

**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 Midwest Independent Transmission)
System Operator, Inc.)

Case No. EO-2008-0046

STAFF’S POSTHEARING BRIEF

Aquila is requesting that the Commission authorize Aquila to transfer to the Midwest Independent Transmission System Operator, Inc. (“Midwest ISO”), operational control of Aquila’s transmission lines in Missouri that operate at voltages of 100 kV or more.¹ In considering Aquila’s request, the Commission must not only consider present circumstances, but also reasonably anticipated future circumstances (with and without Commission authorization). Two of the most significant circumstances are that Aquila has fewer transmission line interconnections with the Midwest ISO than it has with the Southwest Power Pool (“SPP”)² and that the cost-benefit analysis accepted into evidence in this case demonstrates, even after challenge, that transferring control of Aquila’s transmission lines in Missouri to the SPP yields substantially greater net economic benefits than transferring control of those lines to the Midwest ISO, principally because of Aquila’s greater physical interconnectedness with SPP.³

Additional significant circumstances are that Aquila’s physical interconnections to the Midwest ISO are through Union Electric Company d/b/a AmerenUE, and AmerenUE has given

¹ Aquila witness Odell Direct, Ex. 1, p. 6,

² Staff witness Proctor Rebuttal, Ex. 12, pp. 29-30 and Sch. 2 (14 lines at 5,915 MVA Aquila-SPP vs. 2 lines at 1,207 MVA Aquila-Midwest ISO).

³ Staff witness Proctor Cross-Surebuttal, Ex. 13, pp. 1-35; Aquila witness Odell Direct, Ex. 1, pp. 7-8 and Sch. DO-3, pp. 4-6 (CRA International study); Aquila witness Luciani Surrebuttal, Ex. 3, pp. 3-7; Aquila witness Odell Vol. 3, Tr. 73-74.

formal notice to the Midwest ISO notice of its intent to withdraw from the Midwest ISO.⁴ Further, Great Plains Energy, Inc. (“Great Plains”) has pending before this Commission in Case No. EM-2007-0374 a request for authorization to acquire Aquila, which approval is the last required to allow the transaction to close. Great Plains is the parent of Kansas City Power & Light Company (“KCP&L”), and KCP&L is a member of the SPP. Should that transaction close it would be more economical for KCP&L and Aquila to be members of the same independent system operator, *i.e.*, the SPP, so that they could be more fully integrated operationally than they have already proposed in Case No. EM-2007-0374.⁵ Additional, less significant circumstances are pointed out later in this brief.

In light of all the circumstances presented in this case, particularly Aquila’s greater physical interconnectedness with the SPP which results in there being substantially more net economic benefit for Aquila to be a member of the SPP than a member of the Midwest ISO, the Staff continues to recommend the Commission deny Aquila’s request for authority to transfer to the Midwest ISO operational control of Aquila’s transmission lines in Missouri that operate at voltages of 100 kV or more.

Should the Commission disagree with the Staff’s primary recommendation that Aquila’s request be denied and determine to grant Aquila authority to transfer to the Midwest ISO operational control of Aquila’s transmission lines in Missouri that operate at voltages of 100 kV or more, then the Commission should grant its authorization subject to each of the conditions following:

- 1) The Commission’s authorization terminates if Great Plains Energy, Inc. acquires Aquila, Inc.;

⁴ Aquila witness Odell Direct, Ex. 1, p. 4; Aquila witness Odell Surrebuttal, Ex. 2, pp. 10-11; Aquila witness Odell Vol.3 , Tr. 106-107.

⁵ Aquila witness Odell Direct, Ex. 1, pp. 5-6; Aquila witness Odell, Tr. 105-106; Staff witness Proctor Rebuttal, Ex. 12, pp. 44-45.

- 2) Union Electric Company must continue to be a member of the Midwest ISO; and, as well,
- 3) Interim approval by the Commission for the Aquila joining MISO for a period of seven (7) years;
- 4) An agreement by Aquila to perform a follow-up cost-benefit study to be submitted in an Interim Report as evidence regarding continuing RTO participation prior to the end of the interim approval period;
- 5) A cap placed on MISO administrative costs over the interim period, that if exceeded, triggers a filing by the utility with the Commission;
- 6) Full consideration being given to Aquila joining MISO on the same basis as other MAPP utilities that are not now members of MISO, without Aquila incurring any MISO exit fees;
- 7) A service agreement between Aquila and MISO that prevents the transfer of transmission rate setting for existing facilities from the Commission to the FERC, with the Commission's approval contingent on FERC approval of this service agreement;
- 8) Seams agreements involving all Missouri utilities, but specifically between MISO and AECI;
- 9) Provisions related to Aquila withdrawal from MISO for fundamental changes in the utilities participation in MISO, including:
 - a) Twelve months to effectuate a withdrawal from MISO;
 - b) Recognition of exit fees related to withdrawal from MISO; and
 - c) Aquila agrees to seek the Commission's approval to withdraw from MISO or take other actions that fundamentally change Aquila's participation in MISO; e.g., participation in MISO through an Independent Transmission Company.

