

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

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6 TRANSCRIPT OF PROCEEDINGS

7 Evidentiary Hearing  
8 December 5, 2007  
9 Jefferson City, Missouri  
Volume 5

10 In the Matter of the Joint )  
11 Application of Great Plains )  
Energy Incorporated, Kansas )  
12 City Power & Light Company, )  
and Aquila, Inc., for Approval )Case No. EM-2007-0374  
13 of the Merger of Aquila, Inc., )  
with a Subsidiary of Great )  
14 Plains Energy Incorporated and )  
for Other Related Relief. )  
15

16 NANCY M. DIPPELL, Presiding,  
SENIOR REGULATORY LAW JUDGE.

17  
JEFF DAVIS, Chairman,  
18 CONNIE MURRAY,  
LINWARD "LIN" APPLING,  
19 TERRY JARRETT,  
COMMISSIONERS.  
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22 REPORTED BY:

23 PAMELA FICK, RMR, RPR, CCR #447, CSR  
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## P R O C E E D I N G S

(EXHIBIT NOS. 32, 33 AND 34 WERE MARKED  
FOR IDENTIFICATION BY THE COURT REPORTER.)

JUDGE DIPPELL: Okay. Then let's go  
ahead and go on the record. Good morning. It is  
Wednesday morning, December 5th, and we are back on  
the record in EM-2007-0374. We left off yesterday at  
the end of the day with some Staff questions of  
Mr. Green. And I think we'll just go ahead and get  
started with the remainder of those questions that  
don't need to be in-camera.

MR. WILLIAMS: Sure.

JUDGE DIPPELL: Mr. Green, if you could  
please come back to the stand. And Mr. Green, you  
were sworn in yesterday and remain under oath on the  
stand.

THE WITNESS: Yes.

JUDGE DIPPELL: Thank you. Go ahead,  
Mr. Williams.

MR. WILLIAMS: Thank you.

RE-CROSS-EXAMINATION (CONTINUED) BY MR. WILLIAMS:

Q. Mr. Green, have you ever been any --  
involved in any mergers in the past that closed where  
merger savings of \$600 million or more were achieved?

A. I have not.

1           Q.       If Great Plains acquires Aquila, will  
2 you be employed by Aquila?

3           A.       I will not.

4           Q.       Will your employment terminate?

5           A.       It will.

6           Q.       Will you receive a payment related to  
7 that termination?

8           A.       I will.

9           Q.       How much?

10          A.       \$3 million.

11          Q.       And is that \$3 million payment included  
12 in the about 95 million of transaction costs that  
13 applicants are asking the Commission to be recovered  
14 from ratepayers?

15          A.       I believe it is.

16          Q.       Have the applicants received approval  
17 for this transaction for Great Plains Energy to  
18 acquire Aquila in any other regulatory jurisdictions?

19          A.       Yes, we have.

20          Q.       And have any of those regulatory  
21 jurisdictions in connection with that approval also  
22 approved the regulatory plan that includes recovery  
23 from ratepayers of 100 percent of the transaction  
24 costs of the acquisition?

25          A.       I don't recall that specific of the

1 regulatory plans.

2 Q. You don't know?

3 A. I don't know.

4 Q. And have any of those other  
5 jurisdictions in connection with the approval of the  
6 acquisition of Aquila approved ratepayer -- or  
7 shareholders recovering 50 percent of the estimated  
8 merger synergy savings as proposed in this case?

9 A. I don't know.

10 Q. Do you know if current Aquila employees  
11 who become employees of Kansas City Power & Light  
12 Company if Great Plains Energy acquires Aquila, will  
13 accrue pension benefits solely on the basis of the  
14 length of their employment with KCP&L?

15 A. I don't know.

16 Q. Do you still have a copy of  
17 Exhibit 118 HC which at the deposition was marked as  
18 Exhibit No. 16?

19 A. I do.

20 Q. I believe you earlier testified that the  
21 statements in that exhibit are true and correct to  
22 the best of your knowledge, information and belief at  
23 the time they were made?

24 A. That's correct.

25 Q. Turning to the last paragraph, first two



1 sentences of that in particular.

2 A. Yes.

3 Q. Does that passage accurately indicate  
4 when Aquila first became aware that there was a  
5 desire that Aquila file a 2007 rate case in  
6 connection with the merger of Aquila with Great  
7 Plains Energy?

8 A. I believe that it does.

9 Q. And when does it indicate that Aquila  
10 first learned of that?

11 A. I believe, as we discussed yesterday,  
12 this e-mail is dated December 27th, 2006, and I  
13 believe we began to understand the regulatory  
14 strategy of the 2007 rate case days or a couple of  
15 weeks before that time. I don't remember the  
16 specific day or event or communication.

17 Q. Well, if you turn to the second  
18 paragraph, does that provide a date that perhaps  
19 would be the date?

20 A. Second paragraph of the e-mail?

21 Q. Begins "Last Thursday ..."

22 A. I think that's a possibility. It  
23 doesn't tell me that it definitely was on that date,  
24 but it certainly points to the fact that there was a  
25 lot of interaction and negotiation going on around

1     this -- around this time.

2             Q.       So it would have been on or about that  
3     day?

4             A.       I'd accept that.

5             MR. WILLIAMS:   Judge, I would like to  
6     offer Exhibit 118 HC.

7             JUDGE DIPPELL:   Would there be any  
8     objection to Exhibit 118?

9             MR. MILLS:   Judge --

10            MS. PARSONS:   No, there's no objection,  
11     but it is part of those documents that we submitted  
12     yesterday which are highly confidential.

13            MR. MILLS:   And I'd just like to note a  
14     continuing objection to admitting -- most of this  
15     stuff is highly confidential, and I don't think we  
16     need to continue to belabor that.

17            MR. WILLIAMS:   Your objection is over  
18     the treatment, not over the admissibility?

19            MR. MILLS:   Exactly.

20            MR. WILLIAMS:   Thank you.

21            JUDGE DIPPELL:   All right.   Then I will  
22     admit it subject to the highly confidential issue  
23     being resolved.

24                         (EXHIBIT NO. 118 HC WAS RECEIVED INTO  
25     EVIDENCE AND MADE A PART OF THE RECORD.)

1 BY MR. WILLIAMS:

2 Q. What was your understanding of what was  
3 to occur regarding the Aquila 2007 rate case that had  
4 been proposed in the case for approval of the  
5 acquisition of Aquila by Great Plains Energy?

6 A. I believe the answer to your question is  
7 that the 2007 rate case that we're speaking of is one  
8 that would have included amortization for Aquila, and  
9 that would have started that effort eventually. I  
10 think there was an expectation of a merger of cases  
11 along with the application for the merger approval  
12 down the road. That's my general understanding.

13 Q. And did you have any understanding about  
14 what might happen with regard to the acquisition  
15 based upon what might happen in that rate case?

16 A. I'm not sure I understand the question.

17 Q. Would you turn to Exhibit 118 HC again?

18 A. Is that -- I have something that's  
19 marked Exhibit 16. Is that the same thing?

20 Q. Yes. It's your e-mail of December 27,  
21 2006, to the board of directors.

22 A. I have it.

23 Q. Would you turn to the second page, the  
24 first full paragraph, in particular, the next --  
25 let's see, third sentence from the end?

1           A.       Does that begin, "It is our  
2 understanding ..."?

3           Q.       Yes.

4           A.       I do see the sentence.

5           Q.       Does that accurately reflect your  
6 understanding at that point in time?

7           A.       Yes, I think that's one of the points in  
8 the negotiations at that point in time.

9           Q.       And did you not testify earlier that  
10 Aquila was -- did not want to pursue that rate case  
11 as proposed?

12          A.       I have -- I have testified to that.

13          Q.       And why wasn't it that -- why was it  
14 that Aquila did not want to pursue filing a rate  
15 case?

16          A.       We did not think it was appropriate for  
17 us to immediately file a rate case at the conclusion  
18 of our current rate case under the direction of Great  
19 Plains.

20          Q.       And did you not testify earlier that you  
21 spoke with Mr. Chesser at Great Plains Energy  
22 regarding that?

23          A.       I did bring it up to him at a meeting we  
24 had.

25          Q.       And did you inform Aquila's board of

1 directors about that communication you had with  
2 Mr. Chesser?

3 A. I believe that I did.

4 Q. And how was it that you informed the  
5 board of directors of Aquila?

6 A. Most likely in an e-mail.

7 MR. WILLIAMS: Another exhibit.

8 JUDGE DIPPELL: Okay. We're up to  
9 No. 119.

10 (EXHIBIT NO. 119 HC WAS MARKED FOR  
11 IDENTIFICATION BY THE COURT REPORTER.)

12 MR. WILLIAMS: This will be HC at this  
13 point, at least.

14 JUDGE DIPPELL: And I need one more  
15 copy, Mr. -- oh, no, I don't. I'm sorry.

16 BY MR. WILLIAMS:

17 Q. You have in front of you what's been  
18 marked for identification as Exhibit 119 HC?

19 A. I do.

20 Q. And what is Exhibit 119 HC?

21 A. It is an e-mail from me to the Aquila  
22 board of directors.

23 Q. And is that the e-mail in which you  
24 communicated to the board of directors about your  
25 communications with Mr. Chesser regarding the 2007

1 rate case?

2 A. It is.

3 Q. Have you had an opportunity to review  
4 the content of that e-mail?

5 A. I have looked over it.

6 Q. Are all of the statements set out in  
7 that e-mail true to the best of your knowledge,  
8 information and belief?

9 A. I believe that they are.

10 MR. WILLIAMS: I offer Exhibit 119 HC.

11 JUDGE DIPPELL: Okay. Is there any  
12 objection to Exhibit 119 HC which is part of the --  
13 also the conditionally marked HC package?

14 MR. CONRAD: With the same subject too  
15 that you applied earlier, because that's the --  
16 that's the area of controversy, I don't have an  
17 objection.

18 JUDGE DIPPELL: All right. I will note  
19 that there are objections to the highly confidential  
20 nature as have been obviously noted on the record  
21 previously.

22 MS. PARSONS: Aquila doesn't have any  
23 objections over those that you've just described.

24 JUDGE DIPPELL: All right. Then I'll  
25 admit Exhibit 119 conditionally HC.

1 (EXHIBIT NO. 119 HC WAS RECEIVED INTO  
2 EVIDENCE AND MADE A PART OF THE RECORD.)

3 BY MR. WILLIAMS:

4 Q. In December of 2006 when you learned  
5 that Great Plains Energy was wanting to have Aquila  
6 file a rate case in conjunction with the application  
7 for approval of Great Plains Energy acquiring Aquila,  
8 was Great Plains Energy the only entity who was still  
9 pursuing acquisition of Aquila?

10 MS. PARSONS: Your Honor, I'm gonna  
11 object to this line of questioning. I'm not sure  
12 what the 2007 rate case -- it's not part of this  
13 application, so I'm not sure of its relevancy here.

14 JUDGE DIPPELL: I'm gonna overrule the  
15 objection. I think it's relevant.

16 THE WITNESS: I'm sorry. Could you  
17 repeat the question?

18 BY MR. WILLIAMS:

19 Q. The question is, at the time you learned  
20 that Great Plains Energy was asking Aquila to file  
21 the rate case in connection with the acquisition of  
22 Aquila, was Great Plains Energy the only bidder?

23 A. We learned of that in December, and,  
24 yes, at that point in time they were the only bidder.

25 Q. So at that point in time was Aquila

1   faced with either pursuing Great Plains Energy  
2   acquiring Aquila or Aquila going forward as a  
3   standalone entity?

4           A.       That would be correct.

5           Q.       And was Aquila attempting to obtain the  
6   best terms possible for its shareholders at that  
7   point in time?

8           A.       I think for our shareholders and also  
9   our customers and also our employees.

10          Q.       Did Aquila seek any external input to  
11   evaluate the probability of regulatory approval in  
12   Missouri of the Great Plains Energy regulatory plan?

13          A.       I -- we would have definitely talked  
14   about it with our regulatory counsel.

15          Q.       Anyone else?

16          A.       I don't recall anybody else.

17          Q.       And why did you seek that input?

18                 MS. PARSONS:  I'm gonna object that that  
19   calls for attorney/client privilege.  He's already  
20   testified that the only person -- that the only  
21   conversations he recalls are with his regulatory  
22   counsel.

23                 MR. WILLIAMS:  I'm not asking for the  
24   communications.  I'm just asking why they sought  
25   advice from the regulatory counsel.



1 JUDGE DIPPELL: I'll overrule and let  
2 him answer.

3 THE WITNESS: We were interested in  
4 their thoughts, input, perspective.

5 BY MR. WILLIAMS:

6 Q. And who was the regulatory counsel that  
7 you obtained that input from?

8 MS. PARSONS: I'm gonna object to the  
9 relevancy of that. That also calls -- it -- in that  
10 it's attorney/client privilege.

11 MR. WILLIAMS: I don't think who the  
12 counsel is is attorney/client privilege, and I do  
13 think --

14 MS. PARSONS: Well, then, I'm gonna  
15 object on relevance. I don't know what relevancy it  
16 has to these proceedings.

17 MR. WILLIAMS: I think the  
18 qualifications of who Aquila may have relied upon in  
19 going forward with this transaction does have a  
20 bearing on this case.

21 JUDGE DIPPELL: Well, I'll sustain the  
22 objection.

23 BY MR. WILLIAMS:

24 Q. Did Aquila's management present to  
25 Aquila's board of directors in late January of

1 2000 -- did Aquila's management make a presentation  
2 to Aquila's board of directors in late January of  
3 2007 setting forth what it had identified as  
4 regulatory issues in Great Plains Energy's regulatory  
5 plan?

6 A. We definitely did have a meeting like  
7 that, and I believe it was in January.

8 MR. WILLIAMS: May I have another  
9 exhibit marked?

10 JUDGE DIPPELL: 120.

11 MR. WILLIAMS: And this also will be HC.

12 (EXHIBIT NO. 120 HC WAS MARKED FOR  
13 IDENTIFICATION BY THE COURT REPORTER.)

14 BY MR. WILLIAMS:

15 Q. I've handed you what's been marked as  
16 Exhibit 120 HC. What is that exhibit?

17 A. It appears to be the board packet for a  
18 special board of directors meeting on January 20th,  
19 2007.

20 Q. Were you present at that board meeting?

21 A. I was.

22 Q. Would you turn to what's marked as  
23 page 5 on that packet, and is there a table set out  
24 there?

25 A. There is a table.

1           Q.       And does it list execution issues and  
2       comments?

3                   MS. PARSONS:  I'm gonna object.  This  
4       entire document was marked HC, so I believe that the  
5       questioning and the responses may elicit some highly  
6       confidential material.  So I would suggest we go  
7       in-camera if we're gonna discuss the exhibit.

8                   MR. WILLIAMS:  I wasn't planning on  
9       going any further into the content than what I just  
10      have on the record.

11                  MS. PARSONS:  Well, that content is  
12      marked HC based on the judge's ruling yesterday.

13                  JUDGE DIPPELL:  Mr. Williams, can you  
14      keep your questions without having to be -- to go  
15      in-camera?

16                  MR. WILLIAMS:  I wasn't planning on  
17      asking anything further other than ...

18                  JUDGE DIPPELL:  She's right.  As of now  
19      I've marked the entire document HC.

20                  MR. WILLIAMS:  All right.

21      BY MR. WILLIAMS:

22           Q.       Are the statements made on pages 5 -- I  
23      guess the numbers are HC too -- 5 and -- let's see,  
24      5, 6 and 7 indicate what Aquila's management had  
25      identified as issues in -- regulatory issues in

1 Missouri?

2 A. They are.

3 Q. And would you review what Aquila's  
4 management had said at that point in time and tell me  
5 whether or not those statements, to the best of your  
6 knowledge, information and belief were true at the  
7 time they were made?

8 A. I do believe they were true to the best  
9 of my knowledge when they were made. Your other  
10 question is, you're asking me to summarize --

11 Q. No.

12 A. What --

13 Q. I'm not asking you to reveal the  
14 contents of the document.

15 A. What was your first part of the  
16 question, then?

17 Q. I was just asking you if, to the best of  
18 your knowledge, information and belief at the time  
19 these statements were made, they were true?

20 A. Yes.

21 Q. Are they now?

22 A. I believe them to be.

23 MR. WILLIAMS: Staff offers Exhibit

24 No. 120 HC.

25 JUDGE DIPPELL: Okay. Obviously there's

1 a continuing objection to the highly confidential  
2 nature. Is there -- are there any other objections  
3 to this being received into evidence?

4 MR. CONRAD: Subject to that, none here.

5 MR. MILLS: (Shook head.)

6 MS. PARSONS: No additional objections  
7 from Aquila.

8 JUDGE DIPPELL: All right. Then I'll  
9 receive it into evidence.

10 (EXHIBIT NO. 120 HC WAS RECEIVED INTO  
11 EVIDENCE AND MADE A PART OF THE RECORD.)

12 MR. WILLIAMS: No further questions of  
13 this witness at this time.

14 JUDGE DIPPELL: So Mr. Williams, am I to  
15 understand that that takes care of your questions  
16 that you would have had that needed to go in-camera?

17 MR. WILLIAMS: I think with his  
18 statements about the veracity of the information in  
19 the documents and the documents themselves, there's  
20 not a need to do -- do so.

21 JUDGE DIPPELL: All right. Thank you.  
22 All right. Are there any additional non-in-camera  
23 questions from Great Plains?

24 MR. RIGGINS: No.

25 JUDGE DIPPELL: Black Hills?

1 MR. DeFORD: None, your Honor.

2 JUDGE DIPPELL: They did not let me know  
3 if they were not gonna be present in the courtroom  
4 today. And I'm -- I'm looking for representatives of  
5 the other parties, and seeing none, I'm just going to  
6 skip them. If someone is here and I don't call your  
7 name, please speak up.

8 Ag Processing, do you have any other  
9 non-in-camera questions?

10 MR. CONRAD: Judge, there might be. I'm  
11 remaining slightly puzzled.

12 JUDGE DIPPELL: I need you to speak in  
13 the microphone, Mr. Conrad. The court reporter is  
14 having a hard time hearing.

15 MR. CONRAD: There might be. I'm  
16 remaining a little bit puzzled. I'm looking at an  
17 exchange on page 100 of Mr. Green's deposition, but  
18 it has to do with one of these documents. So I'm --  
19 I'm reluctant to try it, even though I think that --  
20 you know, we've argued the HC stuff back and forth.

21 I'm reluctant to try it in public and  
22 run afoul with something which creates the problem  
23 that I made reference to yesterday or the day before,  
24 that retroactive designations of material as HC  
25 creates problems for practicing attorneys who are

1     trying to communicate what's going on with their  
2     clients. But setting that issue aside, I -- and  
3     probably to be safe, we better wait.

4                   JUDGE DIPPELL: All right. I'll assume  
5     your -- your questions remain in-camera questions.  
6     Public Counsel, did you have any other public  
7     questions?

8                   MR. MILLS: I -- I think I can do a  
9     couple in open session.

10    RE CROSS-EXAMINATION BY MR. MILLS:

11           Q.     Mr. Green, with regard to the \$3 million  
12     payment that you will receive if the merger closes,  
13     do you know whether other Aquila executives will  
14     receive payments of a similar -- similar nature?

15           A.     There are other Aquila managers that  
16     will get a change-in-control payment.

17           Q.     And do you know whether all of those  
18     payments are included in the category of transaction  
19     costs for which joint applicants seek recovery from  
20     ratepayers?

21           A.     I believe that they are.

22           Q.     Do you have a copy with you of what was  
23     marked as Exhibit 18 at your deposition and which I  
24     think was marked as Exhibit 203 yesterday? It's the  
25     January 25th e-mail from you to your board.

1           A.       I don't have that with me. I think I  
2    had it yesterday but I don't have --

3                   MR. MILLS: May I approach?

4                   JUDGE DIPPELL: Yes.

5   BY MR. MILLS:

6           Q.       In the -- in the -- in the second  
7    paragraph of that e-mail, the very last sentence you  
8    use the phrase "aspects of the transaction." What  
9    particular aspects were you referring to there?

10          A.       The aspects here would be referring to  
11   the 2007 rate case.

12          Q.       Just the fact that it was a rate case or  
13   the components that were intended to be included in  
14   the rate case?

15          A.       I think more had to do with the -- with  
16   the rate case.

17          Q.       Did it have anything to do with the  
18   components that would be included as part of that  
19   rate case?

20          A.       It could. The point I'm making here is  
21   that it is a rate case, so implied in that, rates  
22   would be going up, and therein the difficulty in our  
23   opinion of having this 2007 rate case. Now, the  
24   components in there would cause something like that  
25   to happen, but I think it's more the fact of the rate



1 case than it is any parts of the components.

2 Q. At that point in time, were you aware  
3 that the plan was to request regulatory amortizations  
4 in that rate case?

5 A. Yes, I was.

6 Q. And did you make Commissioner Davis --  
7 Chairman Davis aware of that?

8 A. As I talked about the two seven -- 2007  
9 rate case, I probably would have mentioned that  
10 amortization was in it, but my point and feeling  
11 about it was more of a rate case itself as opposed to  
12 any particular component.

13 Q. And what do you mean by the phrase  
14 "consume some political capital"?

15 A. I think that just has to do with the  
16 intervention and opposition that would be drawn to  
17 the case because of the 2007 rate case.

18 Q. So would that be your, Rick Green's  
19 political capital or somebody else's?

20 A. I think it's just there generically. It  
21 could be my political capital. I don't assume I have  
22 any in any regard, but it was just generally --

23 Q. Well, if it wasn't yours, then whose did  
24 you mean?

25 A. I think it was just in general. I think

1     when you take a step, as we saw it in this case that  
2     is gonna attract more opposition, it's -- it's gonna  
3     consume political capital.

4             Q.       So there's -- you're saying there's --  
5     there's just a pool of political capital out there  
6     that anybody can tap into; this doesn't refer to any  
7     particular person's political capital or any  
8     particular body's political capital?

9             A.       Right, correct.

10            MR. MILLS:   Okay.  I think that's all I  
11     can get into in the non-highly confidential portion.

12            JUDGE DIPPELL:  All right.  Are there  
13     any additional --

14            MR. MILLS:  Oh, I do have one more.

15            JUDGE DIPPELL:  Oh, okay.  Go ahead,  
16     Mr. Mills.

17     BY MR. MILLS:

18             Q.       Since it's just out there floating  
19     around, how can I get some of that political capital?

20             A.       I'm not sure.

21            MS. PARSONS:  I'm gonna object and ask  
22     to strike the question.

23            MR. MILLS:  I'll withdraw that question.

24            JUDGE DIPPELL:  All right.  That -- that  
25     question and answer has been withdrawn and will be

1 stricken if it got into the record.

2                   Commissioners, do you have any  
3 additional questions that can be made in public  
4 session?

5                   CHAIRMAN DAVIS: Judge, I've got a  
6 couple. If Commissioner Jarrett wants to go first,  
7 he's more than welcome to.

8                   COMMISSIONER JARRETT: (Shook head.)

9                   JUDGE DIPPELL: Okay. Mr. Chairman?

10 QUESTIONS BY CHAIRMAN DAVIS:

11           Q.       Good morning, Mr. Green.

12           A.       Good morning.

13           Q.       The Concerned Citizens of South Harper  
14 are not represented here today, but without divulging  
15 any attorney -- attorney/client privilege, could you  
16 please tell us who provided you the legal and  
17 strategic advice early on as to how to get South  
18 Harper sited?

19           A.       Mr. Chairman, that would have been  
20 internal meetings. We had no outside consultant that  
21 said this is the way you go about it. We put  
22 together our plan and set forth. Obviously, it was a  
23 flawed plan there as we've all lived through that.

24                   I would also offer up that a more recent  
25 siting in the community of Sedalia, the Sedalia

1 Energy Center, I would offer that up in contrast as  
2 a -- the correct way to do it, and also recognize  
3 it's a process where we had learned our lessons from  
4 South Harper and do things correctly.

5 Q. And are any of those internal employees  
6 still employed with the company who advised you  
7 initially on South Harper as how to proceed?

8 A. Yes, there are still those employees.

9 Q. And can you identify those employees for  
10 us for the record?

11 A. Well, I -- I would start with myself. I  
12 was the one that oversaw the plan, agreed to the plan  
13 as we began to execute that. There would be a fairly  
14 long list of employees.

15 Q. We've got two weeks, Mr. Green.

16 A. Well, starting with myself, it would  
17 then go to Keith Stamm who was our past chief  
18 operating officer.

19 Q. Okay.

20 A. Glenn Keefe, who at the time was running  
21 our Missouri operations. It then would go into  
22 various people in our Missouri operation that would  
23 include -- gosh, I'm forgetting those names right  
24 now. We also would have had corporate communication  
25 people in there. At that time that was --

1           Q.       Okay. But were they providing you legal  
2 and strategic advice?

3           A.       Oh, no, they were not providing legal  
4 advice.

5           Q.       Okay. Is there any -- anybody else that  
6 sticks out in your mind that is providing you legal  
7 and strategic advice? Is there anyone out there that  
8 you think, boy, I'm not ever gonna listen to that guy  
9 again?

10          A.       Not --

11                   MR. BOUDREAU: You know, I think I'm --  
12 I think -- I'm reluctant to do this, but I think I'm  
13 gonna object to this line of questioning as really  
14 having no particular relevance to the matters at  
15 hand.

16                   CHAIRMAN DAVIS: Then, Judge, can I  
17 respond to his relevance objection?

18                   JUDGE DIPPELL: Certainly.

19                   CHAIRMAN DAVIS: I think it's relevant  
20 because either in this case or some future  
21 proceeding, I might want to -- want to put a  
22 condition on -- on Aquila that, you know, before you  
23 get your rate increase, these problems need to be  
24 addressed.

25                   MR. MILLS: Judge, if I may?

1 JUDGE DIPPELL: Yes.

2 MR. MILLS: One of the big issues in  
3 this case, and we've heard it from both utilities  
4 over and over again, that this is a well-run utility  
5 and -- and that KCPL is a well-run utility.

6 I think you can look to asking some  
7 questions about South Harper whether there were any  
8 lessons learned from that debacle and make some  
9 conclusions about how well-run the company is. So I  
10 think it's very relevant to the point of whether or  
11 not this is a well-run company.

12 MR. BOUDREAU: I think those questions  
13 have been asked and answered.

14 MR. CONRAD: And your Honor, I guess I  
15 would add to it, as far as relevancy, that the  
16 decision-making process employed by this company  
17 which Mr. Green already has acknowledged resulted in  
18 a flawed decision is very much in play in this  
19 proceeding.

20 JUDGE DIPPELL: I'll overrule the  
21 relevance objection.

22 THE WITNESS: I've forgotten where we  
23 were, Mr. Chairman.

24 BY CHAIRMAN DAVIS:

25 Q. Okay. Thinking back, is there any

1 other -- are there -- are there names of any other  
2 individuals who you listed as giving you key advice  
3 with regard to the -- the strategy of site -- the  
4 original strategy of siting the South Harper plant?

5 A. Not that I recall.

6 Q. Not that you recall. So no one else  
7 sticks out in your mind as someone that says --  
8 you're saying, boy, I'm not ever gonna listen to that  
9 guy again, or person?

10 A. Not at this point in time. I think --

11 CHAIRMAN DAVIS: That's fine. That's --  
12 you've answered the question. Thank you.

13 JUDGE DIPPELL: Commissioner Jarrett,  
14 did you have any additional questions?

15 COMMISSIONER JARRETT: Yes.

16 QUESTIONS BY COMMISSIONER JARRETT:

17 Q. Good morning, Mr. Green.

18 A. Good morning.

19 Q. I think you've testified that, you know,  
20 you're pretty familiar with all of the conditions and  
21 all of -- all of that of the merger; is that correct?

22 A. To a certain degree from my oversight.

23 Q. Okay. I would like to kind of throw out  
24 some thoughts and see if you agree or disagree with  
25 them. You know, talking in the time frame of the

1 first five years after the merger as the -- as  
2 proposed in the application, my understanding for the  
3 shareholders of Aquila, they're going to get roughly  
4 the value of \$4.54 per share, I believe some of the  
5 testimony has been, that's -- they'll get some Great  
6 Plains stock and some cash?

7 A. That was the value on announcement day.  
8 It is a price that fluctuates with Great Plains'  
9 stock price, so the cash portion, which is \$1.80, is  
10 fixed. The stock portion is set at a percentage of  
11 the stock price which is .0856, so that does move  
12 around.

13 On yesterday's Great Plains' price, the  
14 deal would be at \$4.35, so that's a moving piece.  
15 People have used 4.54 because it's an easy reference  
16 as being the announcement day.

17 Q. Right. And Aquila stock right now is, I  
18 think, just a little under \$4 per share?

19 A. That would be correct.

20 Q. Something like that. So that's a little  
21 premium over what the current market price is, would  
22 you say?

23 A. It is, but since we signed the  
24 agreement, Aquila's stock trades off of Great Plains'  
25 stock, so when you look at the difference between the



1     Aquila stock and the Great Plains stock, it is a  
2     spread between the two prices that indicates how the  
3     investors in our stock are looking at the probability  
4     of closure and also timing to closure. So we don't  
5     really have a separate trading in our own right  
6     because of the agreement we've signed.

7             Q.     Okay. I believe Mr. -- Mr. Giles  
8     yesterday testified that there would be a small  
9     accretion, like four cents, in the first five years  
10    of the stock?

11            A.     I'm not really familiar with their  
12    financial model.

13            Q.     Okay. Currently, do Aquila -- when's  
14    the last time Aquila paid a dividend on its stock?

15            A.     That would have been back in 2002.

16            Q.     Okay. And is Great Plains, are they  
17    paying dividends on their stock?

18            A.     Yes, they are.

19            Q.     So the Aquila -- when the merger's  
20    completed, the Aquila shareholders will get some  
21    Great Plains stock and they will begin receiving  
22    dividends on that?

23            A.     That's correct.

24            Q.     Okay. Under the proposed merger, the  
25    shareholders would get 50 percent of the synergy

1 savings for the first five years?

2 A. That's correct.

3 Q. And then there would be some additional  
4 amortizations that would benefit -- would that  
5 benefit the shareholders?

6 A. I -- I am not that familiar with how  
7 amortization actually works, so I really couldn't  
8 tell you exactly.

9 Q. So I guess since the board unanimously  
10 approved the plan, the Aquila board thought it was a  
11 pretty good deal for the shareholders?

12 A. The Aquila board, you know, with their  
13 own deliberations and, of course, with the advising  
14 counsel of financial advisors, did believe it was a  
15 reasonable plan to put to the vote of Aquila  
16 shareholders. And on October 9th, Aquila  
17 shareholders did pass the plan -- the acquisition.

18 Q. Okay. And now let's switch over to  
19 the -- to the ratepayers. Their rates will go up in  
20 the first five years due to the additional  
21 amortizations; is that correct?

22 A. I believe they will. Again, I -- I'm  
23 not that familiar with amortization, but I believe  
24 that they will.

25 Q. Okay. And then they -- they won't

1 receive the full benefit of the synergy savings  
2 because half of that's gonna go to the shareholders  
3 for the first five years?

4 A. That's correct.

5 Q. The ratepayers will end up paying  
6 higher -- a little bit higher interest rates for  
7 Aquila's nonregulated activities if -- if the merger  
8 happens? Right now I think Aquila, they're --  
9 they're limited at 7 percent?

10 A. Oh, with the request of the interest in  
11 it.

12 Q. Right.

13 A. Yes, that's correct.

14 Q. Okay. And then -- and then I think you  
15 testified this morning that some of the severance  
16 payments for management to Aquila will be included in  
17 the transaction costs, so the ratepayers are being  
18 asked to pay for -- pay for the severance packages;  
19 is that correct?

20 A. That's currently the way it is.

21 COMMISSIONER JARRETT: Okay. I don't  
22 have any further questions. Thank you.

23 JUDGE DIPPELL: Thank you.

24 CHAIRMAN DAVIS: Judge, can I -- could I  
25 go back and ask Mr. Green?

1 JUDGE DIPPELL: Yes, certainly.

2 QUESTIONS BY CHAIRMAN DAVIS:

3 Q. Mr. Green, how many shares of Aquila  
4 stock do you and members of your family out to the  
5 third degree do you own?

6 A. The only number that I'm really familiar  
7 with at this point in time would be my own, and that  
8 is just under 700,000 shares.

9 Q. Are you aware that other members of your  
10 family own stock?

11 A. At this point in time, Mr. Chairman,  
12 since the 2002 financial difficulties, each of the  
13 family members have made their own decisions as far  
14 as what they would retain and what they have sold,  
15 and I have not stayed current with all of those  
16 dealings. So that's why I tell you I can't give you  
17 a number on that.

18 Q. All right. So is it -- is it possible  
19 that members of your family own a lot more than  
20 700,000 shares?

21 A. I do -- I believe that not to be true.

22 Q. You believe that not to be true?

23 A. That it would -- if they do have  
24 continuing ownership, it would be less.

25 Q. And your title is CEO, correct?

1           A.       That is correct.

2           Q.       And we -- if we set aside the merger for  
3 a moment and we just look at Aquila's balance sheet  
4 right now, if we total up all the assets and all the  
5 liabilities, what is Aquila worth today?

6           A.       Approximately 2.7 -- the enterprise  
7 value of Aquila is approximately 2.7, 2.8 billion.

8           Q.       Okay. And it's the -- now, when you say  
9 "enterprise value," what's -- define enterprise value  
10 for me.

11          A.       I'm taking the equity value of --

12          Q.       Okay. Well, let's -- let's set aside  
13 the value of the equity for a minute and let's just  
14 talk about assets and liabilities. If we add up just  
15 the -- we set aside equity and say what are the --  
16 what are the value of all of Aquila's assets, what --  
17 just the assets, what's the book value of all of the  
18 assets?

19          A.       Approximately \$1.5 billion.

20          Q.       Okay. And what's the book value for all  
21 the liabilities?

22          A.       Approximately 1.1 billion.

23                   CHAIRMAN DAVIS: Okay. No further  
24 questions, Judge.

25                   JUDGE DIPPELL: Thank you. Is there any

1 further cross-examination based on those questions  
2 from the Bench from Great Plains?

3 (NO RESPONSE.)

4 JUDGE DIPPELL: From Black Hills?

5 MR. DeFORD: (Shook head.)

6 JUDGE DIPPELL: From Ag Processing?

7 MR. CONRAD: Yes, your Honor. Just to  
8 follow up on -- on the stock ownership thing.

9 RECROSS-EXAMINATION BY MR. CONRAD:

10 Q. When you referred in responding to  
11 the -- to the Chairman's question, Mr. Green, that  
12 you owned about 700,000 shares, is that official or  
13 is that direct?

14 A. That's direct.

15 Q. Are there any shares owned beneficially?

16 A. There may be. If there is, it would  
17 be -- boy, I would say it would be less than 40 or  
18 50,000.

19 Q. Now, in what form would these beneficial  
20 shares be owned?

21 A. It would be trusts.

22 Q. Are you referring to the Green family  
23 trust?

24 A. No.

25 Q. What trust are you referring to?

1           A.       Referring to three different trusts that  
2 my mother set up for my children.

3           Q.       I seem to recall, and perhaps you can  
4 correct me, that at some time in the past there was a  
5 Green family trust of which you and brother Bob were  
6 the trustees. Do I remember correctly?

