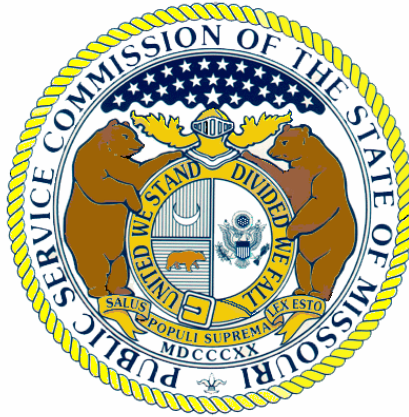


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



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 Control of Certain)
Transmission Assets to the Midwest Independent)
Transmission System Operator, Inc.)

Case No. EO-2008-0046

REPORT AND ORDER

Issue Date: October 9, 2008

Effective Date: October 19, 2008

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)	
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Appearances

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Renee Parsons, Senior Attorney, Aquila, Inc., 20 West 9th Street, Kansas City, Missouri 64105.

For Aquila, Inc.

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For Midwest Independent Transmission System Operator, Inc.

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Curtis C. Blanc, Attorney at Law, Kansas City Power & Light Company, 1201 Walnut, Kansas City, Missouri 64141.

For Kansas City Power & Light Company.

Spencer Throssell, Smith Lewis, LLP, 111 South 9th Street, Suite 200, Columbia, Missouri 65201.

For Union Electric Company, d/b/a AmerenUE.

David C. Linton, David C. Linton, L.L.C., 424 Summer Top Lane, Fenton, Missouri 63026, and
Heather H. Starnes, Attorney at Law, 415 North McKinley, Suite 140, Little Rock, Arkansas 72205-3020.

For Southwest Power Pool, Inc.

Carl J. Lumley, Curtis, Heinz, Garrett & O'Keefe, P.C., 130 S. Bemiston, Suite 200, St. Louis, Missouri 63105.

For Dogwood Energy, LLC.

Alan I. Robbins and Debra D. Roby, Jennings Strouss & Salmon, PLC, 1700 Pennsylvania Ave. NW, Suite 500, Washington, D.C. 20006, and
B. Allen Garner, City Counselor, and **Dayla Bishop Schwartz**, Assistant City Counselor, Law Department, City of Independence, 111 East Maple Street, Independence, Missouri 64050.

Nathan Williams, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102

For the Staff of the Missouri Public Service Commission.

Lewis R. Mills, Jr., Public Counsel, P. O. Box 2230, Jefferson City, Missouri 65102

For the Office of the Public Counsel and the Public.

REGULATORY LAW JUDGE: **Morris L. Woodruff, Deputy Chief Regulatory Law Judge**

REPORT AND ORDER

Syllabus: This order denies Aquila, Inc.'s application for authority to transfer operational control of certain transmission assets to the Midwest Independent Transmission System Operator, Inc.

FINDINGS OF FACT

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

Procedural History

On August 20, 2007, Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P filed an application requesting authority to transfer operational control of certain

transmission assets to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). On August 28, the Commission directed that notice of the filing of Aquila's application be sent to all parties to Aquila's last rate case. That order also established an intervention deadline of September 17.

Dogwood Energy, LLC; Kansas City Power & Light Company; Southwest Power Pool, Inc.; Union Electric Company, d/b/a AmerenUE; and Midwest ISO filed timely applications to intervene. The Commission granted their requests to intervene on September 28. Subsequently, on October 30, the City of Independence, Missouri filed an application to intervene out of time. The Commission granted that application on November 13.

The Commission established a procedural schedule that required the parties to prefile direct, rebuttal, and surrebuttal testimony. An evidentiary hearing was held on April 14 and 15, 2008. The parties filed post-hearing briefs on May 29.

Independent System Operators and Regional Transmission Organizations

1. Aquila's application seeks authority to become a full member of Midwest ISO. That corporation is both an Independent System Operator (ISO) and a Regional Transmission Organization (RTO). ISOs and RTOs are independent entities that have functional control over the operation of transmission facilities of multiple transmission owners under a common tariff. Midwest ISO, like other ISOs and RTOs, was established under the auspices of the Federal Energy Regulatory Commission (FERC).¹ Midwest

¹ Doying Rebuttal, Ex. 4, Page 4, Lines 12-18.

