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Issue:	*Aries Unit; Merger Savings*
Witness:	*Mark L. Oligschlaeger*
Sponsoring Party:	*MoPSC Staff*
Type of Exhibit:	*Surrebuttal Testimony*
Case Nos.:	*ER-2004-0034 and HR-2004-0024 (Consolidated)*
Date Testimony Prepared:	*February 13, 2004*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

MARK L. OLIGSCHLAEGER

AQUILA, INC. d/b/a AQUILA NETWORKS-MPS (Electric)
and AQUILA NETWORKS-L&P (Electric And Steam)

CASE NOS. ER-2004-0034 and HR-2004-0024
(Consolidated)

Jefferson City, Missouri
February 2004

****Denotes Highly Confidential Information****

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Aquila, Inc. d/b/a Aquila Networks L&P and Aquila Networks MPS to implement a general rate increase in electricity.	)	Case No. ER-2004-0034
In the matter of Aquila, Inc. d/b/a Aquila Networks L&P to implement a general rate increase in Steam Rates.	)	Case No. HR-2004-0024

AFFIDAVIT OF MARK L. OLIGSCHLAEGER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

Mark L. Oligschlaeger, of lawful age, on his oath states: that he has participated in the preparation of the following surrebuttal testimony in question and answer form, consisting of 49 pages to be presented in the above case; that the answers in the following surrebuttal testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

Mark L. Oligschlaeger
Mark L. Oligschlaeger

Subscribed and sworn to before me this 13th day of February 2004.

Toni M. Charlton
Notary Public

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

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1 **SURREBUTTAL TESTIMONY**

2 **OF**

3 **MARK L. OLIGSCHLAEGER**

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5 **AND AQUILA NETWORKS-L&P (Electric and Steam)**

6 **CASE NOS. ER-2004-0034 AND HR-2004-0024**

7 **(Consolidated)**

8 Q. Please state your name and business address.

9 A. Mark L. Oligschlaeger, P.O. Box 360, Suite 440, Jefferson City, MO 65102.

10 Q. Are you the same Mark L. Oligschlaeger that has previously submitted direct
11 and rebuttal testimony in this proceeding?

12 A. Yes, I am.

13 Q. What is the purpose of your surrebuttal testimony?

14 A. The purpose of this testimony is to respond to the rebuttal testimony of
15 Aquila, Inc. (Aquila/UtiliCorp or Company) d/b/a Aquila Networks–MPS (MPS) and Aquila
16 Networks-L&P (L&P) witnesses Keith G. Stamm, Jon R. Empson, Frank A. DeBacker and
17 Max A. Sherman on the issue of the Aries Unit Purchased Power Agreement. I will also
18 respond to the rebuttal testimony of Company witness Vern J. Siemek on the issue of Merger
19 Savings.

20 **<u>ARIES UNIT</u>**

21 Q. What is the issue in this rate case pertaining to the Aries generating unit?

1 A. The Staff has proposed to adjust Aquila/UtiliCorp's test year Aries unit
2 purchased power agreement (Aries PPA) costs to appropriately reflect this affiliated
3 transaction on a "cost" basis for rate purposes, rather than a "market" basis. The Staff has
4 also raised issues regarding the Company's decision-making concerning generation resource
5 planning before and at the time Aquila/UtiliCorp decided to enter into the Aries PPA.

6 Q. What are the major arguments the Company makes on the Aries issue in the
7 rebuttal testimony of its witnesses?

8 A. Company witness Stamm alleges that the Staff had its mind made up on this
9 adjustment prior to its audit of Aquila/UtiliCorp in this rate proceeding, and that the Staff's
10 position underlying its adjustment ignores both facts and logic. Company witness Empson
11 states that the Company's decision to enter into the Aries PPA was appropriate given the
12 regulatory atmosphere facing Aquila/UtiliCorp at the time. Mr. DeBacker presents a history
13 of the Aries PPA process from the perspective of Aquila/UtiliCorp's Missouri Commission-
14 regulated MPS operations, and argues that the Staff concurred with the Company's decision-
15 making process. Company witness Sherman presents a history of the Aries PPA process
16 from the perspective of Aquila/UtiliCorp's unregulated Merchant Energy Partners–
17 Pleasant Hill (MEPPH) operations, and also alleges that the Staff's adjustment to value the
18 Aries PPA on a "cost" basis understates the value of the Aries PPA because, he alleges, the
19 Staff omitted certain costs.

20 Q. What Staff witnesses will be addressing these allegations that
21 Aquila/UtiliCorp makes in the rebuttal testimony of its witnesses?

22 A. Staff Auditing witness Cary G. Featherstone, Michael S. Proctor and myself
23 will respond to the points the Company makes on the Aries issue in rebuttal testimony.

1 Q. What are the major points that you will address concerning the Aries PPA
2 issue?
3 A. I will address the following points in this surrebuttal testimony:
4 1) I will respond to Mr. Empson's and Mr. DeBacker's characterization
5 of the regulatory climate in the late 1990s, and its purported impact on the Company's
6 decision-making process for the Aries PPA;
7 2) I will comment upon Mr. Sherman's criticisms of the Staff's
8 calculation of its Aries PPA adjustment; and
9 3) I will address the comments concerning the discovery process relating
10 to this issue found in Mr. Stamm's and Mr. Sherman's testimony.

11 **ARIES: REGULATORY CLIMATE**

12 Q. What do the Company rebuttal witnesses on the Aries issue say about the
13 regulatory environment before and when Aquila/UtiliCorp made its decision to enter into the
14 Aries PPA?
15 A. Mr. Empson and Mr. DeBacker, in particular, portray the regulatory
16 environment in Missouri in the late 1990s for electric utilities as being dominated by the
17 possibility of electric restructuring within this state. This, according to them, in turn raised
18 questions about this Commission's treatment of stranded costs. These witnesses leave the
19 impression that the Company ultimately decided to have its MPS division obtain power
20 through an affiliated PPA largely, or perhaps entirely, on the premise that there would be
21 electric restructuring in this state, which would leave issues of stranded costs. Further, they
22 leave the impression that the Staff and the Commission not only shared these premises but,

1 based upon them, approved Aquila/UtiliCorp's decision-making as it related to the Aries
2 PPA.

3 Q. Does the Staff agree with this characterization?

4 A. No. Mr. Empson's and Mr. DeBacker's rebuttal testimony do not place the
5 Company's Aries PPA decision in the proper context, and imply that the Staff's role in this
6 decision-making process was vastly greater than it actually was. By doing so, these
7 witnesses seek to evade the Company's true responsibility and accountability for the
8 decisions that it has made concerning the Aries unit.

9 Q. What is "electric restructuring?"

10 A. Electric restructuring is a generic term that refers to the initiatives
11 implemented in some jurisdictions to foster competition in the electric industry on the
12 generating side, and to offer electric retail customers potential choices as to their electricity
13 provider.

14 Q. What are "stranded costs?"

15 A. Stranded costs is a term describing those costs charged by electric utilities to
16 their customers in regulated rates that may not be recoverable when and if electric utilities set
17 their prices based upon a competitive electric market. In short, stranded costs are "above-
18 market" costs.

19 Q. Why might stranded costs have been a potential item of concern for Missouri
20 electric utilities in the late 1990s?

21 A. At that time, certain parties (including Aquila/UtiliCorp) were recommending
22 that the Missouri Legislature consider measures that would have led to electric restructuring
23 in Missouri. To the extent those measures were enacted into law, then regulated electric

1 utilities would face the possibility that some of their costs that had been reflected in retail
2 electric rates would not be recoverable in a more competitive electric market. If electric
3 restructuring were to be seriously considered, then the policy question of whether stranded
4 cost recovery should be allowed or not allowed would have to be dealt with by legislators
5 and/or regulators.

6 Q. During this period, was the Commission concerned with electric restructuring
7 and stranded cost issues?

8 A. Yes. As referenced in Mr. Empson's testimony, the Commission initiated a
9 "Retail Electric Competition Task Force" (Task Force) in 1997 to identify key issues and
10 make recommendations as to how the Commission should proceed with potential electric
11 restructuring initiatives. A variety of interested parties, including the Commission Staff,
12 utility companies and consumer advocate groups, participated in the Task Force's activities
13 and those of its working groups.

14 Q. Did you personally participate in the activities of the Task Force?

15 A. Yes. I was designated by the Commission to be the Staff Vice-Chair of the
16 Task Force's Stranded Costs Working Group (SCWG).

17 Q. What was the purpose of the SCWG?

18 A. The purpose of the SCWG was to provide recommendations to the Task Force
19 on issues pertaining to stranded cost recovery.

20 Q. What overall conclusions did the SCWG reach on policy questions concerning
21 stranded cost recovery in the event of electric restructuring in Missouri?

22 A. The SCWG was not able to reach a consensus on the fundamental policy
23 question of whether regulated electric utilities should be allowed recovery in rates of

1 stranded costs if and when electric restructuring was allowed. However, the SCWG did
2 make a number of recommendations concerning other aspects of the stranded cost issue.
3 Among these recommendations was one that electric utility companies in Missouri should
4 take measures to "mitigate" their potential stranded costs before seeking recovery of stranded
5 costs in rates.

6 Q. What did the SCWG mean by stating that electric utility companies in
7 Missouri should take measures to "mitigate" their potential stranded costs?

