

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

| | | |
|--|---|-----------------------|
| In the Matter of the Application of Aquila, |) | |
| Inc., d/b/a Aquila Networks - MPS and Aquila |) | Case No. EO-2008-0046 |
| Networks - L&P for Authority to Transfer |) | |
| Operational Control of Certain Transmission |) | |
| Assets to the Midwest Independent Transmission |) | |
| System Operator, Inc. |) | |

BRIEF OF DOGWOOD ENERGY, LLC

COMES NOW Dogwood Energy, LLC ("Dogwood Energy") and submits its Brief for consideration by the Commission.

Introduction

Dogwood Energy opposes Aquila's application for authority to transfer control of transmission assets to the Midwest ISO.¹

In support of its position, Dogwood presented the rebuttal and surrebuttal testimony of Mr. Robert Janssen, Vice President of Kelson Energy, which owns Dogwood Energy,² and the surrebuttal testimony of Dr. Jonathan Lesser, consultant with the Bates White firm.³ Dogwood also elicited pertinent information from witnesses for Aquila, SPP and Staff at the hearing.

¹ Given the overwhelming evidence against the application, the Commission could justifiably be frustrated that so many resources have been diverted to the fulfillment of Aquila's ill-advised contractual commitment to pursue this matter to its conclusion. As Chairman Davis recognized at the outset of the hearing, that contractual commitment substantially impairs the credibility of any arguments offered in support of the application by Aquila. (Tr. 46-48). Absent this unapproved commitment, it seems doubtful Aquila would seriously consider membership in MISO at this point. At least now, with the submission of briefs, the Commission can proceed to deny the application and release Aquila from its stale commitment. And so, since it is better to laugh than to cry, with apologies to Gershwin, "You say Mee-So, I say My-So ... let's call the whole thing off."

² Exhibits 15 and 16.

³ Exhibit 17.

Dogwood owns the 600 MW combined cycle generating facility located in Aquila's MPS service territory in Pleasant Hill, Missouri. This facility was formerly owned by Calpine and known as the Aries facility. Dogwood acquired it at the end of 2006.⁴

Mr. Janssen's responsibilities include active representation of Kelson at the SPP RTO and regulatory agencies, power market development and NERC⁵ compliance for 4,000 MW of Kelson's generating capacity in the United States, including the Dogwood facility in Missouri.⁶

Specifically, Mr. Janssen's responsibilities include coordinating Dogwood's participation in SPP electricity markets.⁷

Mr. Janssen includes a curriculum vitae with his rebuttal testimony that describes his background and experience. He has over 13 years of experience in the electric industry, regarding: power plant management, acquisition, development, and financial analysis; electrical market analysis, design and monitoring; utility rate analysis and development; and expert testimony and litigation support. He received his B.S. in Mechanical Engineering, with a minor in economics, from the University of Pennsylvania.⁸

Mr. Janssen explains that Aquila and KCP&L are potential customers of Dogwood's generating capacity. He shows that Dogwood's generating facility will "move" with Aquila's transmission facilities into whichever RTO Aquila ultimately joins. He demonstrates that Dogwood's interests are aligned with those of Aquila and its customers in ensuring robust access to both transmission and power supplies in the region. Like the public, Dogwood benefits from

⁴ Janssen Rebuttal Testimony, p. 1.

⁵ North American Electric Reliability Corp.

⁶ Janssen Rebuttal Testimony, p. 2.

⁷ Janssen Rebuttal Testimony, p. 2.

⁸ Janssen Rebuttal Testimony, p. 2-3.

Aquila's transmission facilities being operated in the most efficient manner possible, which is under the SPP RTO.⁹

Mr. Janssen has also testified in Case No. EM-2007-0374 currently pending before the Commission regarding the proposed acquisition of Aquila by Great Plains Energy. In that case he recommends that the Commission condition any approval of that transaction so as to require Aquila to join SPP with Great Plains Energy's subsidiary KCP&L and to require Aquila and KCP&L to consolidate their Balancing Authority areas.¹⁰ He explains that Dogwood opposes the transfer of transmission control over Aquila to MISO regardless of the outcome of the pending merger case.¹¹

Together with other witnesses, Mr. Janssen informs the Commission of the many benefits of RTO membership for a utility like Aquila. He describes the primary function of an RTO as follows:

RTOs facilitate open and non-discriminatory electric transmission access and pricing, with regional open access tariffs, planning, and coordinated reliability operations.¹²

To exemplify RTO benefits, he provides a detailed description of the way SPP fulfills that function for Aquila's proposed sister corporation KCP&L, as follows:

For example, KCPL is a SPP RTO member and SPP currently performs the Planning Coordinator function for KCPL on a regional basis. KCPL participates

⁹ Janssen Rebuttal Testimony, p. 4-5. MISO witnesses attempted to disparage Dogwood's motivation in the case, claiming that Dogwood's interests somehow were in opposition to the public interest. Such claims are untenable given that Staff and Public Counsel join Dogwood in opposing the application. Further, even Aquila's evidence showed that it will purchase less energy from Dogwood as an SPP member than as a MISO member. (Luciani Tr. 166-67). Dogwood benefits more from an efficient RTO relationship than from blindly trying to maximize sales to Aquila.

¹⁰ The term "Balancing Authority" refers to an entity, such as a utility or an RTO, which is responsible for maintaining a balance between loads and resources within a particular area. Specifically, this entity integrates resource plans ahead of time, maintains load-interchange-generation balance within an area defined by metered boundaries, and supports interconnection frequency in real-time. Janssen Rebuttal Testimony, p. 4.

¹¹ Janssen Rebuttal Testimony, p. 4.

¹² Janssen Rebuttal Testimony, p. 5.

in the SPP regional planning process which includes an annual transmission reliability assessment of the SPP RTO footprint. The SPP Transmission Expansion Plan (STEP) analyzes the transmission system for compliance with NERC Reliability Standards and SPP Criteria. Where standard or criteria violations exist, SPP and Transmission Owners (i.e. KCPL) work together to develop mitigation plans that eliminate problems. These mitigation plans may include new or upgraded transmission facilities. The STEP also performs a screening analysis of potential economic transmission projects. These assessments do not study individual control area transfer capability but rather projects that may improve transmission congestion across the SPP footprint. These projects are ranked based on a cost/benefit analysis of generation dispatch cost savings compared to the cost of the potential project. These projects are typically bulk transmission projects (345kV and above) not required by standards or criteria that cross multiple control areas and/or states and would require project sponsors to actually agree to fund and construct.

As part of the planning process, SPP also performs an Aggregate Study three times per year that collectively analyzes specific transmission service requests, including service associated with generation interconnection requests, across the SPP footprint. These service reservations are modeled based on control area to control area transfers. The transmission system is assessed with these potential service requests and, where needed, transmission improvements are identified that would enable the service to occur without standard or criteria violations. Once the customer that has made the service request agrees to the conditions of the system improvement the project is included in the STEP.