In the remainder of its brief the Staff presents, following the format of the list of issues and Staff's position statements, the Staff's argument and citations to the record that support the Staff's positions.

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

Yes, "not detrimental to the public interest" is an appropriate statement of the standard under which the determinations in this case are to be made; however, the Staff believes the same

standard also has been described by the Missouri Supreme Court as “in the public interest.” Regardless of how the standard is labeled, in its review, the Commission must consider the effects on the public as a whole (including the public in Aquila’s service area and Kansas City Power & Light Company’s service area), not only of all the present circumstances, but also all the future impacts of proposed present actions in evaluating whether to authorize Aquila to become a member of the Midwest ISO.

Section 393.190, RSMo 2000 contains no express standard for the Commission’s determination of whether to approve a request to “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, . . .”

In recent cases, the Commission has expressly stated it is using the standard of “not detrimental to the public interest” in determining whether to approve these types of transactions. *In the Matter of the Application of Aquila, Inc. for Authority to Assign, Transfer, Mortgage or Encumber its Utility Franchise, works or System in Order to Secure Revised Bank Financing Arrangements*, 12 Mo. P.S.C. 3d 375, 378 (Case No. EF-2003-0465, *Report and Order* issued February 24, 2004). In that same *Report and Order*, the Commission explained what it meant by the “not detrimental to the public interest” standard as follows:

The Commission concludes a detriment to the public interest includes a risk of harm to ratepayers. In reviewing a recent merger case involving the same parties, the Supreme Court of Missouri ruled that . . . “(w)hile (the Commission) may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was reasonable, and it should have considered (the premium) . . . when evaluating whether the proposed merger was detrimental to the public.”⁶ In other words, the Commission could not have known whether the acquisition premium would result in rate increases. But it should have looked at the premium’s reasonableness. Likewise, the Commission cannot know whether the encumbrances will result in rate increases. But the Commission should look at the reasonableness of the risk of the increases. This

⁶ *State ex rel. AG Processing Inc., v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo.banc 2003).

analysis conforms to the concept that . . . “(n)o one can lawfully do that which has a **tendency** to be injurious to the public welfare.”⁷ (Emphasis in original, footnotes renumbered).

While the Public Service Commission has described the standard it has used in the past as “not detrimental to the public interest,” in 1944, the Missouri Supreme Court, sitting *en banc*, described the standard it used for evaluating the reasonableness of a Commission order that authorized a public electric utility to sell to a rural electric cooperative that part of its electric system in Missouri as whether granting the authority was “in the public interest.” In its opinion the Court stated:

Moreover, we think the Commission did consider and decide the question of whether, under the particular circumstances of this case, it would be ***in the public interest (including the interest of the public in the whole area involved)*** to approve or deny the proposed transfer, and that it based its approval upon the conclusion that this transfer would be in the public interest. Furthermore, we hold that such a conclusion was reasonable upon the evidence showing the rural character of the Missouri communities involved, their present poor service, ***the prospect of what better service might be reasonably expected from either applicant for the territory***, the financial condition, management, and prospects of both, the sentiment of the people in these communities and their almost unanimous desire to become members of the Cooperative.

(Emphasis added.) *State ex rel. Consumers Public Service Company v. Public Service Commission*, 352 Mo. 905, 924; 180 S.W.2d 40, 48 (*banc* 1944).

In addition to the foregoing summary of factors it reviewed, throughout its opinion the Supreme Court notes from the facts in the case not only current circumstances, but also current expectations, such as in the following passages:

The property proposed to be sold is old, obsolete and in need of repairs and betterments to render adequate service to its customers, and revenues have not been sufficient to make them.

The Cooperative made application for a loan from the Rural Electrification Administration, with which to acquire and improve the system of the Seller and

⁷ *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393, 399-400 (Mo.banc 1934)(emphasis supplied).

integrate that system with the system now owned and operated by it. A loan in the amount of \$118,000.00 was approved. An officer of the Cooperative stated that necessary improvements **would be made** to the property acquired in order that better and more adequate service **may be rendered** to the present consumers. The Cooperative **proposes to make** further extensions from the purchased lines to reach unserved persons in rural areas; and to integrate the properties, with that now owned and operated by it, when materials are available at the end of the present emergency. It already has a line within seven miles. By acquiring these properties, the Cooperative **expected** to serve farmers in Wayne County, Iowa, (where no cooperative exists) as well as additional farmers in Mercer County, Missouri.

The rates now charged by the Cooperative to its members are shown to be slightly lower, in most instances, than those now charged by the Seller. Seven businessmen and electric users now receiving service from the Seller stated that all its present customers favor the sale of this property to the Cooperative. Ninety-five per cent of these customers, at the date of the hearing, had made application for membership in the Cooperative and all but two or three petitioned the Commission for the approval of the proposed sale. No one now receiving electric service from the Seller, or any person living in the towns and territories it now serves, entered any protest to the granting of the proposed transfer.