8 A. In simple terms, stranded cost mitigation refers to efforts made to minimize
9 potential stranded costs in advance of seeking rate recovery of those amounts. Mitigation is a
10 common-sense measure that utilities should have desired to pursue regardless of whether
11 stranded cost recovery in rates was allowed or not; if allowed, mitigation would reduce the
12 negative impact of stranded cost recovery on ratepayers, if stranded cost recovery ultimately
13 was not allowed, mitigation would reduce the losses to utility shareholders due to stranded
14 costs.

15 As detailed in page 66 of the SCWG Report, dated March 6, 1998, "…most
16 regulatory agencies that have to date made decisions regarding stranded cost recovery have
17 specified that only recovery of stranded costs net of mitigation will be allowed." The SCWG
18 Report is attached as Schedule 1 to this testimony.

19 Q. What conclusions did the Task Force reach on the overall issue of the
20 desirability of electric restructuring in Missouri?

21 A. The Task Force was not able to reach a consensus on that issue.

22 Q. Has the Commission itself ever taken a position on the desirability of electric
23 restructuring?

1 A. No, not to my knowledge.

2 Q. During this period, were bills introduced in the Missouri Legislature that
3 sought to initiate electric restructuring in Missouri?

4 A. Yes, a variety of bills offered from different perspectives (electric utility, large
5 customers, etc.) were proposed in the Missouri Legislature in the late 1990s. None were ever
6 passed by the Legislature and sent to the Governor for his signature.

7 Q. What is your perspective on why electric restructuring initiatives were not
8 successful in Missouri?

9 A. There were undoubtedly a number of reasons. However, it should be noted
10 that most jurisdictions that undertook electric restructuring efforts in the mid- to late 1990s
11 were high-cost electricity regions, in which it was believed that allowing more competition in
12 the electric marketplace might produce more favorable rate results than continued status-quo
13 regulation. Very few states that were in low-cost or medium cost areas pursued electric
14 restructuring during this period, presumably because of the risk that, if electric restructuring
15 efforts did not go as planned, higher electric rates would result. The cost of electricity in
16 Missouri is generally regarded to be low to medium in comparison to the cost of electricity in
17 other states.

18 By the Year 2000, when the problems with California's electric restructuring effort
19 became apparent, state-by-state electric restructuring largely halted.

20 Q. Of what relevance is your brief history of electric restructuring efforts in
21 Missouri in the late 1990s to the Aries issue in this rate proceeding?

22 A. The Company claims in its rebuttal testimony that its decision to enter into a
23 short-term PPA from the Aries unit with an affiliated entity (MEPPH) was appropriate, as

1 opposed to the alternative of having its MPS division construct its own generation to meet its
2 power needs, because (among other reasons) having MPS construct a generating unit would
3 have exposed MPS to the possibility of stranded costs; because entering into a short-term
4 PPA was a proper measure to mitigate stranded costs; because the Staff was allegedly
5 advocating generating asset divestiture; and because the Staff was in agreement with the
6 Company's Aries PPA decision.

7 I will respond to each of these points in turn.

8 Q. Would constructing the Aries unit as a regulated plant in MPS' rate base have
9 exposed Aquila/UtiliCorp to the risk that costs of building the plant might be stranded in the
10 event of electric restructuring?

11 A. To answer "yes" to that question, three different things would have had to
12 happen: 1) there would have to be electric restructuring in Missouri; 2) stranded cost
13 recovery would have to be disallowed by the Legislature or Commission; and 3) the costs of
14 Aries would have to exceed the market based rate.

15 Q. Was electric restructuring in Missouri a likely prospect in the late 1990s?

16 A. While there were certain parties and interests advocating electric restructuring
17 in this state, and the Commission thought it prudent to prepare for that possibility, electric
18 restructuring was far from a certainty. In any event, of course, electric restructuring was
19 never initiated in Missouri.

20 Q. In the event electric restructuring had been initiated in Missouri, was it likely
21 that the Legislature or Commission would have disallowed stranded cost recovery?

1 A. One cannot know with certainty. However, most jurisdictions that approved 2 electric restructuring also provided mechanisms for affected utilities to recover at least some 3 of their stranded costs.

4 Q. Has the Commission ever expressed a position on the recoverability of 5 stranded costs in the event of electric restructuring?

6 A. Not to my knowledge.

7 Q. Has the Staff ever expressed a position opposing the opportunity for stranded 8 cost recovery in rates in the event of electric restructuring in Missouri?

9 A. Not to my knowledge.

10 Q. Mr. Empson in his rebuttal testimony makes a particular point that the Staff 11 has expressed support for the idea of stranded cost mitigation. What does stranded cost 12 mitigation have to do with the Aries unit?

13 A. Mr. Empson is alleging that relying upon short-term PPAs instead of building 14 regulated power plants is a valid way to mitigate stranded costs.

15 Q. Is this accurate?

16 A. If building the Aries combined cycle generating unit as a regulated plant that 17 would be included in rate base would have exposed MPS to above-market generating costs 18 (if electric restructuring had occurred), then choosing to enter into a short-term PPA with an 19 affiliated entity for power from Aries might be fairly described as a means to avoid stranded 20 costs. However, the Company has not presented any evidence whatsoever in this or any 21 other proceeding that construction of the Aries unit as a rate base unit would have led to 22 above-market generating costs.

1 Q. When you were on the SCWG, what was the general view as to the potential
2 exposure of Missouri electric utilities to stranded costs if electric restructuring was
3 implemented?

4 A. The general belief was that Missouri utilities should not have significant
5 stranded cost exposure, with the possible exception of AmerenUE and Kansas City Power &
6 Light Company. AmerenUE and Kansas City Power & Light Company were viewed as
7 possible exceptions due to their ownership interest in the Callaway and Wolf Creek Nuclear
8 Generating Units, respectively.

9 Q. Are you aware of any studies conducted by Aquila/UtiliCorp that examined its
10 exposure to stranded costs in the event of electric restructuring?

11 A. Yes. In the context of Case No. ER-97-394, an MPS electric rate proceeding,
12 the Staff requested and received copies of several documents that represented the Company's
13 examination of its exposure to stranded costs associated with its generating assets in the
14 event of electric restructuring.

15 Q. What did these documents show?

16 A. These documents showed that Aquila/UtiliCorp's MPS division had studied
17 and believed that its existing generation resources at that time would not leave it exposed to
18 stranded costs, under reasonable assumptions.

19 The Staff in its testimony in Case No. ER-97-394 expressed the following opinion
20 concerning MPS' exposure to stranded costs:

21 ** ____
22 ____
23 ____
24 ____
25 ____
26 ____ **

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1 (Direct Testimony of Mark L. Oligschlaeger, p. 11, Case
2 No. ER-97-394)

3 The MPS documents pertaining to stranded costs reviewed by the Staff in Case
4 No. ER-97-394 and attached as schedules to testimony in that case are also attached to this
5 testimony as Highly Confidential Schedule 2.

6 Q. Has the Company performed any further studies concerning potential stranded
7 cost exposure for its Missouri properties since Case No. ER-97-394?

8 A. No. Please refer to the response to Staff Data Request No. 377, which is
9 attached as Schedule 3 to this testimony, for verification of this point.

10 Q. Even if MPS' existing generating resources did not expose to MPS to
11 potential stranded costs at the time of Case No. ER-97-394, isn't it possible that a new
12 generating unit (such as the Aries plant) could result in above-market costs?

13 A. That is a possibility. But one can state with some assurance that it would not
14 be likely in the case of the Aries unit. In the stranded cost documents attached to this
15 testimony as Schedule 2, ** ____
16 ____
17 ____
18 ____
19 ______________________________ **. Of course, the Aries unit is a combined
20 cycle unit.

21 Q. Did other Missouri utilities construct generating units and place them in rate
22 base during the time period of the construction of the Aries unit?

23 A. Yes. Other Missouri utilities constructed and placed in rate base combined
24 cycle units in the same general time period that Aquila/UtiliCorp did not do so. For example,

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1 The Empire District Electric Company commenced construction of its State Line combined
2 cycle generating unit in 1999, and placed it in service in 2001. Please refer to Staff witness
3 Featherstone's surrebuttal testimony in this case for a further discussion of other utilities'
4 recent generating resource decisions.

5 Q. Even if the addition to rate base of a generating unit such as the Aries plant
6 could conceivably have resulted in stranded costs, would that mean irreparable harm to the
7 utility?

8 A. No. It is possible that some or all of the utility's other generating units could
9 have negative stranded costs in the event of electric restructuring. In this context, "negative"
10 stranded costs means that a generating unit could produce power at a lower cost than the
11 current market price of electricity. In that instance, if electric restructuring is implemented,
12 the utility would enjoy a gain because it could charge a price for that unit's power that was
13 above the cost-based (regulated) rate that would have been charged under traditional electric
14 regulation. The existence of negative stranded costs means that the benefits of generating
15 units with below-market costs may make a utility a net winner from the introduction of
16 electric restructuring, even if one or more of the generating units it owned in fact caused
17 positive stranded costs.

18 Q. Did the SCWG Report provide any perspective on the likelihood of Missouri
19 electric utilities incurring generating asset stranded costs if electric restructuring was
20 implemented?

