BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

POST-HEARING BRIEF OF JOINT APPLICANTS GREAT PLAINS ENERGY INC., KANSAS CITY POWER & LIGHT CO. AND AQUILA, INC.

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POST-HEARING BRIEF
OF JOINT APPLICANTS GREAT PLAINS ENERGY INC.,
KANSAS CITY POWER & LIGHT CO. AND AQUILA, INC.

Joint Applicants Great Plains Energy Incorporated ("Great Plains Energy"), Kansas City Power & Light Company ("KCPL"), and Aquila, Inc. ("Aquila") (collectively "Joint Applicants") submit this Post-Hearing Brief pursuant to the Commission's Second Order Adopting Procedural Schedule issued March 11, 2008.

I. Overview of the Case

With the conclusion on May 1 of almost two weeks of live testimony by over thirty witnesses, it is clear that there are many compelling reasons that support the approval of the Joint Applicants' request that Aquila be acquired by Great Plains Energy.

Although a number of parties offered objections or conditions, a fair reading of the record does not reveal any serious impediment to a finding that the proposal is not detrimental to the public interest. To the contrary, given the failure of the opposition to offer a serious analysis of the Joint Applicants' merger synergy savings evidence, and the absence of any real objection to the revised regulatory requests, the Commission is not faced with any good reason to disapprove the request.

Because there is no credible evidence that the proposed transaction is detrimental to the public interest, "[t]he Commission may not withhold its approval of the disposition of assets ...."

State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980). The Joint Applicants, therefore, request that the Commission issue an order by June 20, 2008 approving Great Plains Energy's acquisition of Aquila so that they may close the transaction by July 1, 2008.

A. Revised Regulatory Requests.

The Joint Applicants' regulatory requests offer greater protection and more benefits to ratepayers. The Additional Supplemental Direct Testimony submitted by Great Plains Energy and KCPL on February 25, 2008 narrowed the scope of this proceeding by removing the following issues from the case that had been in controversy.

1. Aquila Interest Expense: Joint Applicants do not seek to recover in any future general ratemaking proceeding any interest expense in excess of equivalent investment-grade debt that is currently held by Aquila.
2. Merger Savings: Joint Applicants do not request a specific merger savings sharing mechanism, but rather will rely upon the traditional regulatory ratemaking process so that any merger savings will be passed through to Aquila and KCPL customers in future rate cases.
3. Regulatory Amortizations: Joint Applicants do not request authority in this proceeding for Aquila to use regulatory "Additional Amortizations" to maintain the investment-grade credit rating that Aquila anticipates receiving upon approval of its acquisition by Great Plains Energy.
4. Aquila Senior Executive Severance Costs: Joint Applicants will not request recovery in a future rate case of $16.7 million in severance expense related to departing Aquila senior executives. When combining this adjustment with the re-classification of $13.6 million in non-executive severance expense as

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Transition Costs, the total amount of Transaction Costs that Joint Applicants will seek to recover has been reduced from \$95.2 million to \$64.9 million, of which \$47.2 million is Missouri jurisdictional.

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

Not one witness testified that the proposed acquisition of Aquila endangered the CEP construction projects or the financial well-being of KCPL, or that the CEP could not be carried out as the acquisition of Aquila proceeds. To the contrary, the evidence demonstrated that despite pressures on costs and scheduling at the Iatan projects, Great Plains Energy is financially able to complete both the Aquila acquisition and the CEP construction projects. A fully vetted reforecast of the Iatan Unit 1 and Unit 2 projects was completed in early May and subsequently shared with the Commission and all other interested parties.

Additionally, on April 6, 2008 Great Plains Energy announced that it had entered into a definitive agreement to sell its unregulated subsidiary Strategic Energy, LLC ("Strategic Energy") for \$300 million in cash. The transaction closed on June 2, 2008. Proceeds from this transaction will be used to offset some of Great Plains Energy's anticipated financing needs in 2008. Given that the credit rating agencies had assumed a lower sales price of \$250 million in their January evaluation of the Joint Applicants' revised regulatory requests, the sale of Strategic Energy provides more financial flexibility. <u>See</u> Staff Ex. 124, 125. The assumed lower sales price also confirms the conservative nature of the advisory opinions of the credit rating agencies that Great Plains Energy's acquisition of Aquila will not adversely impact the credit ratings of Great Plains Energy or KCPL.

The evidence in this case continues to show that the long-term advantage in Aquila's becoming an operating subsidiary of Great Plains Energy, in coordination with KCPL, will result in greater scale operational efficiencies, and that rates over time are expected to be lower than they would be otherwise. This will occur because the geographical service territories of the utilities are adjacent, therefore increasing the potential for economies of scale and improved reliability. Second, Aquila and KCPL are already joint owners of the Iatan 1 generating unit and the Iatan 2 project. Third, combining the headquarters and support functions of the two companies, which are both located in the Kansas City area, will be smooth and uneventful. Most importantly, the financial effect of Great Plains Energy's acquisition of Aquila is expected to result in investment-grade credit metrics for Aquila and lower debt costs. This credit rating improvement and Great Plains Energy's financial support will permit Aquila to have greater access to capital markets on more reasonable terms. Finally, the merger will improve the overall business risk profile of Great Plains Energy, which will benefit the ratepayers of both Aquila and KCPL.

Based on an unusually detailed analysis, the Joint Applicants conservatively estimate savings from the transaction at $755 million over ten years, with $305 million occurring during the first five years, 2008-2012. The prospects of Aquila and KCPL working together in a coordinated and efficient fashion, within a financially healthy holding company structure, will clearly bring benefits to ratepayers over the next several decades. These possibilities have already been recognized by the shareholders of Aquila and Great Plains Energy, who approved the transaction in early October 2007.

B. The Merger Transaction.

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

The Joint Applicants do not propose to consolidate KCPL's and Aquila's service territories. They also do not propose to legally merge KCPL and Aquila, or to transfer any Aquila assets to KCPL. KCPL and Aquila will continue to operate as separate and distinct corporations under their respective Commission-approved tariffs. Nonetheless, the Merger will result in significant synergy savings by bringing KCPL and Aquila under common operation.

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

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

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

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

Since the hearings were adjourned in December, the transactions were also approved by both the Colorado Public Utilities Commission and the Kansas Corporation Commission. See In re Application of Aquila, Inc., Docket No. 07A-108EG (Colo. P.U.C., Feb. 14, 2008); In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Aquila, Inc., Docket No. 07-KCPE-1064-ACQ (Kan. Corp. Comm'n, May 15, 2008).

Only this Commission's approval is needed for the Merger to close.

II. Merger Synergy Savings

Overview

Of the many parties to this case, only Staff, OPC and the Industrials actively oppose the Merger. However, an analysis of their objections shows that they are based on either a limited review of the details of the Merger or simply a general opposition because they don't like the corporate structure of the transaction.

OPC witness James Dittmer presented prefiled testimony to the Commission where he stated that "Public Counsel would welcome a scenario under which Missouri ratepayers would no longer be exposed to subsidizing Aquila's failed unregulated business operations." See Ex. 200, Dittmer Rebuttal at 47. He acknowledged during the hearing that Joint Applicants' withdrawal of their request to recover Aquila's actual cost of debt changed his analysis of the potential benefits to consumers from a negative to a positive number. See Tr. 1667. He further agreed that with the reduction in Transaction Costs from \$95 million to \$65 million (Missouri jurisdictional \$47.2 million) "the math would work" to increase the positive number. See Tr. 1668.

While Mr. Dittmer quibbled with the synergy savings estimates of the Joint Applicants, he admitted that he did not have the resources to do a "complete bottom-up analysis of the expected synergies" (Tr. 1666, 1720) and that as of April 23 when he testified he had not looked at "the underlying work papers for seven months." See Tr. 1686. He conceded that a utility like Aquila that is not able to recover all of its costs has "a bigger hole to crawl out of" and could "go into bankruptcy," with debt holders taking "a bigger pounding than they have already." Id. at 1682-83. He additionally noted that the purchase price for Aquila that Great Plains Energy agreed to pay "looks very reasonable" (Tr. 1694), and that adjoining companies like KCPL and Aquila "should achieve more synergies than disjoined utilities." See Tr. 1752.