ISO's operational area serves fifteen states and the Canadian province of Manitoba, and is located generally north and east of Missouri.²

2. Midwest ISO administers a common tariff, called an Open Access Transmission Tariff, that applies to all transmission services provided on the transmission facilities placed under the ISO's control by member electric companies. The common tariff applies the same rules to all transmission customers and avoids the "pancaking" of rates that occurs when power flows through transmission facilities operated by multiple entities and governed by multiple tariffs.³

3. An RTO provides wholesale transmission service on a regional basis. Such service meets two needs for transmission customers. First, it ensures the long-term deliverability of electricity from designated resources to load. In other words, the RTO provides a path by which electricity can be reliably transmitted from a generating facility to the customers that need that electricity. Second, the RTO facilitates short-term deliverability of electricity for economic transactions. That means, the RTO provides the transmission service required to deliver surplus electricity from lower-cost resources as a substitute for electricity from a higher-cost resource. That allows for the development of an electricity market in which those transactions can occur.⁴

4. Midwest ISO is not the only RTO capable of providing transmission services to Aquila. The FERC authorized Southwest Power Pool, Inc. to operate as a RTO beginning in October 2004.⁵ Southwest Power Pool also provides independent reliability coordination and tariff administration through a FERC approved Open Access Transmission

² Doying Rebuttal, Ex. 4, Page 4, Lines 7-8.

³ Doying Rebuttal, Ex. 4, Pages 4-5, Lines 19-24, 1.

⁴ Proctor Rebuttal, Ex. 12, Page 6, Lines 1-24.

Tariff.⁶ Southwest Power Pool has fifty members serving more than four million customers in all or parts of eight southwestern states.⁷

5. Aquila is already a member of Southwest Power Pool. Its predecessor companies, Missouri Public Service Company and St. Joseph Light and Power joined that organization in 1951 and 1958, respectively.⁸ Aquila currently contracts with Southwest Power Pool for certain services. Specifically, Aquila receives tariff administration, OASIS administration, available transmission capacity and total transmission capacity calculations, scheduling agent, and regional transmission planning from Southwest Power Pool.⁹ Aquila does not, however, participate in Southwest Power Pool's EIS market.¹⁰

6. Aquila now pays Southwest Power Pool between \$2 and \$3 million per year for its membership in that organization.¹¹ If the Commission approves Aquila's application and it joins Midwest ISO, Aquila will have to terminate its relationship with Southwest Power Pool.¹² In doing so, Aquila would incur approximately \$4 million in termination costs.¹³

7. Aquila also has a contractual relationship with Midwest ISO, currently receiving security coordination service from that organization.¹⁴ If instead of joining

⁵ Monroe Surrebuttal, Ex. 9, Page 4, Lines 11-13.

⁶ Monroe Surrebuttal, Ex. 9, Page 7, Lines 18-19.

⁷ Monroe Surrebuttal, Ex. 9, Page 7, Lines 13-14. A map showing the service areas of Southwest Power Pool and Midwest ISO can be found at Janssen Rebuttal, Ex. 15, Schedule RJ-3.

⁸ Monroe Surrebuttal, Ex. 9, Page 2, Lines 17-18.

⁹ Odell Direct, Ex. 1, Page 6, Lines 10-12. A brief description of these services can be found at Transcript, Pages 98-100.

¹⁰ Monroe Surrebuttal, Ex. 9, Page 5, Lines 14-15.

¹¹ Transcript, Page 101, Lines 11-21.

¹² Transcript, Page 110, Lines 23-25.

¹³ Transcript, Page 111, Lines 1-14.

¹⁴ Odell Direct, Ex. 1, Page 6, Lines 8-10.