21 A. Yes. On page 10 of the SCWG Report, the following is stated:

22 Of the various types of generating units, it is widely held that nuclear
23 plants are likely to be responsible for most (if not all) of the potential
24 stranded investment associated with generating assets…other types of
25 generating technologies, including fossil fuel units (coal and gas-fired)

1 are viewed as much less likely than nuclear facilities to result in
2 stranded costs in a competitive market. In fact, some studies have
3 indicated that, taken as a whole, generating technologies other than
4 nuclear will produce net negative stranded costs nationwide. This
5 means that in the aggregate, the book value of these types of
6 generating facilities will be less than the estimated market value of
7 these units. In general, we see no reason to quarrel with this
8 expectation as it applies to Missouri specifically. (Emphasis added.)

9 Q. Did the SCWG Report provide any perspective on the likelihood of Missouri
10 electric utilities incurring stranded costs associated with long-term power contracts?

11 A. Yes. The following text can be found on page 12 of the Report:

12 Some utilities around the country have very significant potential
13 stranded costs associated with long-term power contracts. Most of these
14 are connected to the PURPA Act of 1978, which required utilities to
15 purchase power from certain "non-utility generators" (NUG) at the
16 "avoided cost" of power to the purchasing utility…while there may be
17 individual contracts that may give rise to positive stranded costs in
18 Missouri, there have been no significant NUG purchases under PURPA
19 in this jurisdiction. For this reason, we do not foresee that this category
20 of stranded costs will be a serious problem in Missouri. (Emphasis
21 added.)

22 Q. What is the Staff's overall perspective on claims that stranded cost concerns
23 would have made any decision to construct and rate base a generating unit a "bad business
24 decision" at the time of the Aries PPA decision (Empson rebuttal, page 2, lines 24-25)?

25 A. To be credible, there should be some evidence that the generating unit in
26 question was likely to lead to the incurrence of above-market generating costs under a
27 reasonable set of assumptions. Aquila/UtiliCorp has failed to present any such evidence in
28 relation to the Aries unit. To make blanket statements that stranded cost concerns made any
29 decision to build any generating units in the late 1990s a bad one is nonsense. Even if a
30 regulated combined cycle unit similar to the Aries unit would be susceptible to stranded costs
31 under electric restructuring, it is not clear why a decision to build such a unit in a non-

1 regulated affiliate would protect the same exact type of unit from being uneconomic. Please
2 refer to the surrebuttal testimony of Staff witness Proctor for further discussion of this point.

3 Q. Did the SCWG Report take the stance that, as a measure to mitigate stranded
4 costs, Missouri utilities should not own and place in rate base generating assets?

5 A. No. While the SCWG Report contains several pages of text where the pros
6 and cons of various stranded cost mitigation measures are discussed, a blanket policy that
7 Missouri utilities should stop building and owning generating assets is not stated or even
8 mentioned as an option. The notion that any and all generating assets are equally prone to
9 expose utilities to stranded costs is completely contradictory to the conclusions contained in
10 the SCWG Report.

11 Q. Did other Missouri utilities stop building generating units and placing them in
12 rate base in the late 1990s?

13 A. No. As discussed in the surrebuttal testimony of Staff witness Featherstone,
14 all of the other Missouri utilities have added to their rate base generation assets since the late
15 1990s. This was notwithstanding the fact that these other utilities were just as aware as
16 Aquila/UtiliCorp of the possibility of electric restructuring, and the Staff's positions taken in
17 the forums cited by Mr. Empson.

18 Q. To your knowledge, has the Staff ever expressed a specific concern that
19 regulated combined cycle units should be avoided due to stranded cost exposure concerns?

20 A. I am not aware that the Staff ever had this concern specifically concerning
21 combined cycle units.

22 Q. Mr. Empson references a document on page 4 of his rebuttal testimony titled
23 "Electric Restructuring Plan for the Competitive Supply of Generation in Missouri" (Staff

1 Plan), dated June 12, 1998, which he has attached as a schedule to this testimony. Did you
2 participate in the preparation of this document?

3 A. Yes. I was one of the Staff members who participated in drafting this
4 document.

5 Q. What was the purpose of this document?

6 A. The Staff members were asked to prepare this document to provide input to
7 the Missouri Legislature on how the Staff believed electric restructuring should be
8 implemented in Missouri, if the Legislature determined to pursue electric restructuring.

9 Q. Was the Staff speaking for the Commission in any aspect of this document?

10 A. No.

11 Q. Was the Staff recommending to the Legislature or other parties that electric
12 restructuring should be pursued in Missouri?

13 A. No.

14 Q. What were the general guidelines offered for the Legislature's consideration
15 regarding stranded cost recovery and mitigation issues?

16 A. In the Staff Plan, the Staff advised that a four-year transition period be
17 allowed between the decision to pursue electric restructuring and when full retail electric
18 customer choice was implemented. In the first year of the transition, utilities could submit
19 proposals for reduction of expected positive levels of stranded costs, and the Commission
20 could determine whether to approve such proposals, in whole or in part. For the following
21 three years, retail rates for all customers would be frozen to allow for mitigation, and partial
22 or total recovery, of stranded costs. If, at the end of this three-year period, the utility
23 believed that it had not fully recovered its stranded costs, it would than have had the

1 opportunity to seek to institute an additional charge on customer bills for the recovery of a
2 portion of any remaining positive stranded costs. That charge would not be extended beyond
3 an additional three years, and we expressed hope in the Staff Report that no additional
4 charges would even be necessary if electric restructuring was implemented.

5 Q. Did the Staff Plan support a belief that the Staff was opposed to the concept of
6 stranded cost recovery, as implied by Mr. Empson?

7 A. Obviously not.

8 Q. Mr. Empson mentions in his rebuttal testimony at pages 4-5 that the Staff had
9 expressed support for "divestiture" of generating units in the event of electric restructuring in
10 the Staff Plan. What is "divestiture" in this context?

11 A. Divestiture means that retail electric providers would sell their generating
12 units once retail competition was implemented. This would enforce a total separation
13 between the generating and distribution functions, and those who advocated divestiture did
14 so because they believed it would reduce the potential market power of electric generation
15 suppliers, as well as provide for a more accurate quantification of the amount of stranded
16 costs associated with each generating asset.

17 Q. Is Mr. Empson correct in his claim that in the Staff Plan the Staff favored
18 generating asset divestiture in the event of electric restructuring?

19 A. On page 12 of the Staff Plan, the Staff laid out three options for the electric
20 industry structure after restructuring. Each of these structures would have resulted in the
21 separation of the generation, transmission and distribution functions of the current bundled
22 electric industry structure: 1) divestiture, or sale of generation and/or transmission assets to

1 other entities; 2) separate affiliate companies, or holding company structure; and 3) separate
2 divisions within the same company.

3 Elsewhere in the Staff Report, the Staff expressed its preference for the divestiture
4 option, both on market power and stranded cost quantification grounds. However, the Staff
5 nowhere recommended in the Staff Report that generating asset divestiture be made
6 mandatory, and suggested instead that incentives be offered to those electric utilities that
7 voluntarily chose the divestiture option.

8 Q. Did the SCWG Report offer any perspectives on the option of generating asset
9 divestiture?

10 A. Yes. On page 34 of the Report, it is stated that:

> 11 It is debatable whether regulatory or even legislative bodies have
> 12 strong legal authority to require the divestiture of generation assets…
> 13 The generating asset auctions contemplated or initiated to date in the
> 14 U.S. are the result of regulatory and legislative actions, as well as
> 15 restructuring agreements, designed to induce voluntary asset
> 16 divestiture, generally in exchange for guarantees of stranded cost
> 17 recovery and other concessions to utility interests in the process of
> 18 restructuring the electric utility industry in various states.

19 Q. In light of this background, is it persuasive to cite the possibility of generating
20 asset divestiture as a reason not to build generating units and place them in rate base in
21 Missouri?

22 A. No. Mr. Empson implies in his testimony that a utility would be foolish to
23 own and rate base generating units if generating unit divestiture was a possibility.
24 Accordingly, in his view, the decision to obtain power for MPS through a PPA with an
25 unregulated Aries unit is justified. However, this belief ignores the fact that there was no
26 serious consideration of mandatory generating asset divestiture at the time of the Aries PPA
27 decision (if such an option was even legally possible), and certainly the Staff never

1 advocated this. Mr. Empson also implicitly assumes that any law that would require
2 divestiture of generating units would not apply to non-regulated units owned or controlled by
3 electric utilities. This is not necessarily true. Any mandatory requirement for divestiture
4 might have required the Aquila/UtiliCorp affiliate, MEPPH, to sell its interests in the Aries
5 unit.

6 Q. On pages 4-5 of his rebuttal testimony, Mr. Empson presents four quotes from
7 the Staff Report that he claims were intended as "guidance" in electric utility decisions
8 concerning new regulated generating plants. Please comment.

9 A. Each of these four quotes is taken out of context in some way. I will address
10 each quote in turn:

11 **Quote:** "Only in the case where the utility has made significant divestiture of its
12 generation assets should these subsequent charges be set at levels necessary to allow 100% of
13 the remaining utility stranded costs to be recovered." (Staff Report, page 11)

14 **Staff Response:** This quote is presented out of context, as the Staff was only
15 advocating less than 100% stranded cost recovery if an electric utility failed to gain full
16 recovery during the last three years of the Staff's proposed transition period. The very next
17 sentence in the Staff Report following the above quote, omitted by Mr. Empson, reads
18 "Otherwise, the utility will have no incentive to maximize mitigation of stranded costs during
19 the earlier three-year period." As earlier discussed, the Staff believed that three-year period
20 for stranded cost recovery should be sufficient for full recovery for most electric utilities.

