

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

POST-HEARING BRIEF OF THE CITY OF INDEPENDENCE, MISSOURI

THE CITY OF INDEPENDENCE, MISSOURI ("City") respectfully submits this Post-hearing Brief in accordance with the Commission's Order Extending the Time to File Briefs, issued May 20, 2008, in this proceeding. Although the City addresses only certain issues herein, the City's silence on a particular issue should not be necessarily construed as agreement with any particular party's position.

I. SUMMARY

For the reasons discussed more fully herein, the City respectfully suggests that the Commission grant Applicant's request for authorization to participate in the Midwest ISO. The substantial weight of the record evidence supports such a conclusion, establishes that Aquila and its customers will experience net benefits from such participation as compared to Aquila operating on a stand-alone basis, and establishes that such participation would not be detrimental to the public

interest. While many parties will likely contend that greater benefits would flow from Aquila's participation in the SPP RTO rather than the Midwest ISO, the evidence of SPP benefits (and Midwest ISO detriments) is seriously flawed and of little probative value, if any at all. In any event, this proceeding involves only an application for authorization to participate in the Midwest ISO. No request for Aquila to participate in the SPP RTO is before the Commission.

II. DISCUSSION

The discussion below is organized in accordance with the List of Issues set forth in the "List of Issues, and Order of Opening Statements, Witnesses and Cross-examination" filed by Commission Staff on March 7, 2008, in accordance with the Commission's directive in the "Order Adopting Procedural Schedule" issued on October 30, 2007.

A. Is "not detrimental to the public interest" the appropriate standard for the Commission to use in making its determinations in this case?

The City of Independence understands that "not detrimental to the public interest" is the applicable statutory standard.

B. Should the Commission determine that Aquila's application to join MISO is not detrimental to the public interest? What considerations should the Commission take into account in making its determination?

The record evidence in this case supports a determination that authorization of Aquila to join the Midwest ISO is not detrimental to the public interest, unless the Commission considers participation in *any* RTO to be

inherently detrimental to the public interest. No party has argued that Aquila should not join any RTO, and no party has argued that RTO participation is inherently detrimental to the public interest. To the extent there is any real issue before the Commission, it involves debate as to which RTO Aquila should join -- the Midwest ISO or SPP.

The considerations that the Commission should take into account include cost and rate impacts resulting from participation in the Midwest ISO, both in terms of charges directly assessed by the Midwest ISO on participating utilities, and the cost impacts flowing from operational impacts that may result from being part of the Midwest ISO and being subject to the Midwest ISO's operating and other protocols. Consideration of such cost impacts should also take into account off-setting benefits resulting from participation in the Midwest ISO. Finally, the City urges the Commission to consider the costs and benefits in as "real world" a manner as possible, as compared to relying solely on economic computer models.

Substantial record evidence supports granting to Aquila authorization to participate in the Midwest ISO. The Midwest ISO is a broad-based RTO with a wide geographic reach and significant markets in place and in operation. E.g., Exh. 10 at 5:14-23; Exh. 11 at 5:12-22; Tr. at 78:6-21, 293:14-21. Whether compared to Aquila operating on a stand-alone basis or to Aquila participating in SPP, the Midwest ISO offers more fully developed and operational markets, a broader geographical reach that captures a far greater number of market

participants (as both buyers and sellers), and greater opportunities to market participants, whether they are net sellers or net buyers. Id.

Aquila submitted with its application the CRA Study (Exh. 1, Schedule DO-3) which determined that Aquila would experience net trade benefits in excess of \$21 million over the ten-year study period by participating in the Midwest ISO, as compared to operating on a stand-alone basis. To the best of the City's determination, while the CRA Study is the subject of much dispute and argument regarding that portion forecasting that Aquila's participation in SPP would yield greater net benefits than would its participation in the Midwest ISO, no real challenge has been asserted against the CRA Study's conclusions regarding participation in the Midwest ISO.