In response to Commissioner Clayton's questions, Mr. Dittmer acknowledged that, despite his misgivings, "I expect there are some fairly significant synergy savings." See Tr. 1723. He also admitted that his initial analysis failed to evaluate the merit of either the estimated Transaction or Transition Costs "because we didn't need to," having arrived at his preliminary negative conclusion. See Tr. 1724-27. Mr. Mills then interjected that because of OPC's "limited budget, we have not had Mr. Dittmer do a whole lot of work since that time," having only paid him to do the "analysis on the original case" and not on the numbers now before the Commission. See Tr. 1724-25. Based upon the statements of Mr. Mills and the witness, little weight should be given to Mr. Dittmer's opinions that are critical of the Merger's estimated synergy savings or its costs.

Similarly, the Industrials' witness Mr. Brubaker admitted that his "testimony does not address the specifics of the synergies that the Applicants contend will be achieved." See Ex. 300, Brubaker Rebuttal at 4. Given that all parties waived cross-examination of this witness, and the testimony given by Great Plains Energy's Mr. Kemp that exposed the weaknesses of the Brubaker analysis,[1] little weight should be given to his opinions as well.

The most surprising opposition to the Merger came from Staff's only witness, Robert Schallenberg, who hasn't testified in a utility merger case in 15 years. See Tr. 1808. Although Staff offered nine witnesses in the 2000 UtiliCorp acquisition of St. Joseph Light & Power Co., Case No. EM-2000-292, Mr. Schallenberg did not testify in that case. See Ex. 35 at 9, 11; Tr. 1800-03. Mark Oligschlaeger and Phil Williams, both current members of Staff, offered testimony on merger savings in that case, but were not called upon by Staff in this case. Id.; Ex. 53. Staff also failed to call other respected Staff professionals such as Dr. Michael Proctor, Chuck Hyneman, Cary Featherstone and Steve Traxler, who provided testimony in the UtiliCorp/SJLP merger.

In the 1997 merger of Union Electric Co. with Central Illinois Public Service Co., Case No. EM-96-149, Staff offered ten witnesses. See Ex. 54. Mr. Schallenberg was not one of them. Although current Staff members Oligschlaeger, Featherstone and Hyneman, as well as Daniel Beck and David Elliott were called to testify in the UE/CIPS merger, they are absent from this case.

Despite Staff's contention in its Prehearing Brief at 16-17 that "the area of synergy savings is the most crucial one for the Commission to subject to a searching scrutiny," what the Commission has been presented with by Staff is 16 lines of substantive testimony. See Ex. 100, Schallenberg Direct at p. 4, line 15 - p. 5, line 6. Mr. Schallenberg's objection to the original regulatory plan is an anachronism, given the Joint Applicants' withdrawal of requests to recover actual Aquila debt, establish a merger synergy sharing plan, and approve regulatory "Additional

[1] See Ex. 19, Kemp Surrebuttal at 10-12 (above-industry synergies should be expected since KCPL and Aquila have adjoining service territories).

Amortizations." His objection to the Application's merger structure is, in reality, a legal issue concerning the requirements of Section 393.190.1 that he is not qualified to address, lacking a law degree or any legal education. See Tr. 1790-91.

Mr. Schallenberg's final point that the Merger is "uneconomical from a consumer perspective even when comparing the cost and benefits sponsored by the Joint Applicants" (Ex. 100 at 4) has little probative value, given his concession that Staff did not conduct an audit of the asserted merger savings. See Tr. 1820-21. Similarly, neither Mr. Schallenberg nor members of the Engineering and Management Services Department analyzed or developed an alternative calculation of merger synergies. Id., 1825-26.

Because the Joint Application does not request approval to merge KCPL and Aquila, Staff has simply ignored the many witnesses who offer detailed testimony on merger synergy savings and the benefits of the detailed plans to functionally integrate and coordinate KCPL and Aquila operations. Mr. Schallenberg admitted that in the Staff Report section dealing with merger synergy savings, there was no discussion or evaluation of the testimony offered by KCPL witnesses Lora Cheatum, Wallace Buran, William Herdegen, Dana Crawford, Robert Steinke, Richard Spring or John Marshall. See Tr. 1893-94. While Staff is free to take a narrow, legalistic approach to the Joint Application, its decision to call only one witness to support an anonymous Staff Report that rambles on for over 80 pages leads one to the inescapable conclusion that Staff pre-judged the Merger months ago and declared it not worthy of serious consideration. As Mr. Schallenberg admitted, neither his testimony nor the Staff Report has been updated since being filed in October 2007. See Tr. 1823.

The Staff Report itself departs from even the new format that Staff has adopted in certain recent cases, where prefiled testimony is highlighted or summarized in a report. For example, in KCPL's last general rate case, No. ER-2007-0291, Staff did submit a 54-page report, however, it carefully set forth a detailed analysis of dozens of issues, with specific disclosures at the conclusion of each section that identified the Staff witness that authored the passage and who would be sponsoring prefiled testimony. Staff's direct case in the 2007 KCPL Rate Case consisted of five witnesses, the Cost-of-Service and Rate Design Reports, and Accounting Schedules (Ex. 101-03, 105, 108, 112, 116, 119); its Rebuttal case consisted of five witnesses submitting prefiled testimony (Ex. 106, 110, 113, 117, 120); and its Surrebuttal case consisted of six witnesses filing testimony. (Ex. 107, 109, 111, 114-15, 118).

In stark contrast, Staff has presented the Commission with only one witness who provided only one round of testimony and a lengthy anonymous Staff Report that fails to reflect the educational or professional basis for the many opinions expressed there. Indeed, Mr. Schallenberg conceded that portions of the Staff Report were written by lawyers in the Commission's General Counsel Division (Tr. 1814-15). These are legal arguments that more properly belong in a pleading.

Given the failure of the opposition to present the Commission with evidence that is anchored in a sound factual analysis, the detailed, comprehensive and conservative plan to execute the transaction and produce merger synergy savings stands virtually unrebutted. A dozen well-qualified and thoughtful witnesses were presented by the Joint Applicants on April 21-23. Their testimony, both pre-filed and live, provides substantial and competent evidence that Great Plains Energy's acquisition of Aquila will produce significant merger savings once the operations of Aquila and KCPL are coordinated and integrated.

As the Joint Applicants have agreed to recover any merger savings through "regulatory lag" as part of the traditional ratemaking process (Tr. 1301, 1309-11 [Terry Bassham]), there is no net detriment to customers. The Commission should, therefore, find that the synergies and savings that will result from the Merger are real and substantial, and will produce benefits that support the approval of the Joint Applicants' requests.

A. The Actual Synergy Savings Exceed the Sum of the Transaction and Transition Costs that the Joint Applicants Propose to Recover Over the First Five Years Following the Merger.

The total operational synergies that will result from the proposed transaction are $305 million over the first 5-year period. However, the Merger is expected to produce substantially more savings to customers. The total synergies created would total $755 million through year 10. On a Missouri jurisdictional basis, the total synergies are equal to $549 million for 10 years, with $222 million expected during the first 5 years. See Ex. 37, Bassham Add'l Supp. Direct at 3.

These actual synergy savings will substantially exceed $90 million, the sum of the $47.2 million in Missouri Transaction Costs and $42.8 million in Missouri Transition Costs.[2] In fact, two areas of synergies alone nearly equal the expected Transaction and Transition Costs. Great Plains Energy/KCPL witness Zabors testified that there was approximately $50 million of synergies related to employee reductions and an additional $30 million related to the sale and closing of the Aquila headquarters building. See Tr. 1417. There is nothing speculative about these synergies. They are "certain" (Tr. 1410-11) and can be calculated "to the penny." See Tr. 1410.