Midwest ISO, Aquila chose to fully participate in Southwest Power Pool, it would have to end its relationship with Midwest ISO.¹⁵

Aquila's Commitment to Apply for Membership in Midwest ISO

8. In 1999, Aquila, then known as UtiliCorp, agreed to merge with St. Joseph Light & Power Company. That proposed merger required the approval of both this Commission and FERC. In its order approving the merger, FERC required the merged company to file a plan to join an RTO. At the time, Midwest ISO was the only FERC-approved RTO in the area, so Aquila entered into an agreement to join Midwest ISO on July 16, 2001.¹⁶

9. In 2001, Aquila applied to both FERC and this Commission for approval to transfer operational control of its transmission system to Midwest ISO. FERC approved that transfer, but Aquila withdrew its application before this Commission on January 2, 2002.¹⁷ Aquila withdrew its application because AmerenUE, upon which Aquila is dependent for its physical connection to the Midwest ISO control area, had withdrawn from Midwest ISO, leaving Aquila with no physical connection to the RTO.¹⁸

10. In anticipation of turning operational control of its transmission system over to Midwest ISO, Aquila transferred security coordination responsibilities from Southwest Power Pool to Midwest ISO. As previously indicated, Midwest ISO continues to provide that service to Aquila on a contractual basis.¹⁹

¹⁵ Transcript, Page 111, Lines 18-24.

¹⁶ Odell Direct, Ex. 1, Page 3, Lines 3-9.

¹⁷ Odell Direct, Ex. 1, Pages 3-4, Lines 11-20, 1-4.

¹⁸ Odell Direct, Ex. 1, Page 4, Lines 5-9.

¹⁹ Odell Direct, Ex. 1, Page 4, Lines 12-15.

11. On December 20, 2002, Aquila made a filing with FERC challenging the reasonableness of certain administrative costs that Midwest ISO proposed to assess against Aquila.²⁰ Aquila and Midwest ISO settled that dispute, and one of the provisions of the settlement agreement required Aquila to once again apply to transfer operational control of its transmission facilities to Midwest ISO and diligently pursue approval of that application.

12. Aquila complied with that requirement of the settlement agreement by filing a second application with this Commission on June 20, 2003, again seeking authority to transfer control of its transmission facilities to Midwest ISO. After a number of delays, the Commission dismissed that application, without prejudice, to be refiled when additional system cost information became available.²¹ On August 20, 2007, Aquila refiled its application, causing this case to open.

13. In its testimony, Aquila confirmed that it filed the application currently before the Commission to satisfy its obligation under the 2003 FERC settlement with Midwest ISO.²² At the hearing, Aquila's witness, Dennis Odell, indicated Aquila's concern that it would be required to pay financial penalties to Midwest ISO if it breached its contractual obligation to again apply for membership in Midwest ISO.²³ When asked at the hearing whether Aquila would have applied for membership in Midwest ISO in the absence of its obligation under the 2003 settlement, Odell replied that he did not know.²⁴

²⁰ Odell Direct, Ex. 1, Page 4, Lines 15-17.

²¹ Odell Direct, Ex. 1, Page 5, Lines 1-7. See also, *In the Matter of Aquila, Inc. d/b/a Aquila Networks – MPS and Aquila Networks – L&P's Application to Join the Midwest Independent Transmission System Operator, Inc.*, Order Closing Case, Case No. EO-2003-0566, May 12, 2005.

²² Odell Direct, Ex. 1, Page 6, Lines 17-20.

²³ Transcript, Page 95, Lines 5-16.

²⁴ Transcript, Pages 114-115, Lines 18-25, 1-2.

The CRA International Study

14. As part of its application, Aquila submitted the results of a cost-benefit analysis performed by CRA International. CRA is an independent consulting firm hired by Aquila to analyze the costs and benefits of Aquila's various options for joining, or not joining, an RTO.²⁵ After consulting with a stakeholder group that included Midwest ISO, Southwest Power Pool, Staff, and Public Counsel,²⁶ Aquila instructed CRA to consider three scenarios: membership in Midwest ISO; membership in Southwest Power Pool; and a move to a stand-alone status in which Aquila would perform transmission and reliability related functions on its own.²⁷ CRA completed the study on March 28, 2007, and Aquila submitted a copy of the study as part of its application, and as an attachment to Dennis Odell's direct testimony.²⁸

15. To conduct its study, CRA ran a detailed economic dispatch and production cost model that simulates the operation of the electric power system. The model, known as GE MAPS, determines the security-constrained commitment and hourly dispatch of each modeled generating unit, the loading of each element in the transmission system, and the locational marginal price (LMP) for each generator and load area.²⁹ Membership in an RTO reduces impediments to Aquila's purchases and sales of energy and capacity to other RTO members, yielding "trade benefits" to Aquila. Those "trade benefits" are offset by additional administrative charges Aquila would incur by being a member of an RTO.³⁰

²⁵ Odell Direct, Ex. 1, Page 7, Lines 1-3.