SPP has recently completed an EHV¹³ Overlay Study that provides a strategic assessment of how to meet SPP's future reliability and capacity needs through the use of a 500kV and 765kV transmission system overlaying the existing SPP footprint. This study focused on providing a foundation for long range planning and detailed economic assessments that can help SPP work with neighbors to create an interstate transmission superhighway.¹⁴

Mr. Janssen confirms that Aquila is currently in the transmission footprint of SPP and that all point-to-point service requests are processed through SPP. Aquila was originally a full member of SPP and still receives many services from SPP, such as tariff administration, OASIS¹⁵ administration, available transmission capacity and total transmission capacity calculation, scheduling agent, and regional transmission planning. In contrast, while Aquila is a

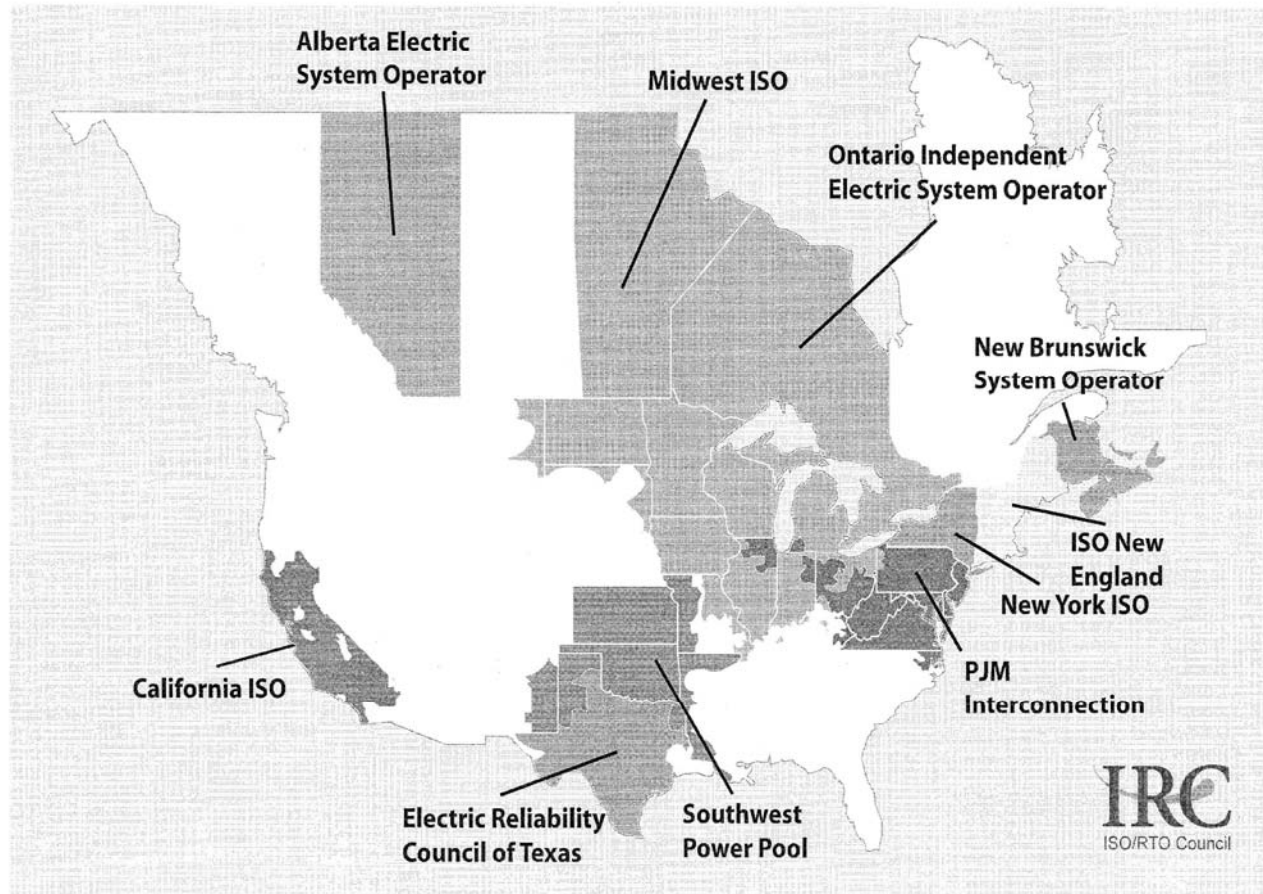
¹³ Extra-High Voltage

¹⁴ Janssen Rebuttal Testimony, p. 5-7.

¹⁵ Open Access Same Time Information Service.

conditional member of MISO, it only obtains security coordination at this time from MISO.¹⁶

Mr. Janssen also provides information from the SPP website, including the following map that graphically demonstrates the natural relationship between Aquila and SPP:¹⁷



Schedule RJ-3

¹⁶ Janssen Rebuttal Testimony, p. 7; Odell Direct Testimony, p. 6.

¹⁷ Janssen Rebuttal Testimony, p. 7.

Dogwood also presented the surrebuttal testimony of Dr. Jonathan Lesser. Dr. Lesser is an economist and member of the Bates White Energy Practice. He has 25 years of experience in the energy industry, including RTO design and operation. His testimony includes a detailed curriculum vitae describing the scope and extent of his expertise, and his many testimonies, reports and publications. He received his Masters and Ph.D. in Economics from the University of Washington and a BS in Mathematics and Economics from the University of New Mexico.¹⁸

Dr. Lesser has significant expertise on the subject of cost-benefit analyses. Based on that expertise, he provides the Commission with detailed background information regarding such analyses to facilitate assessment of the various cost/benefit testimonies in this case.¹⁹

In their testimonies, Mr. Janssen and Dr. Lesser explain why Aquila's proposal to transfer control of transmission assets to MISO would be detrimental to the public interest. As explained below, pursuant to Section 393.190, a transaction that would be detrimental to the public must be rejected.

Dogwood's evidence, together with that submitted by other parties that oppose the application, demonstrates that in this case, the benefits of SPP membership that would be forgone by Aquila are so substantial that the Commission should not approve the application. Even if Aquila membership in MISO would be slightly better than Aquila not belonging to any RTO, Aquila does not currently operate - and will not in the future - in such a "stand-alone" manner. Rather, Aquila is already deeply involved with SPP.²⁰ And the evidence shows that it would be a significant move backwards for Aquila to sever its ties with SPP and instead join

¹⁸ Lesser Surrebuttal Testimony, p. 3-5.

¹⁹ Lesser Surrebuttal Testimony, p. 5-6, 20-33.

²⁰ Janssen Rebuttal Testimony, p. 7; Odell Direct Testimony, p. 6.

MISO. The resulting public detriment compels a rejection of the application under applicable law.²¹

Regarding the specific issues as stated in the pre-hearing materials submitted by the parties:

1. “Not detrimental to the public interest” is the appropriate standard for the Commission to use in making its determinations in this case.

If the Commission determines that Aquila’s proposal to transfer operational control of certain transmission assets to the Midwest ISO is detrimental to the public interest, then it must reject the proposal under Section 393.190 RSMo. See, e.g., *Fee Trunk Sewer, Inc. v. Litz*, 596 SW2d 466, 468 (Mo App 1980); *Environmental Utilities, LLC v. PSC*, 219 SW3d 256, 265 (Mo App 2007). Failing to select the alternative providing the greatest expected benefits would be detrimental to the public interest, even if another alternative might provide minor benefits relative to an unrealistic “do-nothing” case.

In its application, Aquila seeks approval from the Commission, pursuant to Section 393.190 RSMo. and 4 CSR 240-3.110, to transfer operational control of certain transmission assets to MISO.

Section 393.190 requires advance Commission approval of any disposition or encumbrance, or direct or indirect merger or consolidation, of any portion of Aquila’s electrical works or system.

Since at least 1934, the Missouri courts have held that the Commission’s duty and authority under statutes such as Section 393.190, “is to see that no such change shall be made as would work to the public detriment.” *State ex rel. City of St. Louis v. PSC*, 73 SW2d 393, 400 (Mo. 1934). The courts have recognized the over-arching principle of public policy, “which

²¹ Janssen Surrebuttal Testimony, p. 36-38; Lesser Surrebuttal Testimony, p. 61-66.

declares that no one can lawfully do that which has a tendency to be injurious to the public.” *Id.* (emphasis added). See also *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 SW2d 466, 468 (Mo App 1980); *AG Processing v. PSC*, 120 SW3d 732, 735 (Mo. 2003). “The obvious purpose of this provision is to ensure the continuation of adequate service to the public.” *Litz, supra*.

Consistent with these authorities, Commission rule 4 CSR 240-3.110 requires applicants under Section 393.190 to demonstrate the reasons that the proposed transaction “is not detrimental to the public interest.”

As confirmed by pre-hearing position statements and opening statements, all parties agree that the Commission must base its decision whether to approve or reject the application on an evaluation of whether the proposal would not be detrimental to the public interest.

In its Notice Regarding Filing of Briefs issued April 16, 2008 the Commission directed the parties “to thoroughly address in their briefs the meaning of the ‘not detrimental to the public interest’ standard by which the Commission is to determine this case.”