The testimony offered on behalf of Consumers Public Service Company, was to the effect that it is a Missouri electric utility, and as such owns and operates an electrical distribution system adjacent to the towns now served by the Seller. Its transmission line extends from Brookfield where interconnection is made with the Missouri Power & Light Company's large steam plant. The line of the Consumers Company extends from Brookfield north to Ravanna, and within seven and a half miles of Mercer, where the Seller's transmission lines are. The Consumers Company takes the position that it is ready and willing to purchase the Seller's system and to connect it with its existing system, or, if proper priority orders for building the seven and a half miles connecting system line cannot now be obtained, to install an additional unit in the generating plant at Lineville, which unit it now owns and has available; that it is willing to pay \$40,000.00 for the Seller's entire system; that it has such a contract made by its president with the Utilities Holding Corporation; that its acquisition of the system **will result in improved and adequate service** to the public; and that after connection of the Seller's system to its system the ownership and operation of the Seller's plant at Lineville as a standby or peakload reserve plant **will enable it to operate its entire system with greater efficiency and economy**, as well as increasing its revenue about \$17,000.00.

However, the offer of the Consumers Company to purchase the Seller's property was **conditioned upon its ability to completely refinance itself**. There was evidence tending to show that at the present time its financial condition is such that it would be unable to buy the Seller's distribution system without a

refinancing program. There was also evidence offered tending to show that the service now rendered by the Consumers Company to its own customers, in certain areas, has not been satisfactory.

The Missouri Power and Light Company showed that it has ample and adequate sources of electric power for the entire area; that it has large capacity transmission lines extending into the area and now supplies the Consumers Company and Missouri Public Service Corporation with substantially all the electric current used by such companies in their systems; that the most advantageous and logical plan for the integration of the electric systems in the area require the connection of the Seller's system with the existing three-company interconnected system and its eventual acquisition by the Cooperative would interfere with the most practical methods of integration of facilities in northwest Missouri.

(Emphasis added.) 352 Mo. at 915-16; 180 S.W.2d at 42-43. Further, in analyzing whether the intervenors' had sufficient interest to lawfully intervene and prosecute their appeals, the Court looked not only at their present circumstances, but also present expectations as shown by the following passages from the opinion:

Therefore, when two utilities can reasonably be said to be operating in the same general territory, and the question before the Commission is whether or not one of them should be allowed to take additional locations which either might make arrangements to serve, the other must be held interested in the matter in the sense the term 'interested' is used in Section 5689. That was the situation in this case. Both the Cooperative and the Consumers Company had lines approximately seven miles of the property sought to be acquired. Both were operating in the same area, even in the same county, in which this property was located and both (according to the evidence) had negotiated to acquire it and could make arrangements to do so and to operate it. ***The question of which one should be permitted to acquire it must be decided on the basis of whose operation of the area would best serve the public interest under all the circumstances and not merely upon which could first obtain a contract for purchase.*** A contract found to be against public interest or the Commission's regulatory policy could not be permitted to stand in this situation any more than a contract for unapproved rates. We hold that Consumers Company was sufficiently 'interested' to have the right to intervene and likewise the right to apply for a rehearing, when the Commission decided that a competitor could take over these new locations adjoining the general territory in which both were operating. Our conclusion also is that this company had the further right, because of such interest, to seek a review in the circuit court and appeal to this court from its adverse decision. The motion to dismiss must be overruled as to the Consumers Company.

We think the same thing is true of the Missouri Power & Light Company. It showed that it had large capacity transmission lines extending into the area with adequate sources of power for the whole area, and that it now supplies and would continue to supply the Consumers Company with substantially all the power it uses. (And would supply these new properties.) It further showed that its *plans were to take over* the Consumers Company (and also the other intervenor) and integrate their systems into its own and thus *sought to eventually acquire* the Seller's properties herein involved. The motion to dismiss the appeal as to it should also be overruled. However, there is nothing in the record to show that the Missouri Public Service Corporation is interested, in any reasonable construction of that term. It had no nearby lines, did not seek to acquire any of the Seller's properties and did not furnish or propose to furnish any power to the Consumers Company. Apparently the purpose of its intervention was to show its consent to the ultimate three company integration. Certainly this could have been shown by evidence, and it might have supported the other intervenor's contentions by a showing similar to that of an amicus curiae in a case in court, but that does not show an 'interest' in the result sufficient to constitute a reasonable basis for intervention. Therefore, as to it, the motion to dismiss the appeal should be sustained and its appeal is dismissed.

(Emphasis added.) 352 Mo. at 921-22; 180 S.W.2d at 46-47.

The Missouri Supreme Court visited the question of the breadth of the Commission's review again in 1986 and held the Commission appropriately looked broadly at the circumstances presented in making its determination to approve the transfer of Union Electric Company's steam system in St. Louis to Bi-State Development Agency. The sale of Union Electric Company's steam system in St. Louis to Bi-State Development Agency was a step in a plan to address the City of St. Louis' long existing refuse disposal problem—a problem which had led to an order of the Environmental Protection Agency for the City to end its existing refuse incineration operations. The plan was to dispose of refuse by using it to fuel the steam system. The Missouri Supreme Court described the issues raised on the appeal, and the Commission's findings and conclusions to those issues, as follows:

The objecting users assert legal arguments against the proposal essentially as follows: ^{FN5}

^{FN5}. The respondents argue that any constitutional claims have been waived because they were not presented to the Public Service Commission. We believe that the

essential bases of the challenge were clear at all stages of the proceeding, and therefore perceive no obstacle to the consideration of the merits.