Most importantly, because the Joint Applicants will not seek recovery of Transaction or Transition Costs in rates unless the synergies achieved equal or exceed the level of such amortized costs, ratepayers are not subject to any risk regarding the recovery of these costs in rates. See Tr. 1310-1311. OPC Witness Dittmer admitted while being questioned by

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[2] Merger integration costs will be allocated as described by Mr. Giles in his Additional Supplemental Direct Testimony, Ex. 39 at 4-5, and by Mr. Tim Rush in his Supplemental Direct Testimony, Ex. 23 at 3-8.

Commissioner Clayton that the Joint Applicants' proposal regarding recovery of these costs is reasonable. See Tr. 1730.

B. Great Plains Energy's/KCPL's Synergy Estimates are Reasonable and Consistent With Other Merger Transactions.

In developing the synergy estimates, Great Plains Energy/KCPL and Aquila formed joint teams of internal experts around each of their major operational functions. The teams followed the same general steps in developing their synergy estimates, as discussed by KCPL witness Kemp who reviewed the work of these teams and confirmed the soundness of their approach. See Ex. 18, Kemp Supp. Direct at 10-12. He determined that their methodology ensured that all cost items only belonged to one team, and that the teams verified that the sum of the non-fuel O&M costs was equal to the companies' total non-fuel O&M costs. Id. at 12. Mr. Kemp also found that the synergy estimates were assured because KCPL senior executives had reviewed and approved the estimates and "took ownership" for achieving the targeted benefits. Id. Taking ownership of the implementation of synergies is a necessary step to achieve the estimated levels of savings. See Tr. 1068.

Mr. Kemp compared the synergy estimates to a sample of 15 electric utility mergers involving utilities that had contiguous and non-contiguous service territories. This analysis revealed that Great Plains Energy's synergy estimates showed significantly higher savings in areas such as customer service, distribution and A&G due to the fact that KCPL and Aquila have adjoining service territories, are similarly sized and have complementary operating strengths. Id. at 21; Tr. 1065. Because of these factors, KCPL's synergy estimates were above the average of the 15-utility sample. See Tr. 1065. Mr. Kemp indicated that these results were expected and are not out of the ordinary based on his experience with other utility mergers. See Ex. 18, Kemp Supp. Direct at 21.

C. The Criticisms of Other Parties Regarding Estimates of Synergies are Unsupported and Should be Rejected.

Despite the fact that neither Staff, OPC or the Industrials performed a detailed, "bottom up" analysis of the synergies, they all argue that the synergy estimates are inflated and unreasonable. For example, OPC witness Dittmer argues that many of the synergies could be achieved absent the Merger. However, under questioning from Commissioner Murray, Mr. Dittmer admitted that a utility under financial stress may not have the capital available to fund construction projects and would have to defer them. See Tr. 1686. Mr. Dittmer also admitted during questioning from Commissioner Clayton that he did not know if Aquila had the resources to undertake on its own the $59 million of "enabled" projects that he identified. See Tr. 1719. His mistrust of the synergy estimates is based on an unrealistic view that every utility has the ability to undertake projects that realize savings. Moreover, both "created" and "enabled" synergies require management initiative and action before they can be realized. The transaction before the Commission will unlock these synergies.

Witness Brubaker argued that the synergy estimates should be discarded merely because they are above the median of industry experience. As Mr. Kemp explained in his testimony, the synergies should be expected to be above the industry average since KCPL and Aquila are in close proximity and the potential for synergies is substantially greater than in other transactions. See Ex. 19, Kemp Surrebuttal at 10-12.

D. The Integration of Synergy Savings are Dependent on KCPL and Aquila Integrating Their Operations.

The major argument of the Industrials and Staff is that synergies do not exist because the Joint Application does not request a merger of Aquila and KCPL. They claim that any evidence regarding the synergies from the integration of KCPL and Aquila is irrelevant based on their hyper-technical reading of Section 393.190.1, Mo. Rev. Stat. (2000).

As detailed in the Opposition pleadings of Great Plains Energy and KCPL filed on December 2, 2007 and March 18, 2008 to the Industrials' two unsuccessful motions in limine, the Joint Applicants have not sought to merge KCPL and Aquila under Section 393.190.1. Many of the benefits that will flow to KCPL and Aquila customers come from integrating various KCPL and Aquila functions and activities. However, as a legal matter, Aquila will continue to own its own generation, transmission and distribution facilities, as well as other utility plant. Aquila will continue to serve its customers under its separate electricity and steam tariffs. See Ex. 15, Giles Surrebuttal at 3. The fact that KCPL and Aquila will integrate their operations does not require any regulatory approval not already requested in this proceeding. See Ex. 39, Giles Add'l Supp. Direct at 1-3.

However, if the Commission determines that some additional authorization is required, the Joint Applicants specifically requested such permission be part of an order "[g]ranting such other relief as may be necessary and appropriate to accomplish the purposes of the Merger and this Joint Application, and to consummate the Merger and related transactions in accordance with the Agreement and Plan of Merger and this Joint Application." See Joint Application, Paragraph (k) at 21 [emphasis added]. Realizing synergy savings is clearly a "purpose of the Merger," and integrated operations are clearly "necessary and appropriate to accomplish" that purpose. Id.

III. Transaction Cost Recovery

Great Plains Energy requests that $64.9 million in Transaction Costs ($47.2 Missouri jurisdictional) be permitted to be amortized and considered by the Commission for cost recovery in a future rate case. See Ex. 37, Bassham Add'l Supp. Direct at 5; Ex. 2, Bassham Supp. Direct at 8; Ex. 31, Zabors Supp. Direct at 14-15. Great Plains Energy does not request recovery of any acquisition premium.

The Industrials, Staff and OPC are likely to argue that since Great Plains Energy, a non-regulated entity, has paid the Transaction Costs related to the acquisition of Aquila, ratepayers should not pay these costs. This shortsighted view ignores the reality of the situation. In order for KCPL and Aquila to integrate their operations and achieve synergies, Great Plains Energy must own both entities. The acquisition process involves Transaction Costs which include expenses such as investment banker fees and legal costs. Without the acquisition of Aquila by Great Plains Energy, none of the synergies resulting from the integration of KCPL and Aquila would occur, and recovery of Transaction Costs is appropriate.

While denial of this request may not prevent the Merger from being consummated, it would deprive the Joint Applicants of financial flexibility as they manage a variety of post-Merger issues. See Tr. 1384-85, 1982-83 (Bassham).

IV. Actual Debt Cost Recovery

The Joint Applicants have withdrawn their request that the Commission permit recovery of Aquila's actual debt interest costs in a future rate case. Instead, they propose to follow -- as recommended by Staff, OPC and other parties -- the debt cost recovery procedure that the Commission used in Aquila's recent Missouri rate cases. See Ex. 37, Bassham Add'l Supp. Direct at 2.

V. Additional Amortizations Mechanism

The Joint Applicants have withdrawn their request for consideration of a regulatory "Additional Amortizations" mechanism in this case. See Ex. 37, Bassham Add'l Supp. Direct at 4.

VI. Affiliate Transaction Rule

A. The Affiliate Transactions Rule Under 4 CSR 240.015 is Not Applicable to Transactions Between KCPL and Aquila or, if Applicable, Should be Waived.

Following Commission approval of the transaction, KCPL and Aquila will each be separate affiliates of Great Plains Energy. Although Aquila and KCPL will remain separate legal entities, many of the companies' operation functions will be integrated after the merger closes. See Ex. 39, Giles Supp. Direct at 1. KCPL's and Aquila's cost allocation manual ("CAM") will set forth how costs are to be allocated among KCPL, Aquila, Great Plains Energy and any other subsidiary of Great Plains Energy.