²⁶ Transcript, Page 121, Lines 7-21.

²⁷ Odell Direct, Ex. 1, Page 7, Lines 3-5.

²⁸ Odell Direct, Ex. 1, Schedule DO-3.

²⁹ Odell Direct, Ex. 1, Schedule DO-3, Page 2.

³⁰ Odell Direct, Ex. 1, Schedule DO-3, Page 2.

16. The study concluded that over the ten-year study period, the net benefit to Aquila of joining Midwest ISO was \$21.1 million, compared to moving to a stand-alone status. However, the study also concluded that the net benefit to Aquila of joining Southwest Power Pool's RTO over the same period amounted to \$86.9 million, again compared to a stand-alone status.³¹

17. Given the greater net benefits shown by the study to result from Aquila's membership in the Southwest Power Pool RTO, several parties, including Southwest Power Pool, urge the Commission to reject Aquila's application to join Midwest ISO so that the company can instead apply to join Southwest Power Pool's RTO. Aquila, using an argument the Commission will address in detail in the conclusions of law section of this Report and Order, contends the Commission should not consider the Southwest Power Pool alternative in ruling on its application to join Midwest ISO. In addition, Midwest ISO and the City of Independence challenge the factual basis of the CRA study's conclusion that the net financial benefits Aquila would attain from joining Southwest Power Pool's RTO would significantly exceed the net benefits of joining Midwest ISO.

18. A large part of the challenge to the accuracy of the CRA study's analysis of the Aquila in Southwest Power Pool alternative is centered on the study's assumption that Southwest Power Pool and Midwest ISO will operate similar markets over the long-term time frame used in the study.³² In fact, Midwest ISO currently operates both a real-time market and a day-ahead market, while Southwest Power Pool operates only a real-time market.³³ Southwest Power Pool is currently evaluating whether a day-ahead market

³¹ Odell Direct, Ex. 1, Schedule DO-3, Page 4, Table 1.

³² Odell Direct, Ex. 1, Schedule DO-3, Page 8.

³³ Transcript, Page 151, Lines 11-14.

would be cost effective and the earliest it could implement such a market would be between the end of 2010 and 2012.³⁴ The existence of additional markets can result in increased trade benefits for Aquila.³⁵ As a result, the study's assumption of similar markets could overstate the benefits to Aquila of membership in Southwest Power Pool, at least in the short-run.

19. That is not, however, a serious flaw in the study. When evaluating a company's request to join an RTO it is appropriate to consider the long-run costs and benefits of that membership, not short-term variations. In the long run, it is appropriate to assume Southwest Power Pool will implement these additional markets if doing so proves cost beneficial.³⁶ To account for the short-term variation, the CRA study assumed not only that Midwest ISO and Southwest Power Pool offered similar markets; it also assumed that the two companies charged their members identical administrative charges to operate those markets. While additional markets tend to increase trade benefits, the additional markets also increase administrative charges, resulting in a rough balance at least in the short-term.³⁷

20. Midwest ISO engaged the services of an economic consultant, Johannes P. Pfeifenberger³⁸, to further evaluate the CRA study. Pfeifenberger concluded the CRA study tends to overstate the benefits Aquila would achieve from joining Southwest Power Pool instead of Midwest ISO. In large part, Pfeifenberger's criticism of the results of the

³⁴ Monroe Surrebuttal, Ex. 9, Page 17, Lines 14-21.

³⁵ Transcript, Page 288, Lines 12-14.

³⁶ Proctor Rebuttal, Ex. 12, Page 25, Lines 15-16.

³⁷ Transcript, Page 110, Lines 13-22.