21 **Quote:** "The Staff believes that divestiture of generation by utilities will more
22 quickly promote vigorous competition in the generation markets and raise fewer questions

1 and concerns regarding independence of operation of the generation assets." (Staff Report,
2 page 12)

3 **Staff Response:** As previously noted, nowhere in the Staff Report did the Staff
4 suggest that generation divestiture be required of any utility, though the Staff did suggest that
5 certain stranded cost recovery incentives be offered to those utilities that voluntarily divested
6 their generation assets. Any utility that did not wish to divest its generating assets would not
7 have to do so, under these suggested Staff policies.

8 **Quote:** "The utility will not want to commit to new contracts over long periods when
9 such a contract term might result in stranded costs at the time direct access is implemented."
10 (Staff Report, page 28)

11 **Staff Response:** This statement is presented out of context in Mr. Empson's
12 testimony. The above quote assumed the adoption of the electric restructuring plan outlined
13 in the Staff Report, and in particular use of a four-year "transition period." While the issue
14 of whether utilities should enter into long-term contracts was certainly germane in the late
15 1990s, the Staff also believes that utilities should have considered other scenarios besides the
16 implementation of electric restructuring in Missouri in making its generation resource
17 decisions, and certainly should not have assumed that highly specific recommendations for
18 electric restructuring implementation, such as the Staff Report, would be adopted in full.

19 **Quote:** "In addition to replacing existing generation capacity, all of the investor-
20 owned utilities will need to add additional capacity to meet their growth in native load
21 (wholesale under contract and retail). <u>It is anticipated that much of this new generation</u>
22 <u>capacity will be acquired through short-term purchased power contracts rather than from the</u>

1 addition of new generation capacity." (Emphasis added by Mr. Empson) (Staff Report, page
2 29)

3 **Staff Response:** Like the last quote, this Staff statement was in the context of the
4 Staff's proposal for a four-year transition period being adopted as part of an electric
5 restructuring initiative. The underscored statement in particular was intended as more of a
6 prediction than a policy pronouncement. In any case, electric utilities in Missouri other than
7 Aquila/UtiliCorp did choose to construct new generating facilities in the same general period
8 as the Staff Report.

9 Q. Is the implication in the rebuttal testimony filed by the Company's witnesses
10 that by entering into the Aries PPA and avoiding ownership of a regulated generating unit,
11 Aquila/UtiliCorp was being responsive to various Staff concerns an accurate
12 characterization?

13 A. No. It is a very misleading characterization. Included as a Highly
14 Confidential Schedule to Staff witness Featherstone's testimony is the Staff's notes to its
15 October 28, 2003, interview with Mr. DeBacker and Mr. Robert Holzwarth, as modified and
16 clarified by those individuals. On page 4 of Schedule 3, Mr. DeBacker and Mr. Holzwarth
17 make the following points:

18 1) ** ____
19 ____
20 ____
21 ____________________ **.

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2) ** ____

____ **

The reality is that Aquila/UtiliCorp entered into the strategy that led to the Aries PPA decision for its own reasons, quite independent of the Staff concerns on electric restructuring and stranded costs, etc. In fact, the Staff believes the primary reasons that Aquila/UtiliCorp engaged in a "buy/not build" approach to generating resources during this period have very little to do with the reasons the Company states for this approach through the testimony of its witnesses in this case.

Q. What does the Staff believe were the Company's primary reasons for its "buy/not build" strategy in the mid- to late 1990s?

A. The Staff believes that Aquila/UtiliCorp embarked on this approach for the simple reason that it believed it could obtain higher profits by selling power to its retail customers from affiliated non-regulated units at market-based rates than from selling power from units included in utility rate base at regulated rates.

Q. How could the Company obtain higher profits in this manner?

A. By two means:

1) In an environment of increasing power prices, an approach of using short-term PPAs to supply power for retail customers would require either a renegotiation of the original PPA or finding a new power supply when the original PPA expired, with either option resulting in higher prices to retail customers; and

2) The traditional inclusion of generating units in rate base also includes the approach of reflecting as an offset in the calculation of customer rates any interchange sale

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1 proceeds from the units in question. If power is supplied to retail electric customers from
2 unregulated generating units (even if they are affiliated), then no such credits to retail
3 customers for interchange sales from those units must be made.

4 Q. Referring to the first point above, do you have any support that the Company
5 sought higher profits in this manner?

6 A. First, the Staff believes the evidence shows that Aquila/UtiliCorp expected
7 significantly higher power prices over time to occur to its benefit. Second, the evidence
8 shows that the Company has engaged in a consistent pattern of seeking deregulated treatment
9 of its generating units that would allow it to reap the benefit of higher market-based power
10 prices than it would be able to if its generating units were included in rate base.

11 Q. What evidence exists that Aquila/UtiliCorp expected higher power prices over
12 time in the electricity market?

13 A. As previously discussed in my rebuttal testimony in this proceeding, the Staff
14 is aware of a number of electric power price forecasts performed by, or on behalf of,
15 Aquila/UtiliCorp that showed an expectation of sharply higher prices for power into the
16 future. Two such forecasts are attached to Staff witness Featherstone's surrebuttal testimony
17 in this proceeding, and both show significant increases in the price of power during the time
18 of the Aries PPA evaluation by Aquila/UtiliCorp.

19 Q. What is the importance of the Company's expectation of higher power prices
20 to its Missouri retail customers?

21 A. A strategy of negotiating short-term PPAs to provide power to customers
22 would lead to significantly higher rates for those customers every time the PPA would
23 expire, compared to being provided power through units included in rate base.

1 Q. What evidence do you have of an Aquila/UtiliCorp strategy to place its
2 existing and new generating units on its deregulated side, as opposed to its regulated
3 operations?

4 A. Again, as previously addressed in my rebuttal testimony, the Company has
5 taken the following actions along this line in recent years:

6 1) An attempt to transfer all of its existing MPS generating assets to an
7 unregulated exempt wholesale generator (EWG) structure in Case No. EM-97-395
8 (this case was later withdrawn);

9 2) An attempted transfer its Greenwood units to an unregulated
10 Aquila/UtiliCorp subsidiary once their leases ran out; and charge its customer a
11 higher rate for the "market" price of Greenwood power, compared to the rates
12 customers paid when the units were under lease; and

13 3) Its decision to build the Aries unit as an unregulated unit, as opposed
14 to a regulated unit included in MPS' rate base.

15 The 1997 EWG proceeding and the Greenwood leases are further discussed in
16 Staff witness Featherstone's surrebuttal testimony.

17 Q. What evidence does the Staff have that the Company had a strategy for
18 seeking to retain interchange sale profits for itself?

19 A. In Aquila/UtiliCorp's last two Missouri electric rate cases for its MPS division
20 immediately preceding the instant proceeding (Case Nos. ER-97-394 and ER-2001-672),
21 Aquila/UtiliCorp presented proposals for the Company to retain all or a portion of its
22 interchange sales proceeds, rather than reflect the full amount of the proceeds as a reduction
23 to its revenue requirement. The Commission rejected that proposal in the 1997 rate case,

1 while the 2001 rate proceeding ended in a negotiated settlement. Aquila/UtiliCorp also
2 proposed the same position on interchange sales in a rate proceeding before the Kansas
3 Corporation Commission, which also rejected the Company's proposal.

4 Q. Are you aware of other evidence that the Company's approach of avoiding
5 regulated rate base generating additions in Missouri was motivated by a desire for higher
6 profit levels?

7 A. Yes. Schedule 4 to this testimony is Aquila/UtiliCorp's response to Staff Data
8 Request No. 365 in Case No. ER-2001-672. The response is by Mr. Stephen L. Ferry,
9 Aquila/UtiliCorp's then Vice-president, Wholesale Power Services. Asked why the
10 Company was following a policy of not building and placing in rate base generating assets,
11 Mr. Ferry responded, "The Company believes that the current regulatory climate does not
12 warrant the business risks associated with constructing and owning rate-based generating
13 plants." The Staff interprets this response as meaning that Aquila/UtiliCorp perceived that
14 profit levels earned on rate base investment was inadequate, and that greater returns could be
15 garnered through have unregulated affiliates construct and own/operate the units, and charge
16 the regulated Aquila/UtiliCorp divisions market rates for power. In his response, Mr. Ferry
17 did not state any concerns regarding stranded costs, generating unit divestiture, etc.

18 Q. In the Staff's opinion, did Aquila/UtiliCorp act prudently in its generation
19 resource planning decisions relating to its decision to enter into the Aries PPA?

20 A. No. In view of Aquila/UtiliCorp's expectations of higher power prices in the
21 future, as a prudent utility the Company should have acted to protect its customers from those
22 higher prices by the generating resource decisions it made. Instead, the Company chose a

1 deliberate strategy of seeking to expose its Missouri retail customers to increasing market-
2 based power rates, and thus, rather than protect its customers, increase its profit levels.

3 Q. What could Aquila/UtiliCorp have done differently?

4 A. The Company could have chosen to construct and own regulated units,
5 placing them in rate base, as a "hedge" against higher future power costs. As previously
6 explained in my rebuttal testimony in this proceeding, prices for power set by regulators
7 based on the actual costs of generating units in rate base should be less expensive than the
8 "market" price of power when power prices are increasing significantly over time.

9 Q. Have other regulatory commissions recognized the value of electric utilities
10 owning and controlling their own generating units as a hedge against higher power prices?