The Commission has addressed this standard in general fashion many times, along the following lines:

Section 393.190.1 does not contain a standard to guide the Commission in the exercise of its discretion; that standard is provided by the Commission's own rules. An applicant for such authority must state in its application “[t]he reason the proposed sale of the assets is not detrimental to the public interest.” A court has said of Section 393.190.1, that “[t]he obvious purpose of this provision is to ensure the continuation of adequate service to the public served by the utility.” To that end, the Commission has previously considered such factors as the applicant’s experience in the utility industry; the applicant’s history of service difficulties; the applicant’s general financial health and ability to absorb the proposed transaction; and the applicant’s ability to operate the assets safely and efficiently.

(Report and Order on Rehearing, EO-2004-0108) (footnotes omitted).

Likewise:

The Commission concludes a detriment to the public interest includes a risk of harm to ratepayers. In reviewing a recent merger case involving the same parties, the Supreme Court of Missouri ruled that . . . “(w)hile (the Commission) may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was reasonable, and it should have considered (the premium) . . . when evaluating whether the proposed merger was detrimental to the public.”²² In other words, the Commission could not have known whether the acquisition premium would result in rate increases. But it should have looked at the premium’s reasonableness. Likewise, the Commission cannot know whether the encumbrances will result in rate increases. But the Commission should look at the reasonableness of the risk of the increases. This analysis conforms to the concept that . . . “(n)o one can lawfully do that which has a **tendency** to be injurious to the public welfare.”²³

(Report and Order, Case No. EF-2003-0465).

And in another example:

In considering such cases, the Commission must be mindful that the right to sell property is an important incident of the ownership thereof and that “[a] property owner should be allowed to sell his property unless it would be 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). “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). “[T]he Commission is unwilling to deny private, investor-owned companies an important incident of the ownership of property unless there is compelling evidence on the record tending to show that a public detriment will occur.” In the Matter of the Joint Application of Missouri Gas Company et al., Case No. GM-94-252, *supra*, 3 Mo.P.S.C.3d at 221.

Pursuant to Commission Rule 4 CSR 240-2.060(9)(C), the applicant for such acquisition authority must show why the proposed acquisition is not detrimental to the public interest. The Commission reads State ex rel. City of St. Louis v. Public Service Commission, *supra*, 335 Mo. at 459, 73 S.W.2d at 400, to require a direct and present public detriment. To that end, the Commission has previously considered such factors as the applicant’s experience in the utility industry; the applicant’s history of service difficulties; the applicant’s general financial health and ability to absorb the proposed transaction; and the applicant’s ability to operate the asset safely and efficiently. See In the Matter of the Joint Application of Missouri Gas Energy et al., Case No. GM-94-252 (*Report and Order*, issued October 12, 1994) 3 Mo.P.S.C.3d 216, 220.

²² *State ex rel. AG Processing Inc., v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo. banc 2003).

²³ *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 399-400 (Mo. banc 1934) (emphasis supplied).

(Report and Order, Case No. WF-2000-519).

Several key elements of these prior Commission decisions provide guidance for the present case. First, the efficiency of future operations should be considered carefully. Second, actions that would tend to harm the public or pose a risk of harm must be avoided.

Whenever choices with economic impacts are presented, the choice of one alternative imposes the opportunity cost of not selecting the other alternative. "Making a choice in effect costs us the opportunity to do something else. The alternative forgone is called the opportunity cost" PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, *ECONOMICS* 128 (16th ed. 1998).

Authorities from around the country in a variety of contexts indicate that when alternatives with economic impacts are presented, an evaluation of the detriments of a particular result to the public interest must include consideration of the opportunity cost of not pursuing the other alternative(s).

For example:

When deciding whether assignment of a broadcast channel to one applicant over another would be detrimental to the public interest, the FCC was required to consider the opportunity costs to the public of not being served by the other applicant. *Victor Broadcasting v. FCC*, 722 F2d 756 (DC Cir. 1983).

When deciding whether abandonment of rail lines would be detrimental to the public interest, the ICC was required to consider the opportunity costs of alternative uses of the involved resources. *International Minerals & Chemical Corp v. ICC*, 656 F2d 251 (7th Cir. 1981); *Missouri Pacific Railroad v. US*, 625 F2d 178 (8th Cir. 1980).

When evaluating whether an antitrust consent decree that only prohibits certain conduct would be detrimental to the public interest, the courts are required to consider the opportunity costs of not taking advantage of the chance to address other anticompetitive practices. *USA v. Microsoft*, 159 FRD 318 (Dist. DC 1995).

When evaluating whether zoning amendments would be detrimental to the public interest, local officials should consider the opportunity cost of lost sales taxes if non-tax generating uses were to be permitted. *Napleton v. Village of Hinsdale*, 872 NE2d 23 (Ill. App. 2007)(further appeal pending).

The Commission has many times determined whether a proposal would not be detrimental to the public interest, and in doing so has either explicitly or implicitly examined opportunity costs. And rightly so, because in making any administrative decision, the Commission must consider all relevant factors. See, e.g., *State ex rel. Util. Consumers Council v. PSC*, 585 SW2d 41 (Mo. 1979). The courts recently approved the Commission's rejection of a proposed sale of part of a troubled utility, because even though there were benefits to the subset of customers that would be served by a new entity, the benefits of a combined sale of the entire system would be greater and would be lost if there were an incomplete transaction. *Environmental Utilities, LLC v. PSC*, 219 SW3d 256 (Mo. App. 2007).

Thus, as applied to this case, the standard of "not detrimental to the public interest" requires the Commission to consider the opportunity cost of forgoing the alternative of Aquila joining the SPP RTO. The evidence overwhelmingly shows that such opportunity cost is so great that if Aquila were allowed to join MISO it would be detrimental to the public interest. Without question, Aquila would not operate as efficiently under MISO as it would with SPP. The public would be deprived of a substantially more advantageous RTO relationship. Hence, to avoid the risk of harm to the public, the Commission should deny the application.

In philosophical terms, "under the guidance of reason, we should pursue the greater of two goods and the lesser of two evils", because "a good which prevents our enjoyment of a greater good is in reality an evil." Spinoza, *On Human Bondage*, Prop. LXV. Here, the public interest can only be protected from harm if the Commission denies the application so that Aquila can pursue the "greater good" of SPP membership.

2. The Commission should reject Aquila's application to transfer control of transmission assets to MISO because it would be detrimental to the public interest.

The evidence shows that the Commission should reject Aquila's application as detrimental to the public interest, for at least the following reasons:

- (a) Aquila is already substantially involved with SPP;
- (b) Aquila currently has a very limited relationship with MISO;
- (c) SPP will afford Aquila the full benefits of RTO membership;
- (d) Aquila is heavily interconnected with other SPP members;
- (e) Aquila would incur \$4 million to terminate its relationship with SPP;
- (f) Full membership in SPP will ensure more efficient transmission operations and robust access to transmission and power supplies;
- (g) Risks associated with seams issues will be substantially less if Aquila becomes a full member of SPP rather than joining MISO;
- (h) Aquila membership in MISO would impose substantial risks due to lack of transmission interconnectivity, particularly if AmerenUE withdraws from MISO;
- (i) Aquila membership in MISO could lead to higher production costs;
- (j) The proposed acquisition of Aquila by KCP&L's parent would make SPP membership even more beneficial, given KCP&L's current SPP membership;
- (k) Aquila has met its stale commitments to MISO by making and prosecuting its application in this case; and
- (l) Additionally, based on the foregoing factors, ratepayers would face higher rates and greater risks if Aquila were allowed to join MISO rather than solidify its current relationship with SPP.

(a). Aquila is already substantially involved with SPP.

Aquila is in the SPP transmission footprint (see map, p. 5), all point-to-point service requests are processed through SPP, and SPP provides Aquila with tariff administration, OASIS administration, available transmission capacity and total transmission capacity

calculations, scheduling agent, and regional transmission planning. Aquila obtains all these services from SPP because it is beneficial and less-costly for it to do so.²⁴ On cross-examination Aquila witness Odell confirmed all the foregoing aspects of Aquila's current involvement with SPP and described the various services and benefits it obtains from SPP in more detail.²⁵ He agreed that Mr. Monroe accurately described those benefits in SPP's testimony.²⁶ Mr. Monroe and Mr. Odell confirmed that Aquila benefits from SPP's services and pays about \$3 million per year in full membership fees to obtain those benefits.²⁷

(b). Aquila currently has a very limited relationship with MISO.