³⁸ Pfeifenberger is a Principal and Director of The Brattle Group, an economic consulting firm. He has an M.A. in Economics and Finance from Brandeis University and an M.S. in Electrical Engineering with a specialization in Power Engineering and Energy Economics from the University

CRA study is centered on the model's dispatch of the Dogwood combined-cycle merchant generating plant, which is located in Aquila's service territory.³⁹

21. Pfeifenberger contends the CRA study greatly over-commits the Dogwood plant in the "Aquila Stand Alone" and the "Aquila in Midwest ISO" simulation scenarios, but not in the "Aquila in Southwest Power Pool" scenario. This over-commitment of the Dogwood plant is uneconomic, indicating greater costs for Aquila in those scenarios. According to Pfeifenberger, the presence of these greater costs unrealistically indicates greater benefits to Aquila from joining Southwest Power Pool since those uneconomic costs are not included in the "Aquila in Southwest Power Pool" scenario.⁴⁰

22. However, as Staff's witness, Dr. Michael Proctor explains, the heavy commitment of the Dogwood plant in the Aquila in Midwest ISO scenario reflects a real problem, not a problem with the modeling. Because of limited transmission between Midwest ISO and the resulting high levels of congestion, energy imports from the Midwest ISO generation pool were not available for unit commitment and consequently, the Dogwood plant had to be committed more to meet Aquila's load.⁴¹ Thus, the model is demonstrating a real drawback to Aquila's proposed membership in Midwest ISO. It simply does not have adequate transmission links with the rest of Midwest ISO.

Aquila's Limited Interconnection with Midwest ISO

23. Aquila is linked to Midwest ISO by just two tie line connections with AmerenUE, which is a member of Midwest ISO. Those two tie lines have a summed MVA

of Technology, Vienna, Austria. Pfeifenberger Rebuttal, Ex. 5, Page 1.

³⁹ The Dogwood Plant was formerly known as the Aries Plant and is sometimes referred to as such in the testimony.

⁴⁰ Pfeifenberger Rebuttal, Ex. 5, Pages 8-9, Lines 20-23, 1-7.

⁴¹ Proctor Cross Surrebuttal, Ex. 13, Page 12, Lines 12-15.

capacity⁴² of 1,207. In contrast, Aquila is linked to Southwest Power Pool by 14 tie lines with a summed MVA capacity of 5,915.⁴³ Thus, the megawatt import capability from Southwest Power Pool into Aquila is much higher than from Midwest ISO into Aquila.⁴⁴ This greater interconnection with Southwest Power Pool allows Aquila to displace expensive generation in its own control area with less expensive purchased power from the Southwest Power Pool control area, resulting in cost savings for Aquila.⁴⁵

AmerenUE's Decision to Remain in Midwest ISO

24. As indicated, Aquila's two tie lines connecting it to Midwest ISO connect through AmerenUE. During the course of this case, AmerenUE was considering whether it would choose to remain a member of Midwest ISO. If AmerenUE withdrew from Midwest ISO, Aquila would no longer have any direct transmission connection to Midwest ISO and it would be difficult for it to continue to participate in Midwest ISO.⁴⁶ However, while this case was awaiting decision, the Commission approved a stipulation and agreement that will allow AmerenUE to remain in Midwest ISO at least through 2011.⁴⁷

The Merger with KCPL

25. One other development that occurred during the course of this case will have a definite impact on the possible benefits to Aquila from joining Midwest ISO. On July 1,

⁴² MVA stands for mega volt amperes, a measure of the transmission capacity of a power line. Janssen Rebuttal, Ex. 15, Page 12, Footnote 8.

⁴³ Proctor Rebuttal, Ex. 12, Page 29, Table 1.

⁴⁴ Proctor Rebuttal, Ex. 12, Page 30, Lines 19-21.

⁴⁵ Odell Direct, Ex. 1, Schedule DO-3, Page 5.

⁴⁶ Transcript, Page 107, Pages 11-25.

⁴⁷ *In the Matter of the Application of Union Electric Company for Authority to Continue the Transfer of Functional Control of its Transmission System to the Midwest Independent Transmission System Operator, Inc.*, Case No. EO-2008-0134, Order Approving Stipulation and Agreement, issued September 9, 2008.