1. Section 70.373(2), RSMo Cum. Supp. 1984, which purports to confer upon Bi-State the power to acquire and operate facilities for the conversion of waste and refuse into energy, was “invalid” at the time the Commission acted because it had not at that time been consented to by Congress;
2. Section 70.373(2) does not authorize Bi-State to acquire and operate oil-fired or coal-fired facilities for the production of steam;
3. The Commission was in error in yielding up its jurisdiction over Thermal as a “heating company.”

The users also argue that the proposals should not be approved because there is no assurance that a refuse-to-steam facility would ever be built, and that the entire program is not in the public interest because it is not feasible and economic. They subsume these arguments in a claim that the decision is not supported by substantial evidence.

The Commission, without dissent, rejected the users' arguments and granted the permission sought. It found that the proposed contracts were a part of an integrated plan and that the initial acquisitions were a first step in the plan. It concluded that the overall plan was not detrimental to the public interest and that the contracting parties were capable of carrying it out. It rejected the users' argument that the plan would produce an unreasonable increase in rates for steam, and held that the fact of an initial rate increase was not ground for disapproving the plan. It concluded that Thermal was exempt from its jurisdiction because it served only Bi-State, which was specifically excluded by statute from Commission jurisdiction by § 386.020(10), RSMo Cum. Supp. 1984. It also found that the transaction was authorized by the governing statute.

Love 1979 Partners v. Public Service Commission of Missouri, 715 S.W.2d 482, 485-86 (Mo. banc 1986).

In its holding the Supreme Court stated the following:

It is initially suggested that the Commission applied the wrong standard of review. The users insist that the applicants have the burden of showing that the sale of the utilities' assets is in the public interest and that the proposed purchaser of the assets is capable of assuming the utility's role in providing service.

The Commission's decision and order shows that concern for the public interest was predominant in its deliberations. It considered not only the interest of its customers, but the interest of the St. Louis metropolitan area in solving its

refuse problems. The thought of using refuse to produce worthwhile energy is certainly appealing. ***The Commission is justified in looking at the broad picture.***

Love 1979 Partners, 715 S.W.2d at 489-90 (Emphasis added).

In a more recent opinion, *State ex rel. AG Processing, Inc. v. Public Service Commission of the State of Missouri*, 120 S.W.3d 732 (Mo. banc 2003), the Missouri Supreme Court described the standard applicable to UtiliCorp United, Inc.'s acquisition of and merger with St. Joseph Light & Power Company as "whether or not the merger would be 'detrimental to the public.'" *Id.* at 735. In its holding the Supreme Court, consistent with its prior decisions, directed that the Commission consider all circumstances in determining whether to approve the merger as follows:

The judgment is reversed, and the case is remanded. The circuit court shall remand the case to the PSC to consider and decide the issue of recoupment of the acquisition premium in conjunction with the other issues raised by PSC staff and the intervenors in making its determination of whether the merger is detrimental to the public. Upon remand the Commission will have the opportunity to reconsider the totality of all of the necessary evidence to evaluate the reasonableness of a decision to approve a merger between UtiliCorp and SJLP.

Id. at 737.

From the foregoing it is apparent that, regardless of whether the standard used is described as "not detrimental to the public interest" or "in the public interest," in making its determinations the Commission looks at the broad picture and considers not only all the present circumstances but also the reasonably expected future circumstances and the effects of the Commission's determinations on those reasonably expected future circumstances.

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

Regardless of whether described as “not detrimental to the public interest” or “in the public interest,” under the appropriate standard the Commission should not grant Aquila’s application for authority to join the Midwest ISO. In making its determination the Commission should consider not only all the present circumstances, but also the reasonably expected future circumstances and the effects of the Commission’s determinations on those reasonably expected future circumstances.

Here, significant present circumstances are that Aquila has fourteen (14) transmission lines with a total capacity of 5,915 MVA tying it to the SPP versus two (2) transmission lines with a total capacity of 1,207 MVA tying it to the Midwest ISO⁸ and that Aquila’s tie to the Midwest ISO is through AmerenUE, which has given the Midwest ISO notice of its intent to withdraw from the Midwest ISO.⁹ Here, significant reasonably expected circumstances are the relative future net economic benefits of Aquila joining the Midwest ISO versus Aquila joining the SPP as shown by the CRA International cost-benefit study.¹⁰ That study shows a significantly greater expected net economic benefit if Aquila joins the SPP rather than the Midwest ISO.¹¹ A result that is largely due to Aquila’s greater physical interconnectedness with the SPP.¹²

The Staff views the CRA International study to be the most significant circumstance for its recommendation. The record here does not demonstrate that the net economic benefits from Aquila joining the Midwest ISO exceed the net economic benefits from Aquila joining the SPP.¹³

⁸ Staff witness Proctor Rebuttal, Ex. 12, pp. 29-30 and Sch. 2.