Great Plains Energy/KCPL witness Lori Wright explained in her testimony that Aquila will have a separate general ledger with reporting entities within its accounting and reporting systems for Aquila's regulatory business units. See Ex. 29, Wright Direct at 7. Aquila's employees will become KCPL employees and services will be provided to Aquila from KCPL, Great Plains Energy Services and Great Plains Energy. Id. Costs incurred by KCPL (such as accounting, payroll and regulatory costs), by Great Plains Energy Services (such as human resources), or by Great Plains Energy to serve Aquila will be properly allocated pursuant to the CAM, which is filed annually with the Commission. Id.

Both KCPL and Aquila will each be "regulated electrical corporations" and "public utilities" under Chapter 386 and thus subject to the Commission's jurisdiction. Both companies will continue to be subject to the various reporting requirements they operate under today. The Commission will continue to have access to the books and records of both companies. See Ex. 39, Giles Supp. Direct at 2. The Commission will have all the information and tools necessary to determine if the centralized operations of KCPL and Aquila are having an adverse impact on either of their customers or if costs are not being allocated properly. Id. at 3.

KCPL and Aquila will exchange goods and services at cost. If the Commission determines that a Joint Operating Agreement between KCPL and Aquila is necessary, the Joint Applicants are willing to develop one. However, a Joint Operating Agreement is not truly necessary since the most significant part of the companies' operating arrangement, the CAM, has already been reduced to writing and provided to the Commission. See Tr. 1497.

The Affiliate Transaction Rule (the "Rule") was designed to prevent cross-subsidization between a utility and its unregulated affiliates. The purpose clause of the Rule states that it provides the public the assurance that rates are not adversely impacted by the utilities non-regulated activities. Moreover, the text of the Rule itself presupposes a regulated utility and an unregulated affiliate. Many sections of the Rule are premised on the existence of an unregulated affiliate not subject to the Commission's jurisdiction. For example, Sections 20.015(2)(E) and (F) provide that if a regulated electrical corporation provides marketing materials about an affiliate, the materials must state that the affiliate is not regulated by the Commission. Sections 20.015(4) and (6) require a regulated electrical corporation to keep its records separate from those of its affiliates and make those records available to the Commission. Since both Aquila and KCPL will continue to be regulated electrical corporations after the Merger, neither of these sections would apply.

The Commission has confirmed that the focus of the Rule is to prevent the shifting of unregulated costs to regulated customers on several occasions. See In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 17, Report and Order on Rehearing at 38 (2005) ("… purpose of the affiliate transaction rule is to prevent cross-subsidization, in which a conglomerate including a regulated entity seeks to shift costs of its unregulated activities to its regulated customers"). Prior to the Union Electric case, the Commission defended the Rule at the Missouri Supreme Court in State ex rel. Atmos Energy Corp. v. PSC, 103 S.W.3d 753, 763-64 (Mo. 2003). The Court noted:

> In its brief, the PSC explained that the rules are a reaction to the emergence of a profit-producing scheme among public utilities termed "cross-subsidization," in which utilities abandon their traditional monopoly structure and expand into non-regulated areas. This expansion gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities' customers.

Because both Aquila and KCPL will be regulated electrical corporations, transactions between KCPL and Aquila do not involve cross-subsidization and therefore are not covered by the Rule.

Staff argues that the Rule's definitions of "affiliated entity" and "affiliate transaction" are not limited to regulated entities. See Staff's Prehearing Brief at 35. However, under cross-examination, Staff witness Schallenberg agreed that the purpose of the Rule is to prevent regulated utilities from subsidizing their non-regulated operations and that after the close of the merger, the Commission will have full access to the books and records of both Aquila and KCPL. See Tr. 2070-2071. Mr. Schallenberg also indicated that Staff was not generally opposed to transactions between Aquila and KCPL on a cost basis. See Tr. 2071. Thus, even Staff agrees that there is no reason to apply the Rule in order to maintain access to the books and records of Aquila or KCPL, or to prevent cost-based transactions between Aquila and KCPL. Should Staff believe that transactions between KCPL and Aquila are improper or harm either entities' ratepayers, Staff can review the transactions since it has access to their financial records and can propose adjustments in a rate case.

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

Since the synergies contemplated by Great Plains Energy are premised on the ability of KCPL and Aquila to exchange goods and services at cost, the Rule would actually prevent benefits from accruing to Missouri ratepayers. A literal application of the Rule would prohibit synergies from occurring between KCPL and Aquila, and actually increase costs to ratepayers.

Should the Commission determine that the Rule does apply to transactions between regulated affiliates, KCPL and Aquila request a waiver of the entire Rule as it pertains to transactions between them. This waiver should be granted for all transactions except for wholesale power transactions, which would be based on rates approved by the Federal Energy Regulation Commission. See Ex. 39 at 3-4, Giles Add'l Supp. Direct. As shown above, the asymmetrical pricing requirements of the Rule would prevent Aquila and KCPL from taking advantage of synergies between the two companies. Thus, the "Standards" and "Evaluating Standards" in Sections 2 and 3 of the Rule should not apply. Moreover, since both KCPL and Aquila will continue to be subject to the Commission's recordkeeping requirements for regulated electrical corporations, Sections 4, 5, 6 and 7 which relate to recordkeeping should not apply. The prevention of duplicative and unnecessary regulatory requirements constitutes "good cause" for the waiver of these sections of the Rule.

VII. Service Quality

A. GPE Has Taken Adequate Measures to Ensure that the Service Quality of KCPL and Aquila Post-Merger Will Not be Detrimental to the Public Interest.

KCPL has always been committed to providing reliable service to its customers and expects that both utilities' quality of service will achieve Tier 1 status after the close of the transaction. See Ex. 16, Herdegen Direct at 12. In order to ensure that service quality will not be adversely affected by the integration of customer service functions of Aquila and KCPL, KCPL undertook an extensive analysis of both companies' management structure, work practices, technology use and field workforce to ensure Tier 1 performance. See Ex. 17, Herdegen Supp. Direct at 15.

KCPL Vice President of Customer Operations William Herdegen explained KCPL's process and future steps to ensure that customer service and reliability will not deteriorate after the close of the transaction. The strategy is to adopt the KCPL organization design to minimize change as much as possible for combining the two companies' customer service functions. Teams were formed with experts from each utility, using KCPL's customer service organization as the baseline. See Ex. 17, Herdegen Supp. Direct at 17. In this way all work was accounted for at Aquila and properly mapped into the KCPL organization. As a result of this analysis, 124 incremental positions will be added to KCPL's customer service team after the transaction is completed. Id. at 18. This number represents the sum of the allocation from Aquila's Central Service team assigned to its Missouri electrical properties, plus the direct cost areas of meter reading, customer service personnel and the customer relations team. Id. Given the potential for additional customer questions during the year following the Merger, an additional 42 employees will be available on Day One in the Customer Service area to respond to these expected inquires and ensure that service levels stay at their current levels. See Tr. 2295.

As set forth in the testimony of KCPL's Vice President of Information Technology (IT) Charles Tickles, Great Plains Energy and KCPL have taken the proper steps to ensure that the integration of the companies' IT systems will be transparent to the external customer and will have minimal impact on the internal users of IT services. See Ex. 27, Tickles Supp. Direct at 3. The integration will provide a seamless customer experience for KCPL and Aquila customers, but will allow for separate tracking and reporting of customer financial and operational support data for both companies. In order to minimize disruptions, both the Aquila and KCPL customer information systems will remain in place on Day One post-closing until they can be integrated into one system. See Tr. 2220.

KCPL has reached an agreement with Aquila's Jim Alberts to lead Customer Service operations for both companies. Mr. Alberts is a key reason for Aquila's successful and award-winning customer service operations. KCPL expects that he will be able to use his experience to build on KCPL's good performance and deliver high levels of service to both utilities. See Ex. 22, Marshall Surrebuttal at 12.

While Great Plains Energy/KCPL does expect to reduce employee levels as a result of the transaction, it is important to note that all of the distribution and customer service collective bargaining unit employees will be employed by KCPL on Day One. The majority of the reductions in the distribution and customer service areas are from reductions in redundant administrative/clerical positions or middle and senior management. See Tr. 2297.