7           A.       There were a number of trusts and --

8                   MR. BOUDREAU: If I might just as a  
9 point of order, Mr. -- Mr. Green, is -- do you --  
10 this is in public session. Are you comfortable  
11 answering these questions or is this information  
12 about beneficial ownership something that you  
13 consider to be --

14                   THE WITNESS: At this point in time I'm  
15 okay.

16                   MR. BOUDREAU: Okay. That's fine.  
17 Thank you. I'm sorry. Apologize for the intrusion.

18                   MR. CONRAD: No problem.

19 BY MR. CONRAD:

20           Q.       And Mr. Green, let me caution you, if I  
21 step on a sensitive area -- but I think these are  
22 things that are generally disclosed to the SEC, am I  
23 correct?

24           A.       Yes.

25           Q.       Do I also recall that a few years ago

1     there was a lawsuit involving that Green family  
2     trust?

3                   MS. PARSONS:  I'm gonna object to the  
4     relevancy of these questions.

5                   MR. CONRAD:  Well, I'm trying --

6                   JUDGE DIPPELL:  Overruled.

7                   MR. CONRAD:  I'm trying to find out how  
8     much the gentleman owns here.  Do you need the  
9     question read back?

10                  JUDGE DIPPELL:  Can -- can you read the  
11     question back?

12                  (THE COURT REPORTER READ BACK THE  
13     PREVIOUS QUESTION.)

14                  THE WITNESS:  There was a lawsuit  
15     involving a -- one trust, yes.

16     BY MR. CONRAD:

17                 Q.     And was that a trust of which you and  
18     brother Bob were trustees?

19                 A.     It is a trust that I was trustee of.

20                 Q.     Okay.  And brother Bob didn't have  
21     anything to do with that one?

22                 A.     No, he did not.

23                 Q.     Is that the trust that you're referring  
24     to in this 40 to 50,000 shares that are owned  
25     beneficially?



1           A.       It is not.

2           Q.       So here today on the stand under oath we  
3   get your shock -- we get your stock ownership as  
4   700,000, plus or minus all change direct, and 40 to  
5   50,000 beneficially, correct?

6           A.       To the best of my knowledge right now,  
7   that's correct.

8           Q.       So help me do the math.  You had  
9   testified earlier that your severance would be  
10  3 million.  In responding to questions, I believe  
11  from Commissioner Jarrett, you indicated that some  
12  portion of payout, a proposed payout would be in  
13  cash?

14                   THE COURT REPORTER:  Would be what,  
15  Mr. Conrad?  I'm sorry.

16                   JUDGE DIPPELL:  Mr. Conrad, the court  
17  reporter didn't hear you.

18                   THE COURT REPORTER:  I'm sorry.

19  BY MR. CONRAD:

20           Q.       How much was that -- some portion of  
21  that payout was to be in cash.  How much was that  
22  account?

23           A.       The cash portion of the transaction is  
24  \$1.80.

25           Q.       So if I were to multiply \$1.80 by --

1 well, let's give you the benefit of the doubt,  
2 740,000 shares, what will I get to?

3 A. I don't have a calculator up here.

4 Q. I could pull one out, but would you  
5 accept roughly 1.2 million?

6 A. I would, somewhere over a million, yes.

7 Q. Now, in addition to that, you will also  
8 get shares in a going Ginnie called Great Plains  
9 Energy; am I correct?

10 A. That is correct.

11 Q. And what is the ratio on that?

12 A. It would depend on what the Great Plains  
13 stock price is on the day of closing.

14 Q. If we had to do that calculation now,  
15 give me a rough-ball estimate as to what the ratio  
16 would be.

17 A. As of yesterday, the entire transaction  
18 was worth \$4.35. On that basis you would subtract  
19 the 1.80 from the 4.35 and that would give you the  
20 per-share value of Great Plains shares that would be  
21 distributed.

22 Q. Well, you helped me out a little bit  
23 there because what I was gonna do was back into that  
24 4.35 number. So let's look at that and do that by  
25 740,000 shares. If it's true, I take it, Mr. Green,

1     that the day after this proposed transaction were to  
2     close and the stock transfers would all occur, you  
3     could take those 740,000 shares by whatever the ratio  
4     is, would be converted to Great Plains and dispose of  
5     them, could you not?

6           A.     At some point in time I -- what I -- I'm  
7     not aware of is what the SEC rules are around that,  
8     whether for me that is the day after close or if  
9     there's a waiting period before I'm -- would have the  
10    option to do that.

11          Q.     But subject to those types of  
12    restrictions, you've been given value that would  
13    total something, if it was done today, \$4.35,  
14    correct?

15          A.     That's correct.

16          Q.     So it wouldn't be unfair to take the  
17    740,000 shares and multiply that by \$4.35, would it?

18          A.     That would be fair.

19          Q.     What would we -- what do we get if we do  
20    that?

21          A.     Again, I do not have a calculator up  
22    here.

23          Q.     My consultant has one and he tells me  
24    that it's roughly 3.3 million, Mr. Green. Would you  
25    like to compromise on that?

1           A.       I would accept that.

2           Q.       Okay.  So we're talking about this total  
3   package for Rick Green is transferring value to you  
4   of approximately 6.3 million plus or minus small  
5   change, right?

6           A.       With these assumptions, that's correct.

7           Q.       Now, the reason I was asking about the  
8   ratio on the Great Plains shares, you would end up  
9   being a fairly significant individual shareholder in  
10  Great Plains, correct?

11          A.       I do not believe so.

12          Q.       Do you know how many shares they have  
13  out?

14          A.       I do not.

15          Q.       You would be anywhere -- would you be  
16  anywhere close to 5 percent?

17          A.       Oh, I wouldn't even be a percent.

18          Q.       So there's not really a significant  
19  risk.  Although there are many other risks to this  
20  transaction, one of them is not that you would  
21  surface again in some management position in Great  
22  Plains; am I correct?

23          A.       I will not surface again in some  
24  management position at Great Plains.

25          Q.       Or on their board?

1           A.       Or on their board.

2           MR. CONRAD: Judge, I believe that's all  
3 I have at this point that's follow-up to the Bench  
4 questions that would be HC -- or that would be not  
5 HC. I'm sorry.

6           JUDGE DIPPELL: All right. Is there  
7 anything -- further cross based on questions from the  
8 Bench from Public Counsel?

9           MR. MILLS: No.

10          JUDGE DIPPELL: Staff?

11          MR. WILLIAMS: No.

12          JUDGE DIPPELL: Okay. Would you like to  
13 go ahead and do your redirect based on all of the  
14 public ...

15          MS. PARSONS: We'll -- we'll just wait  
16 till the end.

17          JUDGE DIPPELL: Okay. Well, here's  
18 where we are with the highly confidential. I've been  
19 reviewing the redacted versions that the parties gave  
20 me that they worked on last night in compliance with  
21 my ruling. There's a couple of issues with the ones  
22 that Aquila gave me that I need to get straightened  
23 out, and then when I can give that version to the  
24 Commissioners and they have a chance to look at it,  
25 then they can rule easier on whether or not they

1 agree with my ruling.

2                   So I would say that it's probably best  
3 for us to take a break and get those copies made  
4 and -- and distributed to the Commissioners and they  
5 can have a chance to look at them. So -- and then  
6 maybe we could go ahead and get started with another  
7 witness while the Commissioners have a chance to  
8 review that a little bit and then come back to  
9 Mr. Green.

10                   MS. PARSONS: Your Honor, while we're on  
11 this subject, I would like to bring up one other  
12 issue with respect to the HC designations and your  
13 ruling yesterday.

14                   There are several e-mails, as you know,  
15 that are part of this -- that are part of the record,  
16 and their e-mail addresses are actually indicated  
17 on -- on the part that you designated as public. And  
18 I would ask that your Honor reconsider making just  
19 the e-mail addresses public. I believe that -- that  
20 it's -- that it's not required, the names are listed  
21 and identified and Mr. -- Mr. Lewis was on the  
22 record -- public record yesterday.

23                   JUDGE DIPPELL: Mills.

24                   MS. PARSONS: Excuse me, Mr. Lewis -- or  
25 Mr. Mills -- excuse me twice -- was on the record

1 yesterday, on the public record and identified each  
2 of the individuals that was identified in the  
3 e-mails. And if we need to do that again, I don't  
4 have any objection to doing that, but I would ask the  
5 Commission to reconsider disclosing those personal  
6 e-mail addresses of those individuals.

7 In addition -- in addition, there were  
8 some documents that were released to the public as  
9 part of a Commission ruling on Monday, I believe, and  
10 I would ask that the Commission also reconsider that  
11 order and at least allow us to redact the  
12 confidential e-mail addresses of those individuals.

13 MR. MILLS: I have no problem with  
14 removing the actual e-mail addresses. I think it's  
15 important on the record that we find out who they  
16 were sent to, but I don't need to know -- I don't  
17 need -- I don't need to release the actual e-mail  
18 addresses and get them flooded with spam. But I  
19 certainly agree with that.

20 JUDGE DIPPELL: Are there -- would there  
21 be any other objection to the Commission redacting  
22 those e-mail addresses?

23 MR. CONRAD: What is it we're actually  
24 asking -- being asked to redact?

25 JUDGE DIPPELL: On -- on the e-mail

1 exhibits that were part of the whole HC controversy,  
2 there are some personal e-mail addresses spelled out.  
3 They were e-mail addresses of assistants to board of  
4 directors mostly, I believe, and the request is that  
5 those e-mail addresses be kept -- I would suggest  
6 that we just redact them from the -- from the  
7 exhibits and ...

8 MR. CONRAD: Well, I haven't checked,  
9 but the last that I was aware, it was kind of  
10 difficult to unring bells, and I think your Honor  
11 already posted those on EFIS.

12 JUDGE DIPPELL: This is true.

13 MR. CONRAD: So this is -- that's well  
14 out there, and that's in the hands of parties  
15 unknown --

16 JUDGE DIPPELL: And there will be  
17 nothing that we can do about the fact that they've  
18 been out there for three days or two days, but we  
19 can --

20 MR. CONRAD: So this is kind of like  
21 locking the barn door after the horse is gone, and it  
22 goes back to my earlier comments and questions about  
23 retroactive designation. If you want to -- if you  
24 want to do this, it's their responsibility to  
25 designate it. These are decisions that are made, and



1 go forward.

2 MS. PARSONS: Your Honor --

3 JUDGE DIPPELL: They designated the  
4 entire document as HC and the Commission is the one  
5 that released it. I think there can be some damage  
6 control. If anybody has gathered those e-mail  
7 addresses in the last 48 hours, there will be nothing  
8 we can do about it. But rather than keep them out on  
9 the Internet in perpetuity, I believe something can  
10 be done about it. If you don't have an objection  
11 other than the damage is already done --

12 MR. CONRAD: It's moot, frankly. Her  
13 attempt to do that is moot. It's over, it's done.

14 JUDGE DIPPELL: Well, I happen to  
15 disagree, so I will -- will rule that we can keep  
16 those e-mail addresses from the -- from the general  
17 public.

18 MS. PARSONS: Thank you, your Honor.

19 JUDGE DIPPELL: And Mr. Fischer, you had  
20 something else?

21 MR. FISCHER: Yes, Judge, just in the  
22 nature of housekeeping. Mr. Dottheim had asked that  
23 we produce the application and the transition  
24 agreement and one other exhibit that was related to  
25 those things. We have provided that to the court

1 reporter, 32, 33 and 34, and I just wanted to let you  
2 know that that had been done.

3 And secondly, I wanted to also mention  
4 that Mr. Chesser is in Jefferson City and available  
5 at the Commission's disposal.

6 JUDGE DIPPELL: Is he -- is he here now?

7 MR. FISCHER: Yes.

8 JUDGE DIPPELL: Are -- is Public Counsel  
9 and Ag Processing prepared to go forward with  
10 Mr. Chesser's cross-examination?

11 MR. MILLS: Sure.

12 MR. CONRAD: We have the issue of the  
13 HC, but to some extent I suppose we can.

14 MR. MILLS: We will -- we will run into  
15 the same kind of issues with him because we have some  
16 documents that are still -- I wouldn't say in limbo,  
17 but subject to Commission review and your ruling.

18 JUDGE DIPPELL: Okay. We had some  
19 discussions late yesterday about Mr. Fleener being  
20 ready and able to take the stand. Would -- is he  
21 present and --

22 MS. PARSONS: Yes, your Honor, he's here  
23 and ready to testify.

24 JUDGE DIPPELL: Okay. Well, then, to  
25 avoid the whole HC issue again, I would say -- yes,

1 Mr. Green, you may step down for now. I would say  
2 let's take a break. I'm going to give the versions  
3 that the companies gave me to review back to them to  
4 make copies, give those to the Commissioners so they  
5 can be looking at that determining their ruling on  
6 the HC, and when we come back from the break, we'll  
7 go ahead and start with Mr. Fleener.

8 CHAIRMAN DAVIS: Judge, before -- before  
9 the parties leave and before they -- before they run  
10 off, can you ask the -- can you poll the parties with  
11 a question for me?

12 JUDGE DIPPELL: Certainly.

13 CHAIRMAN DAVIS: Okay. Issue No. 5, the  
14 additional amortizations, is that purely a legal  
15 issue? Is there any issue of fact there?

16 MR. MILLS: Well, sure. I mean, there's  
17 the threshold legal issue of whether it can be  
18 done --

19 CHAIRMAN DAVIS: Right.

20 MR. MILLS: -- but then there's the  
21 factual issue about whether it should be done even --  
22 even if you get past that hurdle. We -- we -- we  
23 don't really have a whole lot on the -- on the record  
24 about why that would be such a great idea for -- for  
25 Aquila ratepayers.

1                   CHAIRMAN DAVIS: Right. Well, I guess  
2 my -- my question is, Mr. Mills, I mean, are -- are  
3 there -- is -- for you, is this -- is this an issue  
4 of -- I mean, is this a -- is this a legal issue that  
5 could be decided on the -- the pleadings should be  
6 decided on the pleadings? I haven't seen any motions  
7 for summary judgment or directed verdict on that  
8 issue or anything like that.

9                   MR. MILLS: Certainly, I think you could  
10 decide it on the pleadings. And I'm not sure that  
11 we -- that we approached it that way, but I -- I  
12 think you could.

13                  MR. CONRAD: I think, Commissioner, it's  
14 kind of one of these mixed questions. There  
15 certainly are parts of it that pertain to what the  
16 Commission can do lawfully under 393.135. What has  
17 been done in the past that's been occasionally in  
18 dispute, either in KCPL -- I don't remember if your  
19 Honor was here yesterday when Mr. Giles was on the  
20 stand, but there continues to be dispute about  
21 that -- that part of it as to what the Commission can  
22 do.

23                  But Mr. Mills is quite correct, once you  
24 get past that, there is an additional question which  
25 is a factual question, is it -- is it -- is it an

1 appropriate thing to do, is it a good thing to do.  
2 Now, obviously depending on the sequence in which you  
3 took those up, if you -- I believe your statement in  
4 the form of a question to one of the witnesses  
5 yesterday was, well, you can ask for anything but you  
6 may not get it.

7                   If there is a legal impediment to that,  
8 what the Commission finds itself unable to get over,  
9 and I think there are those that would -- would agree  
10 with that, then that kind of moots the second part of  
11 it. But I had not really thought about the idea of  
12 pushing to -- to bring that directly before the  
13 Commission at an early date. I suppose, you know,  
14 that's certainly not an unreasonable approach.

15                   But if what you're thinking is trying to  
16 shorten this up, I'm all in favor of that. I mean,  
17 it's possible that they could stipulate, I don't  
18 know.

19                   JUDGE DIPPELL: Mr. Riggins?

20                   MR. RIGGINS: That would be surprising  
21 given how things have gone, but I suppose anything's  
22 possible. From Great Plains and Kansas City Power &  
23 Light's perspective, Mr. Chairman, I think to a  
24 certain extent I agree with the comments made thus  
25 far. Within the context of the issues that have been

1 raised in this proceeding, I think to some extent  
2 there's a legal issue there. I think to some extent  
3 there's what I would characterize as a policy issue  
4 there that is, you know, if the Commission decides it  
5 has the jurisdiction or the statutory authority to do  
6 something like that, is it appropriate.

7 And I suppose to a certain extent there  
8 are some factual issues there. The -- the issue in  
9 addition to being addressed in the prefiled testimony  
10 of various witnesses has also been addressed to some  
11 extent in the prehearing briefs. And I think our  
12 expectation was, is that, you know, at the conclusion  
13 of all of the testimony and the exhibits and the --  
14 and the briefing, that the Commission would make a  
15 decision on that in the context of its final order.

16 JUDGE DIPPELL: All right, then. If  
17 there's nothing further on that issue ...

18 MR. CONRAD: He was asking --

19 JUDGE DIPPELL: Mr. Chairman, does that  
20 get your question answered?

21 CHAIRMAN DAVIS: Huh?

22 JUDGE DIPPELL: Does that get your --

23 MR. CONRAD: He has to follow up with --

24 JUDGE DIPPELL: Does that get your

25 question answered?

1 CHAIRMAN DAVIS: I think it's clear as  
2 mud.

3 JUDGE DIPPELL: Let's go ahead and take  
4 a break until ten o'clock and then we'll come back  
5 and we'll get started with Mr. Fleener. If attorneys  
6 for Aquila and Great Plains could come up here and  
7 get their redacted versions. Let's go off the  
8 record.

9 (A RECESS WAS TAKEN.)

10 JUDGE DIPPELL: Okay. We're back on the  
11 record. Go ahead, Mr. Boudreau.

12 MR. BOUDREAU: I'd like to call  
13 Mr. Fleener to the stand, please.

14 JUDGE DIPPELL: And just -- again, to  
15 clarify, when we get those redacted copies, I'm gonna  
16 give those to the Commissioners along with the  
17 motions and things, and when the Commissioners are  
18 prepared to make a ruling which will be sometime this  
19 morning, we may just stop in the middle of what we're  
20 doing and let them make their -- make their ruling.

21 So Mr. Fleener, could you please raise  
22 your right hand?

23 (THE WITNESS WAS SWORN.)

24 JUDGE DIPPELL: Thank you.

25 MR. BOUDREAU: Thank you.

1 DIRECT EXAMINATION BY MR. BOUDREAU:

2 Q. Good morning. Would you state your name  
3 for the record, please.

4 A. Richard T. Fleener.

5 Q. Mr. Fleener, by whom are you employed  
6 and in what capacity?

7 A. Aquila, and I'm the vice president of  
8 corporate development.

9 Q. Okay. And are you the same R. Thomas  
10 Fleener that caused to be filed with the Commission  
11 prefiled direct testimony which I believe has been  
12 previously marked for identification as Exhibit 14?

13 A. Yes.

14 Q. Was that -- was that document prepared  
15 by you or under your direct supervision?

16 A. Yes.

17 Q. Do you have any corrections you'd like  
18 to make to it at this time?

19 A. I do not.

20 Q. If I were to ask you the same questions  
21 as are contained in that document today, would your  
22 answers as contained therein be the same?

23 A. Yes.

24 Q. And would they be true and correct to  
25 the best of your information, knowledge and belief?



1           A.       Yes.

2                   MR. BOUDREAU: With that, I would tender  
3 Mr. Fleener for cross-examination. I'll offer his  
4 exhibit, although I understand that we still need to  
5 get a copy of that exhibit to the court reporter. So  
6 with that caveat, I'd like to offer the testimony  
7 into the record. But if you want to reserve --  
8 reserve ruling until we actually get the copy into  
9 her hands, we can do that.

10                  JUDGE DIPPELL: That's fine. Now, is  
11 Mr. Fleener appeared to schedule -- or scheduled to  
12 appear just this one instance?

13                  MR. BOUDREAU: Yes.

14                  JUDGE DIPPELL: All right. We'll  
15 just --

16                  MR. BOUDREAU: That is my understanding,  
17 which is why I'm offering it at this time.

18                  JUDGE DIPPELL: All right. And his  
19 testimony has been premarked as Exhibit No. 14.  
20 Would there be any objection to Exhibit No. 14?

21                  MR. CONRAD: We have none.

22                  MR. MILLS: (Shook head.)

23                  JUDGE DIPPELL: All right. Then I will  
24 receive it into evidence.

25                  (EXHIBIT NO. 14 WAS RECEIVED INTO

1 EVIDENCE AND MADE A PART OF THE RECORD.)

2 MR. BOUDREAU: Thank you.

3 JUDGE DIPPELL: And we can begin with  
4 cross-examination. Great Plains?

5 MR. BLANC: None, your Honor.

6 JUDGE DIPPELL: Black Hills?

7 MR. BOUDREAU: No questions, your Honor.

8 JUDGE DIPPELL: Seeing none of the other  
9 parties, Ag Processing?

10 MR. CONRAD: Yes, your Honor, thank you.

11 CROSS-EXAMINATION BY MR. CONRAD:

12 Q. Good morning, Mr. Fleener.

13 A. Good morning.

14 Q. It's been a fun couple days, hasn't it,  
15 sitting in the back of the room?

16 A. Sure.

17 Q. Look, please, at the first page, page  
18 numbered 1 of Exhibit 14 of your testimony with me,  
19 and I'd like to ask you to look down at the question  
20 and the answer that begin on line 16. Let me know  
21 when you're there.

22 A. I'm having a little bit difficult time  
23 hearing you.

24 Q. Okay. Here we go again.

25 JUDGE DIPPELL: Sorry, Mr. Conrad.

1                   MR. CONRAD: I'm not sure if it's the  
2 microphone or me.

3                   THE WITNESS: Probably my ears.

4                   MR. CONRAD: Well --

5                   JUDGE DIPPELL: No, the problem is we  
6 have these fans right above our heads and it's  
7 like ...

8                   MR. CONRAD: I usually don't have a  
9 problem being heard.

10                  JUDGE DIPPELL: I know you can be heard,  
11 Mr. Conrad.

12                  MR. CONRAD: Sometimes too well.

13 BY MR. CONRAD:

14                  Q.       Are you -- are you at page 1, line 16  
15 and following?

16                  A.       Yes.

17                  Q.       Okay. On line 18 there's a discussion  
18 about strategic initiatives for Aquila. Do you see  
19 that?

20                  A.       Yes.

21                  Q.       Help me understand what that means.

22                  A.       What that means is that I am responsible  
23 or my group is responsible for the execution of  
24 certain things that are outside of perhaps the  
25 ordinary course of utility operations. For example,

1 over the last five to six years, Aquila has been  
2 involved in a number of divestitures and strategic  
3 transactions related to those kinds of things, so my  
4 group would be responsible for those initiatives.

5 Q. Would your group have been responsible  
6 for getting into those escapades?

7 A. I don't know that I would characterize  
8 them --

9 MR. BOUDREAU: I'll -- I'll -- yeah,  
10 I'll object to the characterization.

11 BY MR. CONRAD:

12 Q. I'll -- I'll withdraw the  
13 characterization but we're talking about, I think,  
14 the -- the deregulated activities of Aquila; am I  
15 correct?

16 A. Not all of the initiatives that I've  
17 been involved in were nonregulated assets, no.

18 Q. Okay. Were some?

19 A. Some of them were, yes.

20 Q. Was your group responsible for acquiring  
21 those?

22 A. That would have been prior to my  
23 involvement with Aquila.

24 Q. Now, Mr. Fleener, let me ask you,  
25 please, to turn in your testimony to Exhibit 14. I

1 believe it is on page -- yes, page 6, a question and  
2 an answer that begin on line 11. Take -- take just a  
3 moment and look at that, and I think that carries  
4 over actually to 7, but I'm not intending to go  
5 through each of those with you.

6 A. Uh-huh.

7 Q. So do you kind of have that in mind?

8 A. Yes.

9 Q. Is it a fair statement to say that there  
10 wasn't a lot of credible, unsolicited expressions of  
11 interest in purchasing Aquila?

12 A. Yes.

13 Q. And the list of things you have that  
14 starts on page 7, stretches back -- well, really  
15 begins in July, 2006, and has one item in November of  
16 '06, and those are things, the point of which in that  
17 list, I take it, is to say, well, we -- we  
18 communicated to the financial community the potential  
19 purchasers, if you will?

20 A. Actually, the point of the testimony is  
21 to suggest that there was market speculation around a  
22 possible transaction. The -- the process that we  
23 embarked on, actually, was not public, but there was  
24 market speculation, and I think the citations there  
25 are to the news reports of that -- that speculation.

1                   I don't believe at any time during this  
2 process up until the time we announced the  
3 transaction did we ever confirm that we were involved  
4 in a strategic transaction.

5           Q.       Okay. But you -- you are standing on  
6 your testimony on line 14 and following no credible,  
7 unsolicited expressions of interest, correct?

8                   MR. BOUDREAU: Well, I'm not sure that  
9 that -- I'm not sure that that was his testimony.

10 BY MR. CONRAD:

11           Q.       Well, let's -- let's read it, then. "At  
12 no point during the process" -- at line 14, "At no  
13 point during the process did Aquila or its advisors  
14 receive any credible, unsolicited expressions of  
15 interest (that is, legitimate proposals from  
16 companies with sufficient balance sheet capability,  
17 utility experience or M&A experience), even though  
18 reports of the potential sale of Aquila existed in  
19 the marketplace." Did I read that correctly, sir?

20           A.       You did.

21                   MR. BOUDREAU: And I -- just for the  
22 record, Mr. Conrad was correct. My objection was  
23 erroneous and I apologize for that.

24                   MR. CONRAD: Your Honor, I think I need  
25 to have an exhibit marked. I don't know if it has

1    been marked previously.  It is from one of the  
2    depositions.  Let me -- and I do not, unfortunately,  
3    have copies of it because this came up, but I can get  
4    those to you later.  This would be, I guess, an HC,  
5    subject to the -- but I don't know if this is on  
6    Mr. -- Mr. Mills' list.

7                   JUDGE DIPPELL:  Okay.

8                   MR. CONRAD:  Exhibit 22.

9                   MR. MILLS:  I've got copies for you.

10                  MR. CONRAD:  Was that on your list?

11                  MR. MILLS:  Yes, I believe so.

12                  MR. CONRAD:  Mr. Mills advises me that  
13    it was on his list.

14                  JUDGE DIPPELL:  But it -- has it been  
15    previously -- previously marked as an exhibit in this  
16    hearing?

17                  MR. MILLS:  I don't believe so.  Which  
18    one is it?

19                  JUDGE DIPPELL:  Okay.  And let's see.  I  
20    don't believe this has been previously marked as an  
21    exhibit in this hearing.  Yes, this will be Exhibit  
22    301, and conditionally HC at this time.

23                  (EXHIBIT NO. 301 HC WAS MARKED FOR  
24    IDENTIFICATION BY THE COURT REPORTER.)

25                  JUDGE DIPPELL:  And Mr. Conrad, just so

1     that you know my ruling, I made this document in its  
2     entirety with regard to, except the caption, I  
3     believe, HC.

4                     MR. CONRAD:   Okay.   That being the case,  
5     since I do want to ask him something about the  
6     content, I suspect we will need to go in-camera at  
7     this point.

8                     JUDGE DIPPELL:   Okay.   I think that's  
9     what we'll do just to keep the thing -- record as --  
10    clear, and then if my ruling should get overturned, I  
11    will make this part of the transcript once again  
12    public.

13                    So let's go ahead, then, and go in an  
14    in-camera session.   If there's anyone in the room who  
15    is not allowed to hear those highly confidential  
16    information, they need to leave.

17                    (REPORTER'S NOTE:   At this point, an  
18    in-camera session was held, which is contained in  
19    Volume 6, pages 624 through 631 of the transcript.)

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1 JUDGE DIPPELL: Okay. We're back in  
2 public session. And just to confirm, Mr. Conrad, you  
3 didn't have any more questions for this witness?

4 MR. CONRAD: That is correct, your  
5 Honor.

6 JUDGE DIPPELL: Public Counsel?

7 MR. MILLS: No questions.

8 JUDGE DIPPELL: No questions. Staff?

9 MR. DOTTHEIM: Yes.

10 CROSS-EXAMINATION BY MR. DOTTHEIM:

11 Q. Good morning, Mr. Fleener.

12 A. Good morning.

13 Q. Mr. Fleener, on page 1 of your  
14 testimony, lines 12 to 14, you indicate, do you  
15 not -- do you not, that prior to your employment at  
16 Aquila, you worked for Verizon Corporation where you  
17 were involved in corporate development, finance and  
18 accounting?

19 A. That's correct.

20 Q. Did any of your activity involve mergers  
21 or acquisitions?

22 A. It did.

23 Q. Were there any specific mergers or  
24 acquisitions that you were involved in at Verizon  
25 when you were working there?

1           A.       Yes.

2           Q.       Could you identify those?

3           A.       They're numerous.  Probably the largest  
4   that I was involved in was the combination of GTE  
5   with Bell Atlantic that created Verizon.

6           Q.       And what was your involvement in that  
7   transaction?

8           A.       My involvement in that transaction, at  
9   the time I was working with our wireless organization  
10  in our corporate development group, and so I was  
11  looking -- or involved in the rationalization of a  
12  lot of overlap wireless properties.  If you're  
13  familiar with that, there were restrictions on how  
14  many megahertz of licensed spectrum you could own,  
15  and I was involved in strategic initiatives around  
16  that.

17          Q.       And were you in the employ of GTE at the  
18  time?

19          A.       At the time of that announcement, that's  
20  correct.

21          Q.       Okay.  Because there was not Verizon at  
22  that time, was there?

23          A.       That's right.  That was created with the  
24  combination.

25          Q.       Okay.  And your activity -- when you say

1 you were involved in the merger or acquisition, were  
2 you actually involved in the determination of the  
3 actual financial terms of that merger or acquisition?

4 A. I was not. That was a very close group  
5 of senior executives at GTE at the time.

6 Q. The merger or acquisition activity that  
7 you were involved in when you were with Verizon, in  
8 any of that activity were you involved in the  
9 financial terms -- the determination of the financial  
10 terms of those mergers or acquisition activity?

11 A. Yes.

12 Q. Okay. Could you identify what  
13 transaction that that would involve?

14 A. Sure. There were several transactions  
15 of smaller size assets where we were perhaps  
16 rationalizing our system and selling to another  
17 system, either some regulated telecommunications  
18 assets, some wireless systems.

19 Q. And could you specifically identify the  
20 transaction?

21 A. One off the top of my head would be the  
22 sale of an Asheville MSA to Bell Atlantic.

23 Q. And when you say "MSA," that stands for?

24 A. That's -- that's kind of the jargon used  
25 to define the market basically that the license

1 covers. Metropolitan statistical area I believe is  
2 the definition.

3 Q. And the transaction, is this wireless  
4 that you're referring to?

5 A. It was. It was a cellular licensing  
6 system.

7 Q. Were -- were all the merger or  
8 acquisition activities that you were involved with  
9 when you were at Verizon, was that involving wireless  
10 activity?

11 A. No. I -- I've been involved in  
12 everything from directories to telephone operations  
13 to wireless operations to other ancillary types of  
14 businesses that the company was involved in.

15 Q. Could you identify for us the time frame  
16 of that activity?

17 A. Sure. That would have run probably from  
18 the early '90s until the current period, or at least  
19 2001 with Verizon.

20 Q. And on page 1 of your testimony, you  
21 identify that you joined Aquila Merchant Services as  
22 vice president of corporate development in July of  
23 2001?

24 A. Yes.

25 Q. Okay. And you were vice president of

1 corporate development at Aquila Merchant Services  
2 from July of 2001 to mid-2004?

3 A. That's correct.

4 Q. And during that time frame, were you  
5 involved in merger or acquisition activity?

6 A. Yes.

7 Q. Could you identify any specific mergers  
8 or acquisitions that you were involved in?

9 A. Initially when I came on board, I was  
10 involved with the potential acquisition of  
11 CoGentrics, and then the preponderance of my activity  
12 subsequent to that transaction has involved  
13 divestiture of assets.

14 Q. And CoGentrics, could you identify  
15 CoGentrics? Is that an independent -- or was an  
16 independent power producer?

17 A. That's correct.

18 Q. And were they based in North Carolina?

19 A. That's the one, yes.

20 Q. And what specifically was the nature of  
21 your divestment activity while you were at Aquila  
22 Merchant Services from July 2001 to mid-2004?

23 A. There were a number of transactions that  
24 the company was involved in. It ran the range from  
25 transloading coal dock facilities to

1 telecommunications businesses to other nonregulated  
2 gas storage assets, things of that nature.

3 Q. And since mid-2004, you've been vice  
4 president of corporate development at Aquila?

5 A. Yes.

6 Q. And in that time frame to the present,  
7 have you been involved in merger or acquisition  
8 activity?

9 A. Yes.

10 Q. Okay. Could you identify specifically  
11 what merger or acquisitions you've been engaged in?

12 A. Sure. Most recently I was involved in  
13 what we call project quest, and you would know it  
14 here primarily through the divestiture of Missouri  
15 Gas property we had, which we sold to Empire District  
16 Gas. In addition to that, there were several other  
17 utilities that were sold, and I was the overall  
18 project lead on that project.

19 Q. The merger acquisition activity that  
20 you've been involved in as vice president of  
21 corporate development, has that been all of a  
22 divestment nature?

23 A. With the exception of the CoGentrics  
24 acquisition, that's correct.

25 Q. And then CoGentrics goes back to when

1 you were vice president of corporate development for  
2 Aquila Merchant Services?

3 A. That's true.

4 Q. So again, in your time with Aquila,  
5 either Aquila Merchant Services or Aquila, Inc., the  
6 only actual acquisition that you've been involved  
7 with was the CoGentrics project?

8 A. As I recall, that's correct.

9 Q. And was the -- was CoGentrics ever  
10 actually acquired by Aquila Merchant Services?

11 A. The transaction did not close. There  
12 was a contract to purchase, but it failed to close.

13 Q. Mr. Fleener, have -- have you been  
14 offered or do you know whether you're being offered a  
15 position with GPE or KCPL after the merger?

16 A. I'm losing my job.

17 Q. Mr. Fleener, have you been involved with  
18 the GPE or KCPL merger integration team?

19 A. Only to the high level extent of  
20 satisfying the conditions to close the transaction,  
21 so strictly speaking, no; if you talk about  
22 integration, no.

23 Q. I'd like to refer you again to your --  
24 your testimony, page 2, lines 6 and 7. And you make  
25 a reference there to the possibility of a strategic

1 transaction.

2 A. Yes.

3 Q. Could you identify what that strategic  
4 transaction was?

5 A. I believe that Mr. Green testified, and  
6 this is basically a recollection of what he has  
7 shared, in that he had received inquiries and I  
8 believe also had a conversation with Great Plains.

9 Q. I'd like to refer you to page 5 of your  
10 testimony, lines 18 and 19, where you make reference  
11 to the Great Plains/Black -- Black Hills offer that  
12 was submitted in late November 2006. Have you  
13 yourself seen that offer?

14 A. Yes.

15 MR. DOTTHEIM: May I approach the  
16 witness?

17 JUDGE DIPPELL: Yes.

18 BY MR. DOTTHEIM:

19 Q. Mr. Fleener, I'm gonna hand you what has  
20 been marked as Exhibit 102 HC, so I anticipate we're  
21 gonna need to go in-camera, but I'm first gonna ask  
22 you if you can identify that -- that document. I --  
23 I have two copies of it. We received two copies, one  
24 copy from Aquila and one copy from Great  
25 Plains/Kansas City Power & Light. And the documents,



1 as you will see, look a little bit differently, but  
2 the contents are the same.