⁹ Aquila witness Odell Direct, Ex. 1, p. 4; Aquila witness Odell Surrebuttal, Ex. 2, pp. 10-11; Aquila witness Odell Vol. 3, Tr. 106-107.

¹⁰ Aquila witness Odell Direct, Ex. 1, pp. 7-8 and Sch. DO-3.

¹¹ Aquila witness Odell Direct, Ex. 1, p. 8 and Sch. DO-3, pp. 4-5; Staff witness Proctor Rebuttal, Ex. 12, p. 3, 24,

¹² Aquila witness Odell Direct, Ex. 1 Sch. DO-3, p. 5-6; Staff witness Proctor Rebuttal, Ex. 12, p. 28-29; Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 12.

¹³ Aquila witness Odell Direct, Ex. 1, Sch. DO-3; Staff witness Proctor Rebuttal, Ex. 12, pp. 2-4; Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 2-3.

Specifically, the record indicates the following (greater details on each of these points in provided below in the section of the Staff's brief on issue 5):

- A. The CRA International cost-benefit analyses show that Aquila in the SPP has a greater level of adjusted production cost savings;¹⁴
- B. These cost-benefit analyses also show that Aquila in the Midwest ISO results in a higher level of congestion for the Aquila control area than Aquila in the SPP; and
 - 1) In the original CRA cost-benefit analysis submitted by Aquila, this increased level of congestion is demonstrated by the inability for Aquila to commit generation from the Midwest ISO pool to meet its load when its own base-load generation is scheduled out of service for maintenance;¹⁵ and
 - 2) In the supplemental CRA cost-benefit analysis performed for by the Midwest ISO, this increased level of congestion is demonstrated by the higher level of congestion costs associated with generation from Aquila's participating base-load generation units to Aquila's load.¹⁶
- C. The primary factor contributing to this higher level of congestion for Aquila's control area is the lower level of interconnections between Aquila and the Midwest ISO.¹⁷

While less significant, the Commission should consider Great Plains' pending acquisition of Aquila in light of Great Plains' ownership of KCP&L and KCP&L's membership in the SPP. The Commission should consider Aquila's existing relationships with the SPP, which include the following:

- A. Aquila is in the SPP's transmission footprint;
- B. The SPP processes Aquila point-to-point service requests;
- C. The SPP provides tariff administration for Aquila;
- D. The SPP provides OASIS administration for Aquila;

¹⁴ Aquila witness Odell Direct, Ex. 1, Sch. DO-3; Staff witness Proctor Rebuttal, Ex. 12, p. 24; Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 15-16.

¹⁵ Aquila witness Odell Direct, Ex. 1, Sch. DO-3; Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 16.

¹⁶ Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 27-35.

¹⁷ Staff witness Proctor Rebuttal, Ex. 12, pp. 29-31.

- E. The SPP, on Aquila's behalf, determines and provides to requestors available and total transmission capacity on transmission elements;
- F. The SPP provides scheduling for third parties of power across Aquila's system;
- G. The SPP provides transmission planning across not only Aquila's system, but the entire SPP footprint; and
- H. Aquila meets its reserves requirements are met through the facilities of all the members of the SPP and not just Aquila's facilities.¹⁸

The Commission should consider Aquila's existing relationships with the Midwest ISO which include the Midwest ISO providing Aquila with security coordination services and Aquila's obligation arising from a settlement agreement with the Midwest ISO to "diligently" pursue Public Service Commission approval for Aquila to transfer to the Midwest ISO operational control of its transmission system in Missouri.¹⁹ Notably, other than Mr. Odell's testimony that Aquila has a contractual obligation to "diligently" pursue Commission approval for Aquila to transfer to the Midwest ISO operational control of its transmission system in Missouri, Aquila offered no evidence of the scope of that obligation, *i.e.*, markedly absent from the record is what enforcement rights the Midwest ISO has under the settlement agreement should Aquila fail to "diligently" pursue Commission authorization to join the Midwest ISO. In addition, the Commission must consider any and all other reasonably foreseeable impacts on Aquila, the Midwest ISO, the SPP, Dogwood Energy, LLC, the City of Independence, KCP&L, AmerenUE, and the public of granting or not granting to Aquila authorization to join the Midwest ISO.

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

¹⁸ Aquila witness Odell Direct, Ex. 1, p. 6; Aquila witness Odell, Vol. 3, Tr. 97-98.

¹⁹ Aquila witness Odell Direct, Ex. 1, pp. 4, 6 8; Aquila witness Odell Surrebuttal, Ex. 2, p. 1, 3; Aquila witness Odell, Vol. 3, Tr. 100.