Certain parties argued that Aquila's only real connectivity with the Midwest ISO is through Ameren, contending that Ameren's withdrawal from the Midwest ISO would make it infeasible or impossible for Aquila to nevertheless participate in the Midwest ISO. But, rather than withdraw from the Midwest ISO, Ameren in fact has pending before this Commission its application in Case No. EO-08-0134, filed on November 1, 2007, in which Ameren is seeking Commission authorization to continue to participate in the Midwest ISO at least through April, 2012, and potentially thereafter.

To the extent that the Commission concludes that Aquila's participation in the Midwest ISO is dependent on Ameren being part of the Midwest ISO, the Commission can readily address that consideration by conditioning authority

granted to Aquila on Ameren's continued participation. Should the Commission adopt such a condition, the City urges that the condition call for a renewed investigation into Aquila's RTO participation, rather than require Aquila to withdraw from the Midwest ISO automatically if and when Ameren might do so. Among many other consequences, such an absolute condition would effectively put Ameren in control of Aquila's RTO destiny.

The prepared testimony of City Witnesses Mahlberg and Volpe each identified that a greater number of buyers and sellers are potentially accessible in the Midwest ISO as compared to SPP. E.g., Exh. 10 at 5; Exh. 11 at 5. In response, Commission Staff and Dogwood claimed that the City's testimony in this respect ignores the fact that transmission constraints and other related conditions or requirements render such broader markets inaccessible, or only at costs that undermine the economics of accessing such buyers or resources. See, e.g., Exh. 13 at 35 et seq.; Exh. 16 at 25-26. The testimony of these witnesses is presented in a manner that strongly implies that such obstacles would not be similarly present if one were to try accessing the SPP region. Cross-examination of these witnesses revealed that these same kinds of problems exist in SPP, and are by no means unique to the Midwest ISO.

For example, Dogwood Witness Jansenn's prepared Surrebuttal Testimony states that "[e]ven in MISO's and PJM's markets, which use FTRs, economic access to power supplies is limited by transmission system congestion..." and that "the location and duration of transmission congestion

limits the distances over which power can be economically purchased even in the MISO and PJM markets.” Exh. 16 at 25-26. Dogwood Witness Jansenn acknowledged on cross-examination, however, that in SPP there “are a significant proportion of [transmission service] requests that are not approved.” Tr. at 392.¹

Dr. Proctor expresses much concern in his prepared testimony over the effects of congestion in the Midwest ISO, and by silence could be construed as implying that SPP is not burdened with such constraints. That is plainly not the case, as the following portion of Dr. Proctor’s testimony on cross-examination confirms:

- Q. Well, if we were to say we favored SPP, would it be your opinion that -- that Independence need not be concerned about the availability of transmission in SPP, that that concern only exists in MISO?
- A. No.
- Q. There are a lot of constraints on SPP, are there not?
- A. Of course there are.
- Q. And there are transmission service requests that get turned down for lack of available transmission capacity; is that right?
- A. Sure.

¹ Dogwood, it should be understood, vigorously urges the Commission to deny Aquila’s application to participate in the Midwest ISO, and goes so far as urge the Commission to order Aquila to participate in SPP. Id. at 38. While Dogwood’s prepared testimony drapes its arguments in policy parlance, on cross-examination Dogwood’s witnesses necessarily admitted that their interest -- indeed their obligation to their shareholders -- is to maximize profits. Tr. at 305-308. Dogwood conceded on cross-examination that its Dogwood Unit (formerly known as the Aries Unit), would be dispatched much more if Aquila participates in SPP than it would if Aquila participates in the Midwest ISO. Id.

Tr. at 296-97. See also Tr. at 392 (wherein Dogwood Witness Jansenn acknowledged on cross-examination that in SPP there “are a significant proportion of [transmission service] requests that are not approved”); Tr. at 227 (wherein SPP Witness Monroe similarly acknowledged on cross-examination that “not all transmission service requests can be granted because the transmission capacity is limited”).