3 JUDGE DIPPELL: I'm sorry, Mr. Dottheim.  
4 Which -- which document are you --

5 MR. DOTTHEIM: It's -- it's 102 HC.

6 JUDGE DIPPELL: Okay. Thank you.

7 BY MR. DOTTHEIM:

8 Q. And Mr. Fleener, the -- the two  
9 documents that I've handed you, if I understand  
10 correctly, the one that's been marked 102 HC does not  
11 show a letterhead on it and does not show a signature  
12 on it on the signature line.

13 And the second document that's been  
14 handed to you does -- does show a -- a letterhead of  
15 Great Plains Energy, and shows a signature of  
16 M. J. Chesser. Do you recognize either one of those  
17 documents?

18 A. I can't positively identify them, but my  
19 expectation is that the letter dated November 15th  
20 would have been transmitted to Aquila electronically  
21 through our investment bankers to whom it's addressed  
22 and would -- so that one -- I'm generally familiar  
23 with them, but I couldn't positively identify them.

24 Q. Okay. Can you verify that the  
25 contents --

1 MR. BOUDREAU: Could I just interrupt?

2 And I apologize --

3 JUDGE DIPPELL: Go ahead, Mr. Boudreau.

4 MR. BOUDREAU: -- to Mr. Dottheim. Is  
5 Mr. Fleener looking at two different documents?

6 I'm -- I'm having trouble following. I just wanted  
7 to make sure that I'm looking --

8 THE WITNESS: Yes. Yes, I am.

9 MR. DOTTHEIM: He's looking at those two  
10 documents.

11 MR. BOUDREAU: Same two?

12 MR. DOTTHEIM: Looking at the same two  
13 documents.

14 MR. BOUDREAU: Thank you. I apologize.  
15 I apologize. I just wanted some clarity.

16 MR. DOTTHEIM: Yeah.

17 BY MR. DOTTHEIM:

18 Q. And which -- Mr. Fleener, I'll just  
19 direct you, then, to the one you've identified which  
20 is the November 15th document, I believe, which is  
21 the one that's been marked Exhibit 102 HC.

22 A. Yes.

23 Q. Do you recognize that or accept that as  
24 the -- the document that -- that you referred to in  
25 your testimony on page 5 as the offer from Great

1 Plains/Black Hills submitted in November 2006?

2 A. Again, I can't positively identify it as  
3 the one that I'm referring to there. They look very  
4 similar, so nonbinding indication of interest.

5 Q. I'm going to direct you to page 2 and  
6 the portion of that document that -- that has not  
7 been designated HC which has been marked as  
8 section 5, Regulatory Strategy.

9 A. I see it.

10 Q. Okay. Do you recognize that section?

11 A. Yes.

12 Q. Okay. And so you recognize that section  
13 from the -- the offer that you referred to that was  
14 submitted by Great Plains and Black Hills in November  
15 2006?

16 A. Again, I can't positively identify this  
17 as the letter we actually received. I didn't produce  
18 that document. And I'm going to look at the other  
19 one to see if it's similar in fashion. If they're  
20 the same language, which I don't know if they are,  
21 then, yes. I --

22 Q. Please take a look at them.

23 A. Okay. There appears to be some  
24 differences, so I can't tell you.

25 Q. What are the differences that you've

1 identified?

2           A.       I did not read them, but I'm just  
3 looking at the formatting, and the first paragraph of  
4 section 5 on the non-letterhead document seems to  
5 have fewer lines than the first paragraph of the  
6 letterheaded document, and that may be a formatting  
7 issue. If you'd like me to take some time to read  
8 them all --

9           Q.       Yes, please.

10          A.       -- I'd be happy to do that.

11          Q.       Yes, would you?

12          A.       Okay.

13                 JUDGE DIPPELL: While Mr. Fleener takes  
14 the chance to read that, I'll just ask, do we have  
15 the redacted copies from the parties?

16                 MS. PARSONS: Yes, your Honor.

17                 JUDGE DIPPELL: If you could bring me  
18 four copies of those. And do you know if Great  
19 Plains has their copies yet?

20                 MR. BLANC: My understanding is they're  
21 being reproduced now.

22                 JUDGE DIPPELL: Okay. As soon as he  
23 gets those, if you could have him bring four copies  
24 to me so I can give those to the Commissioners. So  
25 he can compare them with the originals --

1 MR. BLANC: Yes, your Honor.

2 JUDGE DIPPELL: -- and see if they want  
3 to -- what they want to do with that.

4 THE WITNESS: I'm finished.

5 BY MR. DOTTHEIM:

6 Q. Yes.

7 A. Did you have a question?

8 Q. Yes. They are not the same document,  
9 are they?

10 A. That's correct.

11 MR. DOTTHEIM: Now, at this time I'd  
12 like to have marked the -- the other document, the  
13 document which is on the Great Plains letterhead  
14 which is actually signed by Mr. Chesser.

15 JUDGE DIPPELL: And have we -- have  
16 we -- we haven't previously marked that document --

17 MR. DOTTHEIM: No, the other document.

18 JUDGE DIPPELL: -- but it is the subject  
19 of the HC motions, correct?

20 MR. DOTTHEIM: The other document,  
21 the -- the earlier document, November 15th --

22 JUDGE DIPPELL: Right.

23 MR. DOTTHEIM: -- has been marked.

24 JUDGE DIPPELL: Okay. The next Staff  
25 exhibit number is 121, and that will be conditionally

1 marked HC, I believe.

2 (EXHIBIT NO. 121 HC WAS MARKED FOR  
3 IDENTIFICATION BY THE COURT REPORTER.)

4 MR. DOTTHEIM: If I could have a moment,  
5 please. Thank you. Mr. Fleener, I have no further  
6 questions and I'd like to offer Exhibit 121 HC.

7 JUDGE DIPPELL: Would there be any  
8 objections to Exhibit 121 HC?

9 MR. BOUDREAU: No.

10 JUDGE DIPPELL: I'm assuming that  
11 there's a continuing objection as to the HC nature of  
12 those items subject to my ruling?

13 MR. MILLS: Yes.

14 MR. CONRAD: Your Honor, I do have one  
15 clarity, I guess. This is with respect to what's  
16 been marked as 121 HC. On the second page,  
17 paragraph 5 --

18 JUDGE DIPPELL: Mr. Conrad, we need you  
19 to speak into the microphone.

20 MR. CONRAD: I'm sorry. On the second  
21 page on 121 HC, paragraph 5, there is some  
22 underscoring. And my question simply relates to  
23 whether that's as it was provided to Staff or whether  
24 that's someone else's, and perhaps Mr. Dottheim can  
25 respond there just so that's clear.

1 JUDGE DIPPELL: Mr. Dottheim?

2 MR. DOTTHEIM: Mr. Conrad, I don't -- I  
3 don't know the answer to that. I can attempt to  
4 obtain an answer for you, but that's -- that's how I  
5 obtained it. It had that underscoring on it.

6 MR. CONRAD: That's fine. I just -- I  
7 just wondered if that was part of the original  
8 document or something that had been added. Thank  
9 you.

10 JUDGE DIPPELL: Mr. Boudreau, do you  
11 want to make a comment?

12 MR. BOUDREAU: Actually, I think  
13 Mr. Conrad's inquiry is a good one. I was somewhat  
14 curious about the same -- same thing, but if there's  
15 no answer to it, then I guess there's just no answer  
16 to it.

17 MR. DOTTHEIM: I will attempt to obtain  
18 an answer to that.

19 MR. BOUDREAU: Okay. Thank you.

20 JUDGE DIPPELL: Okay. Then seeing no  
21 other objection besides the HC designation, I will  
22 enter this into evidence.

23 (EXHIBIT NO. 121 HC WAS RECEIVED INTO  
24 EVIDENCE AND MADE A PART OF THE RECORD.)

25 JUDGE DIPPELL: And I'm sorry. You said

1 that was all your questions, Mr. Dottheim?

2 MR. DOTTHEIM: Yes, yes.

3 JUDGE DIPPELL: All right, then. Are  
4 there questions from the Bench for Mr. Fleener?  
5 Commissioner Murray?

6 COMMISSIONER MURRAY: No questions,  
7 thank you.

8 JUDGE DIPPELL: Commissioner Jarrett?

9 COMMISSIONER JARRETT: No questions.

10 JUDGE DIPPELL: Chairman Davis?

11 CHAIRMAN DAVIS: Will this witness be  
12 back?

13 JUDGE DIPPELL: No.

14 QUESTIONS BY CHAIRMAN DAVIS:

15 Q. Good morning, Mr. Fleener.

16 A. Good morning.

17 Q. Okay. Your direct testimony, do you  
18 have a copy of that in front of you?

19 A. I do.

20 Q. Okay. Page 9, roman numeral VII,  
21 Financial Questions.

22 A. Yes.

23 Q. Okay. You reference the materials  
24 prepared by Blackstone, Lehman Brothers and EviCorp  
25 that were attached as an exhibit, schedule 14 A filed



1 with the SEC by Aquila on March 7, 2007; is that  
2 correct -- and then you've got a -- you've got a --  
3 is that a web site citation there?

4 A. It is. That's the SEC's web site.

5 Q. And I believe I've asked Mr. Giles some  
6 questions about this. Were you -- were you present  
7 in the room for my questions to Mr. Giles?

8 A. I was.

9 Q. Okay. So you ought to be familiar with  
10 this issue. If you go back and look at the sheet  
11 prepared by Blackstone, which in that SEC filing  
12 is -- I believe it's -- I'm gonna call it A 14. Does  
13 that sound right?

14 A. Yeah, I believe I have a copy here with  
15 me. If you'd bear with me, I'll -- I'll get it. I  
16 have the document now.

17 Q. Okay. Now, is -- what is that -- what  
18 does that schedule there that's, I guess it's page A  
19 14 represent?

20 A. I apologize. My printout may have not  
21 come out on the same pages as yours.

22 Q. I'm looking at it on the Internet,  
23 so ...

24 A. Okay. This is part of the fairness  
25 opinion that was --

1 Q. Uh-huh.

2 A. -- presented to the board of directors  
3 of Aquila by the Blackstone Group.

4 Q. Right.

5 A. And the particular schedule to which  
6 you're referring is one of the components that they  
7 used to determine the value of Aquila's shares.

8 Q. Okay.

9 A. And that particular reference which  
10 you're citing there is, if you look at the paragraph  
11 ahead entitled Sum of the Parts Analysis, I believe  
12 their fairness opinion looked at several different  
13 ways of determining value.

14 Q. Uh-huh.

15 A. As you know, value's more of an art than  
16 a science, and I think as part of their determination,  
17 they used sum of the parts analysis to derive a range  
18 of value for the company.

19 Q. Right. Now, if we were gonna -- gonna  
20 use this as our basis, you know -- and did --  
21 somewhere else in this document I believe there was  
22 an adjustment made for the Black Hills purchase, or  
23 there was -- there was also a range offered for Black  
24 Hills; is that correct?

25 A. I don't believe so. I don't believe

1     there was fairness rendered on that transaction.

2             Q.     You don't believe there was -- there's a  
3     fairness rendered on that?

4             A.     I think it also contains a fairness on  
5     Great Plains, but I don't recall a fairness on the  
6     sale of the assets.

7             Q.     Okay. Okay. But this schedule here,  
8     you know, in terms of the sum of the parts, if you  
9     look down at the value per share, it lists it at a  
10    low of \$2.50 per share and a high of \$3.56 a share.

11            A.     Yes, that's what the schedule said.

12            Q.     Okay.

13            A.     If I may, it may be helpful for us to  
14    consider another schedule, and that would be the  
15    schedule that's found on -- on page A 5.

16            Q.     Uh-huh.

17            A.     Which is a diagram which depicts all of  
18    the various analyses that was conducted by the  
19    Blackstone Group in determining their range of value  
20    for fairness consideration.

21            Q.     Okay.

22            A.     Sum of the parts would just be a way of  
23    corroborating how they were thinking about their  
24    value, one of the elements. And so it's probably  
25    appropriate to consider all of the -- the various

1 methods that they used.

2 Q. Okay. And so -- so A 5, you have, what  
3 is it, "undisturbed, current, implied consideration,"  
4 and is that "present value of implied offer"?

5 A. Yes. What -- what I would direct your  
6 attention to would be along the left-hand column  
7 there's several value ranges on that schedule,  
8 including the sum of the parts analysis to which you  
9 were referring which was the 2.50 to 3.60. You may  
10 see the bar chart. It's the second to last just  
11 above Discounted Cash Flow. And then they've also  
12 done a publicly traded comp and a precedent  
13 transaction column branch.

14 Q. So you're saying that somehow this  
15 analysis is -- is -- you've got the DCF analysis  
16 based on a base case sensitivity, you've got  
17 selectively public-traded comparable companies'  
18 analysis --

19 A. Correct.

20 Q. -- in the last 12 months trading range?

21 A. Yes. All of those for reference. I  
22 think the last 12-month trading range is, you know,  
23 actual historical information. The last 12-month  
24 trading range to the date is also offered, and then  
25 the others are the results of their analysis, the

1 four bottom bars.

2 Q. Well, Mr. Fleener, when we set rates, we  
3 set rates here based on -- on book value, don't we?

4 A. I'm not a regulatory person, but that's  
5 my understanding.

6 Q. That's -- that's your -- that's your  
7 impression. So -- although we use the DCF analysis  
8 to help us calculate return on equity for  
9 shareholders, and I guess this gets down to is, you  
10 know, should -- should stock price really be a  
11 consideration, and if so, why -- or why shouldn't we  
12 be looking more at the physical value of the assets  
13 and the liabilities here?

14 A. What -- what is the purpose of your  
15 inquiry?

16 Q. Well, I'm just saying, it's -- you  
17 know -- I mean, we're getting -- you've proffered  
18 this exhibit -- you know, the A 5 Exhibit, but I  
19 guess tell me why -- tell me why you think that --  
20 that bar chart is more relevant than the sum of the  
21 parts analysis on A 14.

22 A. Sure. The purpose of the fairness  
23 opinion is, again, to provide the board with comfort  
24 that the value being offered by Great Plains is fair  
25 from a financial point of view to shareholders.

1 Q. Okay.

2 A. And --

3 Q. You can just stop -- you can just stop

4 right there.

5 A. Okay.

6 Q. Okay. Well, if you look back at A 14 --

7 A. Yes.

8 Q. -- you see what the valuation is there

9 at the sum of the parts analysis on page A 14.

10 A. I do.

11 Q. Okay. I mean, those -- those are the

12 numbers that, you know, if you're a shareholder,

13 you're gonna look at that and say somebody's offering

14 me 4.54 a share, then -- then that's a good deal.

15 Isn't that -- isn't that correct?

16 A. Well, the market --

17 Q. Yes, no, maybe, I don't know?

18 A. If my determination of the value of

19 Aquila were based on a sum of a parts analysis --

20 Q. Uh-huh.

21 A. -- then I would agree with your

22 conclusion, but I would suggest that there's more to

23 understanding the value of the company than a sum of

24 the parts analysis. In fact, it's not a preferred

25 method. It's used to corroborate -- generally

1 speaking, analysts will use a discounted cash flow  
2 analysis of the company.

3 And then they will offer even multiple  
4 types of analysis which is the sum of the parts  
5 analysis as well as comparable company analysis which  
6 they've provided here and precedent transaction  
7 analysis.

8 Q. Okay. Mr. Fleener, have you ever heard  
9 of, you know, when looking at utility acquisitions,  
10 utilities placing a value on a -- on a per-customer  
11 or per-meter basis?

12 A. I'm not familiar with that, no.

13 Q. You're not familiar with that at all?

14 A. I'm not.

15 Q. Okay. Do you recall what Aquila's --  
16 and you're not a regulatory person, right?

17 A. I'll try my best.

18 Q. Okay. Do you -- do you know what --  
19 what Aquila's rate base plant in service is  
20 approximately?

21 A. When -- when you speak of Aquila, what  
22 do you mean? Aquila has --

23 Q. Missouri -- Aquila-MPS and Aquila --

24 A. Missouri -- Missouri --

25 Q. St. Joe Power & Light.

1           A.       Okay.  Missouri domicile as --

2           Q.       Just Missouri -- Missouri domiciled  
3   assets.

4           A.       I believe Mr. Green and Mr. Empson  
5   testified to about \$1.2 billion of rate base.

6           Q.       And --

7           A.       I believe also that that's consistent  
8   with, or a relatively close proxy to what our net  
9   property plant and equipment is for our electric  
10  companies.

11          Q.       Uh-huh.

12          A.       But that would also include our Colorado  
13  Electric.  We segment report between gas and  
14  electric, so I know the net property plant equipment  
15  for gas is about \$600 million and for our electric  
16  company, about 1.2 billion.

17          Q.       Okay.  Going back to the sum of the  
18  parts analysis real quick, isn't it -- isn't it true  
19  that some of the hedge funds, when they -- when they  
20  value utility properties, do use the sum of the parts  
21  analysis?  Because the sum of the parts can be worth  
22  more than the entity as a whole, and it's possible  
23  that if you were able to bust up those parts, you  
24  could extract more value from those parts  
25  individually than you could from the -- from the



1 whole unit?

2 A. That certainly is an analysis that hedge  
3 funds would perform, correct.

4 Q. Okay. But in this case you're saying  
5 that the parts are worth significantly less and that  
6 we need to look at other -- other factors, correct?

7 A. No, I don't think I said that.

8 Q. No? Okay. So we can look at the sum of  
9 the parts?

10 A. I think it's one factor that should be  
11 considered when determining whether or not a fair  
12 price is being paid for the company. I think we need  
13 to make --

14 CHAIRMAN DAVIS: That's acceptable.

15 Thank you, Mr. Fleener. No further questions.

16 JUDGE DIPPELL: Thank you.

17 QUESTIONS BY JUDGE DIPPELL:

18 Q. I just have one question for you,  
19 Mr. Fleener, and that's also on page 9 of your direct  
20 testimony at line 5. Well, that first sentence you  
21 referred to "Aquila's merger proxy statement will --  
22 which will be filed when it is available." Do you  
23 know, is that the proxy statement that was filed as a  
24 late attachment to your application, or do you know  
25 whether it might be --

1           A.       I don't know, but I would imagine that  
2   it is, yes.

3           Q.       Okay.

4           A.       It's -- it's available on the web site,  
5   that SEC web site. And if you're an Aquila  
6   shareholder, you would have received one.

7           Q.       And the reference to the SEC web site  
8   that you make on that page, those are all public  
9   documents?

10          A.       That's correct.

11          Q.       And they're filed as a matter of course  
12   with the SEC?

13          A.       That's my understanding, yes.

14                   JUDGE DIPPELL: All right. I just  
15   wanted to clarify one point with the attorneys, one  
16   evidentiary point. Since Mr. Fleener incorporates by  
17   reference that SEC filing, if the Commission uses  
18   that as evidence in its deliberations, is it  
19   considered part of -- I guess I'm asking the  
20   question, is it considered part of his testimony?

21                   MR. BLANC: Your Honor, as a point of  
22   clarification, that is the same document that we  
23   late-filed as an exhibit -- or as an attachment to  
24   the application --

25                   JUDGE DIPPELL: Okay.

1                   MR. BLANC:  -- and that we provided the  
2   court reporter with a copy today.  I believe it's  
3   been separately marked.

4                   JUDGE DIPPELL:  Okay.  Well, that  
5   clears -- clarifies the proxy statement --

6                   MR. DOTTHEIM:  Judge --

7                   JUDGE DIPPELL:  -- but it doesn't  
8   clarify with regard to the March 7th filings at the  
9   SEC.

10                  MR. DOTTHEIM:  Judge, I think you've,  
11   frankly, raised something that's problematic which  
12   has crept into filings made with the Commission, that  
13   witnesses have started doing that's been occurring  
14   for a couple of years now, is just making references  
15   to web sites.

16                  And I think at least some of us believe  
17   there's absolutely no assurance that that -- that  
18   page or that -- what is shown for that address stays  
19   the same document.  So it's -- I think it's a -- it's  
20   a --

21                  JUDGE DIPPELL:  Would you --

22                  MR. DOTTHEIM:  -- real question, a  
23   problem of a generic nature that you're actually  
24   raising.  But it certainly -- it certainly is a good  
25   question in this instance.

1 BY JUDGE DIPPELL:

2 Q. Mr. Fleener, you have a copy of this  
3 filing, you said, with you; is that correct?

4 A. Yes, that's right.

5 Q. And that -- how large is that filing?

6 A. I think that's the reason we didn't  
7 attach it to the testimony. It's probably in total  
8 100 pages.

9 Q. The copy you have is actually in the  
10 form of a bound --

11 A. Well, I believe the reference --

12 Q. The --

13 A. -- that I have here is an early filing,  
14 preproxy filing that we made --

15 Q. Okay.

16 A. -- which included a series of questions  
17 and answers as well as the fairness opinions rendered  
18 by the advisors to Aquila, so it had three fairness  
19 opinions as well as, I don't know, probably a  
20 ten-page Q&A which just provided more disclosure  
21 around the rationale for the transaction. And all of  
22 that, I think, was later incorporated in the bound  
23 proxy that was issued in August, late August.

24 JUDGE DIPPELL: And the bound one is the  
25 one that has been filed; is that correct?

1 MR. BLANC: Correct, your Honor.

2 JUDGE DIPPELL: Okay. Would there be  
3 any objection to the Commission taking official  
4 notice of the documents at the SE -- the public  
5 documents at the SEC as referenced in Mr. Fleener's  
6 testimony?

7 THE WITNESS: Or -- or if it's -- excuse  
8 me, Judge. If it would be more helpful, I could  
9 amend my testimony just to refer now to the bound  
10 document. It just wasn't available at that time, the  
11 fully bound document that's been, I guess,  
12 late-filed.

13 MR. BOUDREAU: To deal with the Bench's  
14 question, Aquila doesn't have any objection to the  
15 Commission taking official notice of that filing with  
16 the SEC.

17 JUDGE DIPPELL: I guess I may be  
18 slightly confused, Mr. Fleener. Are you saying that  
19 the document which you've signed as of March 7th, if  
20 we go to that web site today, that that is now the  
21 bound version?

22 THE WITNESS: No. I believe that that  
23 will keep the historical reference there so --

24 JUDGE DIPPELL: Okay. So -- so I --

25 THE WITNESS: Just trying to be helpful.

1 JUDGE DIPPELL: That's fine. We've  
2 already got the bound version in the record. So is  
3 there any other -- any -- I didn't hear any  
4 objections to the Commission taking official notice  
5 of the document as cited in Mr. Fleener's testimony.

6 (NO RESPONSE.)

7 JUDGE DIPPELL: All right, then. The  
8 Commission will take official notice of that  
9 document.

10 Are there any further cross-examination  
11 questions based on questions from the Bench? From  
12 Great Plains?

13 MR. BLANC: No, your Honor.

14 JUDGE DIPPELL: Black Hills?

15 MR. DeFORD: None, your Honor.

16 JUDGE DIPPELL: Ag Processing?

17 MR. CONRAD: Nothing further, your  
18 Honor.

19 JUDGE DIPPELL: Public Counsel?

20 MR. MILLS: No.

21 JUDGE DIPPELL: Staff?

22 MR. DOTTHEIM: No.

23 JUDGE DIPPELL: Is there redirect from  
24 Aquila?

25 MR. BOUDREAU: No, no -- no further

1 questions for Mr. Fleener, thank you.

2 JUDGE DIPPELL: Mr. Fleener, this is a  
3 first in this hearing, but I believe you are  
4 completed in one sitting and may be excused.

5 THE WITNESS: Thank you, Judge.

6 JUDGE DIPPELL: All right. Do we  
7 have -- do we have copies of --

8 MR. BOUDREAU: I have a copy of -- I  
9 have a copy of Mr. Fleener's testimony to give to the  
10 court reporter.

11 JUDGE DIPPELL: Okay. Does GPE have  
12 copies of their redacted versions? Is that what I  
13 saw coming in?

14 MR. BLANC: Yes, your Honor, I believe  
15 we have copies, but I guess what just transpired with  
16 respect to Hearing Exhibit 121 HC, we may have one  
17 additional clarification, and we would just state for  
18 the record that the confidential treatment of 121 HC  
19 would be the same as 102 HC, and specifically that  
20 numbered paragraphs 1, 7 and 9 would remain HC. And  
21 we can provide a redacted copy of 121 HC if that  
22 would be helpful.

23 JUDGE DIPPELL: I don't think it will be  
24 necessary for the Commissioners' ruling, but if  
25 the -- I will just amend that into my ruling and make

1 the same ruling for that document as I did for 102 HC  
2 and then the Commissioners can take it up.

3 MR. BLANC: Thank you, your Honor.

4 MS. PARSONS: Your Honor, if I could  
5 just clarify. Exhibit 121 HC was part of the Aquila  
6 HC documents, so when I submitted my packet, I  
7 included the references that Great Plains Energy  
8 included in its brief. And so I did redact those  
9 same paragraphs --

10 JUDGE DIPPELL: Okay.

11 MS. PARSON: -- consistent with the --

12 JUDGE DIPPELL: Okay.

13 MS. PARSON: -- Commission's order.

14 JUDGE DIPPELL: Thank you. So we have  
15 copies of GPE. You went to get them; is that --

16 MR. BLANC: That's correct.

17 JUDGE DIPPELL: Okay. The sooner I can  
18 get those to the Commissioners, the sooner they can  
19 make their ruling and we can get this all  
20 straightened out.

21 MR. BLANC: Actually, it appears they're  
22 here.

23 JUDGE DIPPELL: Okay. Thank you.

24 MR. BLANC: Over here?

25 JUDGE DIPPELL: No, if you could just



1 give me four copies for the Commissioners who are  
2 gonna be -- so they can review.

3 (EXHIBIT NO. 14 WAS MARKED FOR  
4 IDENTIFICATION BY THE COURT REPORTER.)

5 JUDGE DIPPELL: Okay. Does Aquila have  
6 one more version of its -- one more copy of its  
7 redacted version?

8 MS. PARSONS: Yes, your Honor.

9 JUDGE DIPPELL: Let's go ahead and take  
10 a short break so I can get the Commissioners their  
11 versions and get it straightened out. Let's break  
12 until 25 till.

13 (A RECESS WAS TAKEN.)

14 JUDGE DIPPELL: All right. I think the  
15 Commissioners are still needing a little bit more  
16 time where they can make their ruling, so we're gonna  
17 continue on and -- but I hope that the Commissioners  
18 will get a chance to do that before we break for  
19 lunch.

20 So as soon as they've had enough time to  
21 look at the documents, then they'll let me know  
22 and -- and we'll break for that ruling. Yes,  
23 Mr. Conrad?

24 MR. CONRAD: In the spirit of the  
25 housekeeping, I think I had mentioned to you --

1 JUDGE DIPPELL: Oh, yes.

2 MR. CONRAD: -- this morning that I had  
3 had a chance to go through -- do you have that  
4 handy -- the Oligschlaeger testimony. I'm not even  
5 gonna attempt to spell it. This was -- I think where  
6 we left this was Public Counsel had wanted the  
7 entirety of this document which is about, looks like  
8 57 pages more or less, not counting the affidavits  
9 and a schedule of the cases the witness has testified  
10 in.

11 And I objected to the wholesale  
12 admission of that. I have since been able to talk  
13 with Mr. Dottheim and with Ms. Parsons for Aquila,  
14 and I don't know if I'm -- if I'm expressing this  
15 correctly, but while I would retain my objection, the  
16 basis for that is this is from Case EM-2000-292 which  
17 is obviously old enough to not have the four digits  
18 on the last segment of the numbers, and happens to be  
19 the AGP case or the underlying Commission case that  
20 the Supreme Court dealt with.

21 It has a whole bunch of stuff in it  
22 that's really not relevant to this -- to this  
23 proceeding in total without commenting on the  
24 particular selections. I thought maybe what we could  
25 do is, since I had made the objection, is I would --

1 I would maintain that objection but recede from it in  
2 recognition that -- recede from it in portion so that  
3 Aquila could have the context of the material that  
4 Mr. Dottheim had referred to, which I believe was  
5 what Ms. Parsons had framed her concern around.

6 And if that is an acceptable way to  
7 proceed, then I would receive from the objection to  
8 the notice or official notice or whatever it was as  
9 to pages 9 and 10, pages 20 and 21, pages 26 and 27  
10 and pages 47 through 49 inclusive.

11 And I was hopeful that that would give  
12 Ms. Parsons -- she'll have to speak to that -- I've  
13 visited with her but I haven't asked her really for a  
14 commitment -- that that will give her the context  
15 that she feels she needs and get us by this hiccup.

16 JUDGE DIPPELL: Ms. Parsons, your  
17 response?

18 MS. PARSONS: I think Mr. Conrad's  
19 proposal sounds reasonable. I would like to take  
20 maybe over lunch just the opportunity to look at the  
21 passages and review the testimony that came out on  
22 the record and just make sure we've covered it all.

23 JUDGE DIPPELL: Okay. Well, then, I'll  
24 leave that --

25 MR. CONRAD: That's acceptable.

1 JUDGE DIPPELL: -- in limbo until after  
2 our lunch break.

3 MR. CONRAD: Thank you.

4 JUDGE DIPPELL: Thank you, Mr. Conrad,  
5 for bringing that back. Are there any other  
6 housekeeping issues like that that we need to take  
7 care of?

8 COMMISSIONER MURRAY: Just for the  
9 record, I am ready to proceed --

10 JUDGE DIPPELL: Okay.

11 COMMISSIONER MURRAY: -- if you're  
12 waiting for comments from us.

13 JUDGE DIPPELL: Okay. I -- I understood  
14 all of the -- I was actually waiting for Commissioner  
15 Jarrett. Not to put him on the spot, but --

16 COMMISSIONER JARRETT: I'm ready.

17 JUDGE DIPPELL: Oh, you're ready, okay.  
18 Well, now I'm gonna wait for the Chairman to come  
19 back in. So -- so when the Chairman comes back in,  
20 we'll -- we'll go ahead with that. I'm not sure  
21 where he stepped out or how long he's gonna be out.  
22 Who's our next witness after Mr. Fleener?

23 MR. ZOBRIST: Well, we brought  
24 Mr. Chesser back this morning, Judge, so he's  
25 available.

1 JUDGE DIPPELL: Right. And so we're  
2 waiting for -- can we go ahead and get started with  
3 Mr. Chesser's cross-examination or will we run into  
4 the HC problem immediately? I'm looking at you,  
5 Mr. Mills, because you're next.

6 MR. MILLS: I noticed that. I -- I  
7 certainly --

8 JUDGE DIPPELL: Or Mr. Conrad is next  
9 up, I guess.

10 MR. MILLS: Okay. I have questions for  
11 Mr. Chesser, and some of them will be non-HC.

12 JUDGE DIPPELL: Okay. And Mr. Conrad,  
13 can we jump -- go ahead and jump in with Mr. Chesser?

14 MR. CONRAD: I -- I think in going  
15 through this, probably the bulk of what I'm going to  
16 be -- going to be doing is HC-based, at least if  
17 that, you know, is where that stands. There  
18 obviously would be material that you would go through  
19 in that that -- on an -- on an -- on an individual  
20 basis might not actually be HC, but the areas that  
21 we'd be going into would be HC because they'll  
22 involve those documents.

23 JUDGE DIPPELL: So you're saying it  
24 would be problematic to just bring him up and get  
25 started before the --

1                   MR. CONRAD: I'd -- it's -- we'd be  
2 taking a lot of time in and out.

3                   JUDGE DIPPELL: Okay.

4                   MR. CONRAD: Of course, it's my  
5 preference that we be as public as much as possible,  
6 but it's just not feasible to organize the documents  
7 that way.

8                   JUDGE DIPPELL: Would there be a problem  
9 with Mr. Mills starting before Mr. Conrad?

10                  MR. CONRAD: If he is ready to go and  
11 has not HC material, I have certainly no problem with  
12 that.

13                  MR. MILLS: I have some here somewhere,  
14 I can probably dig it out. So are we gonna go -- are  
15 we -- just so I know, are we gonna go to Mr. Chesser  
16 next and then do Mr. Chesser until he's done, or are  
17 we just going to bring him up for a few minutes and  
18 then go back to Mr. Green?

19                  JUDGE DIPPELL: If I bring him up, we'll  
20 do him until he's done.

21                  MR. MILLS: Okay. I would prefer to  
22 continue on with Mr. Green, but --

23                  (MULTIPLE SPEAKERS.)

24                  JUDGE DIPPELL: Okay. Time out, time  
25 out. I'm speaking. I think what we'll do is break.

1 I'll go find the Chairman and we'll make the ruling.

2 Let's go off the record.

3 (DISCUSSION HELD OFF THE RECORD.)

4 JUDGE DIPPELL: Okay. Let's go back on  
5 the record. All right. I -- the Commissioners --  
6 four of the Commissioners are here and we're ready to  
7 take up Mr. Mills' motion that I poll the Commission  
8 and have them make a decision regarding the motions  
9 to declassify.

10 So Mr. Chairman, would you like to take  
11 this up as a group or go through document by  
12 document? Do you have a preference?

13 CHAIRMAN DAVIS: I don't necessarily --  
14 I don't necessarily have a -- have a preference.

15 JUDGE DIPPELL: Well, I'll just let you  
16 treat this as if it's an agenda item and call it for  
17 a vote or whatever -- however you want to do that.

18 CHAIRMAN DAVIS: Well, in my opinion,  
19 the redactions were -- were overbroad, and after -- I  
20 certainly would have not redacted anything in No. 5,  
21 I would not have redacted anything in No. 7, you  
22 know, and -- you know, after a while, I mean, just  
23 the blanket -- the blanket deletions I think defeat  
24 the purpose. I mean, you know, in some of these I  
25 would have maybe redacted the identity of the

1 parties, but, you know, in the end I'd just open  
2 everything and be done with it.

3 JUDGE DIPPELL: Is there additional  
4 Commissioner discussion?

5 CHAIRMAN DAVIS: See what the rest of  
6 them want to do.

7 JUDGE DIPPELL: Commissioner Murray?

8 COMMISSIONER MURRAY: Yes, Mr. Chairman  
9 and Judge, I have reviewed each one of these and the  
10 redactions that were made by the judge, with the  
11 exception of three questions that I have, I am  
12 perfectly in alignment with the way the judge has  
13 ruled on each one of them. My three questions are,  
14 on 17, 18 and 20, were portions of those already made  
15 public?

16 JUDGE DIPPELL: Yes, those stood under  
17 my earlier ruling, and I had already made portions of  
18 those public. I have since ruled that I will redact  
19 the e-mail addresses.

20 COMMISSIONER MURRAY: All right. So  
21 there's no longer a question about 17, 18 or 20; is  
22 that correct?

23 JUDGE DIPPELL: Well, the -- yes, it's  
24 still -- the portions that I caused to remain HC are  
25 still being questioned by Mr. Mills and Mr. Conrad.



1                   COMMISSIONER MURRAY: All right. Well,  
2 then, my position on those is that they should remain  
3 as they were redacted originally with the additional  
4 redaction of the e-mail addresses. And other than  
5 that, I am in complete support of the judge's ruling  
6 on this. Thank you.

7                   JUDGE DIPPELL: Commissioner Appling?

8                   COMMISSIONER APPLING: I'm sorry, Judge.  
9 At this point I didn't have all the time I needed to  
10 take a look at what has been presented to us this  
11 morning, but I came here this morning prepared to  
12 support what your -- what your -- the decision that  
13 you had made, and I suppose right now I'm in complete  
14 agreement with that and that's what I'm supporting.