While it is the Staff's recommendation that the Commission deny Aquila's application to join the Midwest ISO, if the Commission determines otherwise, the Staff recommends the Commission, in addition to the two conditions stated under **sub issues 5.f. and g.** below, impose the conditions summarized below, subject to a negotiation period of two months for the parties to negotiate the specific terms of these proposed conditions and present them to the Commission in the form of a settlement agreement for approval by the Commission:²⁰

- 1) Interim approval by the Commission for the Aquila joining MISO for a period of seven (7) years;
- 2) An agreement by Aquila to perform a follow-up cost-benefit study to be submitted in an Interim Report as evidence regarding continuing RTO participation prior to the end of the interim approval period;
- 3) A cap placed on MISO administrative costs over the interim period, that if exceeded, triggers a filing by the utility with the Commission;
- 4) Full consideration being given to Aquila joining MISO on the same basis as other MAPP utilities that are not now members of MISO, without Aquila incurring any MISO exit fees;
- 5) A service agreement between Aquila and MISO that prevents the transfer of transmission rate setting for existing facilities from the Commission to the FERC, with the Commission's approval contingent on FERC approval of this service agreement;
- 6) Seams agreements involving all Missouri utilities, but specifically between MISO and AECl; and
- 7) Provisions related to Aquila withdrawal from MISO for fundamental changes in the utilities participation in MISO, including:
 - a) Twelve months to effectuate a withdrawal from MISO;
 - b) Recognition of exit fees related to withdrawal from MISO; and
 - c) Aquila agrees to seek the Commission's approval to withdraw from MISO or take other actions that fundamentally change Aquila's participation in MISO; e.g., participation in MISO through an Independent Transmission Company.

²⁰ Staff witness Proctor Rebuttal, Ex. 12 pp. 36-38.

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

As the Staff has stated above, particularly in its response to the first listed issue, the Commission is obligated to consider the effects on the public as a whole (including the public in Aquila's service area and Kansas City Power & Light Company's service area), not only of all the present circumstances, but also all the future impacts of proposed present actions in evaluating whether to authorize Aquila to become a member of the Midwest ISO; therefore, the Commission must compare Aquila's membership in the Midwest ISO to other alternatives and make its decision based on which is the best alternative, *i.e.*, the Commission should only authorize Aquila to join the Midwest ISO if it is the best alternative.²¹ In this case, because of the physical location of Aquila's service area in Missouri, the other alternatives to Aquila joining the Midwest ISO are Aquila not joining a regional transmission organization or Aquila joining the SPP.²² With regard to the CRA International study, which the Staff views to be one of the most significant circumstances in this case, the evidence is that:

- A. In the original CRA International cost-benefit analysis submitted by Aquila, the alternative of Aquila as a standalone transmission provider resulted in the highest present value of costs for Aquila ratepayers over a ten-year period (2008 – 2017). The alternative of Aquila as a member of the Midwest ISO resulted in the next highest present value of costs. The alternative of Aquila as a member of the SPP resulted in the lowest present value of cost.²³ Since the alternative with the lowest present value of cost results in the greatest net benefit for Aquila's Missouri ratepayers, the Commission should determine that the second-best alternative of Aquila joining the Midwest ISO is detrimental to the public interest, and the Commission should not grant Aquila's application to join the Midwest ISO.
- B. In the supplemental CRA International cost-benefit analysis submitted by the Midwest ISO, the alternative of Aquila as a member of the Midwest ISO

²¹ Staff witness Proctor Rebuttal, Ex. 12, pp. 3-4.

²² Staff witness Proctor Rebuttal, Ex. 12, p. 3.

²³ Aquila witness Odell Direct, Sch. DO-3, (esp. pp. 4-5); Staff witness Proctor Rebuttal, Ex. 12, p. 24.

resulted in the highest costs for Aquila ratepayers over a one-year period (2008). The alternative of Aquila as a standalone transmission provider resulted in the next highest costs. The alternative of Aquila as a member of the SPP resulted in the lowest cost to Aquila ratepayers.²⁴ While this supplemental cost-benefit analysis is only for one year, it indicates that Aquila joining the Midwest ISO may result in lower net benefits to Aquila's Missouri ratepayers than Aquila not joining an RTO. However, to some extent, the results of Aquila joining the Midwest ISO having the highest costs for Aquila ratepayers for 2008 might be mitigated by:

- 1) The analysis being biased in favor of Aquila as a standalone transmission provider. This bias was introduced by the assumption that unit commitment could be performed on a system-wide, rather than pool-wide basis. This resulted in a low estimate of costs for the standalone scenario.²⁵
- 2) The incremental reliability benefits from Aquila being in an RTO. However, the level of these RTO membership reliability benefits measured for Aquila is only approximate.²⁶

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

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

The Commission should take into account that, while this study is not perfect, it provides reliable evidence of the higher level of congestion if Aquila is a member of the Midwest ISO rather than the SPP.²⁷

- 1) The imperfections in this study occur when Aquila's base-load generating units are scheduled out for maintenance and in order to commit sufficient generation to meet its load, Aquila commits the Dogwood (formerly, Aries) plant. However, once committed, the Dogwood plant is run at a specified minimum running level and energy is purchased from the market. The record indicates that it would have been cheaper for Aquila to commit combustion turbines and purchase the energy from the market, but the unit commitment logic of the GE MAPS model used in this analysis compares the costs of running generation that is committed.²⁸ Even with the Midwest ISO's adjustment for this imperfection—initially made on a false assumption and which, according to Midwest ISO witness Pfeifenberger accounted for the largest difference in the net benefits of Aquila in the Midwest

²⁴ Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 15-16 and pp. 21-22.