Given the emphasis that witnesses such as Dr. Proctor and Mr. Jansenn place on transmission constraints in the Midwest ISO as part of their reasons for favoring SPP participation by Aquila, one might think that these witnesses have specific factual bases for these concerns. They do not. No party submitted evidence that Aquila had submitted a transmission service request to the Midwest ISO, that the Midwest ISO had studied its ability to grant any such request or the need to undertake improvements to do so, and Dr. Proctor is aware of no such request. Tr. at 380-82.

The main driver behind all of this is fundamental -- net buyers favor lower prices, and net sellers favor higher prices. Tr. at 290-91. Aquila is a net buyer. Id.; Tr. 64 (Odell), 143-44 (Luciani). Dogwood is a seller. Id. at 291. Aquila, a net buyer, is seeking authorization to participate in the Midwest ISO. Dogwood, a seller, would rather have Aquila join SPP. Similarly, Independence, which is a net buyer (e.g., id. at 291), supports Aquila’s application for authorization to participate in the Midwest ISO.

There is no basis for concluding that Aquila, the City, Dogwood, or any other interested party would see transmission constraints effectively block their access to the Midwest ISO markets if Aquila were to join the Midwest ISO, but would enjoy nothing but wide-open, smooth, and freshly-paved roads when trying to move power into or out of SPP. The fact is that both RTOs include constrained areas. Market participants in each of these RTOs have or likely will confront constraints in whichever RTO region they transaction purchases and sales in. Those parties that would rather have Aquila join SPP instead of the Midwest ISO testify and argue with the inference that the Midwest ISO is riddled with constraints while SPP is not, but that is not factually correct. Except for “connectivity” via Ameren, no party has provided specific evidence that Aquila’s participation in the Midwest ISO would be rendered infeasible or non-beneficial due to constraints, nor does the record include evidence establishing that constraints would not affect Aquila if it participated in SPP rather than the Midwest ISO.

The evidence does indicate however, that participation in the Midwest ISO is favored by buyers, and SPP participation is favored by sellers. Aquila is a net buyer, which is consistent with it seeking authorization to participate in the Midwest ISO.

C. If the Commission approves Aquila's application to join MISO, should the Commission make its approval subject to certain conditions? If so, what are the conditions?

The City believes that authorization for Aquila to join the Midwest ISO, if granted, should be conditioned. City witness Volpe recommended that authorization be granted for an initial period of not more than five years, in order to ensure that the Commission has the opportunity to evaluate such participation based on actual experience and then revisit the issue at such time. Commission Staff recommends a similar condition, among others, but proposes a seven year period, to which the City is not opposed. The City generally agrees with the other conditions recommended by Commission Staff.

D. In making its determination whether to grant Aquila's application to join MISO, should the Commission compare Aquila's membership in MISO to other alternatives? If so, what are the alternatives and what do the comparisons of the alternatives show?

Aquila's application does not ask "which if any RTO does the Commission wish Aquila to join?," but instead seeks authorization to join the Midwest ISO. That is the scope of this proceeding and thus should be the scope of the Commission's inquiry and determination. As Aquila's counsel stated at the opening of the hearing, "[t]he only question before the Commission in this case is whether it would be detrimental to the public interest for Aquila to join MISO." Tr.3:23:23-25. The Commission should compare Aquila's membership in the Midwest ISO to Aquila remaining a stand-alone utility -- because that is what is before the Commission; i.e., the Commission should grant the company's

request upon finding that Aquila's participation in the Midwest ISO would not be detrimental to the public interest.

The "not detrimental to the public interest standard" requires approval or disapproval of the matter sought by the applicant. Examination of matters that stray beyond the request opens the door to substitution of the Commission's judgment or desires to those of company management. A standard that required the Commission to consider whether the applicant has made the best or most optimal choice would not use "not detrimental" as the operative language. Aquila agrees. Tr. at 3:125:3-9 (wherein Aquila Witness Odell testified that the Commission should weigh participation in the Midwest ISO against the stand-alone case, not broader alternatives); Tr. at 3:25:17-20 (wherein Aquila's counsel states that "[t]he legal standard applicable to the company's request in this case does not require that the business decision be determined by what someone else might suggest is an optimum choice").