15                  JUDGE DIPPELL: Commissioner Jarrett?

16                  COMMISSIONER JARRETT: I too have  
17 been -- have had a chance to look through all of  
18 these, and I'm with the Chairman. On some of these I  
19 think are not -- I think can be released to the  
20 public.

21                  I don't see any problem with Exhibit --  
22 Exhibit 4 being public; I don't see any problem with  
23 Exhibit 5 being public; Exhibit 7, I don't see a  
24 problem with it being public; Exhibit 8, I don't see  
25 a problem with it being public; Exhibit 11 I think

1 can properly remain HC; Exhibit 12, I don't see a  
2 problem with it being HC; Exhibit 13, I don't see a  
3 problem with 13 being public; 14, I think you were  
4 gonna redact the names?

5 JUDGE DIPPELL: Yes.

6 COMMISSIONER JARRETT: I don't see a  
7 problem with that being HC, at least the e-mail  
8 addresses.

9 JUDGE DIPPELL: There was another  
10 portion that I redacted also.

11 COMMISSIONER JARRETT: Right. And I had  
12 not seen the nonredacted version of that.

13 JUDGE DIPPELL: Well, actually, as it  
14 was presented originally, it had those middle two  
15 paragraphs redacted, but I redacted the bottom  
16 paragraph.

17 COMMISSIONER JARRETT: Oh, okay. I  
18 don't see a problem with that being public.  
19 Exhibit 15, I don't see a problem with that being  
20 public; Exhibit 16, I don't see a problem with it  
21 being public; Exhibit 19, I don't see a problem with  
22 that remaining highly confidential; Exhibit 20, I  
23 don't see a problem with it being public -- wait a  
24 second. Is that -- is that the subject of  
25 contention?

1 JUDGE DIPPELL: I'm sorry. Exhibit 20?

2 COMMISSIONER JARRETT: 20.

3 CHAIRMAN DAVIS: I thought we'd already  
4 released that, or at least --

5 JUDGE DIPPELL: Yes, okay.

6 COMMISSIONER JARRETT: Okay. Sorry.

7 JUDGE DIPPELL: That's -- that's one,  
8 but there were portions of it also that --

9 COMMISSIONER JARRETT: That were  
10 redacted?

11 JUDGE DIPPELL: Yes.

12 COMMISSIONER JARRETT: Well, I don't --  
13 I don't see 20 as being part of Public Counsel's,  
14 either one of your filings, was it?

15 MR. MILLS: Exhibit 20, I thought -- I  
16 believe it was.

17 COMMISSIONER JARRETT: Is it? Okay.

18 JUDGE DIPPELL: It got left out of  
19 Aquila's redacted version.

20 COMMISSIONER JARRETT: Okay.

21 MS. PARSONS: Your Honor -- your Honor,  
22 if I could clarify. Exhibit 20 was part of the  
23 Commission's order on Monday, so I didn't attach the  
24 already redacted versions of that to the packet that  
25 I provided.

1 JUDGE DIPPELL: Okay. So 18 -- 17, 18  
2 and 20.

3 MS. PARSONS: That's correct.

4 COMMISSIONER JARRETT: Okay. The only  
5 reason I ask is it says "attorney work product" on  
6 the top. I don't know. I don't see anything in it  
7 that should not be made public. 21, the e-mail  
8 addresses, that's fine, we can redact; 22, I don't  
9 see any problem with it being public; 23, I don't see  
10 any problem with it being public; 24, I don't see a  
11 problem with it being public; 26, the redacted  
12 versions I would agree should remain redacted; 27, I  
13 don't see a problem with paragraph 1 being public,  
14 paragraph 7 being public or paragraph 9 being public.  
15 So I would say all of 27 public. And 30, I don't see  
16 a problem with it being public. That's it.

17 JUDGE DIPPELL: Is that -- I believe  
18 that covered all of them.

19 MR. ZOBRIST: There was also 29 and 31,  
20 Judge.

21 JUDGE DIPPELL: Oh, 29 and 31.

22 COMMISSIONER JARRETT: I don't see a  
23 problem with 29 being public. I don't see a problem  
24 with 31 being public either.

25 JUDGE DIPPELL: Okay.

1                   CHAIRMAN DAVIS:  So it's -- it's two to  
2   two at least on those documents?

3                   JUDGE DIPPELL:  Yes.  Mr. Mills, this  
4   was your motion originally, so I -- do I need -- does  
5   the Commission need to make a formal vote?

6                   CHAIRMAN DAVIS:  Let me -- let me just  
7   go back and ask if -- if the Commissioners -- if any  
8   of the Commissioners would at least be willing to  
9   review those documents and allow those documents to  
10  be opened?

11                  COMMISSIONER MURRAY:  A question for --  
12  a clarification question to Commissioner Jarrett.  On  
13  29 and 31, are you saying that you would not redact  
14  the portions that were redacted from those documents?

15                  COMMISSIONER JARRETT:  Correct.

16                  MR. ZOBRIST:  And I should just say,  
17  Judge, for clarification, on the redacted version  
18  that I gave of 29 and 30, when a page -- when we  
19  recommended that a page be redacted, I just left it  
20  out of the document.

21                  JUDGE DIPPELL:  Uh-huh.

22                  MR. ZOBRIST:  So you really have to  
23  compare the full exhibit with the proposed redacted.  
24  I didn't leave any title for anyone to read.

25                  JUDGE DIPPELL:  We clarified that

1 Commissioner Jarrett understood that when he was  
2 looking at it.

3 COMMISSIONER JARRETT: Right.

4 COMMISSIONER APPLING: Judge, what was  
5 your question again, please? I'm sorry.

6 CHAIRMAN DAVIS: The documents that  
7 Commissioner Jarrett have -- has opined that he would  
8 support being open records, I'm in agreement with him  
9 on those documents. You know, would you be  
10 willing -- would you or Commissioner Murray be  
11 willing to support at least opening those documents?

12 COMMISSIONER APPLING: I need just a few  
13 minutes to line those up on my desk and make sure  
14 that what I'm voting for is what I'm voting for and  
15 that I'm not putting myself between a rock and a hard  
16 place. But if you can give me a few minutes to do  
17 that. I mean --

18 CHAIRMAN DAVIS: Well, Judge, the  
19 hour -- the hour is noon.

20 JUDGE DIPPELL: I understand.

21 CHAIRMAN DAVIS: I'm not trying to punt  
22 from our responsibilities here, but perhaps we could  
23 just go ahead and go to lunch, and that way we can --  
24 you know, better to take a little bit longer and come  
25 up with the right decision in my opinion.

1                   COMMISSIONER APPLING: And Commissioner  
2 Murray, do you have an afternoon appointment that you  
3 can't --

4                   COMMISSIONER MURRAY: I do. I need to  
5 leave the office or leave by no later than 1:50.

6                   COMMISSIONER APPLING: So can we be back  
7 here at 1:00? I will have you the way I stand on  
8 this by 1:00, hopefully.

9                   JUDGE DIPPELL: Okay. I think -- I  
10 think that sounds good. All right, then. Let's  
11 break for lunch until one o'clock. We can go off the  
12 record.

13                   (THE LUNCH RECESS WAS TAKEN.)

14                   JUDGE DIPPELL: Okay. Let's go ahead  
15 and go on the record. All right. We've returned  
16 from our lunch break, and I think the Commissioners  
17 want to continue their deliberations. And  
18 Commissioner Jarrett, you had something you wanted to  
19 add?

20                   COMMISSIONER JARRETT: Yeah. I took a  
21 look at the list and I noticed I had designated my  
22 preference that Exhibit 13 be public, but in going  
23 back and looking at that again, I think 11, 12 and 13  
24 I'm fine with the HC designation, and the reason  
25 being that those documents talk about other bidders

1 and mention them by name, and I don't necessarily  
2 think that should be public, so ...

3 JUDGE DIPPELL: Okay.

4 COMMISSIONER APPLING: Commissioner,  
5 what did you say about -- what were your comments on  
6 4 and 5 at the beginning, do you recall? And the  
7 second thing, do you have any flexibility?

8 COMMISSIONER JARRETT: 4?

9 COMMISSIONER APPLING: And 5.

10 COMMISSIONER JARRETT: I think that 4 is  
11 public.

12 COMMISSIONER APPLING: Okay. And 5  
13 public too, right?

14 COMMISSIONER JARRETT: And 5 public too,  
15 yes.

16 COMMISSIONER APPLING: Okay. Thank you.

17 JUDGE DIPPELL: Mr. Chairman, are there  
18 other discussions? Any of the other Commissioners?  
19 Commissioner Murray, you had something further?

20 COMMISSIONER MURRAY: If the Chair wants  
21 to go first, that's fine. I have made my -- I've  
22 made my decision on each one of the ones that  
23 Commissioner Jarrett suggested, and I can go through  
24 them one by one.

25 CHAIRMAN DAVIS: Well, I think,



1 Commissioner Murray, with all due respect, do you  
2 not -- so there are some you vote yes on and there's  
3 some you'd vote no and so we need to further split  
4 out the list; is that what I'm hearing?

5 COMMISSIONER MURRAY: Mr. Chairman, I am  
6 saying that I have changed on two minor positions  
7 here, and I'm willing to go through each one that  
8 Commissioner Jarrett suggested be made public and  
9 indicate why I do not think it is appropriate to make  
10 it public, and indicate those two areas in which I  
11 see no harm in releasing them.

12 Now, if you don't want to hear that,  
13 that's just fine. But my position is that almost  
14 everything that the judge ruled was appropriate --  
15 everything the judge ruled was appropriate. I think  
16 there are two instances in which something additional  
17 could be released without harm, and I'm willing to  
18 set that out.

19 CHAIRMAN DAVIS: Okay.

20 COMMISSIONER MURRAY: Otherwise, my  
21 position is we leave it exactly as the judge has  
22 ruled.

23 CHAIRMAN DAVIS: Okay. All right.  
24 Well, how about we just -- we just vote to declassify  
25 the documents as Commissioner Jarrett -- the ones

1     that Commissioner Jarrett has proposed with his most  
2     recent amendments, and then we can vote on the other  
3     documents as well. So, all right. Judge, can -- can  
4     you recite for everyone again what -- what we're  
5     voting on here?

6                     JUDGE DIPPELL: Yes. The -- the motion  
7     of the Public Counsel to declassify, and with regard  
8     to the following exhibits, the Commission will either  
9     not declassify them if I say that -- public, or keep  
10    them classified as I had previously classified them  
11    in my ruling, if I say highly confidential.

12                    And Commissioner Jarrett's position was  
13    No. 4, public; No. 5, public; No. 7, public; No. 8,  
14    public; No. 11, highly confidential, No. 12, highly  
15    confidential; No. 13, highly confidential; No. 14,  
16    public except with the deletion of the e-mail  
17    addresses; No. 15, public; No. 16, public; No. 19,  
18    highly confidential; No. 20, public; No. 17, public;  
19    No. 18, public.

20                    And I believe on all of these that were  
21    the e-mail addresses, Commissioner Jarrett was fine  
22    with redacting those. No. 21, my -- the e-mail  
23    address is public; No. 22, public; No. 23, public;  
24    No. 24, public; No. 26, highly confidential; No. 27,  
25    public; No. 30, public; No. 29, public and No. 31,

1 public.

2 COMMISSIONER MURRAY: Point of  
3 clarification, Mr. Chairman. If we vote as the --  
4 this was read, we would be voting not just to make  
5 those public that Commissioner Jarrett suggested be  
6 made public that the judge had designated highly  
7 confidential, but we would also be voting on whether  
8 to designate those as highly confidential that he did  
9 not challenge the judge's ruling on. And I think  
10 that's a bit confusing.

11 CHAIRMAN DAVIS: No. No, because then  
12 we're gonna have to vote on those others because I'm  
13 gonna vote to open all those others, too.

14 COMMISSIONER MURRAY: Well, I need to be  
15 clear on what we're voting on, and I would suggest  
16 that --

17 CHAIRMAN DAVIS: Well, do I need to draw  
18 you a roadmap, Commissioner Murray?

19 COMMISSIONER MURRAY: Chairman Davis, if  
20 we vote on something that is clear, it will be much  
21 more beneficial to the record. And I think it would  
22 be clear if our vote is to reflect whether or not we  
23 accept the changes that Commissioner Jarrett has  
24 suggested to the judge's ruling.

25 CHAIRMAN DAVIS: And that's what I

1 thought we were doing.

2 COMMISSIONER MURRAY: Well, it was not  
3 clear to me.

4 CHAIRMAN DAVIS: So is it clear to you  
5 now?

6 COMMISSIONER MURRAY: If we phrase it in  
7 that manner, it will be.

8 CHAIRMAN DAVIS: Okay. Well, then,  
9 consider it phrased in that manner.

10 COMMISSIONER MURRAY: Thank you.

11 CHAIRMAN DAVIS: All right. So all  
12 those in favor of declassifying the records as  
13 opposed -- as -- as proposed by Commissioner Jarrett  
14 to basically overrule the administrative law judge's  
15 decision in this case, say aye.

16 COMMISSIONER JARRETT: Aye.

17 CHAIRMAN DAVIS: Aye.

18 COMMISSIONER APPLING: Aye.

19 JUDGE DIPPELL: All those opposed?

20 COMMISSIONER MURRAY: No.

21 CHAIRMAN DAVIS: Abstentions for the  
22 record, by a vote of three to one, Commissioner  
23 Jarrett, Commissioner Davis, Commissioner Appling  
24 voting in the ayes, and those records shall be deemed  
25 declassified instantly. Let the record reflect that

1 Commissioner Murray voted no, Commissioner Clayton is  
2 not present.

3 Okay. Now, all those in -- I guess I'm  
4 just gonna phrase this as the remaining records that  
5 are part of Mr. Mills' request, is that ...

6 JUDGE DIPPELL: I think that covers all  
7 of the -- Commissioner Jarrett's list covers all of  
8 the records.

9 CHAIRMAN DAVIS: It covers -- it covers  
10 all of the records, okay.

11 JUDGE DIPPELL: Let me just -- is anyone  
12 aware that --

13 CHAIRMAN DAVIS: Because I don't want  
14 to -- I don't want to -- I don't want to leave any  
15 motions unaddressed.

16 JUDGE DIPPELL: I'm not seeing any  
17 response from --

18 MS. PARSONS: I have one point of  
19 clarification, if I could. I'm sorry to interrupt,  
20 but understanding Commissioner Jarrett's reasons for  
21 making Exhibits 11 through 13 highly confidential, if  
22 you would take a moment to look at Exhibit 14, there  
23 is one line in there that does disclose the names --  
24 a name of a bidder that we would also just ask the  
25 Commission to take one look at before -- before we

1 close this matter. And it's -- it's the second  
2 sentence under project 132.

3 CHAIRMAN DAVIS: Let me just point out  
4 to counsel for Aquila that I think for purposes of  
5 future redaction, it would be appropriate to only  
6 redact that information which is truly, in fact,  
7 highly confidential, because when you get into trying  
8 to redact whole documents and we're saying no, then  
9 this is what happens.

10 JUDGE DIPPELL: I'm sorry. Which line  
11 was that?

12 MS. PARSONS: It's the second sentence  
13 of the one, two, three, fourth, fifth paragraph, and  
14 that would include the two redacted paragraphs.  
15 Starts with "The potential ..."

16 JUDGE DIPPELL: I'm sorry. Was that  
17 Exhibit 14?

18 MS. PARSONS: That is Exhibit 14. It  
19 makes a reference to a code name, but the -- but the  
20 information that's disclosed in the sentence does  
21 identify who that would be.

22 JUDGE DIPPELL: Oh, I see. Are you  
23 talking about the beginning of the second sentence?

24 MS. PARSONS: Uh-huh, yes.

25 JUDGE DIPPELL: And by that -- that

1 sentence basically identifies who the bidder is by  
2 the context of it?

3 MS. PARSONS: Correct.

4 MR. MILLS: And Judge, if I may jump in  
5 here. I was willing to concede yesterday, I'm still  
6 willing to concede that the identities of other  
7 bidders need not be divulged. I think you could do  
8 that by -- by simply striking the second sentence and  
9 leaving the remainder of that in. I think you could  
10 do something similar along those lines with 11, 12  
11 and 13 which have a lot of information in them other  
12 than potential bidders --

13 CHAIRMAN DAVIS: Right.

14 MR. MILLS: -- but we haven't gone  
15 through that exercise yet.

16 COMMISSIONER JARRETT: I'm fine  
17 redacting those two sentences. I guess I'll make the  
18 motion.

19 JUDGE DIPPELL: I believe it's just one  
20 sentence, Commissioner, wasn't it?

21 COMMISSIONER JARRETT: I think there  
22 were two --

23 JUDGE DIPPELL: Okay.

24 COMMISSIONER JARRETT: -- "In light  
25 of ..." --

1 JUDGE DIPPELL: Okay.

2 COMMISSIONER JARRETT: -- and then "The  
3 earliest ..." Well, it's actually three sentences,  
4 isn't it? Three sentences? "The potential ...", "In  
5 light of ..." and then "The earliest ...", those  
6 three sentences?

7 JUDGE DIPPELL: All right. I believe  
8 that constitutes an amendment to Commissioner  
9 Jarrett's earlier position.

10 CHAIRMAN DAVIS: We already voted, so  
11 now I guess it now gets back to, what is this,  
12 Exhibit -- we need to -- we need to reconsider the  
13 vote with respect to Exhibit 14 and redact the one  
14 sentence under the paragraph marked "Project 132."

15 COMMISSIONER JARRETT: Three sentences.

16 JUDGE DIPPELL: Commissioner Jarrett was  
17 in agreement with all three of those sentences.

18 CHAIRMAN DAVIS: I'm looking to  
19 Mr. Mills for guidance.

20 MR. MILLS: Judge, I think -- if you're  
21 asking for my guidance, I think if you strike that  
22 one sentence that -- that -- the very first time that  
23 the code word comes up which would be the second  
24 sentence in that paragraph, I don't believe the  
25 second two sentences give enough information about



1   that potential bidder for anyone to be able to  
2   identify them. And I think the information in the  
3   third sentence is actually quite relevant to the  
4   considerations in this case and should be public.

5                   JUDGE DIPPELL: Commissioner Jarrett, do  
6   you ...

7                   COMMISSIONER JARRETT: I would -- on  
8   further reflection on that argument, I would agree  
9   with that. I could go with the first.

10                  JUDGE DIPPELL: So just the first  
11   sentence should be redacted?

12                  COMMISSIONER JARRETT: Just "The  
13   potential ..."

14                  CHAIRMAN DAVIS: Right. But it's  
15   actual --

16                  JUDGE DIPPELL: Or the second.

17                  CHAIRMAN DAVIS: -- it's actually the  
18   second -- it's actually the second sentence in the --  
19   in the paragraph.

20                  COMMISSIONER JARRETT: Right.

21                  CHAIRMAN DAVIS: Okay. So we're voting  
22   to redact that sentence from the documents -- from  
23   Exhibit 14 that we previously voted to unredact. So  
24   any further discussion?

25                  (NO RESPONSE.)

1                   CHAIRMAN DAVIS: Seeing none, all those  
2 in favor of redacting that sentence, say aye.

3                   COMMISSIONER JARRETT: Aye.

4                   CHAIRMAN DAVIS: Aye.

5                   COMMISSIONER APPLING: Aye.

6                   COMMISSIONER MURRAY: Aye.

7                   CHAIRMAN DAVIS: All those opposed?

8                   (NO RESPONSE.)

9                   CHAIRMAN DAVIS: Abstentions for the  
10 record by a vote of four to zero, one absent. That  
11 sentence has been redacted, so it is now designated  
12 as highly confidential. Is there anything else we  
13 need to do, Judge?

14                  JUDGE DIPPELL: I think that covers it.

15                  CHAIRMAN DAVIS: Okay. Judge. I --

16                  JUDGE DIPPELL: I hope that covers it.

17                  CHAIRMAN DAVIS: I will write -- I will  
18 write a concurrence just to say that I would just --  
19 I would just open up everything because it's  
20 extremely tedious to have to go back and do this for  
21 the parties when they didn't do a good job the first  
22 time. And that's -- you know, I think they should  
23 bear their own risks for -- for engaging in conduct  
24 of that nature.

25                  JUDGE DIPPELL: All right. With those

1     rulings, I believe we are ready to continue with  
2     either Mr. Green or Mr. Chesser. Is there a  
3     preference of how we begin?

4                 MR. CONRAD: We can close out this  
5     Oligschlaeger deal if you'd like to.

6                 JUDGE DIPPELL: Okay. Mr. Conrad --

7                 MR. CONRAD: -- so we can get that --

8                 JUDGE DIPPELL: Let's get one -- one  
9     other thing taken care of.

10                MR. CONRAD: I have -- I have conferred  
11     with counsel for Aquila who has indicated to me now  
12     agreement with a slight adjustment to my position.  
13     So let me attempt to state that.

14                JUDGE DIPPELL: All right.

15                MR. CONRAD: That is, we would generally  
16     object to the taking of official notice, I believe is  
17     the way it was -- it was put, to the rebuttal  
18     testimony of Mark Oligschlaeger that was referred to,  
19     I believe earlier, perhaps today, perhaps two days  
20     ago now -- time flies when you're having fun -- by  
21     counsel for Staff, Mr. Dottheim, with the exception  
22     that after discussion with them, I would recede from  
23     that -- that general objection and recede from that  
24     objection to the extent that pages 9 through 11,  
25     that's one adjustment from what I said this morning,

1 20 and 21, 26 and 27 and 47 through 50, that's also a  
2 slight adjustment, would be acceptable, and we would  
3 withdraw our objection as to those pages. And at  
4 this point, I'd just ask Aquila counsel to confirm  
5 that I've said what I was supposed to say right.

6 JUDGE DIPPELL: Ms. Parsons?

7 MS. PARSONS: Yes, that is correct. And  
8 we would agree to include those excerpts from  
9 Mr. Oligschlaeger's testimony, and we would also just  
10 reserve the right to include other excerpts if it's  
11 used in additional testimony throughout the hearing.

12 JUDGE DIPPELL: Okay. Are there any  
13 other objections to Mr. Oligschlaeger's testimony  
14 with regard to those pages, page 9 through 11, 20 --  
15 or 20, 21, 26, 27, 47 through 50 coming into the  
16 record?

17 MR. CONRAD: By official notice.

18 JUDGE DIPPELL: By official notice.

19 (NO RESPONSE.)

20 JUDGE DIPPELL: Seeing none, I will  
21 receive them.

22 (EXHIBIT NO. 35 WAS RECEIVED INTO  
23 EVIDENCE AND MADE A PART OF THE RECORD.)

24 JUDGE DIPPELL: I'm -- I'm going to go  
25 ahead and mark that as an exhibit just to keep it

1 straight, and ask either Staff or Aquila if they  
2 would make copies of those documents to present to  
3 the court reporter.

4 (EXHIBIT NO. 35 WAS MARKED FOR  
5 IDENTIFICATION BY THE COURT REPORTER.)

6 MR. CONRAD: And just so -- just so it's  
7 clear, although we were the objecting party, I'd be  
8 happy to work with Staff and Aquila to achieve that.  
9 And not to -- not to go back into it at all, but just  
10 to make it a little bit easier, I don't -- I would  
11 not have an objection to the inclusion of the title  
12 page so that when it is a packet, we understand what  
13 that packet is.

14 JUDGE DIPPELL: That -- that would be  
15 fine, including the title page.

16 MR. WILLIAMS: You're requesting the  
17 cover page plus the specifically designated pages?

18 JUDGE DIPPELL: Plus those pages, and  
19 I'm going to designate it as -- as Aquila's Exhibit  
20 No. 35. Thank you. Okay. Mr. Chesser or Mr. Green?

21 MR. MILLS: Judge, I'm -- I'm easy, I'll  
22 do either one. Just for the record, I don't -- I  
23 probably have less for Mr. Chesser. I don't have a  
24 huge amount for either one. And I don't know about  
25 any of the other counsel.

1 JUDGE DIPPELL: All right. Are both  
2 Mr. Chesser and Mr. Green available?

3 MR. ZOBRIST: Mr. Chesser is here.

4 MS. PARSONS: Mr. Green is here.

5 JUDGE DIPPELL: Did you have something  
6 else, Ms. Parsons?

7 MS. PARSONS: No.

8 JUDGE DIPPELL: Okay. You looked like  
9 you wanted to say something.

10 MS. PARSONS: If I could have just one  
11 minute so I could talk with Great Plains' counsel for  
12 just one second? Your Honor, we would like to put  
13 Mr. Green on next.

14 JUDGE DIPPELL: Okay. Let's continue  
15 with Mr. Green, then. And Mr. Green, you remain  
16 under oath. And I will say for counsel, I -- I do  
17 actually have a list now of which exhibits are public  
18 or whatever, so if you need help as you're going  
19 along in determining, please ask and I will try to  
20 assist you.

21 MR. CONRAD: Are we -- there were some,  
22 I guess, that ended up being partially --

23 JUDGE DIPPELL: Yes.

24 MR. CONRAD: Are we -- I'm hesitant to  
25 ask this because I've always got -- I've already got

1 redactions of redactions, I've got so many copies of  
2 some of these things. Are we gonna get a final set  
3 at some point?

4 JUDGE DIPPELL: I'm sorry. I didn't  
5 hear you.

6 MR. CONRAD: A final set of the ones  
7 that --

8 JUDGE DIPPELL: Yeah, we'll deal with  
9 that later.

10 MR. CONRAD: Okay. All right. That's  
11 fine.

12 JUDGE DIPPELL: But we will, we'll throw  
13 away all the old redacted versions and make new ones.  
14 Oh, I'm sorry. Mr. Conrad, have you finished --  
15 you'd finished yours. We were up to --

16 MR. CONRAD: Well, I think I had  
17 finished as much as we -- as I thought we could go  
18 into in response to Bench questions, if I recall  
19 where that was left.

20 JUDGE DIPPELL: I'm having trouble  
21 hearing you, Mr. Conrad.

22 MR. CONRAD: I'm sorry. This is --

23 JUDGE DIPPELL: I'm gonna have to tape  
24 that microphone to your cheek.

25 MR. CONRAD: I don't think that will

1 work. I think I had -- I had finished the -- what I  
2 would call at that point the public version, but now  
3 that has opened up again. So I -- it's probably  
4 gonna take just a moment to collect that.

5 JUDGE DIPPELL: Well, let me just start  
6 at the beginning and make sure we haven't missed  
7 anybody, then. Staff, did you have any further  
8 cross-examination of Mr. Green?

9 MR. WILLIAMS: No.

10 JUDGE DIPPELL: Okay. Great Plains?

11 MR. ZOBRIST: No questions.

12 JUDGE DIPPELL: Black Hills?

13 MR. DeFORD: No questions.

14 JUDGE DIPPELL: Okay. Well, now we're  
15 back to you again, Mr. Conrad.

16 MR. CONRAD: Now, it would help if I  
17 turn it on. On the exhibit that we've kind of been  
18 referring to as -- as 15, that's one I think that has  
19 been declassified; am I correct?

20 JUDGE DIPPELL: Correct.

21 MR. CONRAD: Okay. Has that been marked  
22 here for evidence here in this proceeding? I'm  
23 not -- I'm seeing a number on it but it was crossed  
24 out like somebody changed their mind.

25 JUDGE DIPPELL: I do not believe that



1 that has been previously offered in this proceeding.

2 MR. CONRAD: And again, I do not have  
3 copies of these. I'll have -- I see Mr. -- Mr. Lewis  
4 has kindly supplied us.

5 MR. MILLS: Just to speed things up, may  
6 I pass these out on Mr. Conrad's behalf?

7 JUDGE DIPPELL: Yes, please do. Thank  
8 you. And I believe Ag Processing's next number is  
9 302.

10 (EXHIBIT NO. 302 WAS MARKED FOR  
11 IDENTIFICATION BY THE COURT REPORTER.)

12 MR. MILLS: Judge, I'll note for the  
13 record I prepared exhibit copies of many of the  
14 exhibits to Mr. Green's deposition, and the ones I  
15 prepared for submission in this case are duplexed.  
16 So we need to look at both sides of the paper. I  
17 just wanted to point that out.

18 JUDGE DIPPELL: Thank you.

19 RE-CROSS-EXAMINATION (RESUMED) BY MR. CONRAD:

20 Q. Mr. Green, we have laid before you what  
21 has now been marked for identification as  
22 Exhibit 302, also bears an exhibit sticker or a copy  
23 of an exhibit sticker as Exhibit 15. Do you have  
24 that before you, sir?

25 A. I do.

1           Q.       Could you identify that document for me,  
2     please?

3           A.       It is a e-mail to the Aquila board of  
4     directors from me.

5           Q.       And is it dated November 22, 2006, at  
6     2:47 p.m.?

7           A.       It is.

8                   MR. CONRAD:  Your Honor, be --

9     BY MR. CONRAD:

10          Q.       And as far as you know, that's -- that's  
11     a complete, correct copy of it?

12          A.       As far as I know, yes.

13                   MR. CONRAD:  Your Honor, with that as  
14     foundation, I would -- I would move admission of 302.

15                   JUDGE DIPPELL:  Would there be any  
16     objection to Exhibit 302?

17                   MS. PARSONS:  I'm not sure if it's  
18     really an objection, but I just want to note that the  
19     e-mail addresses are still on the exhibits, so I  
20     would object to producing it as part of the record in  
21     this form.

22                   JUDGE DIPPELL:  All right.  That's true.  
23     We did redact the e-mail addresses.  I will make sure  
24     that the court reporter's copy has the e-mail  
25     addresses redacted, and I would ask counsel to

1 cooperate in making sure that you don't disseminate  
2 that information in another source.

3 MR. CONRAD: Understood.

4 JUDGE DIPPELL: And that can be received  
5 into the -- into evidence.

6 (EXHIBIT NO. 302 WAS RECEIVED INTO  
7 EVIDENCE AND MADE A PART OF THE RECORD.)

8 BY MR. CONRAD:

9 Q. Mr. Green, directing your attention to  
10 the first page of Exhibit 302, towards the bottom of  
11 that page, there's a heading called Regulatory  
12 Matters. Do you have that in front of you?

13 A. I do.

14 Q. And the first bullet talks about -- and  
15 I think we did this before in-camera, and I guess  
16 since this is now public, we can explain it.

17 Before signing a definitive agreement,  
18 then the word "Navy" appears. I'm going to presume  
19 that you're not talking about the United States Navy  
20 that runs battleships around the world, but you're  
21 talking about something else. What is that something  
22 else?

23 A. Navy was the code word for Great Plains.

24 Q. So when we see Navy in these documents,  
25 we should, in effect, mentally interpose Great

1 Plains, correct?

2 A. That's correct.

3 Q. So "Great Plains will seek informal  
4 indications from the Missouri Public Service  
5 Commission that they will be allowed to retain," and  
6 then you put in quotes, "'significant' portion of the  
7 synergies as well as extend their Iatan 2 regulatory  
8 compact to Aquila's Iatan 2 interest." Did I read  
9 that roughly correctly?

10 A. You did.

11 Q. Did you choose the word "significant"?

12 A. No.

13 Q. I was gonna inquire why that was in  
14 quotes.

15 A. I don't know.

16 Q. You -- it takes an extra two key strokes  
17 to put it in quotes, does it not?

18 A. It would.

19 Q. So that's -- that was a conscious two  
20 key strokes on your part, right?

21 A. It would have been, yes.

22 Q. By the way, I should have asked you, do  
23 you type your own e-mails?

24 A. Not all the time, no.

25 Q. What about this one?

1           A.       I think this being what looks like a  
2       summary of the proposal from Great Plains would have  
3       been a collective effort with our financial advisors  
4       and our legal counsel to summarize the bid into a  
5       communication to our board.

6           Q.       So this -- the preparation of this  
7       document involved more than you?

8           A.       Yes, it would have.

9           Q.       And who would have been the keystroke  
10      person?

11          A.       I don't recall that.

12          Q.       Okay. Did they accurately transcribe or  
13      otherwise reflect the significant portion?

14          A.       I'm unclear on that. This would have  
15      been a compilation of whatever we would have received  
16      in writing as well as verbal contributions from the  
17      financial advisors. There was an awful lot of  
18      discussion, negotiation, et cetera, between the  
19      financial advisors of both companies, and so their  
20      input would be in here in different places. Where  
21      they have put their input in here specifically, I  
22      really wouldn't be able to recall.

23          Q.       Do you know why the -- or what -- strike  
24      that. When you used this phrase, "significant  
25      portion," what did you have in mind?

1           A.       I don't know.

2           Q.       Did you have -- did you have anything in  
3 mind, Mr. Green, when you used this phrase?

4           A.       My objective here was to relay what the  
5 written bid was, plus whatever added input there  
6 would have come from the discussions/negotiations  
7 from the financial advisors. So in this case, I'm  
8 relaying information as opposed to creating  
9 information.

10          Q.       So the characterization of significant  
11 portion is the bidders', not yours; is that correct?

12          A.       It could be the bidders', it could be  
13 the bidders' bankers, it could be our bankers or  
14 financial advisors.

15          Q.       Nonetheless, you're the author of this  
16 e-mail, it's coming from you?

17          A.       I have signed it, yes.

18                 MR. CONRAD: Your Honor, I have another  
19 one that I believe has also been now declassified,  
20 but it was previously marked as 301 HC, so that's  
21 already been distributed. It bears the deposition  
22 exhibit sticker Exhibit 22.

23                 JUDGE DIPPELL: Yes, and Exhibit 22 has  
24 been declassified, so you're correct that is now 301.  
25 Again, it's an e-mail, so the e-mail addresses will

1 be redacted.

2 MR. CONRAD: Right. And I'm wondering,  
3 we had earlier distributed copies of that but -- or  
4 actually Mr. Mills had, but I wonder if the witness  
5 can be supplied with that. Do we have an extra one  
6 kicking around?

7 Again, I'm grateful to Mr. Mills for  
8 second chairing me on this. I had no desire to  
9 recruit him for that, but it's worth a lot more than  
10 I could pay for him, I'm sure.

11 BY MR. CONRAD:

12 Q. Before you, Mr. Green, has been laid  
13 Exhibit 301. Do you recognize that document, sir?

14 A. I do recognize it.

15 Q. Would you identify it for the record,  
16 please?

17 A. It is, for the most part, an e-mail from  
18 me to the board of directors passing on to them a  
19 number of points that were discussed by our financial  
20 advisors with Great Plains. In addition to that,  
21 there is a string of e-mail conversation between a  
22 director and myself.

23 Q. Would it be a fair summary that this --  
24 this document, which at least on my copy is three  
25 pages, represents something of what the techno folks

1 call a thread? In other words, it starts really at  
2 the back, doesn't it?

3 A. Yes, it does.

4 Q. And the first e-mail really is one from  
5 you -- I'm looking at the top of page 2 on my copy,  
6 sir -- dated 30 November at 16:37:42, and I believe  
7 that would be in the afternoon. Are we on track?

8 A. Yes, we are.

9 Q. Okay. And that's a summary of your  
10 advisors' discussions with Great Plains advisors. So  
11 far, so good?

12 A. Yes.

13 Q. And then right at the very bottom, just  
14 above the No. 2, there's a reference to a Navy or  
15 Great Plains response. Do you see that?

16 A. I see it, yes, a Navy response.

17 Q. Yes. It starts out "No nonpublic ..."

18 A. I see that.

19 Q. Okay. Let's read along with me here.  
20 "No nonpublic financial information will be provided  
21 absent a commitment to exclusivity." Let's stop  
22 right there. What's the commitment to exclusivity  
23 about?

