

The Commission is not bound by *stare decisis*¹, so a future Commission – if necessary to fulfill its role of protecting the public – could change any aspects of the GPE/KCPL/Aquila proposals even if the current Commission adopted them.

4. Is the net detriment test utilized by the Joint Applicants as the not detrimental to the public interest standard, the criteria required by law for determining whether the proposed acquisition and related transactions are not detrimental to the public interest?

The proper test is that annunciated in the Fee Fee Trunk Sewer case²: the Commission should approve the transaction if it is not detrimental to the public interest. The Joint Applicant's notion of including shareholder benefits in this test should be firmly rejected.

Will the proposed merger cause a net detriment to the public interest because the cost of service on which rates for Missouri ratepayers of Aquila and KCPL will be established will be higher as a direct result of the merger than the cost of service would be for Aquila and KCPL absent the proposed transaction?

Yes, for all the reasons set out in the testimony of Public Counsel witnesses Dittmer and Trippensee and in the Staff Report, the proposed merger is detrimental to the public interest and should be rejected.

5. Does the Affiliate Transactions Rule, 4 CSR 240-20.015, apply to transactions between regulated electrical corporations that are wholly owned by the same parent company?

Yes. There is no exception in the rule for transactions between regulated electrical corporations that are wholly owned by the same parent company.

¹An administrative agency is not bound by *stare decisis*. *State ex rel. AG Processing, Inc. v. Public Serv Comm'n*, 120 S.W.3d 732, 736 (Mo.banc 2003). Courts are not concerned with alleged inconsistency between current and prior decisions of an administrative agency so long as the action taken is not otherwise arbitrary or unreasonable.

Id., *State ex rel. GTE North, Inc. v. Missouri Public Service Comm'n*, 835 S.W.2d 356, 371 (Mo. App. W.D. 1992), *City of Columbia v. Missouri State Bd. Of Mediation*, 605 S.W. 2d 192, 195 (Mo. App. W.D. 1980), *Mitchell v. City of Springfield*, 410 S.W.2d 585, 589-90 (Mo. App. Spring. 1966).

²*State of Missouri, ex rel. Fee Fee Trunk Sewer, Inc v. Litz*, 596 S.W.2d 466 (Mo. App 1980)