11 A. Yes. In Case No. 2003-00252, the Kentucky Public Service Commission
12 approved in December 2003 the application of Union Light, Heat and Power Company
13 (ULHPC) to acquire 1,105 megawatts of generating capacity from The Cincinnati Gas and
14 Electric Company (CGEC), ULHPC's parent company. ULHPC had formerly been provided
15 power from these generating resources under a PPA with CGEC, at a fixed price with a
16 market price component. The Kentucky's Commission order approving the transaction in
17 Case No. 2003-00252 noted that it had expressed interest in the past in ULHPC acquiring
18 generation in order to insulate itself from the impacts of market prices for wholesale power
19 on an ongoing basis.

20 Q. Did Aquila/UtiliCorp avoid stranded costs through its avoidance of building
21 regulated generating units?

22 A. Ironically, no. The term "stranded costs" has a specific meaning that pertains
23 to regulated generating assets. But the concept of a company suffering losses because it

1 experiences above-market costs is not unknown in unregulated businesses. And that is
2 exactly what has happened with Aquila/UtiliCorp's fleet of unregulated generating units.
3 The Company is in the process of selling these units at substantial losses, **___________
4 _________ **. Please refer to the direct testimony of Staff witness Featherstone in this
5 proceeding for further discussion of Aquila/UtiliCorp's financial difficulties relating to its
6 unregulated merchant power plants.

7 Q. It appears that a clear inference in Mr. Debacker's rebuttal testimony is that
8 the Staff's ratemaking position on the Aries PPA in this proceeding is inconsistent with the
9 feedback received from the Staff concerning this matter in 1998-99. Do you agree with that
10 inference?

11 A. No. Most of Mr. DeBacker's discussion of his Staff contacts during this time
12 period concerns the Integrated Resource Planning (IRP) process that had been set up
13 primarily to ensure that the Staff was informed on a timely basis of Missouri electric utilities'
14 plans for meeting their future loads (customer energy demands). The IRP also provided an
15 informal mechanism for the Staff to provide the utilities feedback on their generation
16 resource plans. However, in no way did the IRP process utilize the kind of extensive
17 discovery that is common in rate proceedings to obtain the information required to fully
18 evaluate the prudence of major utility decisions, including generation resource planning
19 decisions. To put it simply, the purpose of the IRP process was not, and is not, to obtain
20 some sort of preliminary ratemaking assurance for electric utility generation resource
21 decisions, so that the utilities can be "held harmless" in later rate proceedings for those
22 decisions.

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1 Q. At page 31 of his rebuttal testimony, Company witness DeBacker describes
2 the Staff's memoranda recommending approval of the Company's application in Case
3 No. EM-99-369 seeking approval of the Aries PPA. Were you involved in that proceeding?

4 A. Yes, as noted by Mr. DeBacker, I was.

5 Q. In Case No. EM-99-369, did the Staff's recommendations to the Commission
6 in any way pertain to future ratemaking findings concerning the Aries PPA?

7 A. No. In fact, I was asked to assist in drafting one of the Staff's memoranda in
8 that case because of the severe limitations to the Staff's investigation of the Aries PPA in that
9 proceeding due to Aquila/UtiliCorp's request for expedited treatment of the application. As I
10 testified in my deposition taken by the Company on January 8, 2004:

11 Q. During the spring of 1999 when the Staff was formulating its
12 recommendations concerning UtiliCorp's application in EM-99-369,
13 were you involved in or aware of any discussions about the possible
14 ratemaking treatment that might be afforded the contract in the future?

15 A. The only discussion that I recall was a discussion I had with
16 Mr. Schallenberg, who was then and is now the division director for
17 the utility services division. He indicated that my scope in this case
18 would be to help formulate some conditions which would help
19 facilitate a review of the ratemaking implications of the – this
20 purchased power agreement in a subsequent rate case. In particular, he
21 stated that because of the very accelerated time frame in which the
22 Staff had to make its recommendation in the case, that we needed to be
23 sure that we would have the power and ability to do a thorough review
24 of the PPA in a subsequent rate case.

25 (Deposition of Mark L. Oligschlaeger, Case No. ER-2004-0034, page 20,
26 January 8, 2004)

27 The point here is not that the Staff desired for the Commission to make ratemaking
28 findings in a non-rate application. That would have gone against traditional Staff and
29 Commission practice. However, the Company's request for an expedited schedule for Case

1 No. EM-99-369 simply left the Staff no time to perform any kind of meaningful review of
2 the Company's application in that case.

3 Q. Prior to filing its application in Case No. EM-99-369, had the Company
4 earlier assumed it would need expedited treatment of this application before the
5 Commission?

6 A. No. Attached as a Highly Confidential Schedule to Staff witness
7 Featherstone's surrebuttal testimony is the response to Staff Data Request No. 301 in this
8 proceeding, which sought all materials pertaining to the decision by Aquila/UtiliCorp to
9 provide MPS' need for power from an affiliated PPA with Aries for the years 2001-2005.
10 Among the materials in this data request response is a January 5, 1999, presentation by
11 Aquila Merchant to Mr. Bob Green, then Chief Operating Officer of Aquila/UtiliCorp,
12 concerning the Aries project. Within the pages of Mr. Featherstone's schedule concerning
13 the January 5, 1999 presentation, one can find an estimated timeline for obtaining necessary
14 regulatory approvals for the Aries project from the Commission and from the Federal Energy
15 Regulatory Commission. The timeline shows that the Company was then expecting the
16 Missouri Commission application to be filed in February 1999, with a final approval in
17 August 1999. This timeline estimated that the Commission and its Staff would have six
18 months to conduct a review and make its decision related to the application.

19 Q. When did the Company actually file its application in Case No. EM-99-369?

20 A. Aquila/UtiliCorp filed the application on March 1, 1999, and requested final
21 Commission action by May 1, 1999. The Commission's order on this application was issued
22 on April 22, 1999. Further discussion of this matter can be found in Mr. Featherstone's
23 surrebuttal testimony.

Q. Are you aware of any reason the Company sought a much more expedited schedule from the Commission than that assumed at the January 5, 1999, presentation?

A. No.

Q. Should the Commission take into account the Company's imprudence regarding its handling of the Aries PPA in making rate determinations in this proceeding?

A. Yes. The Staff recommends that, in making its "lower of cost or market" determination in regard to Aries power pricing, the Commission exclude any allowance for equity invested by Aquila/UtiliCorp in the Aries project in quantifying the "cost" of Aries power. This will be discussed again later in this surrebuttal testimony.

ARIES: ADJUSTMENT QUANTIFICATION

Q. How did the Staff quantify its adjustment to test year Aries PPA expenses in this case?

A. The Staff used the lease payment MEPPH was obligated to make in 2002 as the best approximation of the fixed costs of the Aries unit to MEPPH. Then, the Staff allocated that amount to MPS based on the total amount of capacity that is committed to MPS throughout a twelve-month period under the PPA, compared to the total capacity of the Aries unit. The allocation method is explained in more detail in my direct testimony in this proceeding.

Q. What are the Company's primary criticisms of how the Staff calculated its Aries PPA adjustment?

A. Company witness Sherman offers these two primary criticisms of the Staff's quantification of its Aries PPA expense adjustment:

1) He criticizes the Staff's use of the lease payment as the basis for its quantification of Aries unit fixed costs, on the grounds that the lease payments "are based on financing that was never consummated and does not exist" (Sherman rebuttal, page 31, lines 16-17); and

2) Mr. Sherman further states that the Staff's adjustment omits certain components of fixed Aries costs, such as fixed and variable O&M, payments in lieu of taxes, and equity.

I will respond to each of these points in turn.

Q. Why was the lease that the Staff has based its Aries PPA adjustment on never consummated?

A. The lease was never consummated because the Aries owners (Aquila/UtiliCorp and Calpine) defaulted on its Aries debt obligations in June 2003. The construction financing used for the Aries unit was due to convert to permanent financing in June 2003. An operating lease between MEPPH and its creditors on the Aries project was part of that permanent financing. Instead, the Aries owners defaulted on the construction financing, and the permanent financing never went into effect.

Q. Why did the Aries owners default on the Aries construction financing?

A. ** ____

____

____

____

____

______________________________ **.

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1 Q. Given the Aries default, does the Staff still believe the operating lease
2 payments are an appropriate basis for quantifying Aries unit fixed costs?
3 A. Yes. The operating lease structure of the permanent Aries financing
4 represents the actual financing costs of the capital investment in the Aries unit. Moreover,
5 this lease was intended to be in effect by the end of the test year update period for this case
6 (September 30, 2003). The fact that the Aries owners chose to default on their financing
7 payments does not change the Staff's opinion that the lease payments represents at least a
8 portion of the actual fixed costs of the Aries project. The Staff still recommends that the
9 Commission use the Aries operating lease payments as the basis for establishing the cost of
10 the Aries unit to Aquila/UtiliCorp.
11 Q. What cost of service elements are reflected in the lease payments?
12 A. The Staff believes generally that lease payments are intended to provide the
13 lessor a return on and a return of the lessor's capital investment in the asset being leased. In
14 this instance, the Staff has assumed that the lease payments reflect both the interest expense
15 (return on investment) and the depreciation expense (return of investment) associated with
16 the lessor's investment in the Aries project.
17 Q. Is the Staff proposing any change to its adjustment relating to the amount of
18 the Aries lease payments?
19 A. Yes. The Staff has decided to use the 2003 lease payment amount of
20 $28.4 million, as opposed to the test year (twelve months ended December 2002) lease
21 payment of $27.6 million, to calculate its adjustment. The Staff made this change to better
22 synchronize its allowance for Aries PPA costs with other elements of its recommended fuel
23 and purchased power expense at September 2003.