Although the number of customer service centers will be reduced from 11 to 6, each district will have satellite offices so that service representatives will be employed throughout the rural areas of the utilities' respective service territories. See Tr. 2219; Ex. 17, Herdegen Supp. Direct at 11. None of the nine service centers in more rural areas (St. Joseph, Maryville, Trenton, Henrietta, Marshall, Sedalia, Warrensburg, Clinton and Nevada) will be closed. Id. at

12. Rural areas will continue to be served by local utility workers who will take their trucks home to respond to problems where they live. See Tr. 2270.

KCPL will bring its strong service system and 24-hour service resources to the Aquila territory. Service levels will operate at the same or higher levels due to a greater depth of resources at the larger service centers. See Tr. 2217.

B. The Integration of KCPL and Aquila Operations Will Result in Synergy Savings That Will Maintain or Improve Service Levels.

Two of the factors that influence service quality are tree trimming and meter reading. Mr. Herdegen testified that by using KCPL's experience and best work practices, Aquila's incremental spending on tree trimming can be reduced by about 30 percent or approximately $2 million per year. See Tr. 2287. Even though the amount of spending will be reduced, the amount of tree trimming performed at Aquila will be maintained due to the adoption of KCPL's vegetation management practices that improve the reliability of the circuit, instead of encouraging contractors to trim trees, whether or not it is needed. See Tr. 2288.

Following approval of the Merger, KCPL plans an aggressive rollout of automatic meter reading (AMR) in Aquila's urban areas. See Tr. 2281. There is a significant amount of capital involved in the AMR project. See Tr. 2282. The expected synergy savings for the project in terms of labor and other savings are approximately $4.7 million. See Tr. 2289. However, the AMR project will also bring about improvements in service quality since AMR will allow enhanced meter reading capabilities and increase the level of program offerings to customers. See Ex. 16, Herdegen Direct at 11.

AMR allows quicker response times for the customer, reduced fuel/energy costs, and increased productivity due to reduced drive times. See Ex. 17, Herdegen Supp. Direct at 6. Using AMR allows Aquila to employ Advanced Metering Infrastructure which enables the utility to obtain connect/disconnect reads without a field visit; detect tampering, theft and diversion of service; obtain real-time leads to resolve billing complaints over the phone; provide outage management; and verify when power has been restore. Id. These improvements in service quality to Aquila customers will take place as a result of KCPL's expertise in implementing AMR systems and its ability to invest in AMR technology.

Aquila facilities will be managed through the KCPL Outage Management System (OMS), which tracks outage information at a more detailed customer and circuit level than Aquila currently does. Id. at 15. Using the OMS on Aquila's system provides for better system monitoring and event management at the circuit and customer levels, so that targeted reliability improvements can be made and long-term asset management programs can be identified. Id. KCPL will also expand its Outage Reporting System (ORS) so that Aquila's outage performance can be monitored. The ORS system is an extremely useful tool that permits early tactical decisions that will allow quicker recovery from major storms. Id.

KCPL has also agreed with Staff's recommendation concerning the frequency of customer service performance reviews by Staff to ensure that service will continue at current levels. See Tr. 2311. KCPL will maintain reliability benchmarking data based on rate jurisdiction so that Staff can monitor both Aquila and KCPL reliability benchmarks. See Tr. 2303.

In contrast to KCPL's detailed and extensive forward-looking quality of service analysis, the Staff's concerns remain stuck in 1994. Staff's main argument appears to be that customer service issues following the acquisition of a Missouri natural gas local distribution company by a Texas utility almost 15 years ago is a reason to disapprove this transaction that involves two Missouri electric utilities. Staff presented no analysis of how problems in that transaction are likely to be encountered by KCPL and Aquila, other than to note that workforce reductions and high turnover were factors encountered by the gas utility. See Staff Report at 72. As described above, Great Plains Energy and KCPL will add permanent and temporary employees to the customer service team and have diligently prepared for integration of Aquila and KCPL operations through the adoption of the best practices of both utilities.

VIII. Transmission and RTO Criteria

A. RTO Issues Regarding Aquila do not Cause the Merger to be Detrimental to the Public Interest.

It is unnecessary and premature to require the Joint Applicants to evaluate the potential impacts of Aquila's RTO status. None of the synergy savings in this case presume a change in Aquila's RTO status. Moreover, although certain parties to this proceeding have expressed their preference that Aquila become a member of the Southwest Power Pool ("SPP"), there is no evidence in the record that maintaining the status quo, *i.e.*, Aquila's current RTO status, would be detrimental to the public interest.

As a factual and legal matter, Aquila's RTO status is independent of the Merger. The Merger will have no direct impact on either KCPL's or Aquila's RTO status. Aquila has an application pending before the Commission in Case No. EO-2008-0046, regarding the transfer of functional control of its transmission facilities to Midwest ISO or another RTO. The evidentiary hearing in that case concluded April 15, 2008 and post-hearing briefs were submitted on May 29, 2008.

The Commission has before it in that case a full evidentiary record concerning the benefits and costs associated with Aquila's RTO status. Such evidence is critical for the Commission's evaluation of which RTO, if any, would best serve Aquila and its customers. Moreover, although SPP and Midwest ISO were both active participants in that case, neither party is represented here. The Commission should make its determination concerning Aquila's RTO status based on the evidentiary record before it in Case No. EO-2008-0046.

B. Issues Relating to Joint Dispatch do not Cause the Merger to be Detrimental to the Public Interest.

It is also premature to require the Joint Applicants to evaluate the potential impacts of joint dispatch. Great Plains Energy does not propose to dispatch jointly the Aquila and KCPL generation fleets, and will retain the utilities' respective control areas. See Ex. 11, Dana Crawford Direct Testimony at 5. Any future decision to dispatch jointly will be subject to regulatory approval, at which time a record would be fully developed concerning the impacts of such action.

In the FERC merger proceeding, Docket Nos. EC07-99-000 and EL07-75-000, the City of Independence ("Independence") asked FERC to require KCPL and Aquila to quantify the impacts of joint dispatch before being permitted to merge. In its order approving the merger, FERC denied that request, as discussed in Joint Applicants' Updated Prehearing Brief at 29. See Great Plains Energy Inc., 121 FERC ¶ 61,069 at Para. 36 (2007).

Independence's concerns regarding transmission and interconnection availability are similarly misplaced. KCPL and Aquila fulfill specific obligations set by FERC Orders 888 and 890 regarding open-access, non-discriminatory transmission service to customers. Following the Merger, KCPL and Aquila will continue to provide transmission service through a federally-approved Open Access Transmission Tariff.

Independence also raised this issue before FERC, arguing that KCPL and Aquila had not adequately evaluated the impact of the Merger on transmission availability as part of their market power analysis in support of their application. FERC considered these same arguments that Independence now raises again in this proceeding and correctly concluded that the Merger did not create any transmission availability concerns. Great Plains Energy Inc., 121 FERC ¶ 61,069 at Para. 34, 35 and 37 (2007).

C. Commission Approval of the Merger Should not be Conditioned Upon Aquila Being Required to Operate its Generation and Transmission Facilities with KCPL Within Four Months of the Merger.

For the reasons stated above, the Commission should also not condition its approval of the Merger on Aquila being required to operate its generation and transmission facilities with KCPL and, in essence, join SPP. The Commission should instead make its determination concerning Aquila's RTO status in Case No. EO-2008-0046.

It is also noteworthy that FERC refused to condition its approval of the Merger on Aquila being required to join SPP. FERC found as follows:

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

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

D. Commission Approval of the Merger Should not be Conditioned Upon Aquila and KCPL Being Required to Consolidate Their Balancing Authority Areas Within Six Months of the Merger.