In contrast to its substantial relationship with SPP as described above, Aquila currently only obtains security coordination from MISO.²⁸ On cross-examination, Aquila witness Odell confirmed that Aquila only has a limited relationship with MISO.²⁹

(c). SPP will afford Aquila the full benefits of RTO membership.

SPP offers full RTO benefits to Aquila. It has been an RTO since 2004 and a regional entity since April 2007.³⁰ Contrary to the testimony of MISO and Independence witnesses, SPP operates a real-time energy market that is substantially similar to other RTOs and that provides region-wide, security constrained, economic dispatch for all generating facilities within its footprint.³¹

²⁴ Janssen Rebuttal Testimony, p. 7; Odell Direct Testimony, p. 6; Lesser Surrebuttal Testimony, p. 18-19, 39-40; Monroe Tr. 200.

²⁵ Tr. 97-101.

²⁶ Tr. 101.

²⁷ Tr. 101, 201.

²⁸ Janssen Rebuttal Testimony, p. 7; Monroe Tr. 201.

²⁹ Tr. 100.

³⁰ Monroe, Tr. 199-200.

³¹ Odell, Tr. 108-09; Monroe, Tr. 201.

As Mr. Janssen explains:

All generating facilities that participate in the SPP EIS market offer their dispatchable range to the market in full, thereby allowing SPP, as the market operator, to deploy generating facilities at any point within their dispatchable range based upon region-wide economics, just as in any other real-time energy market. The imbalance nature of the market impacts only the settlement phase of the market when participants' generation and load are settled based on deviations from physical transmission schedules rather than settling all energy or load in the market. This design purposefully emphasizes the continuing importance of bilateral transactions within the SPP region, from both economic and reliability perspectives.³²

He continues:

Let's assume that a natural gas-fired, combined cycle facility is operating and makes its output available to the EIS market for economic dispatch. Further, let's assume that the dispatchable range provided to SPP through the facility's Resource Plan for each hour of the day is between 150 MW and 230 MW.³³ Finally, let's assume that the plant has a combination of firm and/or non-firm power sales backed by physical transmission schedules in the amount of 200 MW. Depending on region-wide generation prices and load levels, SPP will send the facility a deployment signal every five minutes to indicate its target level of generation output. The plant will follow SPP's deployment signals, and at the end of each hour, if its integrated output for the hour is above its 200 MW of transmission schedules, the facility will be paid its nodal EIS Market price (the Locational Imbalance Price ("LIP")) for each MW of its integrated hourly output above 200 MW. Similarly, if the plant's total output for the hour is below 200 MW, it will pay for each MW of output that it did not generate less than that amount. While this is a simplified example and does not address issues such as reserve energy deployment events, uninstructed resource deviation, or transmission service curtailments, it nonetheless provides an accurate portrayal of the essence of the day-to-day operations of SPP's EIS Market.

³² Janssen Surrebuttal Testimony, p. 15

³³ A Resource Plan is provided by each Market Participant for each registered Resource, which can be generation or controllable load, to SPP on an hourly basis. It includes information regarding the Resource's operating capabilities and whether it is available for economic dispatch by SPP in the EIS Market. Janssen Surrebuttal Testimony, p. 15-17.

In summary, the real-time EIS market is substantially similar to the real-time energy market of any other RTO or ISO operating in the United States today. A generator is centrally dispatched based on offered prices, and it can be deployed by the RTO at any point within its dispatchable range based on the region-wide economics that the RTO sees and translates into a locational marginal price at the generator's pricing node. Any significant differences are either regional in nature, or are due to the fact that SPP uses physical rather than financial transmission rights today to support the functioning of its EIS Market. The physical transmission rights in SPP provide a congestion hedge for both purchasers and sellers of power, even though they do not operate in the same fashion as the Financial Transmission Rights ("FTRs") in MISO or similar variations in other RTO and ISO markets.³⁴

Thus, Mr. Janssen demonstrates that SPP's real-time energy market offers full RTO benefits to Aquila.³⁵

SPP also plans to soon implement day-ahead energy and ancillary services markets.³⁶ The short-term absence of these features should not be a defining consideration given the long-term benefits of SPP membership.³⁷ Indeed, MISO is still in the process of implementing its own ancillary services market.³⁸ As Dr. Lesser explains, SPP delivers significant value to Aquila that should not be ignored.³⁹

Mr. Janssen's testimony shows that there is no basis for MISO witness Pfeifenberger's assertion that the CRA study overstates benefits of SPP membership based on the generating output of Dogwood's generating facility. Mr. Pfeifenberger failed to take into

³⁴ Janssen Surrebuttal Testimony p. 15-17.

³⁵ Janssen Surrebuttal Testimony, p. 17-19. SPP also offers unique benefits such as the aggregate transmission study process. (Monroe, Tr. 201).

³⁶ Monroe Tr. 202.

³⁷ Janssen Rebuttal Testimony, p. 14; Janssen Surrebuttal Testimony, p. 11-10; Proctor Rebuttal Testimony, p. 24; Lesser Surrebuttal Testimony, p. 19, 58-60; Odell, Tr. 109-10.

³⁸ Odell Tr. 109.

³⁹ Lesser Surrebuttal Testimony p. 18-19, 39-40.

account interruptions in such output from 2005 to early 2007.⁴⁰

Mr. Janssen's testimony also shows that, contrary to assertions by Independence witness Volpe, SPP's administrative costs are, and will remain, less than MISO's costs.⁴¹ Mr. Janssen shows that Mr. Volpe erroneously fails to credit SPP for operating its real-time energy markets. Mr. Janssen demonstrates that correcting for Mr. Volpe's error "results in a complete reversal of the conclusion that Mr. Volpe reached."⁴² This correction shows that instead of SPP's costs being 6.3 cents per MWh higher in 2017 than MISO's, they should be 3.4 cents per MWh less, according to Mr. Volpe's own analysis.⁴³

Mr. Janssen also points out other errors in Mr. Volpe's analysis of SPP administrative costs. He states:

While Mr. Volpe's arguments regarding the fixed cost nature of RTOs may seem reasonable from a purely theoretical standpoint, he misses the mark on some extremely important real world issues and consequently draws incorrect conclusions regarding economies of scale or lack thereof for SPP.

The first point is his erroneous implicit assumption that SPP's size and boundaries will remain static in comparison to MISO. Over the past decade, the boundaries of RTOs, including MISO and SPP, have not been constant. The trend has generally been toward increases in size and scope. While there will be utilities that are likely to stay out of organized regional markets, numerous parties that initially remained on the sidelines have seen the benefits and started moving into RTOs, such as PJM, MISO and SPP. In some cases, these parties enjoy full participation right from the start, and in some cases it is a more gradual process, with a utility initially taking some non-market services, and then utilizing additional market-related services over time. Aquila appears to be one potential example of this latter case. In any event, Mr. Volpe's assumption that SPP will always be at a significant disadvantage to MISO when it comes to economies of scale is unsupportable, even in the near-term, much less in

⁴⁰ Janssen Surrebuttal Testimony, p. 5-10.

⁴¹ Janssen Surrebuttal Testimony, p. 19-25.

⁴² Janssen Surrebuttal Testimony, p. 22.

⁴³ Janssen Surrebuttal Testimony, p. 22-23.

the long-term. This is particularly true when one considers the fact that many of the utilities that border SPP are not already full market participants in another RTO, which provides SPP's RTO footprint room to expand without encroaching on the territory of another RTO.