24 A. There was a discussion at this point in  
25 time that Great Plains wanted to have exclusivity to



1 move forward in the transaction, which simply meant  
2 that we would have agreement between the two parties  
3 that we would exclusively work on coming to a  
4 definitive agreement as opposed to letting others  
5 become a part of the process, other potential bidders  
6 become a part -- part of the process.

7 Q. Reading on, "Although the nonbinding  
8 proposal ..." And I take it by this time, this being  
9 30 November, you had received this nonbinding bid?

10 A. Yes.

11 Q. Either November 15 or November 20  
12 depending on which version we have. So that's the  
13 nonbinding proposal that's being referred to there?

14 A. Yes.

15 Q. And then, "The nonbinding proposal  
16 stated that there was a requirement that they ..."  
17 And who would the "they" be?

18 A. I would assume that refers to Navy.

19 Q. Which, again, is Great Plains?

20 A. Yes.

21 Q. "That Great Plains retain all  
22 synergies." And then that's all under an "although,"  
23 which is kind of one of those evasive words. The  
24 sentence goes on to say, "This was apparently  
25 overstated and synergies are not that critical." Did

1 I read that correctly?

2 A. You did.

3 Q. And then the sentence goes on at the  
4 bottom of that page and carries forward. "Internal  
5 financial projections are more favorable than public  
6 information." So far, so good?

7 A. That's what it says.

8 Q. Do you know what they're talking about?

9 A. I believe I do.

10 Q. Please explain.

11 A. I think it just is a discussion  
12 regarding synergies and how many they are. At this  
13 point of the negotiations, and I think also with the  
14 limited information about synergies, this is the kind  
15 of discussion that was going on back in November 30,  
16 2006, and also some commentary around the financials  
17 as they were back in the fall of 2006.

18 Q. Now, we may ask Mr. Chesser later, but  
19 you as a -- as a recipient of this information which  
20 you then conduited on to the board, when you see the  
21 sentence, "Internal financial projections are more  
22 favorable than public information," what does that  
23 say to you?

24 A. Well, it tells me that they have an  
25 internal plan that is tracking their information or

1 at least, given this is discussion between financial  
2 advisors, the discussion between two of them is --  
3 is -- this is what the financial advisors think.

4 Q. And when you precede that with the  
5 statement that "synergies are not that critical,"  
6 does that add any additional information?

7 A. I think it does, but I mean, this was  
8 over a year ago, so I don't believe it to be terribly  
9 relevant to today.

10 Q. On page 3 of that same document, there's  
11 a paragraph starts out, "Further disclosure  
12 concerning regulatory plans," and then beneath that  
13 another very short paragraph, "Navy response." Do  
14 you see that?

15 A. I do see that.

16 Q. "Navy's regulatory plan has more  
17 flexibility than indicated in their nonbinding  
18 proposal." Did I read that correctly?

19 A. You did.

20 Q. What regulatory plan are we talking  
21 about there?

22 A. It would have been the regulatory plan  
23 being contemplated or negotiated back in November 30,  
24 2006. What version it was at that point in time, I  
25 am not certain.

1           Q.       There have been several variations of  
2 the theme, haven't there?

3           A.       There has been a series of negotiations  
4 around the regulatory plan over the time period of  
5 our discussions, yes.

6           Q.       So when they responded that their  
7 regulatory plan had more flexibility than indicated  
8 in the nonbinding proposal, what does that suggest to  
9 you as the recipient of this document?

10          A.       That there's room to negotiate.

11          Q.       And did you?

12          A.       I'm sorry?

13          Q.       Did you?

14          A.       I don't recall.

15          Q.       The sentence goes on to say, "They" --  
16 would I be correct that that's Navy or Great Plains  
17 again?

18          A.       Yes.

19          Q.       Navy or Great Plains "will share the  
20 details only if given exclusivity." Now, I believe  
21 you indicated that they had requested exclusivity and  
22 we talked about that briefly. Were they given  
23 exclusivity?

24          A.       They eventually were.

25          Q.       And did they share the details?

1           A.       I think this -- there was some details  
2     shared.

3           Q.       Where and when?

4           A.       This being November -- end of November,  
5     I would imagine this is a build up to the discussion  
6     of the 2007 rate case discussion we've been talking  
7     about here.

8           Q.       Is that the only detail that they would  
9     have revealed at that point?

10          A.       There could have been others but I  
11     don't -- don't recall specifically what they were.

12          Q.       I believe you had indicated that you had  
13     authored a good portion of this document, correct?

14          A.       I had authored -- authored it certainly  
15     because I've signed it, but with saying that, I just  
16     want to clarify that the pieces we've been talking  
17     about, again, is passing on information from our  
18     financial advisors to the board as opposed to  
19     creating the information myself.

20          Q.       I understand. We're kind of working  
21     backwards through this document. Okay. Let's go to  
22     the bottom of the first page, and that would appear  
23     to be an e-mail communication from --

24                   MR. CONRAD: I'm not gonna mention the  
25     e-mail address, but I presume the -- the individual's

1 name is not HC; am I correct?

2 JUDGE DIPPELL: That's correct.

3 BY MR. CONRAD:

4 Q. From an Irvin Hockaday, or I. Hockaday.

5 So far, so good?

6 A. Yes.

7 Q. And who might that be?

8 A. He is one of our board members.

9 Q. And he's communicating to you,

10 apparently, and some other people on the list, right?

11 A. That's correct.

12 Q. Some of those names I remember, but I

13 didn't remember -- who's Patrick Lynch?

14 A. He's one of our directors.

15 Q. Is a Stan Ikenberry also a director?

16 A. Yes.

17 Q. Okay. And what's the thrust of -- oh,

18 by the way, Mr. Hockaday occupies another position

19 besides just being on your board of directors,

20 doesn't he?

21 A. I'm not sure what you mean.

22 Q. Does he have a -- does he have a day

23 job?

24 A. I don't believe he does.

25 Q. He didn't work for DST or Hallmark ever?

1           A.       He did in the past.

2           Q.       I see.

3           A.       He's retired now.

4           Q.       Retired, yeah. Do you consider him to  
5 be something of a mover and shaker in Kansas City?

6           A.       I do.

7           Q.       And his response here is somewhat  
8 negative commenting on the way Navy is positioning  
9 themselves. Is that a fair characterization if  
10 people could read it?

11          A.       I would -- I think that's a fair  
12 characterization.

13          Q.       Okay. And he's, in fact, asking the  
14 EviCorp, at least one named, and some of the other  
15 advisors should help the board, I take it, us,  
16 analyze -- didn't run a spell check -- or "where our  
17 walk-away line is drawn." What's a walk-away line?

18          A.       That would be the series of  
19 circumstances in which we would walk away from these  
20 negotiations.

21          Q.       And by walking away from negotiations,  
22 what does that mean?

23          A.       Terminating the negotiations.

24          Q.       And you responded, then, in about a  
25 little shy of 30 minutes, it looks like, if the

1 systems are right, your response went out at 5:34.  
2 The change in his came to you or was sent out at  
3 5:08. And you're kind of confirming it and saying  
4 their actions are confusing. "We talked this over,"  
5 you say, "with Will Hiltz." Now, who's Will Hiltz?

6 A. Will Hiltz is an individual with the  
7 firm of EviCorp which, in the transaction process,  
8 were financial advisors to the board.

9 Q. When you say in that sentence "we talked  
10 this over," who is the "we"?

11 A. Hmm. It certainly was myself and Will.  
12 It may have included our chief operating officer,  
13 Keith Stamm and maybe others, but I don't think so.  
14 My best judgment, it was probably just Will Hiltz and  
15 myself.

16 Q. So the two of you talked it over with  
17 one of you, is how I read that, then. "We talked  
18 this over with Will Hiltz."

19 A. So perhaps there --

20 Q. Will Hiltz and I --

21 A. -- was another person that I'm --

22 Q. Yeah. Will Hiltz and I talked it over  
23 with Will Hiltz. Is that -- is that -- is that a  
24 good way to phrase that?

25 A. No. I think reading it again, it



1     probably was another individual, and my best guess it  
2     would have been our chief operating officer, Keith  
3     Stamm.

4             Q.       Okay. Now, just a footnote, this Keith  
5     Stamm, this is the same gentleman you identified  
6     earlier in response to a question from Commissioner  
7     Davis as being one of those that was involved in the  
8     South Harper situation; am I correct?

9             A.       That's correct.

10            Q.       And the sentence goes on, "and we  
11     believe," same "we"?

12            A.       Yes.

13            Q.       "There are a lot of options beyond Great  
14     Plains." Did I read that correctly?

15            A.       You did.

16            Q.       A lot of options beyond Navy. What does  
17     that mean?

18            A.       That means that there was not a  
19     necessity to do this transaction unless we could  
20     negotiate a transaction that we thought was fair to  
21     shareholders, customers and employees, and if we  
22     couldn't, there were other things that Aquila could  
23     do going forward.

24            Q.       And remembering that we're in public  
25     session now, how many constitutes "a lot"?

1           A.       Oh, I think in this context there's  
2       probably three or four different scenarios that  
3       inside each of them would have, shall we say,  
4       subopportunities there that would constitute the  
5       description as a lot.

6           Q.       And the next sentence starts, "A number  
7       of the other participants." Is "a number" the same  
8       as "a lot"?

9           A.       No. I think this would be a piece of a  
10      lot.

11          Q.       A subset of a lot?

12          A.       A subset of a lot.

13                 MR. ZOBRIST: Judge, I just want to make  
14      an objection for the record. I think the witness has  
15      testified that this is not particularly relevant to  
16      the merger proposal before the Commission, and I  
17      appreciate the history of this, but, you know, we're  
18      not really engaged in a business school examination  
19      of the history of the transaction, so I would object  
20      to further examination. Here we are in November of  
21      2006. I think we ought to get to the transaction  
22      that's before the Commission.

23                 MR. CONRAD: It is, I believe, relevant  
24      as to how we got there and the mind of these folks  
25      and how that mind is made up and how it is created is

1 of some significance. There is -- there is a more  
2 pertinent, perhaps, question at the end of this, but  
3 I kind of need to work through a little bit of what  
4 these e-mails mean.

5 JUDGE DIPPELL: I'll overrule the  
6 objection, but I will ask Mr. Conrad if he can try  
7 not to belabor his points too long.

8 BY MR. CONRAD:

9 Q. Well, Mr. Green, in the interest of time  
10 and to calm your counsel's ruffled feathers --

11 MR. ZOBRIST: Well, I'm not his counsel,  
12 Mr. Conrad.

13 MR. CONRAD: No, I'm not meaning you,  
14 counsel.

15 BY MR. CONRAD:

16 Q. Why don't you just summarize what it is  
17 you're trying to say to Mr. Hockaday in those four or  
18 five lines.

19 A. Of that one piece of the e-mail we've  
20 been talking about?

21 Q. Yes, sir.

22 A. Simply that if we choose to walk away  
23 from the Navy transaction, there are a number of  
24 different opportunities that Aquila can pursue going  
25 forward.



1 I heard defining of duties, so I withdraw my  
2 objection.

3 JUDGE DIPPELL: I'm gonna overrule the  
4 objection and allow him to state how he defines  
5 fiduciary, which I believe was the question.

6 MR. CONRAD: That's true.

7 MS. PARSONS: Your Honor, I think  
8 he's -- that was the question he already answered.  
9 The follow-up question was different. It involved  
10 corporate governance, I believe.

11 MR. CONRAD: Given -- I think the  
12 question will stand for what it is.

13 JUDGE DIPPELL: Court reporter, could I  
14 have read back the question?

15 (THE COURT REPORTER READ BACK THE  
16 PREVIOUS QUESTION.)

17 JUDGE DIPPELL: I believe it's just  
18 asking for his definition of fiduciary.

19 THE WITNESS: Fiduciary in that context,  
20 I would say, is to the owners of the company that we  
21 operate, the company in a responsible way for those  
22 owners.

23 BY MR. CONRAD:

24 Q. Now, as a manager or a chief executive  
25 officer of a public corporation, do you also have an

1 independent fiduciary duty?

2 MS. PARSONS: Again, I'm gonna object to  
3 the relevancy of this line of questioning. I don't  
4 believe it's relevant to this transaction.

5 JUDGE DIPPELL: I'm gonna overrule. I  
6 think the management of the company we've already  
7 established and how they've been operating the  
8 company and intend to operate the company, and all  
9 those things have been established as being relevant.  
10 You may answer the question.

11 THE WITNESS: Could I have the question  
12 read back?

13 (THE COURT REPORTER READ BACK THE  
14 PREVIOUS QUESTION.)

15 THE WITNESS: I believe I do.

16 BY MR. CONRAD:

17 Q. And to whom in your view, not in a legal  
18 sense but in a very practical sense, to whom do you  
19 see that -- that obligation or duty or however you  
20 want to phrase it owed?

21 A. I see it to our customers in our  
22 communities and our employees.

23 Q. Who hires you?

24 A. The board of directors.

25 Q. Do you perceive that you have a duty to

1     them?

2             A.       Certainly I do.

3             Q.       Do you perceive that it is part of that  
4     responsibility to provide them with accurate  
5     information?

6             A.       Yes, I do.

7             Q.       And unvarnished information?

8             A.       What do you mean by "unvarnished"?

9             Q.       No spin.

10            A.       Yes, clearly communicate with the board,  
11     yes.

12                   MR. CONRAD:  Your Honor, I have another  
13     exhibit.  I believe this would be -- looking at my  
14     notes here -- this also has, I believe, been  
15     declassified in total, and it would be Exhibit 23  
16     from the depositions.  I don't believe it has been  
17     previously marked.

18                   JUDGE DIPPELL:  It has, indeed, been  
19     declassified, and I also don't believe it has been  
20     previously marked.

21                   MR. CONRAD:  Would that be 303?

22                   JUDGE DIPPELL:  That would be 303.

23                   (EXHIBIT NO. 303 WAS MARKED FOR  
24     IDENTIFICATION BY THE COURT REPORTER.)

25     BY MR. CONRAD:

1           Q.       Now, Mr. Green, you have before you a  
2 document that may be one page as you see it, but I  
3 have it as two. It's been marked for identification  
4 as 303. Do you have that before you, sir?

5           A.       My copy says Exhibit 23. Would that be  
6 the same?

7           Q.       I believe it is. I think we have -- we  
8 have redesignated it as Exhibit 303 for purposes of  
9 the record in this proceeding so that there's no  
10 confusion, or at least no additional confusion. Do  
11 you have -- do you have either 23 or 303 before you,  
12 sir?

13          A.       I do.

14          Q.       Do you recognize that document?

15          A.       I do.

16          Q.       Please identify it for the record.

17          A.       It is a letter to the board of directors  
18 of Aquila from me.

19          Q.       Dated December 7, 2006, correct?

20          A.       Yes.

21          Q.       Now, that would be subsequent to the  
22 exchange of e-mail correspondence on November 30 that  
23 we talked about a few minutes ago on 301?

24          A.       That's correct.

25          Q.       Good. I've got my calendar straight,



1    then.

2                   MR. CONRAD:  Your Honor, I think the  
3    witness has identified the document as something that  
4    he authored and he recognizes.  I would move  
5    admission of 303.

6                   JUDGE DIPPELL:  Is there any objection  
7    to Exhibit 303?

8                   (NO RESPONSE.)

9                   JUDGE DIPPELL:  Seeing none, then, I  
10   would receive it into evidence.

11                   (EXHIBIT NO. 303 WAS RECEIVED INTO  
12   EVIDENCE AND MADE A PART OF THE RECORD.)

13                   MR. CONRAD:  Now, I do point out that it  
14   does have one e-mail.

15                   JUDGE DIPPELL:  Oh, you're talking about  
16   up at the top?

17                   MR. CONRAD:  Yes, ma'am.

18                   JUDGE DIPPELL:  I believe that's a  
19   public e-mail address.

20                   MR. CONRAD:  Just to be clear.

21                   JUDGE DIPPELL:  The e-mail on the  
22   letterhead?

23                   MS. PARSONS:  It actually isn't public,  
24   your Honor, but at this point it's been released,  
25   so ...

1 JUDGE DIPPELL: I think if it's on --  
2 printed on your letterhead --

3 MR. CONRAD: I just want to try to work  
4 by the rules.

5 JUDGE DIPPELL: I appreciate that.

6 MR. CONRAD: Even though I don't know  
7 sometimes what they are.

8 BY MR. CONRAD:

9 Q. Okay. Mr. Green, looking please --

10 MR. CONRAD: I'm sorry. Did you make --  
11 did you make a ruling?

12 JUDGE DIPPELL: Yes, I -- I entered it  
13 into evidence.

14 MR. CONRAD: I apologize. I missed  
15 that.

16 BY MR. CONRAD:

17 Q. Looking now at what has been admitted  
18 into the record as Exhibit 303, Mr. Green, I want to  
19 direct your attention to the paragraph that begins  
20 "Tomorrow we will assemble ..."

21 A. Yes.

22 Q. And I believe five lines down to that  
23 begins the line, "toward how we sell"?

24 A. I see that line.

25 Q. Yeah. And the indication there is

1 "... to the benefit of the current shareholders." So  
2 far, so good?

3 A. Yes.

4 Q. I believe in the context of that  
5 sentence, we're talking about -- you're talking,  
6 rather, about a decision that must be made tomorrow  
7 and we're talking again about that exclusive  
8 negotiation agreement with Great Plains, right?

9 A. Let me catch up with you here.

10 Q. Sure, I'm sorry. That -- that sentence  
11 starts on the third line.

12 A. Yes.

13 Q. Now, I recognize, of course, that you're  
14 talking to the directors, but I -- I missed in this  
15 two-page exhibit any reference -- and looking at it  
16 again, I still don't see it -- any reference to  
17 customers. Do you see one that I might have missed?

18 A. No, I wouldn't expect a reference to  
19 customers to be in this letter. I think it is as we  
20 talked about, my various fiduciary responsibilities,  
21 if one is going to talk about a transaction for  
22 shareholders, the gateway for shareholders to receive  
23 anything is making sure that there's appropriate  
24 consideration and thought of the customer.

25 And so when letters like this or others

1 focus on the shareholder, it is a known fact that  
2 shareholders cannot accomplish what they need to  
3 accomplish without executing on that responsibility  
4 to customers.

5 Q. Nevertheless, did I miss somewhere in  
6 that two-page document the word customer or  
7 customers?

8 A. I do not think that you missed.

9 Q. Okay. Now, right after that -- that  
10 phrase, "To the benefit of our current shareholders,"  
11 another sentence begins -- and track with me on this:  
12 "It continues to be clear that staying independent or  
13 standalone is not a scenario that is plausible or  
14 should be considered." Did I read that correctly?

15 A. You did.

16 Q. Now, help me remember, Mr. Green. I  
17 was -- I was thinking yesterday that you had talked  
18 with Staff counsel -- and I believe this is public,  
19 I -- about a standalone plan for Aquila?

20 A. That's correct.

21 Q. And that that plan encompassed -- and I,  
22 again, don't -- I don't -- we've been in and out of  
23 HC so I don't want to use the hard numbers unless  
24 they're public -- that that at least had some  
25 projections about a time period during which you'd

1     become creditworthy?

2             A.       That's correct.

3             Q.       Are you now saying that despite that, in  
4     this letter you're telling your board that that is a  
5     scenario that is not plausible?

6             A.       That's not true. The appropriate  
7     context of that sentence here deals with the fact  
8     that since the November e-mails that we just  
9     discussed where there was some reference to options,  
10    that we have come to a point here where a transaction  
11    with Great Plains is starting to firm; therefore, a  
12    meeting to be decisive with exclusivity as it is  
13    firming, that means that it is offering a price, in  
14    this case 4.50 or an announcement day 4.54, which  
15    takes the other options off the table.

16            The point being, if there is somebody, a  
17    party that can offer a price for Aquila in this case  
18    that achieves value to the shareholders more rapidly,  
19    then we would, in a standalone plan, my fiduciary  
20    responsibility to the shareholders as the rest of the  
21    board has, would be to consider that offer and give  
22    the shareholders a chance to vote on it.

23            Implicit in that, and I think it's  
24    important in the utility business and as we talked  
25    about, it would need to be a party that we felt that

1 would be experienced at the utility business and be  
2 able to carry on the responsibility to the customer  
3 if we were actually able to move ahead and put a  
4 transaction together.

5 Q. Have you finished your answer?

6 A. I have.

7 Q. I didn't want to cut you off. The first  
8 part of that sentence has an interesting phrase in  
9 it. It says, "It continues to be clear ..." That  
10 suggests that prior to this time there was some  
11 determination made by someone that the standalone  
12 wasn't plausible. When was that determination made  
13 so that you could say it continues to be clear?

14 A. The continue to be clear would not be  
15 talking about the standalone plan. The continue to  
16 be clear would be a price, in this case, 4.54, that  
17 continues to be a more rapid value creation for the  
18 shareholders than we would have achieved on a  
19 standalone.

20 So the standalone plan still is -- is --  
21 is progressing as it should, but in this case it is  
22 always matched up to what that offer is to see if it  
23 is the most prudent path as far as a value to the  
24 shareholder.

25 Q. Well, now, did I miss seeing any

1 reference to price in that sentence?

2 A. There is no reference to price.

3 Q. So when you say, "It continues to be  
4 clear that staying independent or standalone is not a  
5 scenario that is plausible ...," somehow we're  
6 talking about price?

7 A. Yes, this is a communication among a  
8 number of communications over a period of time that  
9 in essence encompasses an ongoing dialogue exploring  
10 these strategic options going forward. So a total  
11 explanation is not really required with every  
12 iterative communication going forward.

13 MR. CONRAD: Now, your Honor, my next  
14 exhibit, I also believe if my notes are correct, has  
15 been declassified, and that is what was marked as  
16 Exhibit 16 for the depositions. And I think -- I see  
17 a note here, that it was previously marked for this  
18 proceeding as 118.

19 JUDGE DIPPELL: You are correct on both  
20 accounts.

21 MR. CONRAD: Except it was marked 118 HC  
22 and it no longer is, right?

23 JUDGE DIPPELL: Right. And it is also  
24 an e-mail. Since there are e-mail addresses on it,  
25 we will redact those.

1                   MR. CONRAD: Is there an opportunity for  
2 the witness to see that? Because I do not have extra  
3 copies. I think that was a Staff exhibit,  
4 Mr. Williams?

5                   JUDGE DIPPELL: I'm sure you will have  
6 to let him see it again.

7                   THE WITNESS: Thank you.

8                   MR. CONRAD: Sure, no doubt. And,  
9 Judge, correct me, has that already been admitted?

10                  JUDGE DIPPELL: That has already been  
11 admitted.

12                  MR. CONRAD: Thank you.

13                  MR. ZOBRIST: What was the hearing  
14 exhibit number, please?

15                  JUDGE DIPPELL: It was 118.

16                  MR. ZOBRIST: Thank you.

17 BY MR. CONRAD:

18           Q.       Have you had a chance to look at that,  
19 Mr. Green?

20           A.       Yes, I have.

21           Q.       I won't go through the foundation on  
22 that since it's already been admitted, but ask you,  
23 please, to look briefly at the third paragraph. And  
24 since here we've dropped the maybe designations, so  
25 apparently something has changed.



1                   And do I correctly read that that Great  
2     Plains confirmed they would also need to meet with  
3     the Kansas regulators on the same rationale as they  
4     need to meet with the Missouri regulators ahead of  
5     the signing? So far, so good?

6           A.       Give me just a second.

7           Q.       Sure. Third paragraph. Starts at  
8     "Described in more detail."

9           A.       Yes.

10          Q.       Now, on the very last paragraph on  
11     that page which actually continues over onto the  
12     second page, starts out, "Second, Great Plains was  
13     pushed ..." Do you see that one?

14          A.       I do.

15          Q.       And what are they pushing for based on  
16     that paragraph?

17          A.       A significant change to the regulatory  
18     strategy.

19          Q.       Okay. Now, the regulatory strategy,  
20     what is the regulatory strategy?

21          A.       This would have been their regulatory  
22     strategy at this point in time as we continue to  
23     negotiate that, and I don't recall specifically at  
24     that point in time what the components of the  
25     regulatory strategy were.

1           Q.       Oh, I see. This is -- we're talking  
2 here about that 2007 rate case?

3           A.       That's the subject I bring up in this  
4 e-mail, yes.

5           Q.       "And Great Plains' current thinking is  
6 it would file its annual rate -- rate case  
7 application in February '07, and we" -- and who's  
8 "we" there?

9           A.       I believe "we" would be Great Plains and  
10 Aquila.

11          Q.       "Jointly filed merger application and  
12 Aquila would file a rate case upon -- immediately  
13 upon the conclusion of the current Aquila rate case,  
14 and a motion would then be filed to consolidate all  
15 three cases with a request for extradited approval by  
16 year-end 2007." Did I read that more or less  
17 correctly?

18          A.       You did.

19          Q.       Today is December 5, '07, right?

20          A.       Yes.

21          Q.       It would be tough to carry that forward,  
22 don't you think?

23          A.       Yes, this piece of negotiations did not  
24 carry forward to the final plan.

25          Q.       And that was characterized apparently by

1 Great Plains as a requirement, not an option "for the  
2 successful completion of the transaction." Which  
3 transaction are we talking about there?

4 A. It would be the transaction between  
5 Great Plains and Aquila, and yes, that was their  
6 negotiating position at the time.

7 Q. Now, moving to the top of the second  
8 page or what may be the back of your sheet, I don't  
9 know, continuing with that paragraph, the very last  
10 sentence, "Great Plains indicated that the strategy  
11 will enable them to maintain their investment grade  
12 metrics." So far, so good?

13 A. That is what the sentence says.

14 Q. And the strategy that they're talking  
15 about is to overcome a legal barrier about  
16 incorporating the rate increase in the Aquila rate --  
17 rate case application and then consolidating the case  
18 with merger application. Is that the plan?

19 A. Whatever is characterized in the first  
20 part of that paragraph is what it refers to.

21 Q. And moving on down about, I think the  
22 second sentence in that first full paragraph, "Great  
23 Plains' current model which is being updated shows  
24 that" -- and here's that good word, "significant  
25 amortization rate increase is needed in the Aquila

1 rate case for the consolidated new entity to maintain  
2 investment grade metrics." Did I read that right?

3 A. Yes, that continues to be their  
4 negotiating position at this time.

5 Q. And moving on down, there's a sentence  
6 kind of about two-thirds of the way down, "It is our  
7 understanding" -- kind of toward the right-hand part  
8 of that paragraph. Do you see that?

9 A. I do.

10 Q. And "our understanding" would mean yours  
11 and Aquila's?

12 A. That's correct.

13 Q. "It is our understanding that if the  
14 MPSC," Missouri Public Service Commission, I take it,  
15 "does not rule favorably on the consolidated merger  
16 Aquila rate application for the retention of  
17 synergies and Iatan 2 amortization are specifically  
18 requested, then the transaction would be terminated."  
19 "The transaction" is this acquisition?

20 A. That's correct. Again, it does say  
21 that. That was their negotiating position at the  
22 time. The 2007 rate case is not something that came  
23 about as we talked about it December 27th, 2006.

24 MR. CONRAD: Your Honor, my next exhibit  
25 is No. -- from the deposition is No. 17, and I'm not

1 finding that -- yes, excuse me. That was part of  
2 what you had earlier partially declassified, but I'm in  
3 doubt now as to the rest of it.

4 JUDGE DIPPELL: I'm sorry. Which --  
5 which --

6 MR. CONRAD: 17.

7 JUDGE DIPPELL: No. 17?

8 MR. CONRAD: Yes, ma'am.

9 JUDGE DIPPELL: Is also public.

10 MR. CONRAD: In entirety or --

11 JUDGE DIPPELL: Yes.

12 MR. CONRAD: Okay.

13 JUDGE DIPPELL: I had made parts of it  
14 public and after the Commission's ruling, the rest of  
15 it became public.

16 MR. CONRAD: Not -- not at all trying  
17 to --

18 JUDGE DIPPELL: With the exception of  
19 the e-mail.

20 MR. CONRAD: -- trying to make any other  
21 kind of a statement, I'm just trying to stay out of  
22 trouble. And was that previously identified also as  
23 119?

24 JUDGE DIPPELL: Yes, 119. It was  
25 previously marked HC but obviously that designation

1 is --

2 MR. CONRAD: No longer. And would you  
3 check for me that it has been admitted?

4 JUDGE DIPPELL: It has been admitted.

5 MR. CONRAD: Okay. Could the witness be  
6 provided a copy of that document?

7 BY MR. CONRAD:

8 Q. Mr. Green, I think we have laid before  
9 you what has a sticker on it as Exhibit 17, and that  
10 was from the depositions the other day, and has been  
11 renumbered for purposes of this proceeding as 119.  
12 Please take a moment and familiarize yourself with  
13 that document.

14 A. I've reviewed it.

15 Q. Since it's already been admitted we  
16 won't go through the foundation on it. Let me direct  
17 your attention, please, to the second paragraph. And  
18 there's a discussion there about this ubiquitous 2007  
19 rate case, right?

20 A. Yes.

21 Q. "And Mike mentioned that he's not been  
22 that close to the regulatory schedule." Mike is  
23 Mr. Chesser; is that right?

24 A. That's correct.

25 Q. Then the next sentence was what kind of

1 caught my attention. "That led to discussion about  
2 the discretionary capital that is currently in their  
3 rate plan." Do you see that?

4 A. I do see that.

5 Q. What do you recall about that  
6 discussion?

7 A. At this point in time, again, around the  
8 negotiations, Great Plains wanted to infuse capital  
9 into our distribution system, and so this would refer  
10 to that capital infusion at that point in time.

11 Q. The term that you used here is  
12 "discretionary." I have to presume, Mr. Green, that  
13 given the words have meaning, what did you mean by  
14 the term discretionary described in there?

15 A. That it was capital that was not  
16 mandatory. For example, I believe one of the items  
17 at the time was to invest capital to bring AMR,  
18 automated meter reading to our service territory.  
19 That certainly could be a good investment, and I  
20 think -- I believe still an intended investment, but  
21 it's not something that had to happen now or next  
22 year.

23 Therefore, that's an example of  
24 discretionary capital. So the items in this capital  
25 investment were such items, and that's why the use of

1 the word discretionary.

2 Q. And before we lose the point, that's --  
3 that's an e-mail that's dated January 23?

4 A. That's correct.

5 Q. And that's directed to your directors,  
6 to your board?

7 A. That's correct.

8 Q. In that same paragraph where we were,  
9 "We agreed," I take it that would be you and  
10 Mr. Chesser?

11 A. Yes.

12 Q. "That your respective regulatory and  
13 financial teams would meet in very short order to  
14 address both the 2007 rate case and discretionary  
15 capital." Did I get that right?

16 A. That's correct.

17 Q. Discretionary capital has the same  
18 meaning there that it did in the previous sentence?

19 A. That's correct.

20 Q. And did that discussion that occurred --  
21 or that -- that address, I guess, be correct?

22 A. I'm not sure I understand the question.

23 Q. Well, you're saying you agreed with  
24 Mr. Chesser that your respective regulatory and  
25 finance teams would meet in very short order to



1 address both those topics?

2 A. That's correct.

3 Q. Did that address occur?

4 A. I believe it did.

5 Q. With what result?

6 A. On the 2007 rate case, we agreed that  
7 that would not be considered unless Aquila's  
8 FFO-to-debt ratio, funds-from-operation-to-debt ratio  
9 dropped to a certain number, then the rate case would  
10 be -- would be executed, I suppose, or filed, that  
11 our FFO-to-debt has not dropped, so the 2007 rate  
12 case did not happen.

13 MR. CONRAD: I believe, your Honor, the  
14 next exhibit that I had that I wanted to make -- at  
15 least ask a couple of questions about was Deposition  
16 Exhibit 18. And I'm looking at my list and I  
17 don't -- I don't see that as having been dealt with,  
18 but I do have it marked as Exhibit 203.

19 JUDGE DIPPELL: It -- it has been dealt  
20 with as public.

21 MR. CONRAD: Okay. And was that -- that  
22 would indicate Public Counsel numbered it; am I  
23 correct?

24 JUDGE DIPPELL: And it has not yet been  
25 admitted. It was -- it was -- it was brought in

1 earlier, we talked about it, by Public Counsel, but I  
2 think he was gonna wait to offer it until after the  
3 ruling.

4 MR. MILLS: That's correct. It was  
5 marked but not offered.

6 JUDGE DIPPELL: Right. And it was  
7 marked originally as HC but that has been changed.

8 MR. CONRAD: I just have a couple  
9 questions on that. Can -- can the witness -- can we  
10 find a copy of that somewhere?

11 MS. PARSONS: Could Aquila get a copy  
12 too? All we have is the redacted version.

13 BY MR. CONRAD:

14 Q. Do you have that before you, Mr. Green?

15 A. I do.

16 Q. Do you recognize that document?

17 A. I do.

18 Q. Would I be correct in describing it as  
19 an e-mail from you to, again, your board of directors  
20 dated January 25, 4:30 p.m.?

21 A. That is correct.

22 Q. And you acknowledge that that came from  
23 your machine or it was from you to the board?

24 A. That's correct.

25 Q. As far as you can tell, it is a correct

1 copy of it?

2 A. That's correct.

3 MR. CONRAD: Okay. Your Honor, move the  
4 admission of 203.

5 JUDGE DIPPELL: Would there be any  
6 objection to Exhibit 203?

7 MS. PARSONS: Just that the e-mails be  
8 redacted, obviously.

9 JUDGE DIPPELL: With the redacted  
10 e-mails, of course. Seeing no further objection, I  
11 will admit Exhibit 203.

12 (EXHIBIT NO. 203 WAS RECEIVED INTO  
13 EVIDENCE AND MADE A PART OF THE RECORD.)

14 BY MR. CONRAD:

15 Q. Now, it's my intention, Mr. Green, to  
16 allow some others perhaps to work with this document  
17 some more, but I want to draw your attention to the  
18 sixth paragraph down. Are you there? It starts out  
19 "Turning -- turning to the structure ..."

20 A. Yes, I'm reading it right now. I've  
21 reviewed the paragraph.

22 Q. Now, is it a fair statement that you're  
23 still talking about the 2007 rate case there?

24 A. It is.

25 Q. And what conclusion are you trying to

1     communicate to the directors or what information are  
2     you trying to communicate to the directors through  
3     that paragraph about that topic?

4             A.       That there are few remaining issues  
5     regarding the 2007 rate case, and that at this point  
6     those negotiations were not necessarily opposed to it  
7     but want to be involved in the decision to make such  
8     a filing.

9                     Also noting that regulatory risk is the  
10    greatest risk we face as a business, and we have a  
11    mutual interest in approaching it in a -- in a  
12    good -- in a good way.

13            Q.       Now, up at the top of that, and I think  
14    we had -- you and I have not talked, but some others  
15    have perhaps talked about that -- that second  
16    paragraph. And there you're referring to a  
17    conversation you had with Chairman Davis; am I  
18    correct?

19            A.       You're correct.

20            Q.       And you previously, and I think in  
21    exchange with him at an earlier point in time,  
22    indicated to him that you had not reported the  
23    disclaimer that he had communicated to you at that  
24    time; is that correct?

25            A.       I did not report it in this e-mail, no.

1           Q.       Now, my question to you, recalling your  
2     little discussion a few moments ago about the roles  
3     of boards of directors and roles of management  
4     employees, what was the purpose that you had in  
5     communicating that paragraph to the directors?