1 Q. On pages 33-36 of his rebuttal testimony, Mr. Sherman alleges that the Staff
2 did not include an allowance for fixed O&M costs incurred at the Aries unit in its
3 quantification of Aries costs. Is this accurate?

4 A. Yes. Through an oversight, the Staff neglected to include an allowance for
5 fixed O&M costs for the Aries unit in its Aries adjustment. For purposes of this case, the
6 Staff will accept the Company's quantification of this amount for the twelve months ended
7 September 2003 at $7.5 million, with 61.31% allocated to MPS.

8 Q. On pages 36-37 of his rebuttal testimony, Mr. Sherman implies that the Staff
9 also failed to include an allowance for variable O&M in its Aries cost adjustment. Is this
10 true?

11 A. No, the Staff did include an allowance for variable O&M in its case. This was
12 calculated in a manner consistent with the Aries PPA contract: $1.25 per mwh of the Aries
13 power incorporated into the Staff's fuel model. This amount is then included in the Staff's
14 overall annualized fuel and purchased power expense allowance.

15 Q. Mr. Sherman discusses Payment in Lieu of Taxes (PILOT) amounts at pages
16 37-39 of his testimony. Did the Staff include any amount for PILOT in its Aries adjustment?

17 A. PILOT amounts are payable to Cass County, the nominal owner of the Aries
18 unit, by MEPPH in lieu of property taxes. As the amount of PILOT payments due Cass
19 County in the test year for the Aries unit was zero, the Staff did not reflect PILOT amounts in
20 its Aries PPA adjustment. Since the Staff has now decided to update its Aries adjustment
21 through the end of the test year update period, the Staff will include an amount for PILOT
22 payments in its adjustment, if appropriate. According to the response to Staff Data Request
23 No. 549, Cass County is due $200,000 for PILOT in 2003. If the Company can verify that

1 this payment occurred by the end of the test year update period, the Staff will increase its
2 adjustment for MPS' share of the 2003 PILOT payments. The Staff has issued an
3 outstanding data request to the Company for this information.

4 Q. On page 39 of his rebuttal testimony, Mr. Sherman alleges that an allowance
5 for depreciation should be included in the Staff's adjustment for the Aries unit. Please
6 comment.

7 A. As previously discussed, the Staff believes the lease payments it has used as
8 the basis for its adjustment include a component for a return of the capital investment in the
9 Aries unit. As such, any additional allowance for depreciation expense would constitute
10 double-recovery of this item.

11 Q. On page 32, Mr. Sherman cites an amount of $21 million as the amount of
12 Aries interest expense that should be included in the Staff's adjustment. Is this correct?

13 A. No. Again, interest payments are reflected in the lease amounts the Staff has
14 used to calculate its adjustment. No further allowance for debt costs is necessary.

15 Q. At pages 32 and 33 of his rebuttal testimony, Mr. Sherman argues that the
16 Staff has not included any return on equity amount for Aquila/UtiliCorp in its adjustment for
17 Aries. Is this true?

18 A. Yes. However, the Staff strongly disagrees with the contention that the
19 Commission should consider inclusion of a return on equity allowance for the Company's
20 investment in the Aries unit in the recoverable costs of the project.

21 Q. Why does the Staff disagree with considering an equity return as a valid cost
22 of the Aries unit from Aquila/UtiliCorp's perspective?

23 A. The Staff disagrees with this position for the following reasons:

1) The Aries owners are currently in default on the unit's construction financing. It would be wrong to grant an equity investment in rates to the Aries owners when the same owners are not paying debt costs that are due and related to the unit.

2) Return on equity is a cost of ownership of an asset. Aquila/UtiliCorp is in the process of selling its interest in the Aries unit to its MEPPH partner, Calpine, and does not intend to have ownership rights in the Aries unit on an ongoing basis.

3) For the reasons outlined earlier in this surrebuttal testimony, the Staff recommends that the Commission disallow any equity return on the Aries project on the grounds of the Company's imprudence relating to its decision-making concerning the Aries project.

Q. What is Schedule 6 to this testimony?

A. Schedule 6 presents an updated Aries PPA adjustment calculation in the same format as the original adjustment calculation that was presented in Schedule 4 to my direct testimony in this proceeding. The calculation presented in Schedule 6 has been changed from the earlier adjustment calculation to reflect the previously mentioned changes to incorporate an allowance for fixed O&M costs in the Staff's adjustment, and update the adjustment through September 2003 by changing the amount of the annual lease payment.

Q. What is the updated amount that the Staff is proposing for the Aries PPA adjustment?

A. As shown in Schedule 6, the annualized fixed costs for the Aries unit should be reflected in rates in an amount of $22,010,290.

1 **ARIES: DISCOVERY ISSUES**

2 Q. What does Company witness Stamm say about the relationship between the
3 Staff's position on the Aries issue and the discovery process implemented by
4 Aquila/UtiliCorp concerning Aries related data in this case?

5 A. On page 11 of his rebuttal testimony, Mr. Stamm states the following:

6 …[T]he Staff was provided every document and every piece of
7 information available that was requested during its investigation. Over
8 the objections of the plant's operating partner Calpine, a data room
9 was established by Aquila to provide even extremely confidential and
10 market sensitive information for review. Apparently, Staff either
11 ignored or did not understand this additional data, essentially proposed
12 the same adjustment as in the previous proceeding, made the same
13 errors in fact and logic, and, I suppose, assumed that labeling the
14 transaction as an excellent example of "affiliate abuse" was all that
15 was needed to justify a disallowance.

16 Q. Do you agree with the implication in the above quote that Aquila/UtiliCorp
17 did more than it was required to in providing the Staff access to data concerning the Aries
18 issue in the current rate proceeding?

19 A. No, the Staff strongly disagrees with Mr. Stamm's inference. Based upon an
20 alleged objection by Calpine to allowing the Staff to review Aries related material, the
21 Company set up a procedure by which the Staff was restricted over most of its audit to
22 reviewing Aries material only at Aquila/UtiliCorp's downtown Kansas City, Missouri
23 headquarters building by pre-arrangement. Furthermore, the Staff could only review one
24 data request response at a time, and the Staff had to review such responses in the presence of
25 an Aquila/UtiliCorp employee, who would note the time each data request response was
26 "checked out" by the Staff, and also make notations as to whether the Staff members viewing
27 the documents "discussed" the response or not. (Refer to Sherman Schedule 7). While the

Staff has always and will always be willing to make accommodations to meet utilities' legitimate concerns about the confidential nature of the data to which the Staff must have access to properly audit utility rate applications, the measures taken by the Company in this case related to Aries material were extreme. More to the point, these measures were not in any way an accommodation of the Staff, as Mr. Stamm implies, but rather their practical effect was to significantly impair the Staff's ability to have adequate access to documentation concerning the Aries unit. The fact that Mr. Sherman then uses these extraordinary discovery procedures as a means to attack the Staff (refer to Sherman rebuttal, pages 30-31) makes the Staff question Aquila/UtiliCorp's true motivations for instituting these discovery procedures in this case.

Q. What use does Mr. Sherman make of the discovery process used in this case for the Aries related material in his rebuttal testimony?

A. Throughout his testimony, but particularly at pages 30-31, Mr. Sherman dwells on the amount of time the Staff had checked out certain Staff data request responses without gleaning what he views to be the appropriate information or making the appropriate interpretation of the material provided. The clear inference is that the Staff was too unintelligent to understand these documents or too intellectually dishonest to make use of them, if they undercut the position of the Staff on the Aries issue in this case and the previous Aquila/UtiliCorp electric rate case in Missouri, Case No. ER-2001-672.

Q. Does the information provided in Sherman Schedule 7 provide support for Mr. Sherman's inferences about the Staff?

A. No. Schedule 7 to Mr. Sherman's rebuttal testimony are the "logs" which show the amount of time each Staff data request response concerning the Aries issue was

1 checked out by a Staff member. The materials in Sherman Schedule 7 do not necessarily
2 portray accurate information as to the amount of time the Staff spent in review of the
3 contents of each data request response. Often, when a document was checked out, the Staff
4 member may have spent some of the indicated log time on Sherman Schedule 7 discussing
5 other case-related matters with other Staff members, initiating or responding to phone calls
6 on unrelated matters, etc. Second, the Staff did take detailed notes of the Aries material it
7 reviewed in the "data room," since it was not allowed possession of these documents over
8 almost all of the audit duration. Significant time was spent reviewing these notes off the
9 Company's premises at its downtown headquarters. Accordingly, the amount of time cited
10 by Mr. Sherman at page 31 of his rebuttal testimony that the Staff allegedly spent reviewing
11 Aries related material simply not an accurate measure of the time the Staff actually spent
12 reviewing and assessing the content of each data request response.

13 Q. Are there any new developments concerning Aries discovery matters?

14 A. Yes. As of early January 2004, duplicate copies of Aries data request
15 responses have made available for the Staff's review at Aquila/UtiliCorp's counsel's office in
16 Jefferson City, MO. Under procedures agreed to by the Company, the Staff can request
17 copies of pertinent information from the Jefferson City data room. The new procedures have
18 significantly improved the terms of the Staff's access to these materials compared to the
19 situation when the Staff was reviewing these materials at the downtown Kansas City
20 Aquila/UtiliCorp headquarters.