²⁵ Staff witness Proctor Cross-Surrebuttal, Ex. 13, 22.

²⁶ Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 22.

²⁷ Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 22.

²⁸ Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 10.

ISO versus Aquila in the SPP, the study results still showed the net benefits of Aquila in the SPP to be greater than Aquila in the Midwest ISO.²⁹

- 2) This imperfection can be corrected by allowing for bilateral purchases of energy during the periods when Aquila's base-load generating units are out of service.³⁰
- 3) Even without making this correction, the Commission should ask the question: with Aquila assumed to be in the Midwest ISO why wasn't the Midwest ISO dispatch able to commit sufficient generation to meet Aquila's load when Aquila's base-load generation was scheduled out for maintenance? Moreover, this problem of insufficient generation available from the pool to meet Aquila's commitment of generation to meet load was not an issue for the SPP dispatch when Aquila was assumed to be in the SPP.³¹
- 4) The inability of the Midwest ISO pool to commit sufficient generation to meet Aquila's load when Aquila's base-load generation is scheduled out of service for maintenance occurs because of insufficient interconnection capacity between the Midwest ISO and Aquila.³²

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

The only other cost-benefit analysis presented was supplemental runs CRA International performed at the request of the Midwest ISO.

- 1) This analysis was biased in favor of Aquila as a standalone provider of transmission service. This bias occurred through allowing Aquila to commit generation to meet load on a system-wide, rather than pool-wide, basis. In effect, this assumption gives Aquila the benefits of being able to commit generation to meet its own load from generation units that are in other pools. This gives Aquila, as a standalone transmission provider assumed not to be in an RTO, many of the advantages of being in an RTO.³³
- 2) This analysis was also biased in favor of Aquila being in the Midwest ISO. This bias also occurred through allowing Aquila to commit generation to meet load on a system-wide, rather than pool-wide, basis. Moreover, this assumption allowed Aquila to take advantage of its interconnection with the SPP to overcome the lack of interconnections with the Midwest ISO that showed up in the original CRA International cost-benefit study. Moreover, by allowing system-wide unit

²⁹ Midwest ISO witness Pfeifenberger Rebuttal, Ex. 5, p. 6; Midwest ISO witness Pfeifenberger Supplemental Rebuttal, Ex. 6, pp. 2-4 and Sch. JPP-2; Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 8-9.

³⁰ Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 10-11.

³¹ Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 12.

³² Staff witness Proctor Rebuttal, Ex. 12, pp. 29-32; Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 13-14.

³³ Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 13.

commitment, Aquila is allowed to commit generation from the SPP pool when it is not in that pool.³⁴

- 3) Even with the major flaw that using a system-wide unit commitment introduced, this study still indicates that Aquila in the SPP provides greater net benefits to Aquila ratepayers than Aquila in the Midwest ISO.³⁵ This is because of the higher level of congestion that occurs for Aquila load when it is in the Midwest ISO compared to when it is in the SPP.³⁶

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

Because it is to consider all relevant circumstances, the Commission should consider the benefits attributed to being in an RTO that the Midwest ISO and the City of Independence raised to challenge assumptions in the CRA International study that certain SPP costs would be the same as Midwest ISO costs if the SPP offered the same markets as the Midwest ISO.

A. Benefits attributed to being in an RTO not covered by the CRA International cost-benefit study were from increased reliability and reduced planning reserve margins.³⁷

- 1) The Staff agrees that RTOs do provide increased reliability to the electric power grid, but finds that these benefits are attributable to all RTOs, including both the Midwest ISO and the SPP.³⁸
- 2) The Staff does not agree that Aquila will benefit from reduced planning reserve margins from joining the Midwest ISO, primarily because of the low level of interconnection between Aquila and the Midwest ISO.³⁹

B. The City of Independence claims greater benefits from having access via a non-pancaked transmission rates to a market with a larger footprint.⁴⁰ The Staff points out that the question the City of Independence should be asking is not the size of the geographic region, rather the likelihood of obtaining transmission service in the Midwest ISO versus the SPP, and the answer to

³⁴ Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 13-14 and pp. 16-17.

³⁵ Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 8-9.

³⁶ Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 28-35.

³⁷ Midwest ISO witness Doying Rebuttal, Ex. 4, pp. 7-14; Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 4.

³⁸ Staff witness Proctor, Cross-Surrebuttal, Ex. 13, pp. 5-7.

³⁹ Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 11.

