concluded that the Affiliated Transactions Rule would not apply to transactions between KCPL and Aquila following the close of the proposed transaction.

10. That KCPL and Aquila are authorized to integrate the operations of their respective electrical systems, as proposed in the Joint Application and accompanying

testimony filed in this proceeding to achieve efficiencies and synergies identified in the testimony in this proceeding.

11. That the Joint Applicants are granted all other relief as may be necessary and appropriate to accomplish the purposes of the Merger and the Joint Application, and to consummate the Merger and related transactions in accordance with the Agreement and Plan of Merger and the Joint Application.

12. That any evidence the admission of which was not expressly ruled upon is admitted into evidence.

13. That any objection that was not expressly ruled upon is overruled.

14. That any motions, except any pending applications for rehearing, not expressly ruled upon herein are denied.

15. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the transactions herein involved.

16. That the Commission reserves the right to consider any ratemaking treatment to be afforded the transaction herein involved in a later proceeding.

17. That this Report and Order shall become effective on ___________, 2008.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

____________________________CC.,
Concur and certify compliance with the provisions of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this _____day of June, 2008.

<u>Respectfully submitted,</u>

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 2nd day of June, 2008, to all counsel of record.

/s/ James M. Fischer
James M. Fischer