The second point is that Mr. Volpe does not consider that SPP could realize that it might be under pressure to reduce costs and/or increase the benefits it provides, either at its members' urging, state or federal regulators' urging, or simply to remain competitive in providing RTO services, and therefore might take actions to either reduce its costs or increase its revenues from other sources. As one example of this, over the past few years, SPP has been relatively aggressive in marketing its provision of non-market RTO services to non-SPP utilities, and its successes include its current Independent Transmission Organization ("ITO") work for Louisville Gas and Electric / Kentucky Utilities Co and its Independent Coordinator of Transmission ("ICT") work for Entergy. The additional revenues provided by these services supplement those SPP obtains from its own members, thereby reducing SPP's cost burden on its members and reducing SPP's administrative charge on a cents per MWh basis. And, as another example, SPP's administrative charges also include the costs of operating the Regional Reliability Entity for the SPP footprint, which unlike most other RTOs, SPP does in order to provide additional economies of scale for its members and to eliminate duplicative reliability efforts being performed by two different organizations covering the same region of the country, which reduces overall costs to SPP's members.⁴⁴

Dr. Lesser explains that the CRA study properly includes uplift costs (revenue sufficiency guarantees) of all MISO members, contrary to Mr. Pfeifenberger's critique. Hence, Mr. Pfeifenberger's assertion that CRA underestimated the benefits of MISO membership is simply wrong. Id.⁴⁵

Dr. Lesser's testimony also shows that Mr. Volpe's criticisms of the CRA study are unfounded and that Mr. Doying's testimony regarding the MISO "value proposition" has no probative value whatsoever.⁴⁶

⁴⁴ Janssen Surrebuttal Testimony, p. 23-25.

⁴⁵ Lesser Surrebuttal Testimony, p. 8-12, 33-37, 44-46.

⁴⁶ Lesser Surrebuttal Testimony, p. 12-16, 46-60.

The evidence shows that SPP offers full RTO benefits to Aquila and is by far the superior alternative.

(d). **Aquila is heavily interconnected with other SPP members.**

Aquila has total tie-line capacity with SPP members more than five times⁴⁷ as large as capacity on tie-lines that interconnect Aquila with MISO members (which consist solely of interconnections with MISO-member AmerenUE and through non-member AECl).⁴⁸ On cross-examination, Aquila witness Odell confirmed that there has been no effort by Aquila to increase interconnection with MISO members since 2001.⁴⁹ Aquila's greater interconnectivity with SPP members is the primary driver for the substantially greater net benefits of SPP membership identified in the CRA cost/benefit analysis submitted by Aquila with its application.⁵⁰ On cross-examination, Aquila witness Odell confirmed that trade benefits (economical access to lower cost generation from other sources) are a key benefit of RTO membership and depend on efficient interconnection with an RTO and efficient delivery of energy.⁵¹ And he agreed SPP offers Aquila greater trade benefits.⁵²

(e). **Aquila would incur \$4 million to terminate its relationship with SPP.**

On cross-examination, Aquila witness Odell and SPP witness Monroe confirmed that in order to join MISO as proposed, Aquila would have to first terminate its relationship with

⁴⁷ There are seven times more connections with SPP members than MISO members. Janssen Rebuttal Testimony, p. 12; Odell Direct Testimony, Schedule DO-3, p.5; Tr. 102.

⁴⁸ Janssen Rebuttal Testimony, p. 12; Odell Direct Testimony, Schedule DO-3, p. 5.

⁴⁹ Tr. 102.

⁵⁰ Janssen Rebuttal Testimony, p. 12-13; Odell Direct Testimony, Schedule DO-3, p. 4-6, 19-22, Tr. 104.

⁵¹ Tr. 102.

⁵² Tr. 105.

SPP. They explained that Aquila would have to give SPP 12 months notice to implement such termination, and pay SPP termination fees of \$4 million.⁵³

(f). Full membership in SPP will ensure more efficient transmission operations and robust access to transmission and power supplies.

Full membership in SPP will ensure more efficient transmission operations and robust access to transmission and power supplies in the region in which Aquila operates, thus reducing costs. In contrast, membership in MISO would result in substantial cost impediments such as wheeling charges and increased control area generation displacement expenses.⁵⁴ Mr. Janssen explains in his testimony that the relative size of MISO and SPP markets is not a factor due to the limits imposed by transmission congestion.⁵⁵

Transmission congestion is a matter of national concern⁵⁶ and the Commission should seek every opportunity to improve efficiency.

(g). Risks associated with seams issues will be substantially less if Aquila becomes a full member of SPP rather than joining MISO.

Risks associated with seams issues will be substantially less if Aquila becomes a full member of SPP rather than joining MISO. Mr. Janssen explains that while seams agreements can reduce these risks, they cannot eliminate them.⁵⁷ Specifically, he testifies:

For example, the RCF provisions of an agreement between MISO and AECI would allow MISO to effectively obtain control over a portion of the flows over AECI's transmission system for use in operating an energy

⁵³ Tr. 110-11, 203. Mr. Odell also confirmed that the CRA study did not take this \$4 million termination fee in account in assessing net benefits. (Tr. 111).

⁵⁴ Janssen Rebuttal Testimony, p. 12-13, Odell Schedule DO-3, p. 5-6; Lesser Surrebuttal Testimony, p. 18; Odell Tr. 104-05.

⁵⁵ Janssen Surrebuttal Testimony, p. 25-26.

⁵⁶ Odell Tr. 103.

⁵⁷ Janssen Surrebuttal Testimony, p. 31.

market in Aquila. However, since the limits on MISO's use of those flowgates would likely be established by historical rather than anticipated future power flows, those limits may not be adequate to meet the future demands for power flows between Aquila and the rest of MISO after MISO begins dispatching generating facilities in Aquila's territory based on a MISO-wide security constrained economic dispatch. If MISO does not receive a large enough allocation of the RCFs in AECI, then the benefits that Aquila's customers would receive from Aquila's participation in the MISO market would be limited, unless Aquila purchases additional transmission service across the AECI system (if it is available) to allow for increased flows between the two regions.⁵⁸ However, this purchase of transmission would create another cost that could offset the benefits that Aquila would receive from the MISO market, as Dr. Proctor references in his Rebuttal Testimony. (Proctor Rebuttal at p. 31-32).⁵⁹

In contrast, Mr. Janssen shows that seams risks would be less if Aquila joined SPP.

First, the risk of "islanding" would be dramatically reduced if Aquila joined SPP rather than MISO. Second, the need for improvements in the SPP-MISO seams agreement would be reduced since Schedule RJJ-9 shows that generation in the MISO market footprint is important to the resolution of congestion over only one flowgate out of the dozen that I evaluated within or adjacent to the Aquila Missouri utility territory. Finally, while RCF congestion management enhancements to the existing SPP-AECI seams agreement would likely be beneficial, they are by no means as critical as those proposed by Dr. Proctor for a MISO-AECI seams agreement since AECI's service territory is not located between the main body of SPP and Aquila as AECI is for Aquila and the main body of MISO.⁶⁰

Because of Aquila's natural association with SPP, seams will pose fewer risks if Aquila solidifies its relationship with SPP rather than sever that relationship to join MISO.

(h). Aquila membership in MISO would impose substantial risks due to lack of transmission interconnectivity, particularly if AmerenUE withdraws from MISO.

⁵⁸ The lack of such transfer capability could specifically result in MISO determining that there is a lack of deliverability for generating units in Aquila into the rest of the MISO market. At this point, MISO has not performed any deliverability tests for generating facilities within Aquila's utility territory, and cannot guarantee whether they would be able to deliver any or all of their output to the rest of the MISO market. (Janssen Surrebuttal Testimony, p. 31-32, Schedule RJJ-10).

⁵⁹ Janssen Surrebuttal Testimony, p. 31-32.

⁶⁰ Janssen Surrebuttal Testimony, p. 35.