6                   MS. PARSONS:  I'm gonna object that this  
7     question's already been asked and answered of  
8     Mr. Green.

9                   MR. CONRAD:  Not by me.

10                  MS. PARSONS:  Not by -- not today, but  
11     it has each day -- or the other day when he was on  
12     the stand, this line of questioning had already been  
13     done.

14                  JUDGE DIPPELL:  Do you recall who did  
15     the line of questioning, Ms. Parsons?

16                  MS. PARSONS:  I'm sorry?

17                  JUDGE DIPPELL:  Do you recall who did  
18     the line of questioning?

19                  MS. PARSONS:  I think it was Chairman  
20     Davis as well as Mr. Lewis -- or excuse me, can it  
21     just be Mr. Lewis?

22                  JUDGE DIPPELL:  I think that's fair.

23                  MR. MILLS:  I'll answer to that.

24                  MS. PARSONS:  I mean no disrespect.

25                  JUDGE DIPPELL:  Honest, I can't recall,

1     so I'm gonna allow him to ask again. I -- I do hope  
2     we're not being too duplicative.

3                   MR. CONRAD: Trying to avoid it. In the  
4     interest thereof --

5                   THE WITNESS: Can I --

6     BY MR. CONRAD:

7           Q.     Go ahead. I'm sorry. Someone was  
8     speaking.

9           A.     I just --

10                  JUDGE DIPPELL: Go ahead.

11                 THE WITNESS: If it's -- if I need to  
12     answer, I'd like to have the question read over.

13                 MR. CONRAD: That was actually where I  
14     was -- my next comment, Mr. Green, was to ask the  
15     reporter if she would be so kind as to read the  
16     question back to you.

17                 (THE COURT REPORTER READ BACK THE  
18     PREVIOUS QUESTION.)

19                 THE WITNESS: The purpose of the  
20     paragraph was to tell the directors that Chairman  
21     Davis is interested in moving along an approval  
22     process in a forthright way. The paragraph refers to  
23     a regulatory process in New Jersey that actually went  
24     on for 20 months. So the purpose here is that we're  
25     gonna have a full process here, but it was -- it was

1 gonna move along appropriately.

2 BY MR. CONRAD:

3 Q. Did you intend that to be an  
4 encouragement or a discouragement to the directors  
5 with respect to the transaction?

6 A. Neither, just merely information.

7 Q. How would it have affected the message  
8 that you were sending to them if you had also  
9 included Chairman Davis' disclaimer?

10 A. It would not have affected it at all.

11 Q. You don't -- you don't see that as  
12 having diluted it in or in any way impinged on it?

13 A. Not at all. I think Chairman Davis'  
14 disclaimer is really the understanding that we all  
15 have in the way one operates with the regulatory  
16 Commission or in the regulatory environment.

17 Q. So in your view, it wasn't necessary to  
18 provide the board with information as to that  
19 disclaimer?

20 A. It was not. Regulatory issues and risks  
21 and understanding, importance have been a very  
22 consistent theme throughout many of the  
23 communications, many of the board meetings, phone  
24 calls, et cetera. It's an important part -- process  
25 and something that clearly, as we talk about all

1 these different communications is a recurring theme.

2 Q. But it apparently was thought necessary  
3 by you to communicate that the transaction would be  
4 moot. I think your term here this afternoon was  
5 "forthrightly," correct?

6 A. I did pass on that information, yes.

7 Q. So that apparently was not a given as  
8 the disclaimer was? That was something you had to  
9 communicate to the board, right?

10 A. I wouldn't have had to communicate that.  
11 Again, it's a matter of sharing information about the  
12 process.

13 MR. CONRAD: Your Honor, my next exhibit  
14 is, I think, a Deposition Exhibit 20. I do not  
15 believe that has been marked previously, but I do  
16 believe that was on the list per my notes of what was  
17 declassified.

18 JUDGE DIPPELL: It has been declassified  
19 and I also do not have it as being previously marked.  
20 Ag Processing's next exhibit number is 304.

21 MR. CONRAD: I think that would be  
22 correct. Thank you.

23 (EXHIBIT NO. 304 WAS MARKED FOR  
24 IDENTIFICATION BY THE COURT REPORTER.)

25 MR. CONRAD: And thank you again to



1 Mr. Mills.

2 JUDGE DIPPELL: And again, the e-mail  
3 addresses will be removed.

4 BY MR. CONRAD:

5 Q. Mr. Green, you have before you what's  
6 been marked for identification as Exhibit 304. Do  
7 you recognize that document, sir?

8 A. I do.

9 Q. Do you need some additional time to  
10 familiarize yourself with it?

11 A. Give me just a minute.

12 Q. Sure.

13 A. I've reviewed the document.

14 Q. Now, I'm going to -- I'm going to pass  
15 some of this by, but I do want to dry -- draw your  
16 attention to your statements -- oh, excuse me. You  
17 do -- this is coming from a Nancy Manion; is that  
18 correct?

19 A. It is coming from Nancy Manion's e-mail.

20 Q. And who is Nancy Manion?

21 A. My assistant.

22 Q. And at the very bottom of the second  
23 page, setting aside the little PDF logos that are  
24 there, "Rick," that's you?

25 A. That's correct.

1           Q.       So this is really from you even though  
2   it's sent out by your secretary, right?

3           A.       That's correct.

4           Q.       Or your assistant, forgive me. Do you  
5   recognize the document as something that you authored  
6   or initiated?

7           A.       I do.

8           Q.       And is it, as far as you can tell,  
9   correct and complete?

10          A.       As far as I can tell, it is correct and  
11   complete.

12                   MR. CONRAD: Move admission of 304.

13                   JUDGE DIPPELL: Would there be any  
14   objection to Exhibit 304?

15                   MS. PARSONS: No objection.

16                   JUDGE DIPPELL: Seeing none, then I'll  
17   receive it into evidence.

18                   (EXHIBIT NO. 304 WAS RECEIVED INTO  
19   EVIDENCE AND MADE A PART OF THE RECORD.)

20   BY MR. CONRAD:

21          Q.       Now, Mr. Green, in the second line of  
22   the very first paragraph -- well, let's -- I tell you  
23   what, let's just -- let's just start with that first  
24   sentence in the first paragraph. It starts out,  
25   "Since my last update ..." Are you with me?

1           A.       I'm with you.

2           Q.       "I've spoken to Brian Moline, Chairman  
3 of the Kansas Corporation Commission. Chairman  
4 Moline had already spoken to Mike Chesser and he  
5 reiterated to me his support." Now, "his" would be  
6 who? The antecedent of the pronoun --

7           A.       The "he" I believe refers to  
8 Mr. Chesser.

9           Q.       So he -- that pronoun, the antecedent of  
10 that is Mike Chesser when we're talking about "he  
11 reiterated," the verb "reiterated"?

12          A.       Yes.

13          Q.       Okay. But the sentence continues, "To  
14 me," that's presumably you, correct?

15          A.       Yes.

16          Q.       "His support." Now, the pronoun there  
17 is referring to Mr. Chesser or somebody else?

18          A.       I believe that refers to Chairman  
19 Moline.

20          Q.       And as this is worded, "his support for  
21 a transaction." Do you remember our little  
22 discussion yesterday about "the" and "a," the  
23 difference?

24          A.       I do.

25          Q.       All right. Let's just kind of keep that

1 in mind. We move on down to the second paragraph,  
2 that you are reporting a meeting with Mike Chesser,  
3 and "he," that would be Mike Chesser, right?

4 A. Yes.

5 Q. "Confirmed that they," and who would  
6 that be?

7 A. "They," I believe, refers to Great  
8 Plains.

9 Q. "That Great Plains received the same  
10 mixed signals in Jefferson City." And then you --  
11 then you attribute something to Chairman Davis here.  
12 "Chairman Davis indicated he would support the  
13 transaction." Is that different than a transaction  
14 that was brought to Ron Moline?

15 A. In this e-mail there's no difference  
16 between the two transactions.

17 Q. Okay. So whatever you told Chairman  
18 Davis, you also told Ron Moline?

19 A. They both were courtesy meetings to see  
20 what they felt about the concept of a possible  
21 combination between Great Plains and Aquila.

22 Q. Now, the sentence then continues after a  
23 hash which is kind of a hard break in punctuation,  
24 "including the 2007 rate case" -- here it is again --  
25 "while the Staff of the Missouri Public Service

1 Commission indicated they would oppose anything but a  
2 generic merger application."

3 Now, yesterday or perhaps the day before  
4 yesterday, you had the colloquy, I think, with  
5 Chairman Davis. And it frankly was not clear,  
6 perhaps even to him, what it was that you were trying  
7 to report here about that conversation. This seems  
8 to suggest you're telling the directors that you  
9 talked with him about the 2007 rate case; is that  
10 correct?

11 A. I would characterize it differently than  
12 that.

13 Q. Well, how would you characterize it,  
14 sir?

15 A. In talking about a possible combination  
16 of Great Plains and Aquila, I recall mentioning the  
17 2007 rate case that would be a piece of it, not to  
18 have an in-depth discussion about a 2007 rate case.  
19 So it's a component of the concept of the two  
20 companies coming together as opposed to a subject by  
21 itself.

22 Q. Well, it does say "including," and when  
23 you use the term including, that's like we're talking  
24 about a big lot of things, including something else,  
25 right?

1           A.       That's correct. And I included the 2007  
2 rate case in the concept of the two companies coming  
3 together.

4           Q.       But you apparently end the sentence,  
5 draw a distinction for your board between what  
6 conversation you believe you had with -- with  
7 Chairman Davis and a conversation that you believe  
8 you had with the Staff in which, per your words here,  
9 indicated "they would oppose anything but a generic  
10 merger application." So, now, what is the  
11 distinction that you're trying to draw there?

12          A.       That from the Staff, they were not in  
13 favor of or did not think a 2007 rate case was an  
14 appropriate way to go.

15          Q.       And that's what is meant, then, by  
16 "generic merger application"?

17          A.       Yes.

18          Q.       And your belief is that what you have  
19 laid before this Commission is a generic merger  
20 application, correct?

21          A.       Not sure I understand what generic would  
22 mean as far as a rate application.

23          Q.       I thought I said "generic merger  
24 application," but perhaps I misspoke. What would a  
25 generic merger application be, then?

1           A.       I don't know.

2           Q.       Your paragraph then goes on to express  
3   some surprise with "Mike" -- I presume that's  
4   Mr. Chesser again --

5           A.       Yes.

6           Q.       -- right? "Shared his" -- and that  
7   again, Mr. Chesser, I take it -- "his disappointment  
8   that we" -- now, who's the "we" there?

9           A.       That would be -- I guess the "we" would  
10   really mean me. "We" being Aquila would be the  
11   party, but I'm the one that shared the pieces of the  
12   2007 rate case.

13          Q.       That's kind of one of those royal we's?

14          A.       I suppose so.

15          Q.       "We informed Aquila" through you, you  
16   "informed Staff about details such as the 2007 rate  
17   case" -- there it is again -- "and the planned use of  
18   accelerated amortization for electric properties."  
19   Did I get that right?

20          A.       You did.

21          Q.       Okay. Now, why would Mike be  
22   disappointed about that?

23          A.       I don't remember --

24                   MS. PARSONS: I'm gonna -- before the  
25   witness asks [sic], I'm gonna object that that

1 question calls for speculation.

2 MR. CONRAD: I'll agree and withdraw it.

3 BY MR. CONRAD:

4 Q. Does -- does not your sentence indicate  
5 that Mr. Chesser was disappointed?

6 A. It does.

7 Q. Did he express to you what his  
8 disappointment was?

9 A. I don't recall specifically, but again,  
10 we were still negotiating, and this would be, you  
11 know, another insight into the ups and downs of our  
12 negotiations on different issues as we march toward  
13 an announcement.

14 Q. Well, as -- now, it's been a long time  
15 since I tried to diagram sentences, and I never did  
16 it very well anyway, but the way that sentence is  
17 constructed it seems to me that Mike is sharing --  
18 Mr. Chesser is sharing disappointment that Aquila  
19 informed Staff about details. Is that kind of the  
20 sentence -- basic sentence there?

21 A. That's what it says, yes.

22 Q. And those are your words; I mean, I  
23 didn't -- I'm not making those up, am I?

24 A. That's correct.

25 Q. And then we go on to say "details such



1 as," kind of e.g., for an example. So you're not  
2 able, I guess, to opine, and I won't ask you to as to  
3 why he might be disappointed, but how did you react  
4 when he indicated his -- that he was disappointed?

5 A. Well, I think as the rest of that  
6 paragraph goes on, I felt it was an important piece  
7 to get out there, the 2007 rate case, because it  
8 was -- as we've gone through all of these  
9 communications, it's obviously a very big negotiating  
10 item with us and thought it was very important;  
11 therefore, I felt it needed to be a part of the  
12 communications here.

13 Q. Now, then the paragraph continues, "I  
14 indicated," and I take it that's a response from you  
15 back to Mr. Chesser, right?

16 A. Yes.

17 Q. That the meetings -- help me understand  
18 what "the meetings" are that you're referring to.

19 A. It would be the meetings with Chairman  
20 Davis as well as the Staff of the Missouri Public  
21 Service Commission.

22 Q. Okay. "The meetings would have had  
23 little value to us." Is the "us" Aquila, you?

24 A. Yes.

25 Q. "If we," that's Aquila, correct?

1           A.       Yes.

2           Q.       "Did not understand how they," now,  
3   who's the "they"?

4           A.       "They" would be the Staff and Chairman  
5   Davis.

6           Q.       "How they would react to the actual  
7   plan." Now, what is the actual plan and how does  
8   that distinguish itself from "a transaction" and "the  
9   transaction"?

10          A.       The actual plan would refer back to the  
11   2007 rate case mentioned.

12          Q.       Is that the only part of the actual plan  
13   that you brought?

14          A.       This is the only one I talked about,  
15   yes.

16          Q.       Why does your sentence then refer to the  
17   "planned use of accelerated amortization"?

18          A.       That would have been part of the 2007  
19   rate case.

20          Q.       All right. Moving on, the last  
21   paragraph on that first page, Mr. Green -- I  
22   appreciate your patience, by the way. I understand  
23   that you're probably not used to having your e-mails  
24   parsed like this, are you?

25          A.       This is not a common occurrence.

1           Q.       Nor is a merger. The last paragraph is  
2 talking again about this ubiquitous, as I've  
3 characterized it, 2007 rate case. "Their position,"  
4 I presume that's Great Plains; is that correct?  
5 That's the second sentence.

6           A.       Oh, over here. I was looking at the  
7 beginning of the paragraph.

8           Q.       I'm sorry. I mislead you. That's the  
9 last paragraph on the first page right above the  
10 exhibit sticker.

11          A.       I see the sentence.

12          Q.       Yes, okay. "Their position," and then  
13 we have another "they," and I presume both of those  
14 are referencing Great Plains, right?

15          A.       Yes.

16          Q.       "Have the -- they need to have the right  
17 to order us to file the case." Did I read that  
18 right?

19          A.       You did.

20          Q.       Now, "the case" is what case?

21          A.       The 2007 rate case.

22          Q.       "And we had been informed," "we" there  
23 must mean Aquila, right?

24          A.       Yes.

25          Q.       "That they," this is a new one. That

1 must be Great Plains?

2 A. Correct.

3 Q. "Were intractable on this point." So

4 far, so good?

5 A. Yes.

6 Q. What's intractable mean?

7 A. Would not change.

8 Q. And your response was you wouldn't seek

9 control of the revenue line and so on. And having

10 said that, the very last sentence, "With that

11 knowledge, we offer to seed control of the Missouri

12 2007 rate case decision if in 2007 our FFO-to-debt

13 ratio," I guess that's what that means, "drops below

14 a predetermined point. Today they," I guess that's

15 Great Plains again, right?

16 A. Yes.

17 Q. "Agreed with that concept." Did I get

18 that all right?

19 A. You did.

20 Q. What's the status of the FFO debt?

21 A. I know that we never reached the point

22 here that would trigger the rate case. What exactly

23 it is today, I don't recall.

24 Q. Okay. Is that referred to in some of

25 the other documents as a trigger?

1           A.       FFO-to-debt -- in the context of talking  
2   about the --

3           Q.       The context of this -- and I'll call it  
4   a session to -- from Aquila to Great Plains of the  
5   2007 rate case decision. Is that referred to in  
6   other documents as a trigger?

7           A.       I'm not sure I understand what you're  
8   talking about.

9                   MR. CONRAD: Just one moment, your  
10   Honor, please. And by your leave, your Honor, I  
11   think I'll stop at that point. And I appreciate  
12   Mr. Green's patience and yours.

13                  JUDGE DIPPELL: Thank you. Mr. Mills?

14                  MR. MILLS: I do have some questions.

15                  JUDGE DIPPELL: Should we take a break?  
16   We've been in here for over two hours. So let's go  
17   ahead and take a short break, come back at 20 after.  
18   We can go off the record.

19                  (A RECESS WAS TAKEN.)

20                  JUDGE DIPPELL: We can go back on the  
21   record. All right. Mr. Mills?

22                  MR. MILLS: Yes, I'm ready to proceed.

23   RE-CROSS-EXAMINATION BY MR. MILLS:

24           Q.       Mr. Green, I think a lot of my questions  
25   were somewhat covered by Mr. Conrad and I'll try not

1 to be repetitious, but there are a few questions on  
2 some documents that he didn't ask you to look at.  
3 And I want to begin with what was marked as  
4 Exhibit 11 to your deposition.

5 MR. MILLS: May I have an exhibit  
6 marked, please?

7 JUDGE DIPPELL: Yes. Public Counsel's  
8 next exhibit number is 204.

9 MR. MILLS: And I believe this remains  
10 highly confidential, if I'm recalling correctly.

11 JUDGE DIPPELL: And this is highly  
12 confidential, so that makes it 204 HC. And just to  
13 confuse things more, I believe it remains highly  
14 confidential with regard to the ruling that I made.  
15 So the bulleted points are redacted as well as the  
16 e-mail addresses, but I believe the rest was public.

17 (EXHIBIT NO. 204 HC WAS MARKED FOR  
18 IDENTIFICATION BY COURT REPORTER.)

19 MR. MILLS: And Judge, is it -- is it  
20 correct that the -- well, are each of the bullet  
21 points highly confidential still?

22 JUDGE DIPPELL: Yes.

23 MR. MILLS: Okay. I'm gonna have some  
24 questions that are gonna have to be in-camera, but I  
25 think I'd like to try to lay the foundation for this

1 if I can in public session, then come back to it at  
2 the end.

3 BY MR. MILLS:

4 Q. Mr. Green, do you recognize what's been  
5 marked as Exhibit 204 HC?

6 A. I do.

7 Q. And just so that you're clear, the  
8 e-mail addresses at the top and the three bulleted  
9 points in the body are gonna be treated as highly  
10 confidential, but the -- the "Dear Directors" and  
11 then your signature and the first paragraph are not  
12 highly confidential.

13 Is this a -- an e-mail that you sent on  
14 August 9th to your board of directors and some of  
15 your -- some of your management?

16 A. It is.

17 Q. And do you recognize this e-mail?

18 A. I do recognize it as an e-mail I sent.

19 Q. All right. Does it appear an accurate  
20 copy of the e-mail that you sent?

21 A. It does appear so.

22 MR. MILLS: With that, your Honor, I'd  
23 like to offer Exhibit 204 HC.

24 MS. PARSONS: No objections.

25 JUDGE DIPPELL: Is there any objection

1 to 204 HC?

2 (NO RESPONSE.)

3 JUDGE DIPPELL: Seeing none, then, I  
4 will receive it into evidence.

5 (EXHIBIT NO. 204 HC WAS RECEIVED INTO  
6 EVIDENCE AND MADE A PART OF THE RECORD.)

7 MR. MILLS: And I'd like to have another  
8 exhibit marked.

9 JUDGE DIPPELL: Next number is 205.

10 MR. MILLS: And this will be Exhibit 12  
11 from Mr. Green's deposition, and I believe this will  
12 also be HC, at least in part.

13 (EXHIBIT NO. 205 HC WAS MARKED FOR  
14 IDENTIFICATION BY COURT REPORTER.)

15 BY MR. MILLS:

16 Q. And Mr. Green, the marking of this one  
17 is similar to the last one; that is, the heading is  
18 gonna be highly confidential except for the e-mail  
19 addresses. The first couple of paragraphs up through  
20 the one that's headed with the bold heading Board  
21 Meetings is public, and then the last short paragraph  
22 and your signature on the second page are --

23 JUDGE DIPPELL: Mr. Mills, I'm gonna  
24 need you to speak into your microphone too.

25 MR. MILLS: Okay.



1 BY MR. MILLS:

2 Q. Did you understand which portion --

3 A. Could you do that again? I'm not sure I  
4 caught it all.

5 Q. Well, the -- let me just tell you which  
6 is highly confidential. The paragraphs -- well, I'm  
7 not even sure the paragraph headings are not highly  
8 confidential. There is a paragraph on the first page  
9 entitled Board Meetings.

10 A. Uh-huh.

11 Q. That's not highly confidential. The  
12 entire rest of the page is highly confidential.

13 A. Okay.

14 Q. And then there's just a -- there's just  
15 a few lines on the second page that is also public,  
16 not highly confidential.

17 Do you recognize this as an e-mail that  
18 you sent to your board and -- and a number of other  
19 people on September 19th, 2006?

20 A. I do.

21 Q. And does this appear to be an accurate  
22 copy of the e-mail that you sent?

23 A. Yes.

24 MR. MILLS: Judge, with that, I'd like  
25 to offer Exhibit 205 HC into the record.

1 JUDGE DIPPELL: Would there be any  
2 objection to Exhibit 205 HC?

3 MS. PARSONS: No objection.

4 JUDGE DIPPELL: Seeing none, then, I  
5 will receive it into evidence.

6 (EXHIBIT 205 HC WAS RECEIVED INTO  
7 EVIDENCE AND MADE A PART OF THE RECORD.)

8 MR. MILLS: And then, Judge, with  
9 respect to Exhibit 13, my notes indicate that this is  
10 similar to 11 and 12; that -- that is, that most of  
11 the body is highly confidential but the heading and  
12 the footer are not; is that correct?

13 JUDGE DIPPELL: Yes.

14 MR. MILLS: Okay.

15 JUDGE DIPPELL: Well, I don't have the  
16 exhibit in front of me, but I do have it labeled as  
17 HC, so --

18 MR. MILLS: Okay. Then I'd like to have  
19 another HC Exhibit marked.

20 JUDGE DIPPELL: 206 HC.

21 MR. MILLS: Thank you.

22 (EXHIBIT NO. 206 HC WAS MARKED FOR  
23 IDENTIFICATION BY COURT REPORTER.)

24 BY MR. MILLS:

25 Q. Mr. Green, this appears to be, at least

1 most of it, an e-mail that you sent, again, to your  
2 board of directors and -- and some other people on  
3 October 20th, 2006; is that correct?

4 A. That is correct.

5 Q. Okay. And do you recognize that portion  
6 of this document as a e-mail that you sent to your  
7 board and those other people?

8 A. Yes.

9 Q. And does it appear to be an accurate  
10 copy of that e-mail?

11 A. Yes.

12 Q. Okay. And then let me just ask you, is  
13 there any significance to the fact that this was  
14 apparently a few days later on October 23rd forwarded  
15 from Christopher Reitz to Loretta Harris? Does that  
16 add anything to the -- to the substance of the  
17 e-mail?

18 A. Not that I'm aware of. Loretta works  
19 for Chris.

20 Q. Do you know why that was done?

21 A. I don't.

22 MR. MILLS: Judge, with that, I'd like  
23 to offer Exhibit 206 HC.

24 JUDGE DIPPELL: Would there be any  
25 objection to Exhibit 206 HC?

1 MS. PARSONS: No objection.

2 JUDGE DIPPELL: Seeing none, I will  
3 receive it into evidence.

4 (EXHIBIT NO. 206 HC WAS RECEIVED INTO  
5 EVIDENCE AND MADE A PART OF THE RECORD.)

6 MR. MILLS: And Judge, in order to keep  
7 my questions sort of following a chronological order,  
8 I'd like to go in-camera to talk about these three HC  
9 exhibits, and I think the remainder of my  
10 cross-examination will be public.

11 JUDGE DIPPELL: All right. We can go  
12 ahead and go in-camera. If there's anyone in the  
13 room that's not allowed to hear highly confidential  
14 information, I'll ask you to leave.

15 (REPORTER'S NOTE: At this point, an  
16 in-camera session was held, which is contained in  
17 Volume 6, pages 764 through 769 of the transcript.)

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1                   MR. MILLS: And I'd like to have another  
2 exhibit marked.

3                   JUDGE DIPPELL: All right.

4                   MR. MILLS: And this one will be  
5 Exhibit 14 to the deposition which I believe has --  
6 was originally provided with a couple of paragraphs  
7 redacted, and since has had another paragraph -- I  
8 mean, another sentence redacted, if I'm not mistaken.

9                   JUDGE DIPPELL: I believe that is  
10 correct.

11                  MR. MILLS: And I do not have copies in  
12 which that second -- in which that sentence has been  
13 redacted.

14                  JUDGE DIPPELL: I'm going to make sure  
15 that all of the copies of the HC exhibits as they  
16 were finally in their final form get redacted before  
17 those become a public part of the transcript.

18                  MR. MILLS: Okay. So the copy that was  
19 just given to the parties and -- and to the Bench and  
20 the court reporter does not have that sentence  
21 redacted as it should be, so I don't know how you  
22 want to mark that at this point.

23                  JUDGE DIPPELL: Well, I'm gonna mark it  
24 as HC because --

25                  MR. MILLS: Okay. And then --

1 JUDGE DIPPELL: -- that sentence will be  
2 kept confidential.

3 MR. MILLS: Okay. And then should I  
4 provide an NP copy later or will you take care of  
5 that?

6 JUDGE DIPPELL: I will take care of it  
7 with regard to the court reporter's copy.

8 MR. MILLS: Okay.

9 JUDGE DIPPELL: And again, I'll just ask  
10 the attorney's cooperation. We've had a lot of  
11 copies of these exhibits, so ...

12 MR. WILLIAMS: If you wouldn't mind,  
13 would you identify which sentence it is that's HC if  
14 it's not redacted?

15 JUDGE DIPPELL: It's the second sentence  
16 of the full paragraph.

17 MR. WILLIAMS: Thank you.

18 (EXHIBIT NO. 207 HC WAS MARKED FOR  
19 IDENTIFICATION BY COURT REPORTER.)

20 BY MR. MILLS:

21 Q. Mr. Green, did you get a copy of this  
22 e-mail that's been marked as 207 HC?

23 A. I did.

24 Q. Okay. This is an e-mail that was sent  
25 from Christopher Reitz to you as well as other board

1 members, Aquila management and others; is that  
2 correct?

3 A. That is correct.

4 Q. There's a description -- well, first of  
5 all, there's what appears to be two separate  
6 paragraphs that are marked as redacted. Do you see  
7 that?

8 A. I see that.

9 Q. Is it your understanding that that  
10 exhibit was provided to the Commission's Staff in  
11 that fashion?

12 A. I don't know.

13 Q. You don't know. You don't know what was  
14 originally behind those paragraphs?

15 A. I don't.

16 Q. Okay. With respect to the -- to the  
17 only partially redacted paragraph which is project --  
18 titled Project 132, is it correct that this paragraph  
19 seems to indicate that at least as of November 17th,  
20 2006, there was a party in addition to Great Plains  
21 that was considering reengaging in the -- in the  
22 process in a few -- in a month or so?

23 A. Yes.

24 Q. Okay. Would it have strengthened  
25 Aquila's ability to negotiate if it had two bidders

1 to play off against each other?

2 A. Yes.

3 Q. Now, do you have a copy of what was  
4 marked as Exhibit 302 which was -- which was marked  
5 as Exhibit 15 to your deposition?

6 A. Give me just -- give me just a minute  
7 here.

8 Q. And this is a November 22nd, 2006  
9 e-mail?

10 A. I do have Exhibit 15.

11 Q. Now, does this e-mail down at the very  
12 bottom of the first page indicate that, "Rating  
13 agencies have confirmed that Navy will maintain  
14 investment grade rating if they ultimately get the  
15 treatment they're seeking from the Missouri Public  
16 Service Commission"?

17 A. Yes, it does say that.

18 Q. Okay. And is that -- is it -- is that  
19 your understanding of Great Plains' position at that  
20 time?

21 A. It is.

22 MR. MILLS: Okay. And I guess before I  
23 get into that too deeply, was this -- this has  
24 already been admitted; is that correct, your Honor?

25 JUDGE DIPPELL: Yes.



1 MR. MILLS: Okay.

2 JUDGE DIPPELL: Or which one were you  
3 talking about, 20 -- or 302?

4 MR. MILLS: 302.

5 JUDGE DIPPELL: 302 has already been  
6 admitted.

7 BY MR. MILLS:

8 Q. Does that e-mail also -- the second to  
9 the bottom bullet on the first page, does that  
10 indicate that Navy will need informal indications  
11 from the Missouri Public Service Commission that Navy  
12 will be allowed to retain some portion of synergies?

13 A. It says, "Navy will seek informal  
14 indications from the Missouri Public Service  
15 Commission that they will be allowed to retain a  
16 significant portion of the synergies," et cetera.

17 Q. And the way -- I'm sorry. Go ahead, I  
18 didn't mean to interrupt you.

19 A. No, that's fine.

20 Q. Okay. And does it indicate that they --  
21 that they need those informal indications before they  
22 will sign a definitive agreement?

23 A. Yes, it does.

24 Q. Now, if I can get you to turn back to  
25 what was Exhibit 13 to your -- to your deposition,

1 and this one I believe was marked as Exhibit 206 HC,  
2 and I'm not gonna really get into the highly  
3 confidential portion there.

4 But when it talks about, on Exhibit  
5 206 HC, the word "regulators," and this is in a  
6 portion we've talked about in the highly confidential  
7 portion, the -- the third paragraph up from the  
8 bottom, is it your understanding that "regulators" in  
9 that sentence is the same as the Missouri Public  
10 Service Commission in Exhibit 15 to your deposition?

11 A. And I'm still trying to find the -- you  
12 said third paragraph up from the bottom?

13 Q. Yes, uh-huh, almost right in the middle  
14 of that paragraph has the word regulators.

15 A. Yes, I see it.

16 Q. Okay. Is the reference to regulators  
17 there the same as the Missouri Public Service  
18 Commission in Exhibit 15?

19 A. I would assume it is. I mean, it's just  
20 a continuation of negotiations at this point in time.

21 Q. Okay. Now, between October 23rd when  
22 Exhibit 13 was sent and November 22nd when Exhibit 15  
23 was sent, did Aquila attempt to convince GPE that  
24 regulatory contacts were not necessary at that time?

25 A. There certainly was a lot of negotiating

1 going on in this period of time and even beyond this  
2 time. That piece of it, I believe, was a component.  
3 I don't remember exactly the back-and-forth in that.  
4 A lot of that negotiation happened with the financial  
5 advisors, but I would guess it would be a piece of  
6 many things moving back and forth.

7 Q. And as of November 22nd, did you believe  
8 that those contacts were necessary at that point?

9 A. We did not.

10 Q. Okay. Why not?

11 A. It was way too early. We, in our minds,  
12 didn't have a deal.

13 Q. Okay. And did you tell GPE that?

14 A. I would imagine somebody in our  
15 organization or financial advisors did.

16 Q. Okay. Do you know what GPE's response  
17 was?

18 A. I don't specifically, no.

19 Q. Okay. Now, turning to page 2 of  
20 Exhibit 15 to your deposition, at the very top you're  
21 talking about a four-week exclusivity period; is that  
22 correct?

23 A. That is correct.

24 Q. And what exactly does that phrase  
25 "exclusivity period" mean?

1           A.       We would in this case agree with Great  
2       Plains that we would exclusively negotiate with each  
3       other and no other parties regarding a combination of  
4       the two companies.

5           Q.       Okay. And did you accept that proposal?

6           A.       Eventually we did move into exclusivity.  
7       I don't remember exactly when we did that, though.

8           Q.       The following sentence says that you  
9       don't -- you don't -- well, what does the following  
10      sentence say about when you expect to respond to that  
11      Navy offer?

12          A.       Not respond until after the Thanksgiving  
13      holiday.

14          Q.       Okay. So the point at which you entered  
15      into an exclusivity period was sometime later than  
16      November 22nd in any event?

17          A.       That's correct.

18          Q.       Okay. And as part of Navy's proposal,  
19      again, up at the top of page 2, did Navy propose  
20      discussions with the MPSC during that four-week  
21      exclusivity period?

22          A.       They did.

23          Q.       And do you recall when that exclusivity  
24      period began and ended?

25          A.       I don't.

1           Q.       Okay. Do you know -- well, first of  
2 all, do you believe from the context that MPSC means  
3 Missouri Public Service Commission?

4           A.       Yes.

5           Q.       Okay. Do you know whether the  
6 discussions that were ultimately held with the  
7 Missouri Public Service Commission fell within the  
8 exclusivity period that you agreed upon?

9           A.       I believe so.

10          Q.       Okay. Now, what was marked as  
11 Exhibit 23 to your deposition has been marked as  
12 Exhibit 303 here. Do you have a copy of that?

13          A.       Give me just a minute. I have it.

14                   MR. MILLS: And Judge, just to check  
15 myself, this Exhibit 303 was admitted entirely as a  
16 public document; is that correct?

17                   JUDGE DIPPELL: That is correct.

18                   MR. MILLS: Okay.

19 BY MR. MILLS:

20          Q.       On page 2 of Exhibit 303, there is a  
21 discussion of -- or I should say at least a mention  
22 of potential acquirers.

23          A.       Somewhere -- somewhere on page 2?

24          Q.       I'm sorry. And it's -- it's the very  
25 bottom of the third -- third paragraph from the

1 bottom of page 2. There's a series of roman numeral  
2 points in there, and the third one talks about the  
3 "closing risk this transaction will face compared to  
4 that presented by other potential acquirers."

5 A. I see that.

6 Q. As used there, who are the potential  
7 acquirers?

8 MS. PARSONS: I'm gonna object to the --  
9 that might require disclosing confidential  
10 information.

11 JUDGE DIPPELL: I think your  
12 microphone's not on.

13 MS. PARSONS: Excuse me. Did you hear  
14 the objection or do I need to make it again?

15 JUDGE DIPPELL: Why don't you make it  
16 again.

17 MS. PARSONS: I'm gonna object that the  
18 response might -- might call for confidential  
19 information.

20 MR. MILLS: And I'm certainly not trying  
21 to trick him into releasing confidential information  
22 in public session. If it does, he can -- he's  
23 certainly welcome to say so.

24 JUDGE DIPPELL: Okay. I'll let the  
25 witness -- if that calls -- calls for the revealing

1 of information and needs to be marked as highly  
2 confidential, please say so and we can go back  
3 in-camera for the answer.

4 MS. PARSONS: And just for  
5 clarification, if the response, Mr. Green, requires  
6 you to disclose any of the bidders that we've  
7 identified in the highly confidential e-mails, then  
8 you do not need to disclose those to the public in a  
9 public session and we need to go in-camera.

10 THE WITNESS: Okay. Would you reask the  
11 question for me?

12 BY MR. MILLS:

13 Q. Well, let me -- let me -- let me start  
14 it in a different way, then. When you use the phrase  
15 "other potential acquirers" there, were you referring  
16 to specific entities or just the general notion that  
17 there may be other interested entities out there?