⁴⁰ City of Independence witness Mahlberg Rebuttal, Ex. 10, p. 5; City of Independence witness Volpe Rebuttal, Ex. 11, pp. 5-6.

this question has nothing to do with the size of the region, but is driven by the number of interconnections and the congestion associated with each RTO.⁴¹ In this regard, the Staff concludes that the higher level of congestion and lower number of interconnections between Aquila and the Midwest ISO compared to Aquila and the SPP suggests a lower level of availability for transmission service between the City of Independence and the Midwest ISO than between the City of Independence and the SPP.⁴²

- C. The City of Independence offered a fixed-cost theory for why Aquila's administrative costs in the SPP should be higher than in the Midwest ISO, but adduced no evidence to support its theory.⁴³ The Staff rebutted the fixed-cost theory, and the Commission should disregard this testimony by Midwest ISO witness Volpe.⁴⁴

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

Because it must consider all relevant circumstances, the Commission should consider Aquila's current relationships with the Midwest ISO and the SPP, although the Staff does not consider these circumstances to be nearly as significant as the physical interconnection ties Aquila has with the Midwest ISO and the SPP or the results of the CRA International cost-benefits studies. Those relationships are set out in the portion of the Staff's brief following the statement of Issue 2 above.

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

The Commission should put little if any weight on the difference in the development of electricity markets between the Midwest ISO and the SPP. The SPP is in the process of having a cost-benefit study performed to determine whether or not it is cost-beneficial for it to offer a day-ahead energy market, financial transmission rights and markets for regulation and operating reserves. If the cost-benefit analyses support adding these markets, then the CRA International cost-benefit study submitted by Aquila in this case measures the net benefits from those markets.

⁴¹ Staff witness Proctor Cross-Surrebuttal, Ex. 13 p. 42.

⁴² Staff witness Proctor Cross-Surrebuttal, Ex. 13, p. 42.

⁴³ City of Independence witness Volpe Rebuttal, Ex. 11, pp. 6-8.

⁴⁴ Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 47-49.

However, if the cost-benefit analyses the SPP is in the process of having performed do not support the implementation of one or more of these markets, the CRA International cost-benefit study submitted by Aquila in this case underestimates the net benefits, by including net negative benefits for markets the SPP should not implement.⁴⁵

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

Because it must consider all relevant circumstances, the Commission should consider Great Plains' proposed acquisition of Aquila in making its determination in this case. If the Commission determines to authorize Aquila to join the Midwest ISO, then, regardless of any other conditions, the Commission should condition its authorization for Aquila to join the Midwest ISO on Great Plains not acquiring Aquila.⁴⁶

g. Union Electric Company's continuing membership in MISO; and

Because it must consider all relevant circumstances, the Commission should consider Union Electric Company's continuing membership in the Midwest ISO in making its determination in this case. If the Commission determines to authorize Aquila to join the Midwest ISO, then, regardless of any other conditions, the Commission should condition its approval for Aquila to join the Midwest ISO on Union Electric Company's continuing membership in the Midwest ISO.

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

Because it must consider all circumstances, the Commission should consider the obligation. By its conduct in bringing and going forward with this case, Aquila is meeting that obligation. While a circumstance, the Staff believes it is not such a significant circumstance that

⁴⁵ Staff witness Proctor Rebuttal, Ex. 12, pp. 25-26.

⁴⁶ Staff witness Proctor Rebuttal, Ex. 12, pp. 44-45.

the Commission should make its decision in this case based on that obligation to file and support an application to join the Midwest ISO. Instead, that circumstance is but one of many circumstances, of which others are much weightier to the public interest.⁴⁷

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

No, the expected future ratemaking treatment of these costs is not “relevant and critical” nor “necessary and essential” to a Commission determination of whether to grant Aquila’s request to transfer to the Midwest ISO operational control of Aquila’s transmission lines in Missouri that operate at voltages of 100 kV or more. The only issue properly before the Commission in this case is whether the Commission should authorize Aquila to join the Midwest ISO. Only to the extent rate treatment of these costs in setting Aquila’s rates in the future affects the Commission’s determination of whether to grant Aquila’s request to transfer to the Midwest ISO operational control of Aquila’s transmission lines in Missouri that operate at voltages of 100 kV or more should this issue be addressed. *State ex rel. AG Processing Inc., v. Public Service Commission*, 120 S.W.3d 732, 736 (Mo. banc 2003). Unlike the \$92,000,000 acquisition premium at issue in *State ex rel. AG Processing, Inc.*, there is no indication here that the future ratemaking treatment of (1) all future FERC-approved administrative fees the Midwest ISO assesses Aquila or (2) all future costs Aquila incurs from the Midwest ISO in making prudent purchases of capacity and/or energy to serve its bundled retail load are “relevant and critical” issues “necessary and essential” to a Commission determination of whether to grant Aquila’s

⁴⁷ Staff witness Proctor Rebuttal, Ex. 12, pp. 3-4 and Staff witness Proctor Cross-Surrebuttal, Ex. 13, pp. 2-3.

request to transfer to the Midwest ISO operational control of Aquila's transmission lines in Missouri that operate at voltages of 100 kV or more. *Id* at 736 (\$92,000,000 acquisition premium that was part of Aquila's merger plan was a "relevant and critical" issue "necessary and essential" to Commission determination of whether to authorize the proposed merger).

WHEREFORE, as ordered by the Commission during the hearing in this case on April 15, 2008 and by its April 16, 2008 *Notice Regarding Filing of Briefs*, the Staff submits its brief in this case.

Respectfully submitted,

/s/ Nathan Williams

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 29th day of May 2008.

/s/ Nathan Williams