1 **MERGER SAVINGS**

2 Q. What are Company witness Siemek's main points in his rebuttal testimony on
3 the issue of sharing merger savings?
4 A. Much of Mr. Siemek's rebuttal testimony consists of a repeat of the same
5 arguments contained in his direct testimony on this topic, and the Staff has adequately
6 responded to most of those points in its rebuttal testimony filed in this proceeding. However,
7 Mr. Siemek does allege in his rebuttal testimony that the Staff and OPC have been
8 inconsistent in their positions on sharing of merger savings taken over the course of the
9 Aquila/UtiliCorp and L&P merger case (Case No. EM-2000-292) and the last two
10 Aquila/UtiliCorp rate cases (Case No. ER-2001-672 and the instant rate proceeding).
11 Q. In the case of the Staff, in what ways does Mr. Siemek allege that the Staff has
12 have been inconsistent on this issue?
13 A. In general, Mr. Siemek alleges that the Staff keeps changing its position on
14 the issue of merger savings in an unprincipled manner, so that no matter what the Company
15 proposes the Staff is always opposed to it. More specifically, Mr. Siemek states that the Staff
16 has taken the position in the past that sharing of 50% of merger savings with utility
17 shareholders is appropriate, which happens to be the Company's position on this issue in this
18 case.
19 I will respond to both the general and specific arguments that Mr. Siemek makes.
20 Q. Do you agree with Mr. Siemek's argument that the Staff has been inconsistent
21 in the stands it has taken on merger savings sharing in past Aquila/Utilicorp cases?
22 A. Not at all. The position of the Staff in the Aquila/UtiliCorp and L&P merger
23 case and the Missouri Aquila/UtiliCorp rate proceedings that have followed has been totally

1 consistent in how we have recommended that merger savings be treated for rate purposes:
2 regulatory lag should be relied upon as the means by which merger savings are effectively
3 shared between the Company and its customers over time.

4 Q. Are there any exceptions to the Staff position stated above?

5 A. In my rebuttal testimony in Case No. EM-2000-292, I outlined some
6 circumstances in which regulatory lag might not prove to be sufficient to provide a fair
7 opportunity by the combining utility to share in the benefit of merger savings. On page 48 of
8 that testimony, I stated:

> 9 Q. Are there instances in which regulatory lag may not provide for
> 10 a fair sharing of merger savings to a utility?
>
> 11 A. That is possible. In particular, when a company undergoing a
> 12 merger faces increasing revenue requirements even when estimated net
> 13 merger savings are factored in, rate increase cases may serve to pass
> 14 on achieved merger savings to customers without a chance for the
> 15 utilities to retain a share of merger savings for a reasonable period. In
> 16 these instances, the Staff would not be opposed in concept to proposals
> 17 by utilities to "share" merger savings in the context of a rate
> 18 proceeding.

19 Q. Is the above quoted testimony still the stated position of the Staff?

20 A. Yes, it is. The fundamental disagreement between the Staff and the Company
21 on this issue is whether Aquila/UtiliCorp has been in a position of having a reasonable
22 chance to benefit from merger savings over the period of its last two Missouri rate
23 applications.

24 Q. When did the Company file its first MPS rate proceeding after the
25 consummation of the Aquila/UtiliCorp merger?

26 A. The Company filed Case No. ER-2001-672 in June 2001. The test year for
27 that proceeding was the calendar year 2000, with an update period ending June 30, 2001.

1 Q. What was the position taken by the Staff in that rate proceeding on merger
2 savings?
3 A. There were no merger savings included in the test year ordered in that case, as
4 the merger was not closed until the last day of the test year, December 31, 2000. To the
5 extent merger savings were incurred in the areas of the case that the Staff updated through
6 the end of the update period, then merger savings would have been reflected in the Staff's
7 case.
8 Q. Why did the Staff choose to incorporate merger savings achieved up to that
9 point in time in its revenue requirement recommendation in Case No. ER-2001-672?
10 A. The Staff took this course of action because it believed the Company would
11 have the opportunity for substantial retention of merger savings in the future even if some
12 merger savings through June 30, 2001 were reflected in customer rates. The Staff believed
13 this because Company witnesses in that case made a point of stressing how little an amount
14 of merger savings had actually been created by the end of the update period in Case
15 No. ER-2001-672. For example, Mr. Siemek emphasized in his rebuttal testimony in that
16 case at pages 2-9 how Aquila/UtiliCorp's MPS and L&P divisions had not been fully
17 integrated to that point, and that full integration of the divisions would not be complete prior
18 to the end of 2003. Further, the full benefits of joint dispatch of MPS and L&P generating
19 units up to that point had not been achieved due to lack of fully functional and permanent
20 transmission interconnections between the two divisions (Siemek Rebuttal Testimony, Case
21 No. ER-2001-672, p.3).
22 Q. What is the relevance of the status of the MPS and L&P divisions' integration
23 to merger savings?

1 A. Many of the planned merger savings from the Aquila/UtiliCorp and L&P
2 transaction related to successful integration of the MPS and L&P divisions. Also, while
3 some level of joint dispatch benefits had been achieved by the summer of 2001, the
4 Company's testimony in Case No. ER-2001-672 indicated further benefits were possible and
5 expected when more transmission interconnections were installed between the two divisions.
6 For these reasons, the Staff believed that the merger savings achieved by the end of the
7 update period for Case No. ER-2001-672 was minimal, and further significant savings could
8 be expected to incur to the Company's benefit through regulatory lag after that rate case was
9 concluded. Accordingly, the Staff concluded that no extraordinary measures to share merger
10 savings were warranted at that time.

11 Q. Did the Company sponsor a "proposal to share merger savings" in the context
12 of Case No. ER-2001-672?

13 A. No. The Company's position in that rate proceeding was to seek retention of
14 all merger savings it claimed to have achieved by the end of the test year update period; i.e.,
15 no sharing of merger savings with customers.

16 Q. Did the Commission rule on the issue of treatment of merger savings in Case
17 No. ER-2001-672?

18 A. No. The case ended in a negotiated settlement that reduced MPS' electric
19 rates in Missouri.

20 Q. Despite his criticisms of the Staff's treatment of merger savings in Case
21 No. ER-2001-672 in this proceeding, in other forums has Mr. Siemek made other
22 characterizations of the Staff's treatment of merger savings in Case No. ER-2001-672?

1 A. Yes. In Docket No. RPU-02-5, Aquila/UtiliCorp's rate application with the
2 Iowa Utilities Board for its Peoples Natural Gas division, the Company proposed a merger
3 savings sharing adjustment similar to the adjustment proposed in this rate proceeding, and
4 also premised on the L&P merger transaction. In that case, in defending the proposed merger
5 savings sharing adjustment, Mr. Siemek made these statements in rebuttal testimony on
6 pages 7-8 concerning the 2001 Missouri rate increase case:

7 Q. As a participant in that Missouri case, do you have an opinion
8 bon the ultimate resolution of sharing the savings in that case?

9 A. Yes. My opinion is that Missouri Staff made a reasonable
10 attempt to quantify the savings from economies of scale to MPS. I
11 also believe that Missouri Staff testimony from the merger case, which
12 strongly endorsed sharing synergies, also strongly influenced the
13 outcome of the rate case negotiations. I also believe that the Missouri
14 commission in its merger order included the language that encouraged
15 Aquila to believe that sharing synergies would be considered. As a
16 result, I believe that the ultimate commission decision in the rate case
17 would have resulted in sharing synergies between the Company and
18 customers.

19 Mr. Siemek is clearly stating that the negotiated settlement of Case No. ER-2001-672 in
20 Missouri was derived in part through an undefined sharing of merger savings between
21 customers and the Company.

22 Q. Does the Staff agree with Mr. Siemek's characterization of how merger
23 savings were treated in Case No. ER-2001-672?

24 A. No, as the case was settled based on the terms of a Stipulation And
25 Agreement. The Staff believes no party to that proceeding can validly make statements
26 concerning the rate treatment of merger savings that was built into the agreed-upon revenue
27 requirement amount, since the Stipulation And Agreement is silent on the subject of merger
28 savings, among many other things. The Staff asserts that Mr. Siemek's statements in
29 testimony on this topic in the Iowa proceeding are primarily noteworthy in that they clearly

1 contradict the tone of Mr. Siemek's critique of the actions of the Staff in Case
2 No. ER-2001-672, and reveal an approach of stating anything in testimony that may induce a
3 Commission decision that merger savings should be shared.

4 Q. Does the Staff believe that Aquila/UtiliCorp has had a reasonable opportunity
5 to benefit from merger savings by the time this rate increase case was filed?

6 A. Yes. Aquila/UtiliCorp will have had over three and a half years to create and
7 benefit from merger savings by the time rates from this proceeding will likely be in effect.
8 That is more than enough time for sharing of merger savings through regulatory lag,
9 especially considering that it is the Company's own action of filing a rate increase that will
10 end the retention by the Company of the merger savings its has created to date.

11 Q. Mr. Siemek implies at page 5, lines 9-11, that in the Aquila/UtiliCorp and
12 L&P merger case, the Staff acknowledged that extenuating circumstances, such as the
13 financial stress recently encountered by the Company, should be considered in designed
14 merger savings sharing plans. Is this correct?

15 A. No. The Staff has been raising in rate cases for years concerns about the
16 effect on Aquila/UtiliCorp's rates of its nonregulated activities that ultimately resulted in its
17 present financial predicament. The Staff in no way agrees that the recent financial stress
18 suffered by the Company justifies extraordinary treatment of merger savings, or any other
19 revenue requirement component.