18 A. The way I read it, and I -- I don't  
19 really recall this piece of it, but it would have  
20 been discussion about other potential acquirers in  
21 the context of the closing risks. And I don't really  
22 remember much more of the details of what -- what  
23 went on in regard to that particular point for this  
24 meeting.

25 Q. So you don't remember if there were --

1 if when you wrote that you had specific entities in  
2 mind or just the general notion that there may be  
3 others out there interested?

4 A. Yeah, I would -- I just don't remember.

5 Q. Okay. Well, let me -- earlier in that  
6 particular bullet point, you talk about "the closing  
7 risk this transaction will face." Do you see that  
8 reference?

9 A. I do.

10 Q. What is the closing risk that was  
11 involved in this transaction?

12 A. Well, it would have been a conversation  
13 or -- about the closing. Any transaction has closing  
14 risks, so this would have lined up all of the risks  
15 to close that would range to shareholder vote,  
16 regulatory approval and a substantially longer list  
17 that I can't recall specifically at this point in  
18 time.

19 Q. And do you recall whether you planned to  
20 compare the specific risks of this particular  
21 transaction to those presented by other specific  
22 potential acquirers?

23 A. We very well could have.

24 Q. Okay. But you don't know?

25 A. I don't recall.



1           Q.       All right. On page 1 of that letter,  
2 let me see if I can find which paragraph it is. It's  
3 in the middle of the bullet points, starts at the  
4 bottom of the page. You talk about a "Preliminary  
5 assessment of likelihood of receiving regulatory  
6 approvals." Do you see that? It's the third bullet  
7 point down in the list of bullet points.

8           A.       I do.

9           Q.       At that point what was the preliminary  
10 assessment that was -- that was presented?

11          A.       Boy, I don't -- I don't recall at this  
12 time what we talked about in this meeting back in  
13 December last year.

14          Q.       Well, let me just give you a multiple  
15 choice. Was it positive, negative or neutral, do you  
16 recall that much?

17          A.       Well, it would be neutral because it  
18 would just be laying out the facts of the situation.

19          Q.       So the likelihood would be neutral?

20          A.       Neutral in the sense of objective. It's  
21 not meant to come to a conclusion; it's -- it's meant  
22 to look at the -- look at the facts around how one  
23 would achieve regulatory approval.

24          Q.       And -- and is that your understanding of  
25 all of these bullet points so that, for example, the

1 following line and it's, "A preliminary assessment of  
2 the value of the consideration being offered," that  
3 was gonna be neutral as well?

4 A. Objective.

5 Q. In your mind is objective the same as  
6 neutral?

7 A. Perhaps it articulates what I mean  
8 better than the word neutral.

9 Q. Okay. So do you believe that the  
10 presentations given at the meeting following this  
11 letter gave a positive or a negative assessment of  
12 the value of the consideration being offered?

13 MS. PARSONS: I'm gonna object. I think  
14 the witness already answered or responded to that  
15 question and he said that it was objective. I'm not  
16 positive. The question's been asked and answered.

17 MR. MILLS: The question has certainly  
18 been asked, but I don't believe it's been answered  
19 and that's why I rephrased it and asked it again. I  
20 think we had some initial miscommunication about what  
21 object -- what neutral meant and what objective  
22 meant, and I think we've managed to clear that up,  
23 and I'm trying to get -- and if he doesn't know, he  
24 doesn't know, but --

25 JUDGE DIPPELL: Okay. I'll overrule the

1 objection and allow him to answer.

2 THE WITNESS: Would you ask it again?

3 BY MR. MILLS:

4 Q. Yes. With respect to the bullet that  
5 says there was going to be a presentation concerning  
6 a preliminary assessment of the value of the  
7 considerations being offered, do you recall whether  
8 the preliminary assessment was that the value was  
9 good, bad or indifferent?

10 A. I guess I look at it a different way. I  
11 don't look at an assessment as being something that  
12 one has to come to a conclusion of positive or  
13 negative. When I look at this on assessing, it kind  
14 of is what it is.

15 That said, I think regarding the value  
16 of the consideration, since we know we're dealing  
17 with the Great Plains offer at this time, we know  
18 that that certainly was one that was positive because  
19 that value was superior to what we could achieve in a  
20 standalone plan.

21 Q. Okay. And similarly with the bullet  
22 above that, "A preliminary assessment of the  
23 likelihood of receiving approval." Was there any  
24 indication given in this presentation as to whether  
25 or not there was a likelihood or there was not a

1     likelihood of receiving approval?

2             A.       Again, I -- this assessment, as I think  
3     I recall, would have to do with, shall we say, the  
4     standards of achieving regulatory approval which vary  
5     from jurisdiction to jurisdiction. And so it would  
6     be a view of that and the different standards.

7             So what those standards were, who was  
8     meeting those standards, all of those things, again,  
9     I don't -- I don't think the purpose here is to come  
10    to some kind of conclusion, positive or negative, but  
11    just to understand what they are.

12            Q.       What -- what was the purpose of this  
13    letter?

14            A.       It was an introduction for our board  
15    meeting that happened the next day.

16            Q.       And doesn't the very first paragraph say  
17    that "There is a decision that must," and must is in  
18    bold, "be made tomorrow"?

19            A.       There is a sentence that says that.

20            Q.       Okay. And was that the case, that that  
21    decision was made at that board meeting?

22            A.       For exclusive negotiations?

23            Q.       Yes.

24            A.       I think it was, but I don't remember  
25    specifically.

1           Q.       But at least at the time that this  
2       letter was written, it was anticipated that that  
3       decision must be made the next day?

4           A.       From my perspective to my directors.

5           Q.       Okay. And in order to make that  
6       decision, wouldn't you and your directors need to  
7       have an assessment of whether or not it's likely or  
8       unlikely that regulatory approval would be achieved?

9           A.       No, not at all. What they need to have  
10      an assessment of is what are the requirements and can  
11      one achieve those different requirements. It does  
12      not jump ahead to make conclusions one way or the  
13      other.

14          Q.       Okay. In the first paragraph you're  
15      talking about -- and it's about five lines down, you  
16      have a reference to "current shareholders."

17          A.       Is this in the first paragraph, did you  
18      say?

19          Q.       Yes, it is.

20          A.       I'm sorry. It starts how?

21          Q.       The lines from -- I'll just read the  
22      sentence. "The decision that must be made tomorrow  
23      is whether Aquila should agree to enter into  
24      exclusive negotiations with Navy, and perhaps more  
25      importantly, make a strategic decision toward how we

1 sell this company to the benefit of our current  
2 shareholders." Do you see that reference to current  
3 shareholders?

4 A. Yes, I do.

5 Q. Was there a particular group of current  
6 shareholders that you were referring to there?

7 A. No. Just to the current shareholders.

8 Q. Okay. And then if you go down a couple  
9 of sentences, it says, "As you saw on the e-mail from  
10 Nela Hackett (investor relations), we also have the  
11 benefit of knowing our shareholder expectations.  
12 This is a group that does not care about a dividend  
13 or investment grade for that matter, but rather what  
14 kind of stock price appreciation can be achieved."

15 A. I do see that.

16 Q. Is that referring to all of your  
17 shareholders?

18 A. This would be referring to around 85 to  
19 88 percent of them.

20 Q. Okay. So 85 to 88 percent don't care  
21 about dividend or investment grade?

22 A. No. There are institutions where their  
23 goal is stock appreciation, and neither of those two,  
24 as long as the stock is appreciating, is  
25 particularly important to them.

1           Q.       Okay. In the second paragraph, the last  
2 sentence, you talk about whether there are future  
3 options to sell the company "that may more closely  
4 match shareholder expectations." At that time did  
5 you understand that there were future options to sell  
6 the company that more closely matched shareholder  
7 expectations?

8           A.       No. It would have been the thought that  
9 we could in the future find additional options that  
10 would more closely match shareholder expectation.

11          Q.       Okay. And in the sentence above that,  
12 the second to the last sentence in that paragraph, it  
13 says, "Our discussions should include an assessment  
14 of the expected value of this proposal and its  
15 probability of closing."

16                    Would your answers -- would your  
17 explanation of what that sentence means be similar to  
18 what we went through with the bullets that talk about  
19 those same two topics?

20          A.       It would be.

21          Q.       Okay. So you're just -- even at this  
22 point where you're getting ready to vote the next day  
23 on whether to enter into exclusivity, you're not  
24 trying to reach a conclusion on either of those  
25 questions. Is that -- is that your testimony?

1           A.       That's right.

2           Q.       Okay. Now, Mr. Green, do you have with  
3 you what was marked as Exhibit 16 at your deposition  
4 and what was marked Exhibit 118 here today?

5           A.       I do have it.

6           Q.       And that, I believe, is chronologically  
7 at least, after Exhibit 23 in that Exhibit 16 of the  
8 e-mail dated December 27th; is that correct?

9           A.       That is correct.

10          Q.       Okay. Now, just to -- just to start  
11 with, and I think Mr. -- Mr. Conrad touched on this,  
12 it says -- the sentence that starts at the very  
13 bottom of page 1 and carries onto page 2, what is  
14 the -- I'm sorry. Have you had a chance to read that  
15 sentence?

16          A.       I have.

17          Q.       What is the "legal barrier" that's  
18 referred to there?

19          A.       I do not know.

20          Q.       Okay. Do you think that at the time you  
21 wrote this e-mail, you knew then and you just don't  
22 recall any longer?

23          A.       No. I think it's a case of, again,  
24 where I am passing on information by gathering input  
25 from others to the board of directors, so I wouldn't



1 have been familiar with the details of legal barrier  
2 at that time either.

3 Q. On page 2 the first full paragraph  
4 there, this is down from the section we just talked  
5 about, I believe it states that if the Missouri  
6 Public Service Commission does not rule favorably on  
7 synergies and amortizations, that the transaction  
8 will be terminated; is that correct?

9 A. Yes. That was the negotiating point at  
10 that time.

11 Q. Do you know whether that is a condition  
12 in the finally executed merger agreement?

13 A. I don't know.

14 Q. Okay. Do you know what the finally  
15 executed merger agreement talks about in terms of  
16 regulatory approvals?

17 A. I know that it requires regulatory  
18 approvals.

19 Q. Okay. Do you know whether -- well, tell  
20 me what you know about what it requires in terms of  
21 regulatory approvals.

22 A. That's what I know.

23 Q. Okay. So you don't know if it has any  
24 discussion about conditional regulatory approvals or  
25 regulatory approvals in part or anything like that?

1           A.       I do not.

2           Q.       Okay. Now, skipping down a couple of  
3 paragraphs to the second to last paragraph, you  
4 mentioned that, "We need to dig a bit deeper into the  
5 unregulated business Strategic Energy." And I  
6 assume, then, that's a reference to Aquila needs to  
7 dig into that; is that correct?

8           A.       Yes.

9           Q.       Why did you need to dig into Strategic  
10 Energy?

11          A.       During this period of time we were going  
12 through a process that is referred to as reverse due  
13 diligence. Given that our shareholders were getting,  
14 as a part of the purchase price, Great Plains stock,  
15 there is a requirement that we do due diligence on  
16 Great Plains. And this paragraph would be in that  
17 context and specifically referencing Strategic  
18 Energy.

19          Q.       Okay. Is there -- is there anything  
20 else noted in this -- in this e-mail about other  
21 items that you need to look into in your reverse due  
22 diligence?

23          A.       Above that we talk about how we need to  
24 gain a better understanding of the Great Plains  
25 regulatory and financing plans. I think that's the

1   only other thing in this e-mail that would have  
2   anything to do with the reverse due diligence  
3   process.

4           Q.       And when you talk about regulatory  
5   plans, would that be -- regulatory and finance plans,  
6   would that be for consummating the merger itself or  
7   would that be for -- you need to look into that  
8   independent of the merger as part of your reverse due  
9   diligence?

10          A.       It would be broader than that.  Again,  
11   doing due diligence for our shareholders you'd want  
12   to understand, for example, you know, just them as a  
13   standalone, their regulatory plan going forward,  
14   things like that.

15          Q.       And returning to Strategic Energy, did  
16   you, in fact, dig into Strategic Energy?

17          A.       I believe our financial advisors did  
18   most of that due diligence.

19          Q.       And what did you find?

20          A.       I don't specifically recall, but at the  
21   same time, I don't recall that any issues came out of  
22   it that impeded the path towards signing a definitive  
23   agreement.

24          Q.       Do you know that -- at this stage that  
25   GPE is talking publicly about selling all or part of

1 Strategic Energy?

2 A. I do not.

3 MR. MILLS: Your Honor, may I approach?

4 JUDGE DIPPELL: Yes.

5 BY MR. MILLS:

6 Q. I'm looking for a copy of Exhibit 202  
7 which was admitted into the record yesterday which is  
8 a presentation from GPE at the Edison Electric  
9 Institute. As soon as I find that, I will hand it to  
10 you. Exhibit 202, and it's three pages in from the  
11 back.

12 And in the interest of time, Mr. Green,  
13 I'll tell you this has already been admitted into the  
14 record, so you don't really need to -- to lay any  
15 foundation for it, but does there appear right before  
16 the page that I opened to, a cover page in what  
17 appears to be PowerPoint, entitled Great Plains  
18 Energy?

19 A. The page before or the first page? Oh,  
20 here.

21 Q. The page before.

22 A. There is a cover page.

23 Q. That says Great Plains Energy?

24 A. Yes.

25 Q. Okay. And then the one that I turned

1 you to has a heading called Strategic Focus?

2 A. I see it.

3 Q. And a bold heading that says Conducts  
4 Strategic Alternative Review of Strategic Energy, and  
5 then it talks about retaining Merrill Lynch as a  
6 financial advisor and alternatives that may include  
7 continuation, joint ventures or sales of part or all  
8 of the company. Do you see that?

9 A. I do see that.

10 Q. Assuming that this is -- that this is  
11 accurate and that Great Plains is considering these  
12 moves, would that have any impact on the -- from  
13 Aquila's point of view on the merger of Great Plains  
14 and Aquila?

15 A. I don't believe so, but I really haven't  
16 considered it.

17 Q. Now, turning to Exhibit 17 from your  
18 deposition which has been marked as Exhibit 119, do  
19 you have a copy of that?

20 A. I'm sure I do. I have it.

21 MR. MILLS: And Judge, once again, just  
22 to check myself, it's my understanding that with the  
23 exception of the actual e-mail addresses, that this  
24 document has been made entirely public?

25 JUDGE DIPPELL: I'm sorry. What is the

1 number on that one?

2 MR. MILLS: It's Exhibit 17 to the  
3 deposition, Exhibit 119 from this hearing.

4 JUDGE DIPPELL: That's correct.

5 MR. MILLS: Okay.

6 BY MR. MILLS:

7 Q. In the -- in the first paragraph -- and  
8 this is an e-mail from -- from you, again to your  
9 board and some other people on January 23rd, 2007.  
10 Is that -- are you looking at the same e-mail that I  
11 am?

12 A. Yes, I am.

13 Q. Okay. You talk about the fact that you  
14 expected a recalcitrant -- "A recalcitrant tone on  
15 issues such as the 2007 rate case." Do you see that?

16 A. I know it's in here, I can't find it  
17 right offhand.

18 Q. It's the -- it's the very first couple  
19 of sentences.

20 A. Yes, I do see that.

21 Q. Okay. First of all, why did you expect  
22 a recalcitrant trone -- that's a tough one -- a  
23 recalcitrant tone?

24 A. The two thousand and -- the 2007 rate  
25 case that we've been talking about was a negotiating

1 item that was a very serious issue to both sides, and  
2 there had been a lot of back-and-forth. So given  
3 that, I came in with a certain perspective when I met  
4 with Mike.

5 Q. Okay. And you say "on issues such as  
6 the 2007 rate case." Were there other issues in  
7 which you expected recalcitrance?

8 A. I don't recall.

9 Q. Okay. This e-mail seems to indicate  
10 that there was more than just the issue at that time  
11 that you expected recalcitrance on; is that correct?

12 A. It does but I really don't recall any  
13 other issue than that 2007 rate case.

14 Q. Okay. Now, when -- when Aquila and GPE  
15 filed the joint application in this case, do you  
16 believe that you hit the lowest risk and highest  
17 probability of approval as you -- as you refer to in  
18 the middle of that first paragraph?

19 A. You know, I think as we embarked on that  
20 application, I think that is what we thought at that  
21 time.

22 Q. At the time that the joint application  
23 was filed in this case, was part of that application  
24 seeking recovery of Aquila's high cost of debt?

25 A. I don't believe so.

1           Q.       When did that become part of the -- the  
2 merger approval process in this case?

3           A.       At a later date but I really don't know  
4 when exactly that was.

5           Q.       At or before the point at which it  
6 became an issue in this case, did Aquila have the  
7 ability to say no to request for that kind of  
8 recovery?

9           A.       I don't believe we did.

10          Q.       Okay. Was Aquila asked whether or not  
11 Aquila thought that was a good idea in the context of  
12 this application?

13          A.       I don't recall.

14          Q.       You don't recall having been asked?

15          A.       I don't.

16          Q.       Now, in the second paragraph, the very  
17 last sentence refers to a nine-month timeline. Do  
18 you see that reference?

19          A.       I do.

20          Q.       What is the nine-month timeline?

21          A.       There was kind of an understanding  
22 amongst -- not understanding -- oh, shall we say, a  
23 rumor or talk that there might be a nine-month  
24 timeline there is what that refers to.

25          Q.       And how did you hear these rumors?



1           A.       It was -- it was among people of Great  
2       Plains and Aquila had heard mention of a nine-month  
3       timeline. There was no -- nothing specific about it  
4       other than just talk at the time.

5           Q.       Did you believe at the time you wrote  
6       this e-mail that there was some sort of a legal  
7       requirement that a merger case be approved on a  
8       nine-month timeline?

9           A.       No.

10          Q.       When did you file the joint application  
11       in this case?

12          A.       I think in April of '07.

13          Q.       Beginning of April, does that sound  
14       right?

15          A.       I don't know if it was beginning or not.

16          Q.       Nine months from that would be about a  
17       month from now?

18          A.       From April, yes.

19          Q.       Now, let's turn back to the -- to the  
20       first paragraph. At the -- at the end of that  
21       paragraph you refer to the cost of a failed  
22       transaction. At the -- at the point where we are  
23       now, how would an unfavorable decision from the PSC  
24       affect Aquila?

25          A.       Well, I think, as it even says in here,

1 a failed transaction would mean really the sunk cost  
2 of the transaction fees that we paid for signing.  
3 There -- there are different increments but we paid a  
4 piece at signing and a piece at shareholder approval,  
5 we've paid a lot of retention bonuses to try to keep  
6 employees working at the company when the future is  
7 not our company, it's another company. We have  
8 halted, as it says here, our liability management  
9 plan.

10 So it really is -- and we have really  
11 stalled our own business plan because the  
12 anticipation is that we will be a part of Great  
13 Plains. So the risk is -- the business risk piece of  
14 it is all of those items, picking them up together  
15 and kind of getting on with the standalone plan which  
16 we've lost momentum with because of the stall in  
17 this.

18 Secondly, would be to the shareholders,  
19 and I -- quite frankly, I don't know what that would  
20 be there, but certainly would have to circle back  
21 with them and understand what the owners of the  
22 company, what they see in Aquila and what their  
23 thoughts are about Aquila are two of the issues that  
24 come to mind.

25 Q. Do you have an opinion that -- at this

1 point whether the cost of a failed transaction would  
2 be harder on Aquila or harder on GPE?

3 A. I believe it would be harder on Aquila.

4 Q. Now, in Exhibit 18 to your deposition,  
5 which I believe Mr. Conrad had admitted into the  
6 record as Exhibit 203, do you have a copy of that?

7 A. I do have it.

8 MR. MILLS: And Judge, again, just  
9 checking to be sure, this one has been -- with the  
10 exception of the e-mail addresses, has been made  
11 public; is that correct?

12 JUDGE DIPPELL: That's correct.

13 MR. MILLS: Okay.

14 BY MR. MILLS:

15 Q. In this e-mail you talk about in the  
16 very first paragraph, "The leaders of the MPSC Staff,  
17 Wes Henderson and Bob Schallenberg. Do you see that  
18 reference?

19 A. I do.

20 Q. And have you known those two gentleman  
21 for quite a while?

22 A. I have.

23 Q. Probably 20 years or more?

24 A. Yes.

25 Q. Did they react unfavorably to the idea

1 of no longer protecting ratepayers from noninvestment  
2 grade issues?

3 A. From what kind of issues again?

4 Q. Well, I'm looking at the third paragraph  
5 now.

6 A. Yeah. No, that's where I was gonna --  
7 to go. But yes, it's mentioned in the sentence in  
8 the third paragraph.

9 Q. Okay. Were you surprised that they  
10 acted -- reacted unfavorably to that idea?

11 A. I was not.

12 Q. After their unfavorable reaction, did  
13 you have any more conversation to try and bring them  
14 around?

15 A. I did not. I think what we did do,  
16 though, is we certainly -- the 2007 rate case was not  
17 a part of the go-forward plan and also the  
18 amortization piece. The issue with Aquila on  
19 amortization has been that it wouldn't be appropriate  
20 for the amortization tool --

21 Q. Well, now, Mr. Green, I don't want to  
22 interrupt, but I'm specifically asking about what you  
23 talked about with them, not -- not what the rationale  
24 may be now. But if you -- if you're telling me now  
25 things that you didn't tell them at that time, then I

1 think you're beyond the scope of the question I was  
2 asking. If you don't -- I'm sorry.

3 A. The shorthand, all I'm trying to say is  
4 that the amortization is an issue with us because if  
5 it was to take us from noninvestment grade to  
6 investment grade, that wouldn't be appropriate, and I  
7 think that is a piece of this in the sense of  
8 them negatively affecting their negative comments.

9 Q. And my question was, did you tell them  
10 all these things at that point or --

11 A. Again, it was the 2007 rate case which I  
12 would have mentioned that amortization for us was a  
13 part of that as well as mentioned the concept of the  
14 two companies coming together.

15 Q. Okay. And you met with these two  
16 individuals face-to-face?

17 A. No, this was a phone call.

18 Q. It was a phone call. Okay. Even with a  
19 phone call, though, you were able to tell that they  
20 reacted unfavorably; is that correct?

21 A. I was, yes.

22 MR. MILLS: Now, with respect to  
23 Exhibit 20 -- and Judge, I need to keep flipping  
24 around to see what has been previously marked. I  
25 know this one, Exhibit 304 has. This was marked as

1 Exhibit 304, I believe?

2 JUDGE DIPPELL: Yes, and it's public.

3 BY MR. MILLS:

4 Q. And you had some questions about --  
5 about this with Mr. Conrad, so I'll -- I'll be --  
6 I'll be pretty brief. Ultimately you came to an  
7 agreement with GPE that there would be a point at  
8 which you would file a rate case if your FFO-to-debt  
9 ratio fell below a certain point --

10 A. That's correct.

11 Q. -- is that correct? Is that -- is that  
12 agreement reflected in the -- in the merger  
13 agreement?

14 A. I don't know.

15 Q. Do you know whether it's reflected in  
16 writing anywhere?

17 A. I don't.

18 Q. Okay. And finally, with respect to  
19 Exhibit 22 which has been marked as Exhibit 301, do  
20 you have a copy of that there with you?

21 A. I do.

22 Q. In that e-mail you talk about Navy's  
23 current attitude. And that's in the portion of the  
24 e-mail from you to Mr. Hockaday at 17:34:53 p.m. Do  
25 you see that about a little over halfway down on the

1 first page?

2 A. I do see that.

3 Q. Okay. What specifically was Navy's  
4 current attitude at that point?

5 A. I don't remember clearly everything of  
6 the -- of the attitude. I know the issue around this  
7 time was a lot of back-and-forth about timing and  
8 exclusivity and those kind of things. And at this  
9 point in time, there was an issue that was raised as  
10 to some issues they had with the refinancing of some  
11 debt and the problems that caused in being in a --  
12 you know, negotiations with this and having to  
13 refinance debt and around all of that into  
14 discussions and negotiations, that that kind of all  
15 came to what I would have been talking about here as  
16 far as attitude.

17 Q. And does the attitude -- I mean, is  
18 that -- if you look at the original e-mail that  
19 started this group which is -- which is an e-mail  
20 from you on November 30th at 1637, from my reading of  
21 that, and correct me -- or tell me if this is your  
22 reading, Navy's attitude seems to be almost kind of a  
23 take-it-or-leave-it kind of thing? Is that -- is  
24 that how you can read the responses to the points  
25 that you raised with -- that Navy has responded to

1     you?

2             A.       You could, but I think we need to  
3     remember all of this is very much negotiations, and  
4     so you're gonna have different attitudes, different  
5     positions, you know, very often through this.

6             Q.       Okay. At the bottom of page 1, did  
7     Mr. Hockaday say to you that, "The way Navy is  
8     positioning themselves indicates that they are  
9     convinced we have no other options"?

10            MR. ZOBRIST: Judge, just for the  
11    record, I'm gonna renew my relevancy objection. This  
12    is now the second time we've gone over this document.  
13    It's November, we're going backwards in time, and I  
14    don't think it's relevant to the matter pending  
15    before the Commission.

16            JUDGE DIPPELL: I'm gonna overrule your  
17    objection a second time.

18            THE WITNESS: Where are you looking  
19    again?

20    BY MR. MILLS:

21            Q.       The -- the -- toward the bottom of  
22    page 1 of that document there's an e-mail that is  
23    coming from Mr. Hockaday to you and other members of  
24    the board. The very first sentence in that e-mail  
25    reads, "The way Navy is positioning themselves



1 indicates they are convinced we have no other  
2 options."

3 A. I see that.

4 Q. And did you agree at that time that that  
5 was at least one way to read Navy's actions?

6 A. Yes.

7 Q. Okay. Now, in your e-mail back to  
8 Mr. Hockaday in the middle of the page, you note  
9 that, "A number of the other participants may be  
10 ready to engage again in the early part of next  
11 year"; is that correct?

12 A. That's correct.

13 Q. Have you received any information since  
14 November 30th of 2006 that would indicate that that's  
15 no longer correct?

16 A. I have -- since November of 2006? I  
17 mean, I would have perhaps received different  
18 information after November. I think my point is that  
19 once we went in exclusivity, and then, of course,  
20 once we signed the definitive agreement, certainly  
21 our/my commitment shifts to this transaction and I  
22 cannot entertain anything else.

23 Q. Okay. And do you know -- at the very  
24 top of this page it appears as though this e-mail  
25 was -- was sent to and printed by apparently Brad

1 Bacon. Do you know who Brad Bacon is?

2 A. I do know who Brad Bacon is.

3 Q. Okay. And what -- what is his relevance  
4 in this whole discussion?

5 A. I don't know what his relevance would  
6 be.

7 Q. Okay. It doesn't appear as though he  
8 sent any of this text, does it?

9 A. It doesn't, no.

10 Q. Now, the -- the very last in the --  
11 chronologically but the first on the printout page of  
12 these e-mails is an e-mail from you to Keith Stamm  
13 and Christopher Reitz; is that correct?

14 A. That is correct.

15 Q. And it says, "Read below. This has been  
16 a good day." Is that how it starts out?

17 A. That is how it starts out.

18 Q. Which particular portions of the  
19 information below made it a good day?

20 A. I think it had more to do with what was  
21 going on here, as we've talked about. You had the  
22 negotiations that were going on with Great Plains,  
23 you had the prospects of walking away from Great  
24 Plains and doing other things.

25 When things move of that substance, it

1 calls for discussions and agreement of the board and  
2 the management team needing to engage with the board  
3 to make decisions on next steps. And so this is kind  
4 of a good day in the sense we were able to cover a  
5 lot of those bases to continue to move forward in one  
6 way or another.

7 Q. So in and of itself, the fact that  
8 Navy's response to the -- to the price issue that,  
9 "The existing offer is generous and there will be no  
10 price increase," that's not really a very good  
11 response from Aquila's point of view, is it?

12 A. No, we would have loved to have had  
13 another response.

14 Q. And in terms of the price certainty,  
15 Navy's response that, "A fixed exchange ratio is  
16 customary for utility transactions and will not be  
17 changed, the cash portion of the nonbinding proposal  
18 will not be increased," that's not a particularly  
19 favorable response either from Aquila's point of  
20 view, is it?

21 A. It is not.

22 Q. And finally, on page 2, the first  
23 paragraph, and this is the beginning of your e-mail  
24 on November 30th to the Aquila directors, you refer  
25 to "A standalone valuation and alternatives requested

1 by the board at its last meeting." Do you see that  
2 roughly in the middle of that first paragraph?

3 A. I do see that.

4 Q. And is that reference to a standalone  
5 evaluation or a reference to an evaluation of  
6 aquility -- I'm sorry -- Aquila's prospects to remain  
7 as a standalone company?

8 A. It would be the valuation of Aquila by  
9 itself.

10 Q. And what alternatives were requested by  
11 the board at its last meeting, what alternatives were  
12 being talked about at that point in time?

13 A. I think it probably was in connection  
14 with what we saw on this other string of e-mails is  
15 that we had this offer from -- from Navy and it  
16 needed to be compared to what our other option is.  
17 Certainly one of those would be standalone. There  
18 perhaps were other ones in there that I don't recall  
19 right now, but that's what I believe that's referring  
20 to.

21 MR. MILLS: Okay. Judge, that's all the  
22 questions I have. Thank you.

23 JUDGE DIPPELL: Thank you. Are there  
24 questions from the Bench for Mr. Green? Commissioner  
25 Appling?

1 COMMISSIONER APPLING: (Shook head.)  
2 JUDGE DIPPELL: Commissioner Jarrett?  
3 COMMISSIONER JARRETT: No.  
4 JUDGE DIPPELL: Chairman Davis?  
5 (NO RESPONSE.)  
6 JUDGE DIPPELL: All right, then. Is  
7 there redirect?  
8 MS. PARSONS: There's no redirect.  
9 JUDGE DIPPELL: All right, then. I  
10 believe, if I'm correct, that concludes Mr. Green's  
11 testimony, and you may be excused, sir.  
12 THE WITNESS: Thank you.  
13 JUDGE DIPPELL: Thank you very much for  
14 your patience. Okay. It's about 13 till 5:00. My  
15 intent is to go ahead and put Mr. Chesser on and  
16 finish him tonight before we leave.  
17 MR. ZOBRIST: Good. Thank you, Judge,  
18 appreciate that.  
19 JUDGE DIPPELL: So with that in mind,  
20 let's take a break until five o'clock and come back  
21 here ready to move like the wind. Let's go off the  
22 record.  
23 (A RECESS WAS TAKEN.)  
24 JUDGE DIPPELL: Okay. We're back on the  
25 record and Mr. Chesser has come back up to the stand.

1 And I'll just remind you, sir, that you were sworn  
2 the other day --

3 THE WITNESS: Yes.

4 JUDGE DIPPELL: -- and remain under oath  
5 while you're on the stand. I think we're gonna begin  
6 by -- there's some questions from the Bench and we're  
7 just gonna start there and maybe that will actually  
8 shorten things a little bit.

9 THE WITNESS: Okay. Thank you.

10 JUDGE DIPPELL: So Chairman Davis or  
11 Commissioner Jarrett, did you have anything?

12 COMMISSIONER JARRETT: I'll let  
13 Commissioner Davis go first, please.

14 JUDGE DIPPELL: Chairman Davis?

15 QUESTIONS BY CHAIRMAN DAVIS:

16 Q. Good evening, Mr. Chesser.

17 A. Good evening.

18 Q. Mr. Chesser, do you call -- do you  
19 recall your previous testimony in this proceeding?

20 A. Some of it. It was a long testimony.  
21 I'm not sure I have it verbatim.

22 Q. Okay. All right. Well, you know, my  
23 impression of your previous testimony in this case is  
24 that your company, Great Plains Energy, made a deal  
25 to purchase all the shares of Aquila at a specified

1 price and that you're willing to negotiate on a lot  
2 of these other things pretty much anything else other  
3 than that specified purchase price. Is that a fair  
4 statement?

5 A. As a package, that's a fair statement.

6 Q. Okay. And you can't negotiate a lower  
7 price because you've got a signed contract with  
8 Aquila, correct?

9 A. That's correct.

10 Q. And you don't want to be in breach of  
11 contract, correct?

12 A. That's correct.

13 Q. Now, you've had a chance to read some of  
14 the testimony and hear some of the questioning of  
15 Mr. Green, Mr. Empson and others. Now, do you get  
16 the impression that Aquila also had a deal with the  
17 PSC Staff, the Office of Public Counsel, possibly  
18 Mr. Conrad and others not to ever ask the ratepayers  
19 to pick up the tab for any of their borrowing costs  
20 above 7 percent?

21 A. I have the impression that they had a  
22 deal. I don't know the exact parameters, whether it  
23 was ever or what the time frame was, but I do -- I  
24 did hear that they had an arrangement that, you know,  
25 at this time their -- their borrowing costs would be

1 capped at 7 percent. I don't know if that was in  
2 perpetuity or not.

3 Q. All right. I mean, do you think it's  
4 appropriate to ask Aquila as part of your deal to go  
5 back on the deal that they'd previously made with the  
6 PSC Staff and the other parties to this case?

7 A. In my view, this deal provides greater  
8 benefits to the customer and has different  
9 parameters. So when I think in terms of, you know,  
10 the long-term savings that the customers benefit from  
11 and the quality of service that they will benefit  
12 from, the service reliability that they'll benefit  
13 from, I think it's appropriate to put all of the  
14 factors on the table and try to come up with -- and  
15 again, this is our bottom line, I think this is what  
16 I shared with you last time -- last time -- try to  
17 come up with a scenario that will allow Great Plains  
18 to maintain its investment grade credit rating.

19 And, you know, within that context, I  
20 think we should have all the parameters on the table,  
21 make sure we can find a way to bring all the benefits  
22 possible to the customer but at the same time allow  
23 us to maintain our credit rating.

24 Q. All right. So you want to maintain your  
25 credit rating?



1           A.       Yes.

2           Q.       Okay. Let me ask it another way: Can  
3 you understand why the PSC Staff, the OPC, Mr. Conrad  
4 and others who were involved in the negotiation of  
5 that agreement which to the best of my knowledge has  
6 been undisturbed for several years, you know, cringe  
7 at the thought of KCP&L, Great Plains Energy coming  
8 in here and wanting to invalidate that deal when they  
9 felt like they were giving up consideration to get  
10 that -- get that deal in the first place?

11          A.       In isolation I can understand that, but  
12 I think it's important for me to say that I believe  
13 in this case we will demonstrate that there are far  
14 greater benefits available to Aquila customers than  
15 just that interest rate protection. So we will, in  
16 effect, you know, hopefully convince the  
17 Commissioners that the benefits to the customers  
18 coming out of this case will be significantly better  
19 than Aquila on a standalone basis with that interest  
20 rate protection.

21                   So certainly, I -- you know, you can  
22 get, you know, tie-in -- I can just imagine the long  
23 discussions that took place to reach that kind of  
24 agreement, and I can see why they would be frustrated  
25 at the prospect of moving away from it, but I do hope

1   that, you know, once we're able to put our full case  
2   on, people will see the benefits to the Aquila  
3   customers will be significantly better with this  
4   merger.