2008, in Case No. EM-2007-0374, the Commission approved the acquisition of Aquila by Great Plains Energy Incorporated, the parent company of Kansas City Power & Light Company (KCPL).⁴⁸ KCPL is currently a member of Southwest Power Pool.⁴⁹ In approving the merger, the Commission recognized that the merged entity controlling both KCPL and Aquila would realize significant synergy benefits from operating both companies in the same RTO.⁵⁰ Those merger synergies could be lost if Aquila joined Midwest ISO while KCPL remained a member of Southwest Power Pool.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law:

1. Aquila, Inc., is an “Electrical Corporation” and “Public Utility”, as those terms are defined at Subsections 386.020 (15) and (42), RSMo Supp. 2007. As such, it is subject to regulation by this Commission.

2. Section 393.190.1, RSMo 2000 requires a regulated electric utility, such as Aquila, to obtain permission from the Commission before transferring control of any part of its transmission system. Specifically, the relevant portion of that section states:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public

⁴⁸ *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, Report and Order, issued July 1, 2008.

⁴⁹ Transcript, Page 106, Lines 16-17.

⁵⁰ *Id.* at Pages 196-197.

utility, without having first secured from the commission an order authorizing it so to do.

3. The statute does not establish a specific standard for the Commission to use in deciding whether to authorize an electric utility to transfer control of its transmission system. However, that controlling standard was established by the Missouri Supreme Court in a 1934 decision.

4. In its decision in *State ex rel. City of St. Louis v. Public Service Commission*,⁵¹ the Missouri Supreme Court held that in deciding to approve a proposed transfer of stock in a Missouri utility, the Commission did not need to find that the proposed transaction would benefit the public interest. Instead, the court quoted the Supreme Court of Maryland in holding:

To prevent injury to the public, in the clashing of private interest with the public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. *'In the public interest,' in such cases, can reasonably mean no more than 'not detrimental to the public' (emphasis added).*⁵²

Thus, before it can approve Aquila's proposal to transfer control of its transmission system to Midwest ISO, the Commission must determine that the proposed transfer would not be detrimental to the public interest.

5. The Commission has also incorporated the "not detrimental to the public" standard into its own rules. Commission Rule 4 CSR 240-3.110(1)(D) requires an electric utility seeking authority to sell, assign, lease or transfer assets to state "the reasons the proposed sale of the assets is not detrimental to the public interest."

⁵¹ 73 S.W.2d 393 (Mo banc 1934)

⁵² Id. at 459-460. (Quoting, *Electric Public Utilities Co. v. Public Service Commission*, 154 Md 445,

6. Clearly, “not detrimental to the public interest” is the standard by which this Commission must weigh Aquila proposal to transfer control of its transmission system to Midwest ISO.

7. In deciding whether a proposed transaction is “not detrimental to the public interest”, the Commission must consider and decide all the necessary and essential issues.⁵³

8. One necessary and essential issue the Commission must consider is the lost opportunity cost associated with allowing Aquila to join Midwest ISO instead of Southwest Power Pool.

9. When alternatives with economic impacts are presented, an evaluation of the detriments of a particular alternative to the public interest must include consideration of the opportunity cost of not pursuing any available alternatives. There do not appear to be any Missouri state court cases directly announcing this principle, but it is a well-established aspect of Federal administrative law.⁵⁴

10. Missouri’s Western District Court of Appeals has recently held that the Commission is not limited to narrowly considering the possible benefits of a presented alternative when other alternatives are also important. In *Environmental Utilities, LLC v. Public Service Commission*,⁵⁵ the court upheld the Commission’s rejection of a proposed sale of a part of the sewer system of a troubled utility, because, while there were benefits to those customers who would be served by the purchaser, the benefits of the sale of the

140 A. 840, 844, (Md. 1928).

⁵³ *State ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732 (Mo. banc 2003).

⁵⁴ *For example see, Victor Broadcasting v. FCC*, 722 F.2d 756 (DC Cir. 1983).

⁵⁵ 219 S.W.3d 256 (Mo. App. W.D. 2007).

entire system would be greater, and would be lost if the incomplete transaction were allowed to proceed.