Aquila membership in MISO would impose substantial risks due to lack of transmission interconnectivity. And those risks would increase if AmerenUE were to withdraw from MISO, because Aquila would then be “islanded” and MISO would most likely not be able to effectively or efficiently operate an energy market within Aquila under any conditions.⁶¹ Mr. Janssen explains that “islanding” occurs: “when an RTO participant becomes sufficiently removed or disconnected from the RTO that the RTO’s ability to control power flows over critical transmission constraints is impaired. This prevents the RTO from effectively or efficiently operating an energy market within that “islanded” participant.”⁶² Mr. Janssen provides examples of participants that have not been included in an RTO’s market due to the potential for “islanding”:

Specifically, there are SPP members in Southern Louisiana, such as the City of Lafayette and the Louisiana Electric Power Authority, that have expressed a desire to participate in SPP’s EIS Market. However, they have been unable to do so for two reasons. The first of which is that these SPP members are remote enough from the main body of the SPP system, since they are embedded within the Entergy Balancing Authority which does not participate in the SPP EIS Market and does not have a seams agreement addressing Reciprocal Coordinated Flowgates with SPP, that it would be difficult for SPP to effectively control the power flows over key flowgates that would allow these SPP members to participate in the EIS Market. In addition, another SPP member, Cleco Power, provides the primary direct transmission connections between these two SPP members and the rest of the SPP system. However, Cleco does not participate in the EIS Market at this time either. Therefore, with their direct interconnections to the SPP EIS Market footprint cut off, and since they are surrounded by Entergy-controlled flowgates that SPP cannot control effectively, these two SPP members have been “islanded” from the EIS Market footprint and have been unable to directly participate in the EIS Market.

Mr. Janssen also provides examples of temporary islanding:

⁶¹ Janssen Rebuttal Testimony, p. 14-15, Janssen Surrebuttal Testimony, p. 33; Lesser Surrebuttal Testimony, p. 17-18; Odell Tr. 107.

⁶² Janssen Surrebuttal Testimony, p. 33.

There are more routine issues such as transmission line maintenance outages that could potentially result in one or more key transmission lines being taken out of service and thereby reducing or effectively eliminating the ability for a market to operate efficiently for a period of time in a location that is remote from the main body of an RTO market. This is a more temporary “islanding” condition than the one discussed above, but certainly no less real.⁶³

He concludes: "In either situation, if such “islanding” occurred with Aquila in MISO, the result would be that Aquila would absorb the costs to participate in MISO without obtaining the full benefits thereof, or in a worst-case scenario, could incur significant congestion costs as well."⁶⁴ Thus, Mr. Janssen shows that the risks of "islanding" would be dramatically reduced if Aquila joined SPP rather than MISO.⁶⁵

Dr. Lesser agrees with Mr. Janssen's conclusions regarding the risks of "islanding" of Aquila by Ameren leaving MISO: "Another major uncertainty at this time is the status of Ameren as a MISO member. Specifically, should Ameren withdraw from MISO and join SPP, then Aquila would find itself “islanded” within SPP as a MISO member. Mr. Janssen’s testimony discusses several issues associated with such a situation, such as difficulties with congestion management and the limitations such a situation would place on Aquila’s ability to fully participate in the MISO market."⁶⁶ As Dr. Lesser concludes: "To the extent these issues occur, the costs to Aquila ratepayers will increase and the benefits associated with access to lower cost generating resources will decrease."⁶⁷

⁶³ Janssen Surrebuttal Testimony, p. 33-35.

⁶⁴ Janssen Surrebuttal Testimony, p. 33-35.

⁶⁵ Janssen Surrebuttal Testimony, p. 35.

⁶⁶ Lesser Surrebuttal Testimony, p. 41-42.

⁶⁷ Lesser Surrebuttal Testimony, p. 41-42.

On cross-examination, Aquila witness Odell confirmed the importance of this issue, testifying that regardless of any commitment to MISO, Aquila would not join MISO if AmerenUE terminates its membership.⁶⁸

(i). **Aquila membership in MISO could lead to higher production costs.**

As discussed above, MISO's own responses to data requests confirm that Aquila's joining MISO could lead to higher production costs.⁶⁹ Dr. Lesser testifies: "As indicated in the response to Dogwood 1-34 (attached as Schedule JAL-4), not only might adding Aquila not provide Aquila with reduced production costs in proportion to its load share, it might actually increase production costs.

The Midwest ISO has not evaluated the incremental change in production cost with or without Aquila as a member of the Midwest ISO. In general, economies of scale are realized as the number and diversity of available generation increase. However, the change in production cost for a region may be higher or lower when adding a new member depending on the relative generation characteristics of each system (emph. added).⁷⁰

(j) **The proposed acquisition of Aquila by KCP&L's parent would make SPP membership even more beneficial, given KCP&L's current SPP membership.**

Many merger synergies identified in connection with the proposed acquisition of Aquila by KCP&L's parent could only be achieved if both companies were members of SPP. Transmission seam issues would be avoided, with reduced flowgates,⁷¹ simplified management of transmission capacity, and increased flexibility of power transactions. Costs would be reduced for governance, market development, transmission planning and expansion, reliability standards

⁶⁸ Tr. 107-08.

⁶⁹ Lesser Surrebuttal Testimony, p. 51-52.

⁷⁰ Lesser Surrebuttal Testimony, p. 49.

⁷¹ A flowgate is one or more transmission elements that form a potential constraint in the transmission system that are monitored for the purpose of calling curtailments. Janssen Rebuttal Testimony, p. 8-10.

development, and tariff administration. Savings would be realized from participation in a single regional transmission tariff, with simplified administration and minimized FERC proceedings. Consistency would be maintained across both companies for coordinated transmission cost sharing, lower administrative costs, and more congruent investment structures. Consistent retail rate structures would be facilitated, as would more effective transmission planning and expansion. Inefficient, redundant and conflicting solutions could be better avoided. Potential conflicts in joint operations of generating units would be avoided. Consistent development and adherence to bulk power reliability standards and criteria would also be facilitated.⁷²

As Dr. Lesser testifies: "From an economic and planning standpoint, it would make no sense for Aquila to be a member of MISO, while KCPL is a member of SPP. The testimony by KCPL witness Richard Spring in Docket No. EM-2007-0374 indicates that the merged entity will realize cost savings if both belong to the same RTO. Similarly, the rebuttal testimony of Staff witness Mr. Proctor states that there is a potential conflict if the merged entity wishes to operate the individual companies' generating units jointly [Proctor, Rebuttal at 44:14-20]. Thus, requiring the merged company to belong to both RTOs will needlessly – and I would argue, imprudently – force Aquila's ratepayers to pay higher rates than necessary."⁷³

Dr. Lesser explains further:

First, if the merger between Great Plains Energy and Aquila takes place, and if Aquila is required to join MISO, then the merged entity will be forced to operate in two separate RTOs. This makes no economic sense. Typically, since a utility merger is designed to realize various cost "synergies" – i.e., cost reductions that can be achieved by the merger – it is improbable that dispatching the combined portfolio of generating assets under two different sets of rules would reduce electric generating costs paid by ratepayers. Second, dispatching the combined portfolio of

⁷² Janssen Rebuttal Testimony, p. 8-10 (citing testimony from the merger applicants' witnesses in pending Case No. EM-2007-0374); Odell Tr. 106.

⁷³ Lesser Surrebuttal Testimony, p. 16-17.

generating assets under two different sets of rules would likely increase the complexity of the merged companies' accounting, again raising costs paid by ratepayers. Third, as Mr. Janssen discusses in his surrebuttal testimony, it will likely complicate congestion management and cost allocation issues between SPP and MISO themselves, especially since the "seam" between MISO and SPP will be "convoluted" because of the presence of AECl, which operates as a stand-alone entity, between Aquila and MISO. Fourth, there remain questions of the actual deliverability of Aquila's generating resources into MISO owing to potential transmission system congestion, since MISO has not conducted those studies. If Aquila's generating resources are not fully deliverable into MISO, then its realized trade benefits may be reduced compared to the case of full deliverability. Moreover, as Staff witness Mr. Proctor points out in his rebuttal testimony, the interconnection capacity between SPP and Aquila (14 lines and 5,915 MVA) is much greater than the interconnection capacity between MISO and Aquila (2 lines and 1,207 MVA) [Proctor, Rebuttal at 29:10-11]. Fifth, Mr. Pfeifenberger never discusses the potential for uplift costs that could be borne by Aquila ratepayers stemming from other MISO participants' generating plant operations, should Aquila join MISO.⁷⁴

At bottom, a merger with KCP&L's parent makes the application in this case even more detrimental to the public.

(k). Aquila has met its stale commitments to MISO by making and prosecuting its application in this case.