The City respectfully suggests that it would be procedurally improper to so expand the scope of this case. No party can be said to have been given notice at the outset that this case involves analysis of all conceivable RTO or other alternatives that one might argue are available. The testimony and other evidence is, as it should be, primarily focused on the effects of Aquila's participation in the Midwest ISO. The City and presumably all other parties would have approached the case very differently and offered very different testimony and evidence if this case was noticed as one that would undertake a

free-ranging investigation of any and all opportunities that may exist or be created.

It seems that the instant issue is presented because the CRA Study also contains discussion of potential SPP participation. That the CRA Study ventures into that area does not enlarge the scope of the proceeding before the Commission. Additionally, there is, as is separately discussed in Section II.E.5, *infra*, substantial evidence in the record that the CRA Study's analysis of Aquila participation in SPP is fatally flawed. Other than the flawed CRA Study, there is not sufficient record evidence to support informed analysis of options other than Midwest ISO membership or no RTO membership. .

E. To what extent should the Commission take into account the following in its determination of whether or not to approve Aquila's application to join MISO?

1. The CRA International, Inc. cost-benefit study sponsored by Aquila;

The Commission can consider the CRA study as it relates to Aquila's participation in the Midwest ISO vs. operating on a stand-alone basis. For the reasons explained in Section II.D, *supra*, and explained in detail in the prepared Rebuttal Testimony of City Witness Mark Volpe (Exh. 11), among other witnesses, the City respectfully suggests that the Commission should give no consideration to the CRA study as it relates to participation by Aquila in SPP.

2. Cost-benefit analyses sponsored by parties other than Aquila;

The Commission should give consideration to all evidence that relates to MISO vs. not MISO, but should consider testimony and other evidence related to SPP only to confirm that the CRA Study is fatally flawed in its evaluation of Aquila participation in SPP.

3. Costs and/or benefits not included in the CRA International cost-benefit study sponsored by Aquila or cost-benefit analyses sponsored by parties other than Aquila;

The City expresses no position at this time beyond that stated in Section II.E.2 above.

4. Aquila's current relationships with MISO and SPP;

Based on the filed testimony, the City understands that Aquila is contractually obligated to seek authorization to participate in the Midwest ISO. That obligation appears to arise from a FERC-approved settlement agreement. The Commission must give consideration to that relationship since doing otherwise would suggest that contracts and settlement agreements are not binding.

Aquila is neither fully in nor fully out of an RTO, and has certain functions performed by the Midwest ISO and other functions performed by SPP. In the end, the City is not aware of any evidence suggesting that Aquila's arrangements with SPP cannot be terminated, that the services performed by SPP are not available from the Midwest ISO, or that any material adverse impacts would arise

from transitioning the SPP-supplied services to the Midwest ISO in connection with Aquila's full participation in the Midwest ISO.

5. Differences in the development of electricity markets between MISO and SPP;

This is directly relevant to any consideration of the CRA study as it relates to Aquila's participation in SPP because, as City Witness Mark Volpe explains in his prepared Rebuttal Testimony (Exh. 11), the CRA Study assumes that SPP has markets in place that are substantially similar to the Midwest ISO markets, but that is not in fact the case. Yet, a substantial portion of the SPP-related "benefits" reflected in the CRA Study flow from these non-existent SPP markets and thus would not in fact be experienced, as Aquila Witness Odell acknowledged. Tr. at 3:81L21 - 3:82:14. The difference between the SPP and Midwest ISO markets is thus crucial to understanding the central flaw in the CRA Study, which is the source of the baseless, but attention-getting, conclusion that Aquila would experience substantially greater net trade benefits by participating in SPP rather than in the Midwest ISO.

It is undisputed that SPP does not have the same markets in place that the Midwest ISO has. Tr. at 75, 141, 151, 210-11, 271, 418-19. Whether or when SPP may implement similar markets is currently unknown. SPP is currently engaged in a cost benefit analysis that is exploring the costs and benefits of a wide array of markets. E.g., Tr. at 202, 219.