20 Q. On pages 10-11 of his rebuttal testimony, Mr. Siemek alleges that the Staff
21 has in the past endorsed the concept of utilities sharing in at least 50% of merger savings,
22 consistent with the Company's position in this proceeding. Is this accurate?

1 A. No. Mr. Siemek's quotes from prior Staff testimony are taken entirely out of
2 context.
3 Q. In the L&P merger case, did the Staff support any extraordinary measures for
4 the sharing of merger savings?
5 A. No. At pages 47-48 of my rebuttal testimony in Case No. EM-2000-292, I
6 clearly state that the Staff recommended that the Commission adopt the traditional approach
7 of using regulatory lag to achieve a sharing of merger savings arising from the L&P
8 transaction.
9 Q. Given that position, please explain Mr. Siemek's quote from your rebuttal
10 testimony in the merger case that stated that at least 50% of merger savings should be passed
11 on to customers in the long-term if a regulatory plan is adopted.
12 A. Aquila/UtiliCorp and other merging utilities in Missouri in the mid- to late
13 1990s had a practice of proposing "regulatory plans" for the Commission's consideration in
14 merger and acquisition cases. These regulatory plans were intended to govern how merger
15 costs and benefits were to be treated in future rate proceedings after the merger transaction in
16 question was approved. In the Staff's view, these regulatory plans without exception were
17 designed to allow utilities inappropriate rate recovery of merger costs, such as the acquisition
18 adjustment, or to allow for inappropriate retention of merger savings by the utilities, or both.
19 Accordingly, in every major merger case during this period, the Staff recommended that the
20 Commission reject the proposed regulatory plan, including the one proposed by the Company
21 for the Aquila/UtiliCorp and L&P transaction.
22 Q. In the L&P merger case, how much of the merger savings would have been
23 retained by the Company under its proposed regulatory plan?

1 A. The Staff presented evidence in that case that Aquila/UtiliCorp would retain
2 95.7% of all merger savings estimated to be produced over the first ten years following the
3 merger, if its regulatory plan was adopted by the Commission (Rebuttal Testimony of
4 Mark L. Oligschlaeger, Case No. EM-2000-292, page 31). The Staff believed this was
5 grossly unfair and inappropriate, and advised the Commission that if it chose to adopt a
6 regulatory plan for the L&P transaction, it should adopt a plan that would at least allocate
7 50% of merger savings over the long term to the Company's Missouri customers.

8 Q. So the quote found on page 10 of Mr. Siemek's rebuttal testimony is related to
9 a secondary or "fallback" position taken by the Staff in the merger case?

10 A. Yes. To summarize, the Staff opposed the Company's regulatory plan in the
11 L&P merger case, and recommended that an opportunity for the Company to benefit from
12 merger savings be offered through the traditional approach of regulatory lag. In the
13 alternative, as a secondary position, if the Commission chose to adopt a regulatory plan for
14 Aquila/UtiliCorp to follow the merger, the Staff proposed that the Company's plan be revised
15 to allow for a more reasonable sharing of merger savings with customers than what the
16 Company proposed with its regulatory plan. The Staff's position on merger savings in this
17 proceeding is totally consistent with what it was recommending to the Commission in Case
18 No. EM-2000-292.

19 Q. Mr. Siemek also presents quotes from Staff witness Michael Proctor's rebuttal
20 testimony in the L&P merger case that purport to represent an affirmative Staff position that
21 50% of merger savings should be assigned to shareholders. Is this an accurate representation
22 of Dr. Proctor's testimony in that proceeding?

1 A. No. A review of pages 15-22 of Dr. Proctor's rebuttal testimony in Case
2 No. EM-2000-292 shows that he was presenting his perspective on the advantages and
3 disadvantages of various types of "regulatory sharing plans" that could be adopted following
4 the merger. On page 22, Dr. Proctor states the following regarding this discussion:

> 5 Q. Are you recommending that the Commission adopt some form
> 6 of regulatory sharing plan for the purpose of this merger?
>
> 7 A. No. The purpose of my rebuttal testimony is to explain
> 8 attributes associated with various types of regulatory sharing plans.
> 9 Staff witness Mark L. Oligschlaeger of the Accounting Department
> 10 will testify on the Staff's recommendations regarding regulatory
> 11 sharing plans.

12 Q. One of the underlying themes of Mr. Siemek's rebuttal testimony is that the
13 Staff's and the Company's professed "principles" on the issue of merger savings sharing are
14 not that far apart, and that agreement on sharing could be easily achieved if only the Staff
15 would stop "shifting the goalposts" on this issue in an unprincipled manner. Does the Staff
16 agree with this attempted framing of the issue?

17 A. No. The reality is that the Staff and the Company are conceptually very far
18 apart on this issue. Notwithstanding Mr. Siemek's characterization that the Company's
19 position on merger savings sharing is fully consistent with the Staff's regulatory lag approach
20 to this issue in his filed direct testimony (refer to page 17, lines 7-19), in his rebuttal
21 testimony he makes clear the Company's true belief that the regulatory lag approach will
22 never allow for a fair allocation of merger savings benefits to shareholders.

23 On the issue of allocation of merger savings between customers and shareholders, the
24 Staff has consistently held that a regulatory lag approach should be used in setting rates. The
25 Staff has also indicated that there are very narrow circumstances in which a strict regulatory
26 lag approach may not be fair, but has explained in testimony why these exceptions do not

1 apply to Aquila/UtiliCorp. In contrast, the Company has taken a clear position that
2 regulatory lag is never an equitable method to share ongoing merger savings between utility
3 customers and shareholders (Rebuttal Testimony of Vern J. Siemek, page 4, lines 17-21).
4 The differences between the Staff and the Company are real and profound, and Mr. Siemek is
5 trying to evade these differences with baseless and self-serving allegations of bad faith.

6 Q. Please comment on Mr. Siemek's belief that regulatory lag will never lead to a
7 fair or sufficient allocation of merger savings benefits to utility shareholders.

8 A. On page 4 of his rebuttal testimony, Mr. Siemek states, "Regulatory lag is
9 NOT an equitable method to share savings when the synergies created are ongoing. This
10 inequity is because those continuing synergies are passed on to customers periodically and
11 thus are no longer shared." The clear implication in Mr. Siemek's statement is that prior to
12 passing on merger savings to customers in rates, those merger savings are somehow "shared"
13 with customers. This is not what is occurring. Prior to being passed on to customers in rates,
14 utility shareholders receive all the benefits from merger savings. If utilities can avoid
15 applying for rate increases, they will share no or very little merger savings with their
16 customers for long periods of time.

17 Q. On page 6 of his rebuttal testimony, Mr. Siemek claims "Aquila has not
18 realized any positive synergies to date." Is this true?

19 A. This statement is a reprise of Mr. Siemek's argument in his direct testimony
20 that a utility should not be considered to have benefited from merger savings retention
21 through regulatory lag unless its earnings are at or above its authorized level. In other words,
22 if increases in non-merger costs offset expense savings attributable to mergers, the
23 Commission should act as if the merger savings have not occurred. The illogic of this

argument should be readily apparent, and the Commission should resist Aquila/UtiliCorp's proposal that the Commission act as a "guarantor" of utility earnings following merger approval.

Q. On page seven of his rebuttal testimony, Mr. Siemek states that the pooling method of accounting for merger and acquisition transactions was not available for the L&P transaction, and in any case it is no longer used for financial reporting purposes. Please comment.

A. Mr. Siemek misses the point here. The original Aquila/UtiliCorp merger agreement provided for pooling accounting treatment, until the merger participants changed the terms of the deal so that it no longer qualified for pooling. Moreover, while pooling accounting treatment is no longer allowed today under generally accepted accounting principles, it was a legitimate option at the time of the negotiation of the L&P transaction and the regulatory approval process. The Staff's point on pooling is simple: by using of the pooling method for accounting for merger transactions, the booking of an acquisition adjustment would have been avoided as would have been much of the financial pressure that leads utilities to request rate recovery of merger costs or inappropriate methods of sharing merger savings.

Q. Mr. Siemek states at page 6, lines 20-23 of his rebuttal testimony that the Company is proposing sharing of only certain savings which result from clear economies of scale and efficiencies and can be calculated with straightforward quantifications. Do you agree?

A. No. Even if the identification and quantification of savings were as simple as Mr. Siemek asserts, which is not the case, he is engaging in selective savings quantification.

1 The Company has made no effort to identify all merger savings and costs in all areas of its
2 operations, but only proposed sharing of savings in two areas where relatively simple
3 quantifications can be performed, and the results can be deemed to be "merger savings."
4 Merger detriments can be present in other areas of MPS and L&P operations, but
5 Mr. Siemek's approach would ignore those and only seek sharing of the claimed positive
6 benefits of the L&P merger. Please refer to the rebuttal testimony of Staff Auditing witness
7 Steve M. Traxler in this case for an example of merger detriments to the L&P division that
8 has been ignored by Mr. Siemek.

9 Q. On page two of his rebuttal, Mr. Siemek asserts that no Staff, OPC or
10 intervener witness has disputed the Company's quantification of merger savings in the areas
11 of joint dispatch of generating units and allocation of corporate costs. Is this true?

12 A. No. Staff witness Featherstone addressed this point in his rebuttal testimony
13 in this case.

14 Q. Does this conclude your surrebuttal testimony?

15 A. Yes, it does.