Aquila's contractual commitments are clearly out-of-date and contrary to the public interest. Aquila made its commitment to apply to join MISO in 2003. At the time, MISO was the only RTO alternative for Aquila. Now, SPP presents a dramatically more advantageous choice.⁷⁵

⁷⁴ Lesser Surrebuttal Testimony, p. 40-41.

⁷⁵ Janssen Rebuttal Testimony, p. 10-11; Odell Direct Testimony, p. 6-8.

Aquila clearly has presented its application solely to avoid exposure to MISO for breach of contract.⁷⁶ Unfortunately, the Commission and all the other parties have had to endure this proceeding due to Aquila's ill-advised commitment. But now it is time to recognize that the commitment is stale and contrary to the public interest.

As Aquila witness Odell confirmed on cross-examination, many significant changes have occurred since Aquila made its commitment to MISO in 2003, such as:

- SPP has become an RTO
- SPP has developed a real-time energy market
- GPE has applied to acquire Aquila and combine its operations with SPP - member KCP&L
- Ameren UE is considering termination of its relationship with MISO⁷⁷

The inefficiencies, costs and delays that would be involved in severing current ties with SPP and joining MISO would be substantial, and would increase further if Aquila then left MISO to rejoin SPP.⁷⁸ As Mr. Janssen testifies: "In my opinion, it is not a simple matter for a company to jump in and out of RTO membership even within a matter of years. The information contained in Aquila's application and direct testimony in this case demonstrates that there would be contractual limitations on the timing of an exit from an RTO."⁷⁹ On cross-examination, Mr. Odell confirmed Aquila would incur double termination fees if it left SPP to join MISO and then reversed course and left MISO to rejoin SPP.⁸⁰

⁷⁶ Odell, Tr. 95-97.

⁷⁷ Odell Tr. 97, 105-06.

⁷⁸ Janssen Rebuttal Testimony p. 10, 15.

⁷⁹ Janssen Rebuttal Testimony, p. 10.

⁸⁰ Tr. 108-11.

In contrast, Aquila could continue to enjoy full benefits from SPP, including new energy markets as they are introduced, while it pursued termination of security coordination services from MISO.⁸¹

(1). Additionally, based on the foregoing factors, ratepayers would face higher rates and greater risks if Aquila were allowed to join MISO rather than solidify its current relationship with SPP.

All the foregoing factors show that ratepayers would face higher rates and greater risks if Aquila were allowed to join MISO.⁸²

3. While Dogwood recommends that the Commission reject Aquila's application to transfer control of transmission assets to MISO and instead order Aquila to solidify its current relationship with SPP, in the alternative, if the Commission were to approve Aquila's application, then in addition to appropriate conditions proposed by other parties, the Commission should impose the following conditions on any such approval:

- Require MISO to enter into a seams agreement with AECI that adequately addresses congestion management and parallel power flows over the AECI system between Aquila and MISO, including reciprocal coordination of flowgates;
- Require MISO to enhance its seams agreement with SPP to include a market-to-market Interregional Coordination Process ("ICP") that includes provisions for efficient and effective congestion management across the SPP-MISO seam

⁸¹ Odell Tr. 111-12.

⁸² Lesser Surrebuttal Testimony, p. 17-18.

that would allow congestion to be solved by the lowest-cost resource regardless of the RTO in which it is located; and

- Require MISO to investigate and report back to this Commission regarding the potential for incorporating the market-based congestion management efficiencies inherent in the ICP into the MISO-AECI seams agreement no later than one year after the issuance of the Commission's final order in this proceeding.⁸³

As Dr. Proctor's recommends, the Commission should require MISO to enter into a seams agreement with AECI that adequately addresses congestion management and parallel power flows over the AECI system between Aquila and MISO, including reciprocal coordination of flowgates.⁸⁴ As Mr. Janssen explains: "Failure to adequately address seams issues between adjacent RTOs or between an RTO and any non-RTO utilities adjacent to it can cause RTO members to fail to obtain the full benefits of energy market participation."⁸⁵ He adds:

In general, adequate seams agreements between RTOs and neighboring RTOs or utilities are needed to avoid unnecessary adverse impacts across the "seam" or border between the two entities. The issues to be addressed in such seams agreements can vary depending on the level of market development in each of the two entities, as well as the nature of the seam between the two entities. For MISO and AECI, a market to non-market seams agreement containing terms consistent with resolving the types of parallel power flow issues that Dr. Proctor discusses would be appropriate. A seams agreement that addresses reciprocal coordination of flowgates would seem to be the right level of seams agreement between these two entities, in addition to the more basic seams agreement terms in the existing market-to-non-market MISO / TVA seams agreement.⁸⁶

⁸³ Janssen Surrebuttal, p. 37.

⁸⁴ Janssen Surrebuttal Testimony, p. 26-28; Proctor Rebuttal Testimony, p. 4-5, 29-31, 34-35, Schedules 1 and 2; Monroe, Tr. 203-04.

⁸⁵ Janssen Surrebuttal Testimony, p. 26-27.

⁸⁶ Janssen Surrebuttal Testimony, p. 27-28.

The Commission should also require MISO to enhance its seams agreement with SPP to include a market-to-market Interregional Coordination Process (“ICP”) that includes provisions for efficient and effective congestion management across the SPP-MISO seam that would allow congestion to be solved by the lowest-cost resource regardless of the RTO in which is it located. As Mr. Janssen explains, this next level of seams agreement development:

Allows financial compensation between two market-to-market regions that permits redispatch of generation in one region to occur and be compensated for the purpose of solving congestion in the other region. This additional step beyond the CMP use of RCFs between two market-to-market regions brings additional market-based congestion management efficiencies to the seam between two RTOs by allowing congestion to be solved by the lowest-cost resource regardless of the RTO in which that resource is located.⁸⁷

Staff and SPP concurred with Mr. Janssen's recommendation.⁸⁸ Mr. Janssen further explains that if Aquila were removed from SPP's current tariff administration footprint and congestion management processes and included instead in MISO's: "Aquila's transmission interconnections with SPP of fourteen lines totaling 5,915 MVA could require an enhancement to the SPP / MISO seams agreement in order for the two RTOs to effectively coordinate congestion management in a fashion that would not detract from the efficiencies that other Missouri utilities adjacent to Aquila, such as KCP&L, obtain from the SPP EIS Market."⁸⁹ As Mr. Janssen further states: "This is particularly true because the Aquila utility territory splits KCP&L's in two with one portion of KCP&L being located to the east of Aquila that would be separated from the rest of SPP."⁹⁰ Based on his review of flowgates listed on SPP's OASIS that are within or adjacent to Aquila's Missouri territory (Janssen Surrebuttal, Schedule RJJ-9), Mr. Janssen cautions that the

⁸⁷ Janssen Surrebuttal Testimony, p. 28.

⁸⁸ Monroe Tr. 204-05; Proctor Tr. 168.

⁸⁹ Janssen Surrebuttal Testimony, p. 30.

⁹⁰ Janssen Surrebuttal Testimony, p. 30.

Commission should be very concerned that: "without the ICP economic dispatch enhancement discussed above, there could be significant inefficiencies and adverse economic impacts across the new SPP – MISO RTO seam that would be formed at the current borders of the Aquila Missouri, KCP&L and Westar utility territories."⁹¹

Finally, the Commission should require MISO to investigate and report back to the Commission regarding the potential for incorporating the market-based congestion management efficiencies inherent in the ICP into the MISO-AECI seams agreement no later than one year after the issuance of the Commission's final order in this proceeding.⁹²

While the foregoing three conditions would be critical in the event the Commission deemed it proper to allow Aquila to join MISO, Aquila's full membership in SPP would still result in substantially better congestion management and overall net public benefits. Even with the foregoing conditions, Aquila membership in MISO would impose substantial risks due to lack of transmission interconnectivity. And those risks would increase if AmerenUE withdraws from MISO, because Aquila would then be "islanded" and MISO would most likely not be able to effectively or efficiently operate an energy market within Aquila under any conditions.⁹³

4. In making its determination whether to grant Aquila's application to join MISO, the Commission should compare Aquila's proposal to join MISO to the alternative of Aquila solidifying its current relationship with SPP by becoming a full member.