Mr. Volpe explained in his Rebuttal Testimony that, assuming that SPP will not implement Midwest ISO-type markets until 2011, the CRA Study overstates the trade benefits of SPP participation by \$45.1 million (the sum of the trade benefits for the years 2008-2010 as shown on Table 16 of the CRA Study. Exh. 1, Schedule DO-3 at 39. This reduces the purported spread of Midwest ISO benefits vs. SPP benefits from \$65.8 million to \$20.7 million. Exh. 11 at 8. If SPP does not implement such markets until 2012, then an additional year of benefits should be deducted, lowering the differential to only about \$5 million, a far cry from the \$65.8 million spread shown by the CRA Study. Id. at 8-9.² These timing estimates are realistic, as confirmed by SPP Monroe on cross-examination. Tr. at 214 (wherein Mr. Monroe estimated that it would be in the 2010 to 2012 timeframe before SPP could implement such markets, assuming it ultimately decides to do so).

Mr. Luciani acknowledged that differing market designs result in differing trading patterns, and differing costs and benefits. Tr. at 162-64. Dr. Proctor likewise acknowledged that trade benefits are dependent on market design. Id. at 285. Indeed, Dr. Proctor testified on cross-examination as follows:

- A. Well, I think you're asking why did the group decide to formulate the study this way.
- Q. In a sense we are where we are, so the whys maybe don't matter as much as what the significance is.

² The above figures are those set forth in Mr. Volpe's Rebuttal Testimony. Rather than subtract the sum of the values for each year, the City acknowledges that Mr. Volpe should have subtracted the present value of that sum. That would reduce the dollar amount that Mr. Volpe has eliminated, but the difference is not material for the instant purposes since a present value of sums covering a period of only three or four years is not much less than the sum itself.

A. Okay.

Q. Now, I think you just said a moment ago that the more markets you add, the greater the trade benefits?

A. Right.

Q. And by assuming that SPP had the same markets as MISO, the study essentially adds markets to SPP that do not exist today, agreed?

A. That's correct.

Q. Therefore, it follows that the trade benefits reported by the study are greater than they would -- what they would have reflected had they studied the markets that SPP actually had someplace [sic]; is that agreed?

A. That's agreed.

Tr. at 289. Thus, the study's premise that SPP has the same markets as the Midwest ISO added markets that do not exist in SPP, and thus reflect a higher level of trade benefits than could be expected. That is precisely why Mr. Volpe adjusted the trade benefits shown in the SPP scenario in the manner summarized above and more fully explained in his Rebuttal Testimony (Exh. 11). This is the principal reason that the CRA Study is fundamentally flawed -- its reflection of greater trade benefits under the SPP scenario is based on assumption that has no basis in fact.

The differences in the SPP and Midwest ISO markets are otherwise immaterial inasmuch as this case concerns whether or not the Commission should authorize Aquila to participate in the Midwest ISO, but is not a free-ranging proceeding about "which RTO Aquila should join."

6. The proposed acquisition of Aquila by Great Plains Energy that is the subject of Case No. EM-2007-0374;

The City urged in Case No. EM-2007-0374, the proceeding involving GPE's application to acquire Aquila, that a determination of Aquila's RTO participation should be known *before* the parties and Commission undertake consideration of GPE's application to acquire Aquila because of the effects that Aquila's RTO selection would have on the companies' operations and rates. This proceeding nevertheless has been administered virtually in parallel to Case No. EM-2007-0374, rather than sequenced so that the results of the Commission's decision in this proceeding could have then been known before the parties in the GPE proceeding had completed discovery, testimony, and indeed the hearing (with briefs due little more than a week after the due date for the briefs in the instant proceeding).

The parallel prosecution of these cases has disabled the parties from being able to address how, if at all, the outcome of one of these proceedings might have affected their analyses and positions in the other case. It remains the City's position that the Commission's evaluation of GPE's application to acquire Aquila should consider operational and rate impacts flowing from RTO participation, but the issue presented here is reversed -- whether the RTO in which Aquila is authorized to participate should be influenced by GPE's proposed acquisition of Aquila.