The Commission should also not condition its approval of the Merger on KCPL and Aquila consolidating their Balancing Authority areas within a specific time. This Commission is presently evaluating Aquila's RTO status in a separate proceeding. Moreover, SPP is presently evaluating consolidating Balancing Authority operations within its footprint.

Until these matters are resolved, it would be premature and potentially redundant for KCPL and Aquila to pursue consolidation of their Balancing Authority operations.

IX. Municipal Franchise Issues

A. The Commission Approval of the Merger Should not be Conditioned Upon the Negotiation of a Single, Unitary Franchise Between KCPL/Aquila and the City of Kansas City ("KCMO").

Joint Applicants will not repeat the legal arguments in the Prehearing Brief at pages 29-32, except to note that the Commission lacks the legal authority to condition its approval of the Merger upon the negotiation of a single unitary franchise between the utilities and KCMO.

KCMO attempts to cloud the issue by arguing that the Commission has the authority to override franchises and contracts in order to maintain and preserve the public welfare under May Dep't Stores Co. v. Union Elec. Light & Power Co., 107 S.W.2d 41, 48 (Mo. 1937). See KCMO Prehearing Brief at 4. In May the Commission did exercise its authority to override a contract regarding the provision of electric service between a utility and a large user because that contract limited the regulatory authority of the Commission. However, the franchise agreement between KCMO and KCPL does not interfere with the Commission's regulatory authority. In fact, it is KCMO that is seeking to invade the Commission's jurisdiction because it desires specific rate structures and pricing elements in a new unitary franchise agreement. See Tr. 2136, 2137.

Since both Aquila and KCPL will continue to exist and serve customers following the approval of the Merger, each entity will operate under a separate franchise agreement with KCMO. Both Aquila and KCPL have valid franchise agreements with KCMO. See Tr. 2202. KCPL is very experienced in operating under multiple franchises, with approximately 70 different franchises across its territory. See Tr. 2233. Even though two valid franchise agreements exist, KCMO argues that this proceeding gives the Commission the opportunity to force KCPL to renegotiate its franchise agreement with KCMO. But there is no tie between the existing franchise agreements and the public interest. City Manager Cauthen testified that he was satisfied with KCPL's level of cooperation. See Tr. 2159. He stated that KCPL has worked with KCMO on its climate change initiative and Million Lights Program. See Tr. 2137. Mr. Cauthen believed KCPL has "done a good job" on city weatherization programs. See Tr. 2144. KCPL cooperated with KCMO in the installation of security cameras on KCPL facilities. See Tr. 2141. KCPL trains KCMO employees in KCPL's building operator program to promote better energy management for city buildings. See Tr. 2142-2143.

Much of what KCMO wants is for KCPL to renegotiate as part of a unified franchise agreement issues that are already covered by KCPL and Aquila Commission-approved tariffs. For example, if Kansas City or any other municipality asks KCPL to relocate its facilities that are located in a private easement, the city pays the relocation costs. If the facilities are located on public rights of way, any changes are done at KCPL's expense. See Section 15.08, Changes and Removal, Municipal Lighting Service, KCPL General Rules and Regulations, P.S.C. Mo. No. 2 (Tariff Sheets 1.51-52) (1989). Id., Section 10.03(e)(v), Underground Distribution System in Residential Subdivisions. Moreover, City Manager Cauthen testified that he was satisfied with KCPL's facility relocation work on the Sprint Center, the H&R Block Corporate Headquarters building, and the Bartle Hall Convention Center expansion projects, each of which involved a great deal of utility infrastructure relocation. See Tr. 2145-2148. Clearly, KCPL is meetings its obligations under the tariff with regard to facility relocation.

Despite KCPL's assistance to KCMO in its downtown revitalization projects, which included the complete relocation of KCPL facilities from the McGee Street bridge and the coordination of safety meetings with all contractors working in the area (Tr. 2146-2147), KCMO complains about a single street lighting project. See Ex. 400, Cauthen Rebuttal at 9. However, under cross-examination, Mr. Cauthen could not state either the date or location of the project or specify what action KCPL failed to perform. See Tr. 2149-2150. He also could not give a single example of KCPL failing to provide a map or drawing of its facilities at KCMO's request. See

Tr. 2151. There is no reasonable basis for the Commission to determine that KCPL is not meeting its obligations regarding relocations, mapping or cooperation with KCMO concerning building projects.

KCPL witness Marshall noted that the issues of relocation and subordination that concern KCMO are dealt with through KCPL's line extension policy. See Tr. 2233. KCPL uses a sophisticated software program that estimates the cost of relocation or line extension projects. See Ex. 22, Marshall Surrebuttal at 15. Over the past several years KCPL has received thousands of requests for line extensions and relocation, and has properly responded to these requests. Id.

There is no legal or factual basis for the Commission to disturb the franchise between KCPL and the City of Kansas City.

B. The City of St. Joseph ("SJMO") Has Not Presented an Issue that the Commission has the Authority to Determine.

Like KCMO, SJMO wants the Commission to condition the approval of the Merger upon Aquila negotiating a new municipal franchise with SJMO. As explained in the prehearing brief, the Commission does not have the authority to void a valid franchise agreement between a utility and a municipality.

SJMO has submitted no evidence to establish that Aquila's SJMO franchise is no longer valid. No witnesses testified to that effect and SJMO's Exhibit 1200 (an affidavit from the SJMO City Attorney) should not be admitted into evidence. Ex. 1200 was admitted subject to the parties' objections and the RLJ stated that the Commission would rule on its admissibility in its final Order. See Tr. 2231. No one authenticated Ex. 1200 at the hearing so it lacks a proper foundation. The exhibit is hearsay and KCPL did not have an opportunity to cross-examine any witness concerning SJMO's contention that Aquila's franchise with the city had expired.

The Commission's June 19 Procedural Order required prefiled testimony in order to give parties notice of the claims at issue and to identify before the hearing all exhibits that a party wished to offer into evidence. SJMO filed no testimony on the franchise issue and did not identify Exhibit 1200. Moreover, SJMO did not comply with Section 536.070(12) which requires that affidavits to be used at hearing shall be provided before the hearing so that parties may object to them. Because SJMO failed to follow the Commission's procedural orders, as well as the statute governing the use of affidavits, Exhibit 1200 should not be admitted into evidence.

Finally, the essence of what SJMO is asking the Commission to do is adjudicate the validity of Aquila's franchise. The Commission does not have the authority to judge the validity of a franchise. See State ex rel. Electric Co. of Missouri v. Atkinson, 204 S.W. 897, 898 (Mo. 1918). The Commission should reject SJMO's improper attempt to interject it into a contractual dispute and deny SJMO's request.

X. Quality of Service Plan; Earnings Sharing Mechanism and Future Rate Case

A. KCMO's Proposed Quality of Service Plan, Earnings Sharing Mechanism and Future Consolidated Rate Case Demonstrate a Lack of Understanding of KCPL, Aquila and of Missouri Law and Regulation.

KCMO witness Hix proposed three vague conditions (Quality of Service Plan, Earnings Showing Mechanism, Consolidated Rate Case) that he argued the Commission must impose on KCPL and Aquila in order for the Merger to be not detrimental to the public interest. However, Mr. Hix did not perform even the most basic analysis necessary for the Commission to adopt his proposals.

Mr. Hix agreed that the electric utility industry is in a rising cost environment and in a construction phase. See Tr. 2163. Yet, Mr. Hix admitted that he does not know the specifics of KCPL's infrastructure investments contained in its Regulatory Plan. See Tr. 2164. Mr. Hix did not review KCPL's two rate cases filed since the approval of the Regulatory Plan and did not calculate KCPL's actual rate of return. See Tr. 2165. This basic information concerning KCPL's financial situation is necessary in order to make a credible recommendation concerning an earnings sharing recommendation or the timing of KCPL's or Aquila's next rate case.