11. Obviously, if Aquila transfers its transmission system to Midwest ISO and joins that RTO, it cannot join Southwest Power Pool's RTO. Foregoing greater financial benefits that could be obtained from joining Southwest Power Pool to instead accept lesser financial benefits from joining Midwest ISO is a potential detriment to the public that the Commission must consider.

DECISION

Based on the facts as it has found them, and its conclusions of law, the Commission has reached the following decision.

Aquila's proposal to transfer operational control of its transmission assets to Midwest ISO would cause a detriment to the public interest and on that basis, Aquila's application will be denied.

The detriment to the public interest occurs, in part, because Aquila's plan to join Midwest ISO would preclude it from joining Southwest Power Pool. As established by the independent and credible cost benefit analysis performed by CRA International, the net benefit to Aquila of joining Midwest ISO would be approximately \$65 million less over ten years than the net benefit it could obtain by joining Southwest Power Pool.

Midwest ISO and the City of Independence challenged the conclusions of that study, but their arguments are not persuasive. Midwest ISO currently offers a more fully developed day-ahead energy market to its member utilities than does Southwest Power Pool. However, Aquila's decision to join an RTO is a long-term decision, so it is appropriate

to place greater emphasis on the long-term results of that decision. Over the long-term, Southwest Power Pool's markets are likely to catch-up with those offered by Midwest ISO, and the CRA International study appropriately accounts for those differences in the short-term.

Midwest ISO's other criticism of the CRA International Study focuses on the model's allegedly unrealistic dispatch of the Dogwood plant in the "Aquila in Midwest ISO" scenario. However, rather than highlighting a problem with the study's model, this criticism points out a real life problem with Aquila's proposal to join Midwest ISO. Aquila's existing transmission connections to the rest of Midwest ISO, through its interconnections with AmerenUE, simply are not as extensive as its connections to Southwest Power Pool. The additional transmission congestion over those limited connections that would result if Aquila joined Midwest ISO is an additional detriment to the public.

Finally, the public, specifically, Aquila's ratepayers, will suffer one more detriment if Aquila is allowed to join Midwest ISO, thereby excluding it from membership in Southwest Power Pool. Many of the financial benefits ratepayers are likely to see from the recent acquisition of Aquila by the parent corporation of KCPL are predicated on Aquila and KCPL being members of the same RTO. KCPL is already a member of Southwest Power Pool so if Aquila is allowed to join Midwest ISO, many of those financial benefits will be lost.

Nevertheless, Aquila has asked for permission to join Midwest ISO. Under other circumstances, the Commission might be inclined to defer to the business judgment of Aquila if there were a good reason to do so. However, it is clear that the only reason Aquila has applied to join Midwest ISO instead of Southwest Power Pool is its obligation to do so under a six-year-old agreement with Midwest ISO in a case before FERC. This

Commission is not bound by that agreement, and its existence is not a sufficient reason to defer to Aquila's judgment. The Commission will not allow the existence of that agreement to harm Aquila's Missouri ratepayers by allowing Aquila to enter into a less than optimal agreement with Midwest ISO.

The CRA International cost-benefit study shows that Aquila, and thereby its ratepayers, will benefit if Aquila joins an RTO. However, Midwest ISO is not the appropriate RTO for Aquila to join. The question of whether Aquila should join Southwest Power Pool is not properly before the Commission in this case, so the Commission will not now order Aquila to apply to join that RTO. However, Aquila has now satisfied its contractual obligation by applying for authority to transfer operational control of its transmission facilities to Midwest ISO and diligently pursuing approval of that application. The Commission has rejected that application on its merits. Aquila is now free to apply to the Commission for authority to join whichever RTO best meets its needs.

IT IS ORDERED THAT:

1. Aquila, Inc.'s Application for Authority to Transfer Operational Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc. is rejected.

2. This Report and Order shall become effective on October 19, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Murray, Clayton, Jarrett, Gunn, CC., concur;
Davis, Chm., concurs with separate concurring opinion attached;
and certify compliance with the
provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 9th day of October, 2008.

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 Control of Certain Transmission)
Assets to the Midwest Independent)
Transmission System Operator, Inc.)