The Commission's determination in this case should not be influenced by GPE's pending application to acquire Aquila, for several reasons:

(1) Aquila itself has applied for authorization to participate in the Midwest ISO with knowledge that GPE is seeking to acquire it, and with knowledge that Kansas City Power & Light Company, GPE's operating company, is participating in SPP. Aquila Witness ODell confirmed that Aquila and KCPL have discussed the topic of Aquila's RTO participation in the course of merger discussions. Tr. 3:79:25 - 2:80:5. Had the companies considered it sufficiently important, desirable or necessary for KCPL and Aquila to be in the same RTO, there are steps they could have taken towards such a result, but Aquila's filing of a case for authorization to join the Midwest ISO is not one of them. Indeed, at the opening of the hearing in this case, Aquila's counsel stated that the pending acquisition case "is not particularly relevant" to the Commission's deliberations "because the outcome of that case is not yet known" and "delay of this case to await the outcome of that case would only delay the realization of significant economic benefits." Tr. at 3:25:21 - 3:26:3. Aquila Witness Odell testified that even absent Aquila's settlement agreement obligating it to pursue authorization to join the Midwest ISO, Aquila would not await the outcome of the GPE acquisition proceeding to seek authorization to join the Midwest ISO. Tr. 3:116:5 - 3:117:2.

(2) The two proceedings have been two separate proceedings and have not been consolidated or otherwise coordinated. To now treat them as in effect one case after discovery and the filing of prepared testimony has been completed would be procedurally improper and result in a decision that is based on a record that was not developed with sufficient prior notice that such is the record that needed to be developed; and,

(3) As previously discussed, this is not an open-ended case about which RTO Aquila should join, but is instead a case involving an application for authorization for Aquila to participate in the Midwest ISO.

7. Union Electric Company's continuing membership in MISO;

This should not be more than a limited factor. Union Electric (i.e., Ameren) is not a party to this case, and does not control, manage or operate Aquila. Moreover, the contention of various parties that due to "connectivity" Aquila could not participate in the Midwest ISO while Ameren is withdrawing from the Midwest ISO are rendered immaterial by Ameren's pending application before this Commission for authorization to continue in the Midwest ISO. At most, as discussed in Section II.B, *supra*, the Commission might consider including a condition calling for re-evaluation of Aquila's participation in the Midwest ISO in the event that Ameren in fact withdraws from the Midwest ISO.

8. Aquila's obligation to MISO made in FERC Docket No. ER02-871 to file and support Aquila's application to join MISO;

See summary of position on Issue 5(d) above.

F. If the Commission authorizes Aquila to join MISO, should the Commission determine now whether all future FERC-approved administrative fees Aquila is assessed by MISO and all future costs Aquila incurs from MISO in making prudent purchases of capacity and/or energy to serve its bundled retail load should be considered to be prudently incurred expenses for purposes of including them in Aquila's cost of service in Aquila's next general electric rate case before this Commission?

No. Such a broad determination would be tantamount to the Commission giving blanket approval to future costs without any knowledge of the nature or level of such future costs. As a practical matter, such blanket approval could also eliminate any need or incentive for Aquila to vigorously urge the Midwest ISO to be cost conscious, and eliminate any need or incentive for the Midwest ISO to be cost conscious insofar as Aquila and the State of Missouri are concerned.

III. CONCLUSIONS

WHEREFORE, for the foregoing reasons, the City respectfully requests that the Commission find that Aquila has demonstrated that its participation in the Midwest ISO is not detrimental to the public interest and enter an order authorizing Aquila to participate in the Midwest ISO.

Dated this 29th day of May, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Prehearing Brief of the City of Independence, Missouri was served electronically to all parties on the service list compiled by the Secretary of the Commission for this proceeding.

Dated at Washington, D. C., May 29, 2008.

/s/ Michelle King
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