As discussed in Joint Applicants' Prehearing Brief, KCPL and Aquila are currently engaged in major generation construction programs, and both companies will need to raise additional capital beyond their current construction programs to meet environmental regulations. See Ex. 15, Giles Surrebuttal at 13. This will require KCPL and Aquila to file rate cases with the Commission in the year after the transaction closes. These rate increases are necessary to recover the costs of the infrastructure as it is placed into service. Such costs will exceed the total estimated synergies of the acquisition during the next several years. Id. at 14. The synergies will require a smaller increase in rates than would have been required absent the transaction. However, contrary to Mr. Hix's unsupported proposal, there will be no excess earnings to share. Id.

As explained by KCPL witness Giles, earnings sharing mechanisms have been used when the cost of service is expected to be flat or declining over the time the synergies are expected to occur. Absent increases in cost of service, the synergies would result in excess earnings above an authorized rate of return. Although some state utility commissions have adopted earnings sharing mechanisms that require utilities to share the synergies between customer and shareholders, such circumstances do not exist in this case and an earnings sharing mechanism is not appropriate. See Ex. 15, Giles Surrebuttal at 14. Moreover, any savings derived from synergies as a result of the Merger, will be shared through the mechanism of regulatory lag.

Mr. Hix also admitted on the stand that he had not reviewed past earnings sharing plans adopted by this Commission and had not reviewed other Commission approvals of electric company mergers. See Tr. 2169. If he had performed this research, Mr. Hix would have also discovered that the Commission has previously held that it does not have the legal authority to impose such an earnings sharing mechanism or alternative regulation plan on a utility. See In re Southwestern Bell Tel. Co., TC-93-224, 2 Mo. P.S.C.3d 479, 572, 583-85 (1993). In Missouri earnings sharing mechanisms come about as a result of negotiations between the utility, Staff, OPC and other interested parties.

Given that the last earnings sharing mechanism that Mr. Hix designed and was familiar with was in effect from 1997 to 2001 (Tr. 2167), and given his lack of knowledge regarding KCPL's and Aquila's financial structure and current construction programs over the next several years, the Commission should reject KCMO's proposed earnings sharing mechanism.

KCMO's proposed Quality of Service Plan also suffers from a lack of Missouri-specific information and analysis. Mr. Hix stated that a Quality of Service Plan is necessary after a merger so that service quality does not deteriorate. Mr. Hix did not propose any specific service standards, and was apparently not aware that the Commission had already adopted vegetation management standards and reliability metrics that apply to KCPL and Aquila. See Tr. 2168, 2169. Beyond his lack of information about Missouri regulations, Mr. Hix could not list any of the synergies that KCPL is proposing in the area of customer service or how these synergies would impact customer service. See Tr. 2192, 2193. As Mr. Herdegen testified, KCPL has taken a number of steps to ensure that service quality does not decline, including adding 42 employees in the customer service area on Day One post-Merger. See Tr. 2295. In addition, most of the reductions in headcount will come from administrative or middle to senior management positions. See Tr. 2297.

Mr. Hix presented no evidence that customer service will be affected by the transaction because he did not examine the synergies related to customer service. See Tr. 2193. Moreover, he ignored the fact that Staff already reviews the very performance measures he recommended for adoption. In KCPL's last rate case (ER-2007-0291), the Staff reviewed five years of data for System Average Interruption Frequency Index ("SAIFI"), System Average Interruption Duration Index ("SAIDI"), Customer Average Interruption Duration Index ("CAIDI"), and Momentary Average Interruption Frequency Index ("MAIFI"). The Staff found no evidence of long-term trends that should be cause for concern by the Commission. Because the Staff regularly reviews reliability data and can take action should the data indicate a problem, KCMO's Quality of Service proposal is not relevant to the Merger and should be rejected.

KCMO's final proposal is that KCPL and Aquila be required to file a comprehensive rate case within three years after the Commission's approval of the transaction. As discussed earlier, the timing of KCPL's rate cases are influenced by its commitments and activities under the Regulatory Plan Stipulation, Case No. EO-2007-0329. Mr. Hix's proposal ignored the Regulatory Plan, which he admitted he did not review regarding KCPL's future rate cases. See Tr. 2164.

Finally, KCMO wants Aquila and KCPL to integrate their financial and system operations into a structure that can be comprehensively evaluated for efficiencies and improved operations. See KCMO Prehearing Brief at 8. This proposal ignores the fact that Great Plains Energy does not seek to merge KCPL and Aquila (Tr. 305-07), and should similarly be rejected.

XI. Additional Amortizations and Credit Worthiness

A. The Credit Worthiness of KCPL and Aquila Post-Merger is not Dependent on the Commission Authorizing a Regulatory Plan Containing an Additional Amortizations Provision.

The Joint Applicants have no request pending before the Commission with regard to a future Aquila regulatory plan. As Mr. Bassham has testified, if the acquisition of Aquila is approved, the Joint Applicants intend to initiate discussions with interested parties to develop a regulatory plan for Aquila that might include a regulatory Additional Amortizations provision as part of that regulatory plan. See Ex. 37 Bassham Add'l Supp. Direct at 4.

However, there is no request in this proceeding for an Aquila regulatory plan. Mr. Bassham explained to Commissioner Clayton that while the Joint Applicants are not asking for a specific regulatory amortization treatment in this case, "we would like ... to work with the parties to develop a plan similar to what we did with KCPL. Assuming we're not able to achieve that, we might propose our own plan in the first rate case." See Tr. 1312-13.

Given the Joint Applicants' withdrawal of this request, Judge Stearly properly ruled that any evidence relating to the Additional Amortizations would be irrelevant. See Tr. 2096. Although the judge permitted an offer of proof on this issue at the end of the case, that offer made clear that in the absence of a specific proposal containing a variety of financial metrics and other considerations, there was no way to predict what effect a future regulatory plan containing Additional Amortizations would have on either Aquila, Great Plains Energy or KCPL.

Testimony from both Michael Cline, the treasurer of Great Plains Energy and KCPL, and Staff's Robert Schallenberg confirmed that any cash flow from Additional Amortizations was "fungible," and not specifically separated out or directed to specific capital investments or other utility projects. See Tr. 2956, 2958 Cline; Tr. 2994-96 Schallenberg.[3] OPC's Russell Trippensee also testified that "[t]here's no tracing of debt to specific investments at all." See

[3] Mr. Schallenberg agreed with Commissioner Clayton that the "focus" of Additional Amortizations "is less on the actual dollar amount that's going into construction but more on the credit metrics" of the utility's regulatory plan. Tr. 2995. Mr. Schallenberg noted that in KCPL's case the cash flow from Additional Amortizations "doesn't identify Iatan 2" or any other construction project and "isn't designed to specify ... different power plants." Tr. 2994.

He observed that arriving at amounts for Construction Work in Progress, if it were permitted in Missouri, would involve "calculations [that] are completely different." Tr. 2997. "In fact, if you were really trying to isolate part of an entity's construction activities, you probably wouldn't want to use the [Additional Amortization's] formula approach." Tr. 2996.

also Tr. 2967-68. He stated that when the ratios and formula are in place and after the Commission sets rates on a traditional basis in a future rate case, only then would the Additional Amortization process be used "to reflect the additional cash flow necessary to meet ... that ratio target that was set out in the plan ...." See Tr. 2978.

Clearly, issues relating to the Additional Amortization proposal originally made by the Joint Applicants for use by Aquila are not relevant to whether the Merger should now be approved by the Commission.

B. KCPL's Comprehensive Energy Plan Does Not Adversely Affect Great Plains Energy's Financial Ability to Acquire Aquila in a Manner that is not Detrimental to the Pubic Interest

As demonstrated at the hearing, the current cost estimates related to the Comprehensive Energy Plan ("CEP") and its construction projects will not have an adverse effect on the ability of Great Plains Energy to acquire Aquila. Mr. Chesser, Mr. Downey, Mr. Bassham and Mr. Cline testified that any issues arising from the current reforecast being conducted regarding Iatan Units 1 and 2 will not negatively affect the ability of Great Plains Energy to acquire Aquila. See Section XII below.