⁹¹ Janssen Surebuttal Testimony, p. 30-31. Mr. Janssen did not include the City of Independence in his discussion of seams issues, because Independence has not indicated whether it will join the SPP market or the MISO market or continue to stay out of both markets, and thus it is not clear at this time whether the City's seams issues will need to be resolved in a market-to-non-market or market-to-market fashion. Id.

⁹² Janssen Surrebuttal Testimony, p. 28-29.

⁹³ Janssen Surrebuttal Testimony, p. 31-38.

The SPP alternative is substantially more beneficial to the public, and therefore the MISO alternative would be detrimental to the public interest. The Commission should not consider any “stand-alone” alternative, under which Aquila would not be a member of any RTO, because the uncontroverted evidence shows that Aquila is already heavily involved with SPP and that the benefits of RTO membership are substantial.⁹⁴

As discussed under issue 1, the Commission needs to consider the opportunity cost of Aquila forgoing the alternative of joining SPP. As demonstrated under issue 2, the evidence overwhelmingly shows that the public would be harmed by forgoing that alternative.

5. The Commission is required to consider all relevant factors in making its determination in this case.

As discussed under issue 1, the Commission must consider all relevant factors to make its decision in this case. Such an analysis shows that it would be detrimental to the public interest to approve Aquila’s application to join MISO. Further, such analysis shows that Aquila should be required to solidify its current relationship with SPP and become a full member.

Regarding the specific items identified under issue 5:

- a.** The Commission should consider the CRA International, Inc. cost-benefit study sponsored by Aquila.⁹⁵ On its face the CRA study shows that there are substantially greater net benefits if Aquila becomes a full member of SPP.⁹⁶ As

⁹⁴ Janssen Rebuttal Testimony, p. 15-16; Lesser Surebuttal Testimony, p. 38-39.

⁹⁵ Despite all attempts to disparage the study, Aquila and CRA continue to stand by it. (Tr. 103, 166-67).

⁹⁶ Janssen Rebuttal Testimony, p. 11-12; Odell Direct Testimony, Schedule DO-3.

explained by Dr. Lesser, given various critiques, at worst the study by itself is inconclusive and in no way supports the application.

So first, we have Mr. Pfeifenberger testifying that the production cost simulations cannot differentiate between the benefits of Aquila's joining either SPP or MISO, and therefore that the decision should be based on the qualitative benefits provided by MISO, as discussed by Mr. Doying. Then, we have Mr. Doying's testimony, which neither considers whether SPP membership would provide Aquila with similar benefits nor attempts to estimate the value of those benefits that would accrue to Aquila in SPP. We also have Mr. Doying's testimony contradicted by MISO's own responses to data requests with respect to production costs, namely that Aquila's joining MISO could lead to higher production costs, rather than lower production costs as Mr. Doying states. Mr. Doying's testimony boils down to a simple conclusion: an electric utility can benefit by joining an RTO.⁹⁷

- b.** The Commission should consider cost-benefit analyses sponsored by parties other than Aquila. But, as explained by Dr. Lesser, other cost-benefit “studies” at most demonstrate that the CRA study is inconclusive. None demonstrate that MISO membership would be more beneficial to the public. Dr. Lesser discusses in detail the flaws of the incomplete cost-benefit analysis presented by MISO and Independence witnesses.⁹⁸
- c.** The Commission should consider costs and benefits not included in the CRA International cost-benefit study sponsored by Aquila or cost-benefit analyses sponsored by parties other than Aquila. An analysis of all relevant factors shows that full membership in SPP is in the public interest and membership in MISO would be detrimental to the public interest.

⁹⁷ Lesser Surrebuttal Testimony, p. 52.

⁹⁸ Lesser Surrebuttal Testimony, p. 8-20, 44-60.

- d.** The Commission should take into account the disparity between Aquila's current extensive relationships with SPP and its limited relationship with MISO.
- e.** The Commission should consider accurate descriptions regarding the current status of and future plans for the SPP and MISO electricity markets.
- f.** The Commission should consider the proposed acquisition of Aquila by Great Plains Energy that is the subject of Case No. EM-2007-0374. Approval of the proposed acquisition of Aquila by GPE would make SPP membership all the more beneficial to the public as compared to MISO membership.
- g.** The Commission should consider the potential for discontinuance of AmerenUE's membership in MISO which would make MISO membership for Aquila all the more detrimental to the public interest.
- h.** The Commission should not consider Aquila's stale contractual obligation to MISO made in FERC Docket No. ER02-871 to file and support an application to join MISO. Aquila has met its stale commitments to MISO by making and prosecuting its application in this case. The inefficiencies, costs and delays that would be involved in severing current ties with SPP and joining MISO would be substantial, and would increase further if Aquila subsequently left MISO to rejoin SPP.

Conclusion

Aquila clearly should join an RTO. (Odell, Tr. 103). Trading patterns and transmission interconnectivity shows that SPP is the more natural and appropriate market for Aquila. Potential changes regarding the proposed merger and AmerenUE's involvement with MISO only make SPP membership for Aquila all the more beneficial.⁹⁹ The application is simply the absurd consequence of an ill-advised and stale contractual commitment.

The evidence overwhelmingly shows that if Aquila were allowed to join MISO it would be detrimental to the public interest. Without question, Aquila would not operate as efficiently under MISO as it would with SPP. The public would be deprived of a substantially more advantageous RTO relationship. Hence, to avoid the risk of harm to the public, the Commission should deny the application.

For all the foregoing reasons, the Commission should deny the application in this case.

In summary, Dogwood recommends that:

- Aquila and its customers should join an RTO and realize the many benefits that attend such membership;
- The Commission should not be constrained by Aquila's prior commitments and should require Aquila to join SPP rather than MISO; and
- If the Commission approves the pending application for Great Plains Energy ("GPE") and Aquila to merge, then the Commission should require Aquila to join SPP and operate its generation and transmission facilities under the

⁹⁹ Lesser, Tr. 429-30.

auspices of the SPP RTO as soon as possible (and within four months after approval of the merger.)

Respectfully submitted,

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

Carl J. Lumley, #32869
130 S. Bemiston, Suite 200
St. Louis, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)

Attorneys for Dogwood Energy, LLC

Certificate of Service

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 29th day of May, 2008, by either placing same in the U.S. Mail, postage paid, by fax or email transmission.

/s/ Carl J. Lumley

**General Counsel Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.mo.gov**

**Lewis Mills
Office of Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102
opcservice@ded.mo.gov**

**Nathan Williams
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Nathan.Williams@psc.mo.gov**

**Renee Parsons
Aquila, Inc.
20 West 9th Street
Kansas City, MO 64105
renee.parsons@aquila.com**

**Paul A. Boudreau
Aquila, Inc.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
PaulB@brydonlaw.com**

**Dayla Bishop Schwartz
Allen B. Garner
City of Independence, Missouri
111 E. Maple Street
Independence, MO 64050
dschwartz@indepmo.org
agarner@indepmo.org**

Alan Robbins
Debra Roby
Elizabeth Teuwen
City of Independence, Missouri
1700 Pennsylvania Ave., NW, Suite 500
Washington, D.C. 20006
arobbins@jsslaw.com
droby@jsslaw.com
eteuwen@jsslaw.com

Curtis Blanc
1201 Walnut, 20th Floor
Kansas City, MO 64106
Curtis.Blanc@kcpl.com

Mark Comley
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102
comleym@ncrpc.com

David Linton
424 Summer Top Lane
Fenton, MO 63026
djlinton@charter.net

Heather Starnes
415 North McKinley, Suite 140
Little Rock, AR 72205-3020
hstarnes@spp.org

William Powell
James Lowery
Union Electric Company
111 South Ninth Street, Suite 200
City Centre Building
Columbia, MO 65205-0918
powell@smithlewis.com
lowery@smithlewis.com

Steven Sullivan
Thomas Byrne
Beth Burns
1901 Chouteau Avenue
P.O. Box 66149 (MC 1300)
St. Louis, MO 63166-6149
srsullivan@ameren.com
tbyrne@ameren.com
bburns@ameren.com