Case No. EO-2008-0046

CONCURRING OPINION OF CHAIRMAN JEFF DAVIS

I respectfully concur with the decision of the majority in this case and their rationale.

However, I wish to supplement their reasoning with my own additional line of reasoning.

At best, regional transmission authorities (RTOs) were in their infancy at the time the Federal Energy Regulatory Commission (FERC) issued its original order in 2000.¹ FERC required Aquila to propose to transfer operational control of its transmission facilities no later than December 15, 2001.² Although Southwest Power Pool (SPP) was performing various RTO functions at that time, MISO was the only FERC-approved RTO in the area, as such, Aquila applied to join MISO.³ Much has happened since then and this commission does a great job of setting those facts out in painstaking detail.

Requiring a utility to join an RTO is one thing, requiring a utility to join one specific RTO, even if it's the only one in existence in a given area, when the regulatory environment

¹ See *Utilicorp United Inc., and St. Joseph Light & Power Co.*, 92 FERC P 61228, 61233 (2000), where FERC acknowledged there were "likely to be significant changes in the structure and configuration of the regional transmission entities in the area."

² *Id.* at 61234.

³ Odell Direct, Ex. 1, Page 3, Lines 3-9. Note: Southwest Power Pool (SPP) did not become an RTO until 2004.

is in a state of flux, is another. This is especially true when you consider the following factors: the lack of interconnectivity between Aquila and MISO which should have been as apparent to FERC then as it is to us now; many of those functions were already being performed by another organization, SPP; and, at the time, Aquila management decisions were driven more by a sense of political expediency to curry favor with FERC to obtain merger approval rather than thoughtful analysis. For these reasons, the condition requiring Aquila to seek membership in an organization before the RTO market was settled should have been void against public policy and this question should not even be before this commission.

In conclusion, Aquila, FERC, MISO and the City of Independence could have all exercised better discretion in this matter and I would urge the following thoughts for future consideration:

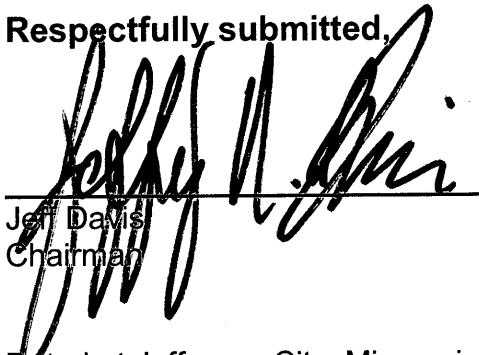
- (1) FERC should have allowed more time for other RTOs to develop instead of just requiring Aquila to join one. It's just another example of FERC firing the gun without aiming in an effort to get something done;
- (2) MISO should be less focused on empire building and more focused on taking care of the numerous issues they face in trying to serve a vast territory that already stretches from Pennsylvania to Montana and from Manitoba, Canada to Southeast Missouri;
- (3) The City of Independence should carefully reconsider their position that MISO membership is more beneficial to their constituents than another RTO. Taking into account everything in the record in this case, everything I have learned as a member of this commission and through my participation as a member of the

Organization of MISO States (OMS) and the Regional State Committee (RSC) for SPP, it is my position that MISO membership for Aquila could be, in fact, an economic detriment to Independence and the other municipal utilities in the Aquila footprint; and

- (4) With regard to RTOs, bigger does not always mean better in terms of better quality or lower costs. In theory, more members in MISO should lead to lower transaction costs across the footprint but I have yet to see those benefits materialize. Moreover, it costs more to maintain a far-flung system. A larger footprint contains more stakeholders whose diverse views make it increasingly difficult to reach agreement on important policy issues. Small utilities like Aquila and the transmission-dependent municipal utilities (TDUs) located inside Aquila's footprint are disadvantaged in terms of their ability to even monitor MISO activity on a going forward basis much less lobby for changes to the system.

Accordingly, for all of the aforementioned reasons, I concur with the decision of the majority to reject Aquila's application to transfer operational control of certain transmission assets to MISO in this case.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Jeff Davis", is written over a horizontal line.

Jeff Davis
Chairman

Dated at Jefferson City, Missouri,
on this 9th day of October, 2008.