C. KCPL's Credit Worthiness is not Adversely Affected by Great Plains Energy's Decision Not to Seek Recovery From Missouri Ratepayers of any of the Non-investment Grade Costs of Aquila's Existing Debt.

As set forth in the Additional Supplement Direct Testimony of Terry Bassham and Michael Cline, the Joint Applicants' withdrawal of their request to recover all of Aquila's actual debt costs will not have an adverse affect upon KCPL's credit worthiness. See Issue IV, supra.

During the hearings, Mr. Bassham testified that he was "very confident" that the credit ratings of KCPL and Great Plains Energy "would remain consistent with the information we discussed with Moody's and Standard & Poor's" earlier in 2008. See Tr. 2139. Both Great Plains Energy Chairman Michael Chesser and KCPL Treasurer Cline believed that a change in the credit ratings would not occur. See Tr. 2539-40 (Chesser), 2585 (Cline). Although Moody's had recently placed the companies on a negative outlook, Mr. Bassham explained that this was not a downgrade, but rather an indication of concern as a "result of the [Joint Applicants'] revised [Merger} request" and "the fact that we had agreed to absorb [Aquila's] interest costs [which] would cause there to be less flexibility …." See Tr. 2321-22. Mr. Bassham stated: "I wouldn't say [a downgrade is] likely" by Moody's, particularly since its credit rating of Baa2 "is one notch above Standard & Poor's." See Tr. 2322-23.

Given that credit ratings aren't normally changed because of a single event and that multiple factors are included in a rating agency's review, Mr. Bassham concluded that under the Joint Applicants' revised regulatory requests, "with all the work we've done, we don't see the merger in and of itself causing a downgrade." See Tr. 2324.

XII. The Cost and Schedule of the Iatan Construction Projects are Not Related to the Merger and do not Cause the Merger to be Detrimental to the Public Interest

The final issue heard by the Commission related to whether the infrastructure projects of the CEP -- the Iatan Unit 1 and Unit 2 projects in particular -- pose an unreasonable risk to the Merger or, conversely, whether the Merger posed an unreasonable risk to the CEP projects, such that the Merger is detrimental to the public interest.

The unequivocal evidence presented at the hearing was that the CEP projects neither threaten the Merger, nor are threatened by the Merger such that the proposed transaction should be disapproved. Mr. Bassham testified that the cost and schedule estimates for Iatan 1 and 2 compiled at the end of April did not present undue risk to Great Plains Energy and KCPL, and that the companies possessed sufficient financial flexibility to consummate the Merger and carry out the projects. See Tr. 2380-84. The public statements issued by Great Plains Energy and KCPL on May 7, 2008, disclosed that while overall projected costs rose by 19%, Iatan 1 will experience a delay of only 47 days to February 1, 2009, and Iatan 2 remains on schedule to be completed in the summer of 2010. See Ex. 305 at 2-3 (Form 8-K); Tr. 2380-81. KCPL's share of the cost of the Iatan 1 environmental retrofits increased from the previous range estimate of $255-264 million to $330-350 million, a 33% rise from the top end of the prior estimate. See Ex. 305 at 3. The mid-point estimate is a 28% increase. Tr. 2381 (Bassham). The cost estimate for Iatan 2 experienced a mid-point increase of 10%, from the control budget estimate of $1,685 billion to $1.861 billion. See Tr. 2380-81 Bassham. KCPL's approximately 55% share of Iatan 2 has increased from the previous 2006 range of $837-914 million to a range of $994 million to $1.050 billion, with the top end of the range representing a 15% increase. See Ex. 305 at 2.

As KCPL President William H. Downey testified, these increases in costs and minor delays in schedule are the product of an "extraordinary period" of labor and construction industry issues. The electric utility industry, not just in the United States, but worldwide, is in a building mode, which has increased demand not only for the sophisticated equipment needed to build power plants, but also labor. See Tr. 2479-81, 2484; Ex. 305 at 2. Inflation is on the rise, and the value of the U.S. Dollar has fallen. Id. Chairman of the Board Michael Chesser advised the Commission that even in light of these economic trends, he believed that Great Plains Energy and KCPL would remain financially strong post-Merger and that, based on discussions with rating agencies, a credit downgrade was "very unlikely." See Tr. 2528, 2539-40. Mr. Chesser noted that with Aquila's debt being reduced, additional assets being placed in rate base, "significant growth" in Aquila's service area, and the sale of Strategic Energy, the rating agencies are viewing Great Plains Energy "as a pretty positive story." See Tr. 2539-40. Mr. Michael Cline, KCPL's treasurer, echoed these sentiments, stating that the results of the reforecast were not likely to have a negative effect (Tr. 2585), which they have not had to date.

KCPL witnesses involved in the Iatan construction projects emphasized the utility's efforts to keep a strict account of cost issues through an evaluation of risks and opportunities through what are known as "R&O Tables," as well as a comprehensive reforecast process. KCPL has recruited highly qualified individuals to manage those projects and retained competent outside experts to review the decisions being made. See generally Tr. 2467-84 (Downey); 2715-28 (Davis); 2756-62 (Foster). Terry Foster, Director of Project Controls at Iatan, has spent over 40 years in the electric utility industry. Tr. 2755. In the last ten years he worked for Fluor Daniel as the project director for a standalone project with Carolina Power & Light, was director of project controls for all capital projects at American Electric Power Co., and was the regional quality control manager for projects overseen by Black & Veatch. See Tr. 2755. Brent Davis, now Iatan 1 Project Director, has worked on Iatan 1 and 2 projects since June 2006. Tr. 2713-14. He has worked for KCPL since 1980 at all four of its coal-fired power plants, and most recently served as plant manager at Hawthorn 5. See Tr. 2713-14. Both Mr. Foster and Mr. Davis testified that their full attention is devoted to the Iatan projects, that they are not involved with the acquisition of Aquila or related creditworthiness issues, and that they do not serve as members of any Merger integration team. See Tr. 2746-47, 2752 (Davis); 2754, 2799-2800 (Foster). Finally, a new vice president of construction, Carl Churchman, has been hired to replace David Price, who had started the reforecast process in 2007 but resigned in February to re-join the non-regulated utility sector. See Tr. 2487-89, 2708.

No qualified expert was offered by Staff or any other party to contradict any of these witnesses. With the exception of speculation and argument, there is no credible evidence that the Merger should be disapproved for any reason related to the current construction projects.

CONCLUSION

After nearly three weeks of hearings -- one week in December 2007 and two weeks in April-May 2008 -- there are several conclusions that can be drawn. First, the Joint Applicants' merger synergy savings analysis is comprehensive, detailed and reasonable. No party opposing the Merger has introduced any competent evidence that seriously questions its design or rationale. Indeed, the three parties who challenged the savings analysis -- Staff, OPC and the Industrials -- conceded that they lacked the expertise and resources to study the proposal. Instead, they offered a series of speculative and vague objections, preferring to "just say no."

Second, the revised regulatory requests clearly provide greater benefits to ratepayers and other stakeholders. Transaction costs and transition costs are reasonable, Aquila ratepayers will only be responsible for investment-grade debt, and questions relating to a future Aquila regulatory plan will be taken up at a later time.

Third, the financial condition of Great Plains Energy and KCPL will not be threatened by either the current CEP construction projects or the Merger. To the contrary, cost and schedule estimates at the Iatan Unit 1 and Unit 2 projects are within industry norms, given current economic conditions. The sale of Strategic Energy will allow more financial flexibility and permit Great Plains Energy to focus on its regulatory assets. Over the long run, the Merger will create a larger and stronger regional utility that will benefit customers and shareholders for many years.

Great Plains Energy, Aquila and KCPL, therefore, respectfully request that the Joint Application, as modified and conformed by the evidence, be approved by the Commission by a June 20, 2008 order so that the Joint Applicants can close the transaction by July 1, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

/s/ Karl Zobrist
Karl Zobrist