5           Q.     And so basically -- I mean, you don't --  
6   you don't disagree with the statement that having the  
7   ratepayers pick up the tab for those excess interest  
8   costs, the refinancing charges, you don't dispute  
9   that that's a detriment to the ratepayers in excess  
10  of more than \$150 million over the next five years;  
11  you just take the position that all the benefits  
12  long-term will be a negative -- or I'm sorry -- a net  
13  benefit when it all washes out; is that -- is that  
14  what you're saying?

15          A.     That's what I'm saying, yes.

16          Q.     Now, normally when there is a merger, I  
17  mean -- well, I guess first, do you concede that --  
18  that you are seeking some extraordinary upfront  
19  measures here in this case that have probably never  
20  been sought in any other merger case in this country?

21          A.     Yes, but I think it's important to say  
22  that at least in my experience, every merger case is  
23  situational. You know, for instance, merger cases  
24  years ago were dealing with stranded costs. I was  
25  involved in one of the first cases and it dealt with

1 a stranded costs issue. So every case is situational  
2 and to me, the challenge is to find a way to put the  
3 new company together that will allow you to maintain  
4 the financial integrity of the new company and share  
5 as much benefit as possible with the ratepayer.

6 Q. But -- and isn't there a more -- isn't  
7 the more traditional way of realizing synergies the  
8 fact that, you know, these companies -- you know,  
9 when there -- when there is a merger and, for  
10 instance, as there's been some testimony in this  
11 case, say Aquila's going to be, you know, reducing  
12 the number of management employees, you know, by a  
13 significant number, you know, you're able to, you  
14 know, retain those synergies just by the virtue that  
15 you're not filing a rate case? Isn't that the more  
16 traditional method of realizing synergies?

17 A. There was a period of time in the past  
18 where that was normally the case. The thing that's  
19 different today is we are in a rising electric rate  
20 environment. Significant investments are having to  
21 be made in new capacity and environmental  
22 investments, so rates will be going up. The  
23 challenge here is to make sure rates don't go up as  
24 much as they otherwise would have.

25 Q. Okay. Mr. Chesser, do you think it is

1 possible to construct a model whereby Great Plains  
2 can pay the purchase price for Aquila and honor all  
3 of the commitments made -- made by Aquila to the  
4 parties here in this case relative to the interest  
5 payments and everything else that they've agreed to  
6 previously?

7 A. We are right now, as we speak, based on  
8 last Monday, working scenarios. And one thing I can  
9 tell you is, you know, one scenario we're working  
10 very hard on -- and this doesn't answer your question  
11 directly, and I'll try to get back to that, but I  
12 think this is information you might find useful.

13 One scenario we are working on is how  
14 can we accelerate the benefits to the customer in the  
15 first five years. As you know, prior to the  
16 discussion was the first five years there were  
17 negatives to the ratepayers; long-term there were  
18 significant positives.

19 We're looking at scenarios where we  
20 might be able to move those benefits up so that in  
21 the first five years there are at least some benefits  
22 and beyond that, obviously, significant benefits, to  
23 be more in sync with the benefits that flow to the  
24 shareholder. So that's -- that's one thing.

25 Now, if -- in that scenario can we find

1 a way to not recover any of the higher interest  
2 costs? I'm not sure if we can do that at this point.  
3 I'm just not sure. But I do think we can demonstrate  
4 significant benefits and make it so that more of  
5 those benefits flow in the earlier years. And  
6 that's -- and Mr. Bassham in his testimony will be,  
7 you know, able to lay some of those options out to  
8 you.

9 Q. Okay. So that's gonna be new territory  
10 that we haven't -- haven't seen or discussed from  
11 Mr. Bassham?

12 A. Right, trying to be responsive to the  
13 Commissioners' questions and interest.

14 Q. Right. If you could construct a  
15 scenario whereby you could pay the purchase price for  
16 Aquila and honor all or substantially all of the  
17 commitments made by Aquila to the -- to the parties  
18 in this case, then don't you think that that would be  
19 a lot better starting place for coming to this  
20 Commission seeking merger approval than where you  
21 started?

22 A. Well, again, I can tell you that it's  
23 critical to us to maintain our credit rating, and I  
24 have some worry that we're not going to be able to  
25 maintain all those commitments and maintain the

1 credit rating. I think we can maintain the credit  
2 rating and deliver significantly more benefits to the  
3 customer than those -- than those assurances would.  
4 Follow what I'm saying? In other words, I think the  
5 benefit -- the customer will benefit much more  
6 through this merger than they would just by the -- by  
7 the assurances that were made around the interest  
8 savings.

9                   So I think we can -- we can present you  
10 a scenario where we will have, you know, more  
11 benefits flowing to the customer than Aquila on a  
12 standalone with the agreements that they've made, and  
13 that's a key point, and also enable us to maintain  
14 our credit rating.

15           Q.       And are Mr. Conrad, Mr. Mills,  
16 Mr. Williams, I mean, are they supposed to be able  
17 to, you know, quickly evaluate whatever new scenarios  
18 Mr. -- Mr. Bassham throws out there, or are they  
19 going to be provided with those scenarios in advance  
20 where they have an opportunity to fairly evaluate  
21 them?

22           A.       I'd be happy to do that. I'll be happy  
23 to try to get them as early and as on time as we can.  
24 And again, we're willing to sit down and talk about  
25 them as well, you know, in a collaborative process.

1 You know, we don't -- I'm not saying we have to  
2 follow through this hearing process.

3 CHAIRMAN DAVIS: Okay. You don't have  
4 to tell me that. I think they're all out there,  
5 they're listening and -- thank you, Judge. I have no  
6 further questions.

7 JUDGE DIPPELL: Thank you. Did you have  
8 anything at this time, Commissioner Jarrett?

9 COMMISSIONER JARRETT: No.

10 JUDGE DIPPELL: All right, then. I  
11 believe where we left off was with Ag Processing's  
12 cross-examination.

13 MR. CONRAD: I think that is correct.  
14 Could I pick up with a couple from the Bench?

15 JUDGE DIPPELL: If you'd like we can go  
16 ahead and follow up there, and then I will -- I will  
17 go back and give the other parties an opportunity if  
18 you have questions about Bench questions.

19 MR. CONRAD: Just while it's -- the  
20 topic is there.

21 JUDGE DIPPELL: That's fine.

22 CROSS-EXAMINATION BY MR. CONRAD:

23 Q. Mr. Chesser, which is more important to  
24 you, this deal or preserving your credit rating?

25 A. The most important thing for us and for

1 all of our stakeholders long-term, customers and  
2 shareholders, is to preserve the credit rating.  
3 We're -- we're in a heavy construction period. It's  
4 important that we have our interest rates as low as  
5 possible.

6 Q. Were you here when your counsel made an  
7 opening statement?

8 A. I was.

9 Q. Did you hear him use the term  
10 "regulatory support"?

11 A. I don't remember everything that he said  
12 in his opening statement.

13 Q. Well, I'll let you take that up with him  
14 later on.

15 A. Yeah.

16 Q. What does the term regulatory support  
17 mean to you?

18 A. Well, you know, in the context of what  
19 we're talking about, finding a pathway where we can  
20 bring these two companies together and allow us to  
21 maintain our investment grade credit rating.

22 Q. Does regulatory support mean rate  
23 increase?

24 A. As I say --

25 Q. Yes, no, maybe or you don't know?



1           A.       Not necessarily.

2           Q.       Is regulatory support of some type going  
3 to be needed for this acquisition to be successful?

4           A.       I would say regulatory -- a regulatory  
5 compact will be needed. I'm not -- I'm not sure if  
6 the word support, you know, means -- support leads to  
7 rate increase, I'm not sure that that's where I'm  
8 willing to go at this point until we examine these  
9 other options.

10          Q.       Well, that's what you're proposing,  
11 that's what you're proposal is, is rate increase.

12          A.       Are you asking me what my current  
13 proposal is or are you asking me --

14          Q.       That's what your proposal is that's  
15 before this Commission, it involves a rate increase,  
16 does it not, sir?

17          A.       The current proposal does.

18          Q.       It also involves regulatory  
19 amortization, does it not?

20          A.       Yes, it does, yes.

21          Q.       What, to you, is meant by "regulatory  
22 amortization"?

23          A.       Regulatory amortization is a lot like  
24 accelerated depreciation. The idea is you get cash  
25 flow, additional cash flow in the short-term to make

1     sure that you meet credit coverages. In the  
2     long-term, it serves to reduce your rate base, and as  
3     such, it's not necessarily in the best interest of  
4     shareholders or customers. It's the kind of thing  
5     that should be used as a last resort.

6           Q.     Now, you've been here enough time to  
7     hear some discussion about regulatory amortization,  
8     and I'm recalling, although I was not there, the  
9     court reporter did a pretty good job of it, you  
10    talked about regulatory amortizations at your  
11    deposition, did you not?

12          A.     I seem to remember that I did. It was  
13    all --

14          Q.     And did you talk about four groups of  
15    stakeholders?

16          A.     Yes, I did.

17          Q.     You do recall talking about those?

18          A.     I recall talking about four groups of  
19    stakeholders, yes.

20          Q.     Is the regulatory amortization mechanism  
21    beneficial to all four of the stakeholder groups that  
22    you identified?

23          A.     I believe it is.

24          Q.     Okay. Was one of those the customers?

25          A.     Yes, it was.

1 Q. Was another the community?

2 A. It was.

3 Q. Was a third the shareholders?

4 A. It was.

5 Q. And was the fourth one the employees?

6 A. It was.

7 Q. And were you asked if regulatory  
8 amortization was there for the bondholders or the  
9 debtholders? Do you recall being asked that?

10 A. You know, it's -- I remember the  
11 discussion about the four stakeholders, and I  
12 remember being asked about the bondholders, and  
13 the -- I'm just trying to remember if it was in the  
14 context of regulatory amortization. But I can -- I  
15 can share with you that -- what was in my mind --

16 Q. Well, rather than do that, let me just  
17 show you a copy of the deposition.

18 A. Okay. Good, good.

19 MR. CONRAD: And for the benefit of  
20 counsel, this is --

21 MR. ZOBRIST: I can give it to him.

22 MR. CONRAD: -- 129. Actually, a  
23 colloquy, I think, that begins on 127 and goes over  
24 beyond that.

25 BY MR. CONRAD:

1           Q.       And you do, Mr. Chesser, have that --  
2       have that deposition before you.  Would you look --

3           A.       I do.

4           Q.       -- at 129?

5           A.       I do.

6           Q.       Line 1.

7           A.       Uh-huh.

8           Q.       Were you asked, "The concept of  
9       bondholders, debtholders, do you lump them into any  
10      of these four stakeholder groups or are they somewhat  
11      outside of those four?"

12                   And did you answer, "Well, to me we are  
13      in business to provide value to those four  
14      stakeholder groups.  We are not in business to  
15      provide value to the banks.  We have a contractual  
16      arrangement with the bank.  Unless you were in  
17      bankruptcy, you were focused on providing -- I mean,  
18      getting your financing done at the lowest possible  
19      cost with the right risk per file"?

20          A.       Right.

21          Q.       "But the real four areas that I focus on  
22      are those four."

23          A.       That's -- that's right.  That's what I  
24      meant.

25          Q.       Now, the regulatory plan that Kansas

1 City Power & Light has, has as its purpose what, sir?

2 THE WITNESS: Lewis, would you move  
3 just --

4 MR. MILLS: I'm sorry.

5 THE WITNESS: Thank you. Thank you.

6 The purpose of the regulatory plan is for us to be  
7 able to add capacity and make the necessary  
8 environmental retrofits and to promote -- move  
9 forward with energy efficiency renewables at the  
10 lowest possible cost to the customer.

11 And in order to do that, the  
12 amortization you talk about helps us maintain a  
13 credit rating that allows us to keep the lowest  
14 possible interest cost.

15 BY MR. CONRAD:

16 Q. And the capacity that you referenced, is  
17 that Iatan 2?

18 A. Yes, it is.

19 Q. Is Iatan 2 to your knowledge, sir, used  
20 and useful and running right now and delivering power  
21 to the grid?

22 A. No, it's not.

23 Q. Was the regulatory plan intended to  
24 support Kansas City Power & Light in a plan to  
25 acquire other utilities?

1           A.       No, it was not.

2           Q.       Were you here yesterday for Mr. Giles'  
3 testimony?

4           A.       I was not.

5           Q.       Are you then aware or not that he takes  
6 the position that the parties' agreement to the  
7 regulatory plan is unnecessary?

8           A.       I'm not -- I'm not aware of that  
9 position.

10          Q.       Would that surprise you to know that  
11 that was his position and testimony?

12                   MR. ZOBRIST: Well, let me object. I  
13 think that's Mr. Conrad's view of what Mr. Giles  
14 said. I'm not certain because we don't have the  
15 record here whether that's entirely accurate.

16                   THE WITNESS: Right. And really, I  
17 don't feel qualified to pass legal judgment on that.

18 BY MR. CONRAD:

19          Q.       I'm not asking you for legal judgment.  
20 I'm asking you if it would surprise you if that was  
21 his position?

22          A.       I just don't have an opinion on that, I  
23 really don't.

24          Q.       Okay. Can you understand why that  
25 attitude if it exists, might make entry into a

1 collaborative process somewhat difficult?

2 A. Well, actually, because I think the  
3 amortization is such a benefit to the customer that  
4 it would seem to me collaborating with people who are  
5 also looking out for the best interest of the  
6 customer would be -- that would be an issue that  
7 would not be a stumbling block.

8 I mean, I think that's why it got into  
9 the initial regulatory plan; people saw that the  
10 customer really in the end is better off having that  
11 amortization provision.

12 Q. Mr. Chesser, on Monday you drew an  
13 analogy between this acquisition and the construction  
14 of a coal plant. Do you recall that analogy?

15 A. I do remember that, yeah.

16 Q. And the analogy, I think to be fair, was  
17 something along the lines that you'd have to expend  
18 money to build the coal plant and then the benefits  
19 would come later?

20 A. Right.

21 Q. Was that -- was that the analogy?

22 A. That's right.

23 Q. Are there some differences too?

24 A. Oh, absolutely. It was not a perfect  
25 analogy.

1           Q.       Can you measure the benefits with a coal  
2 plant?

3           A.       You can.

4           Q.       And what are the measures you would use  
5 to identify the benefits of a coal plant?

6           A.       You talk about net generation costs,  
7 looking at items like the cost of fuel. None of it's  
8 perfect, and it's all based on a judgment you make  
9 about the future, so there's no certainty there.

10                   We've seen the price of natural gas  
11 fluctuate and we've seen the price of coal fluctuate,  
12 so you make your best judgment when you make that  
13 decision.

14           Q.       What tracking mechanism have you  
15 proposed here with respect to rate pay or benefits?

16           A.       We have not proposed a tracking  
17 mechanism.

18           Q.       Are you willing to enter into guarantees  
19 that those benefits will actually appear?

20           A.       We're willing to discuss what form of  
21 assurances are --

22           Q.       Are you willing --

23           A.       I'm not -- I'm not saying I'm willing --  
24 at this point willing to enter into a guarantee.

25           Q.       Okay. So the answer to my question is a



1 no; is that right? You are not willing to enter into  
2 a guarantee?

3 A. A guarantee, no.

4 Q. You made reference, I think, a few  
5 moments ago to a Terry Bassham?

6 A. I did, yes.

7 Q. At an earlier point I believe there was  
8 in your testimony that you had identified --

9 MR. CONRAD: -- and check me on this,  
10 your Honor, an Exhibit 101 that's Exhibit 26 from  
11 Mr. Chesser's deposition?

12 JUDGE DIPPELL: That's correct.

13 MR. CONRAD: And was that admitted?

14 JUDGE DIPPELL: It was admitted and it  
15 remains with some HC portions.

16 MR. CONRAD: Okay. I'm gonna have a  
17 question with respect to, I think it is the third  
18 page of that exhibit, if the witness could be  
19 provided that. And give him an opportunity to review  
20 it for a moment in the second paragraph.

21 THE WITNESS: Okay.

22 MR. CONRAD: And Judge -- thank you.  
23 Judge, is that -- the paragraph to which I've  
24 referred, is that one that is still HC?

25 JUDGE DIPPELL: I haven't got it in

1 front of me, so ...

2 MR. CONRAD: Mr. Mills has handed me  
3 Exhibit 101 HC with some redactions on it. I am not  
4 proposing to ask about anything that is blacked out,  
5 so --

6 MR. ZOBRIST: That's fine.

7 JUDGE DIPPELL: Well, and looking from  
8 here, Mr. Mills, I'm assuming you're representing  
9 that that's the copy that --

10 MR. ZOBRIST: I think that's right,  
11 Judge.

12 MR. MILLS: This is the copy I got  
13 from -- from GP this morning.

14 JUDGE DIPPELL: Okay.

15 MR. MILLS: -- so I think this is the  
16 final verdict.

17 JUDGE DIPPELL: As long as you're not  
18 referring to that redacted paragraph.

19 MR. CONRAD: I don't -- I certainly will  
20 not intend to.

21 BY MR. CONRAD:

22 Q. But looking, Mr. Chesser, at the third  
23 page, second paragraph.

24 A. Right.

25 Q. The paragraph begins "The most

1     difficult"?

2             A.       Right.

3             Q.       And then move your eye to the second  
4     sentence.

5             A.       Yes.

6                     MR. CONRAD:   And that's where I want to  
7     focus, Judge, and I don't think that's within the  
8     redacted material.

9     BY MR. CONRAD:

10            Q.       The letter says, "There is little  
11     debate" -- oh, before we do that, let me ask you,  
12     Mr. Bassham was pretty deeply involved in the  
13     negotiations, was he?

14            A.       He was, yes.

15            Q.       Pretty knowledgeable about them?

16            A.       Yes.

17            Q.       I believe that Mr. Giles was agreeable  
18     to characterizing him as the principal negotiator,  
19     would you agree?

20            A.       I would agree with that, yes.

21            Q.       So he would -- he would obviously be  
22     pretty knowledgeable?

23            A.       Yes.

24            Q.       And he's the author of -- of this  
25     document?

1           A.       Yes.

2           Q.       Now let's go back to that sentence where  
3 we were. "There is little debate that KCP&L stands  
4 to benefit more than any other company from merger  
5 synergies with MoPub in St. Joe." Do you see that  
6 sentence?

7           A.       I do.

8           Q.       Did I read it correctly?

9           A.       You did.

10          Q.       Is there a merger proposed between KCP&L  
11 and MoPub? Yes, no, maybe or you don't know?

12          A.       There is -- there is not a merger  
13 proposed between KCPL and MoPublic.

14          Q.       Is there a merger proposed between KCPL  
15 and St. Joe?

16          A.       There is not.

17                 MR. CONRAD: I think, Judge, anything  
18 else on that would get us into HC. I do have a  
19 question now on what was marked as Exhibit 102,  
20 Exhibit 27 to Mr. Chesser's deposition. And KCPL  
21 Counsel, is that -- has that been redacted?

22                 MR. ZOBRIST: I believe that's been --

23                 MR. CONRAD: Actually, I guess -- excuse  
24 me, I -- I misspoke. I think we've got -- that's the  
25 one where we have two different versions.

1                   MR. ZOBRIST: I thought Exhibit 27 has  
2   been declassified by the Commission.

3                   JUDGE DIPPELL: Exhibit 27 has been  
4   declassified.

5                   MR. CONRAD: Okay. So would it ...

6                   MR. ZOBRIST: I'm not sure it's been  
7   marked as a hearing exhibit.

8                   MR. CONRAD: Well --

9                   JUDGE DIPPELL: It has -- it has been --

10                  MR. WILLIAMS: It's 102.

11                  JUDGE DIPPELL: Exhibit 27 has been  
12   marked in as Exhibit 102 and is now public.

13                  MR. CONRAD: Right. And I'm also  
14   looking at a copy that's on Great Plains Energy  
15   letterhead that's been marked as 121, and it shows an  
16   Exhibit No. 5.

17                  MR. ZOBRIST: Those are slightly  
18   different versions of that letter, my understanding  
19   is.

20                  JUDGE DIPPELL: And Exhibit No. 5 has  
21   also been declassified.

22                  MR. CONRAD: Also -- also declassified,  
23   so it doesn't matter. Okay. All right. I guess  
24   probably get one or the other. Let's go to 121.  
25   Counsel, do you have --

1                   MR. ZOBRIST: I don't have that one.

2                   MR. CONRAD: All right. Do you have

3 102?

4                   MR. ZOBRIST: I have 102.

5                   MR. CONRAD: Well, that may work. Let's

6 check and see --

7                   MR. ZOBRIST: We have 121 right here.

8                   MR. CONRAD: Well, let's go to 121 since

9 that's the one that's signed. And Judge, this --

10 this has been admitted?

11                  JUDGE DIPPELL: They've both been

12 admitted.

13                  MR. CONRAD: Thank you.

14 BY MR. CONRAD:

15                  Q.       What's been laid before you,

16 Mr. Chesser, is a document that's been marked as

17 Exhibit 121, and I guess the HC designation can come

18 off. I'm looking at a date of November 21. Are we

19 at the same place?

20                  A.       That's correct, yes.

21                  Q.       On the second page of that in

22 paragraph 5, there is some underscoring.

23                  A.       Right.

24                  Q.       We had a little puzzle this morning. Do

25 you know -- this is a document that you signed

1 originally, right?

2 A. I did, yes.

3 Q. Do you know anything about that  
4 underscoring?

5 A. I actually do not.

6 Q. Okay. That's fine. I mean --

7 A. Yeah, yeah.

8 Q. But it wasn't that way when you signed  
9 it and sent it out, right?

10 A. No, no, no.

11 Q. So -- and you did not do the  
12 underscoring?

13 A. I did not.

14 Q. So someone other than -- that you,  
15 parties known or unknown, did that --

16 A. Right.

17 Q. -- right? Okay. Well, we'll figure  
18 that out if it's necessary. I wanted you to look,  
19 though, at paragraph 5. The second sentence there,  
20 "Based upon its regulatory relationships and  
21 collaborative approach."

22 A. Right.

23 Q. What does the term "collaboration" mean  
24 to you?

25 A. It means working together with a people

1 of a wide range of different interests to try to come  
2 to a common agreement on how to move forward to meet  
3 the needs of all the people on the -- all the people  
4 involved.

5 Q. Now, without going through all the  
6 rationales as to why and why not, that's not the  
7 approach that's been employed here; is that correct?

8 A. That's not the approach that's been  
9 employed here.

10 JUDGE DIPPELL: Mr. Chesser, I'm gonna  
11 give you my same admonishment. You've got to turn  
12 toward the microphone.

13 THE WITNESS: Thank you. Thank you. I  
14 will.

15 MR. CONRAD: I'm doing better.

16 THE WITNESS: Right.

17 MR. CONRAD: Working on the witness.

18 BY MR. CONRAD:

19 Q. In that same numbered paragraph there is  
20 a second unnumbered paragraph.

21 A. Uh-huh. Yes, there is.

22 Q. Which has after the first positive  
23 phrase, "We require informal discussions with  
24 regulators prior to the execution of the pending  
25 merger agreement for this transaction." Did I read



1     that correct?

2             A.       I'm looking for -- you say it's under 5,  
3     the second paragraph under 5?

4             Q.       It starts out, "In order to deliver."

5             A.       Right, right.

6             Q.       And then continuing after that a  
7     positive phrase, "Great Plains shareholders, we  
8     require," you find that now?

9             A.       Right, right.

10            Q.       "We require informal discussions with  
11    regulators prior to the execution of the pending  
12    merger agreement for this transaction."

13            A.       Yes.

14            Q.       Are we on track with each other?

15            A.       We are, yeah.

16            Q.       "We" is Great Plains Energy?

17            A.       Great Plains, yes.

18            Q.       What is -- what is the nature of the  
19    informal discussion that you were requiring?

20            A.       Throughout the process, you know, our  
21    interest was to sit down with the Staff of the  
22    Commission, both Commissions, and to share with them  
23    what we were contemplating and share with them and  
24    get them to help guide us in how we would go forward  
25    just as we did with our comprehensive energy plan.

1 The -- but we had a confidentiality agreement signed  
2 and we were not able to do that.

3 Q. You were not able to have the informal  
4 discussions?

5 A. That's correct.

6 Q. Now, that means the term seems to turn,  
7 then, on "regulators"?

8 A. Right.

9 Q. Who did you mean when you said  
10 regulators?

11 A. I -- the picture that I had in my mind  
12 was parallel to the way we approach a comprehensive  
13 energy plan. We engage with Staff, work with the  
14 Staff to develop a framework to bring other parties  
15 in and, you know, sign a confidentiality agreement.  
16 That was what we had envisioned, but we weren't able  
17 to do it in that way. We were under the constraints  
18 of the confidentiality agreement.

19 Q. So you did not include within the term  
20 regulators, people who were charged by law in the  
21 constitution of this state, with the responsibility  
22 to regulate public utilities; namely, the five people  
23 who sit behind you?

24 A. That -- that wasn't the approach that I  
25 envisioned and it wasn't the approach we took with

1 the comprehensive energy plan.

2 Q. Let's go to the next page in  
3 paragraph 9, paragraph entitled Exclusivity.

4 A. Uh-huh.

5 Q. Are you with me?

6 A. I am, yes.

7 Q. And you're conditioning your proposal,  
8 if I'm reading it correctly, on an agreement that  
9 provides you with an "exclusive right for a four-week  
10 period to discuss the transaction with the Public  
11 Utility Commission of Missouri as mentioned above"?

12 A. Right.

13 Q. Who is the Public Utility Commission of  
14 Missouri?

15 A. Again, Public Utility Commission of  
16 Missouri is a body, the approach that, you know, we  
17 intended to take was to come in and talk with Staff  
18 who are -- they're a part of the Public Utility  
19 Commission of Missouri.

20 Q. And you didn't talk with the  
21 Commissioners?

22 A. No, we did not.

23 Q. You --

24 A. I mean, we had a -- you know, as we've  
25 discussed before, there was a visit with the

1 Commissioners just prior to the announcement, but  
2 this -- this is in November and we were envisioning  
3 sitting down and talking with the Staff about this.

4 Q. Okay. Back up a second with me for the  
5 very -- that last paragraph we were dealing with on  
6 the preceding page, the unnumbered one underneath  
7 paragraph 5.

8 A. Uh-huh.

9 Q. You're talking about the informal  
10 discussions with the regulators. Why would you have  
11 to -- why would you require those before you executed  
12 a definitive merger agreement?

13 A. Obviously we wanted to get as much  
14 indication as we could around what we would have the  
15 opportunity to reach agreement on in the way of  
16 synergies and in the way of interest costs and the  
17 way of amortization.

18 Q. Now, you did indicate, I think, on  
19 Monday, and the documents here would seem to suggest  
20 in your conversations with Mr. Green that you did  
21 have conversations with the Commissioners; is that  
22 correct?

23 A. Yeah, we had a conversation with the  
24 Commissioner just prior to the announcement.

25 Q. Commissioner or the Commissioners?

1           A.       The Commissioners, Commissioners.

2           Q.       And that was during the week of  
3     January 8?

4           A.       Again, I'm not clear on the date of when  
5     we had that. I just know we came down here and met  
6     with all the Commissioners.

7           Q.       And the purpose, I think, you were  
8     indicating Monday of those contacts was not to obtain  
9     some commitment; is that correct?

10          A.       Exactly.

11          Q.       But rather, to find out if there were  
12     objections?

13          A.       What I said was the purpose was, number  
14     one, to educate the Commissioners on what was about  
15     to happen, what was about to be announced in both  
16     Kansas and Missouri, the Commissioners and the Staff.  
17     So that was -- that was the primary purpose, I would  
18     say.

19                    At the same time we wanted to -- since  
20     we had not been able to sit down and have the  
21     collaborative discussions, I wanted to hear if there  
22     was any major objections that we were not aware of to  
23     this kind of a deal being considered. I heard -- I  
24     heard nothing, we had no conversation around that.

25                    MR. CONRAD: Just a moment.

1 BY MR. CONRAD:

2 Q. I obtained, Mr. Chesser, an advanced  
3 copy of the transcript from Monday, and I think your  
4 words there -- I might say that -- and I'm --

5 MR. CONRAD: By the way, the page number  
6 on this, Counsel, won't correspond, I'm sure, to the  
7 final transcript. It is on page 20 of this version.

8 BY MR. CONRAD:

9 Q. "And I might say that in taking this  
10 tact, I was continuing the process that I had  
11 experienced firsthand in two other mergers where it  
12 was important to sit down with the Commissioners and  
13 Staff prior to a formal announcement to make sure  
14 they understood the arrangement and to make sure that  
15 there wasn't any significant objections that we were  
16 not aware of." Now, did the reporter get it wrong?

17 A. No, I think that's fair. I'm okay with  
18 that.

19 Q. So while on one -- while on one hand,  
20 Mr. Chesser, you're saying you didn't seek or obtain  
21 a commitment, did you communicate to the  
22 Commissioners that if they had a problem that they  
23 should let you know?

24 A. No, I did not.

25 Q. You expected them to just voluntarily --

1           A.       I expected if there -- I expected if  
2     there was a problem, they would make that known to  
3     us.

4           Q.       And -- and in effect, by doing that,  
5     didn't you really get a negative commitment from  
6     them?

7           A.       I -- I walked away with the sense that  
8     they were gonna look at the merits of the deal.

9           Q.       Earlier this afternoon we had marked  
10    and Mr. Green identified what's been referred to as  
11    Exhibit 304. I wonder if you might have that? This  
12    is Exhibit 20 from someone's deposition. I'm not  
13    sure now who. This is not your document,  
14    Mr. Chesser?

15          A.       That's correct.

16                   MR. CONRAD: I just want to make that --  
17    make that clear to you to begin with. And I believe  
18    again, Judge -- check me if I'm wrong -- but I think  
19    20 has been declassified except for the e-mails?

20                   JUDGE DIPPELL: It has been admitted and  
21    it is public.

22                   MR. CONRAD: Thank you.

23    BY MR. CONRAD:

24          Q.       And I'm -- why don't you take just a  
25    moment, Mr. Chesser, and kind of read through that.

1           A.       Is there any particular paragraph --  
2           Q.       Yeah, second paragraph.  
3           A.       Second paragraph, okay.  
4           Q.       You'd want to focus some attention  
5   there --  
6           A.       Okay.  
7           Q.       -- and then later on in the last  
8   paragraph, bottom of page 1.  
9           A.       Okay. And the bottom of page 1 also?  
10          Q.       Page 1, yeah, if you wanted to look at  
11   that.  
12          A.       Okay.  
13          Q.       But focus on the second paragraph to  
14   begin with.  
15          A.       Okay.  
16          Q.       Kind of in the middle of that, Mr. Green  
17   is using the term that he was surprised when -- and I  
18   think he identified you as Mike.  
19          A.       Right.  
20          Q.       "Shared your disappointment that we  
21   informed Staff about details." Is that -- did you  
22   express disappointment to him when you had that  
23   meeting?  
24          A.       I recall doing that, yes.  
25          Q.       Why would you have been disappointed



1     that he had informed Staff about details if your  
2     purpose was to inform the regulators and educate  
3     them?

4           A.     In my view these were not in the fact  
5     stage yet or the plan stage.  You know, we -- we're  
6     not sure whether we were gonna go forward with the  
7     rate case or not.  We weren't sure what level of  
8     amortizations we needed.  There was still a lot of  
9     working going on.  So I just didn't want to share  
10    information that would be premature.

11          Q.     Now, this e-mail is dated January 31.

12          A.     Right.

13          Q.     Do you recall when that meeting -- he  
14     refers to, "I also had another meeting with Mike  
15     Chesser."

16          A.     I don't.  I'm sure it was sometime -- I  
17     assume it was sometime before that, but I don't  
18     recall.

19          Q.     Right.  Probably wouldn't have been  
20     after January 31?

21          A.     Right.

22          Q.     So we can assume, though, that it would  
23     be, you know, two or three days ahead, right?

24          A.     Oh, I'm not -- I really don't -- I can't  
25     tell you.

1 Q. I'm not trying to pin you down.

2 A. I understand, I'm just being honest.

3 Q. You know, a few days ahead of that.

4 Now, here we have this 2007 rate case popping up as  
5 being one of the details about which you expressed  
6 disappointment that Staff had been informed.

7 A. Right.

8 Q. And your answer as to why you were  
9 disappointed was that it was too preliminary, too  
10 early --

11 A. It's premature, it wasn't finalized as a  
12 plan.

13 Q. Now, the last paragraph deals again with  
14 this 2007 rate case. And Mr. Green uses the term  
15 that "they," that's you-all, "were intractable" on  
16 the point that apparently that they need to have the  
17 right, "they" being you, "need to have the right to  
18 order us," being Aquila, "to file the case." Now, I  
19 know I've kind of spliced some sentences together  
20 there, but have I caught the sense of it?

21 A. That's, I think, the sense of the  
22 paragraph.

23 Q. And then he mentions that he has offered  
24 to seed control of that decision with a trigger?

25 A. Uh-huh, right.

1           Q.       And that you agreed with that.  What's  
2   the --

3           A.       Okay.  I was not -- I was not involved  
4   in the detail of that back-and-forth discussion,  
5   okay?  I mean, I was aware that a rate case was one  
6   of the -- one of the options that we were looking at  
7   to maintain our investment grade credit, but I wasn't  
8   involved with details of that back-and-forth  
9   discussion.

10                  MR. CONRAD:  This is -- I'll need you to  
11   refer you to what's been marked as Exhibit 29 to the  
12   depositions.  I think that has been declassified, and  
13   that's also been identified as Exhibit 104,  
14   Management Presentation dated February 1?

15                  JUDGE DIPPELL:  You are correct on both.  
16   BY MR. CONRAD:

17           Q.       So that is the -- and if I recall my  
18   calendar, that's one day after that e-mail we were  
19   just talking about, right?

20           A.       Okay.

21           Q.       January 31, and then it goes February 1.  
22   30 days hath September, April, June and November.  
23   Remember that?  All of the rest have 31 except  
24   February.  I wanted you to look at that Exhibit 104  
25   on -- I believe it's nine pages in.  I'm not seeing a

1 page number on these unless it's under the clip.

2 A. No, I'm not either. You say nine pages  
3 in counting the cover page, right?

4 Q. I think that's correct, yes, sir. And  
5 the page that I'm looking for is the one immediately  
6 following something -- a cover page that's marked  
7 appendix.

8 A. Okay.

9 Q. Are you with me?

10 A. Yep.

11 Q. Something about "Asteroid rate increase  
12 assumptions."

13 A. Right.

14 Q. Now Asteroid is your-all's code for  
15 Aquila, right?

16 A. That's correct.

17 Q. And you-all called yourself Giant?

18 A. Right.

19 Q. We kind of figured that out. Now, look  
20 with me down the left-hand wide column. And there's  
21 reference there to a 2007 Asteroid rate case within  
22 parens, "(filed in July 2006)," right?

23 A. Right.

24 Q. That's actually the one that was  
25 comparatively recently concluded, that was the one

1     that was going on while some of this was  
2     transpiring --  
3             A.     Right.  
4             Q.     -- right?  
5             A.     That's correct.  
6             Q.     Okay. Right below that there's a lineup  
7     of projected rate cases, and we're talking here about  
8     Aquila?  
9             A.     Right.  
10            Q.     There's one that you're projecting for  
11     2008, right?  
12            A.     Well, you know, what is that? Unless  
13     I'm not reading it correctly, "amortization and  
14     transition cost" is the first row.  
15            Q.     Right.  
16            A.     2008's the second row with no numbers in  
17     it.  
18            Q.     No numbers.  
19            A.     Okay. Okay.  
20            Q.     So -- but you don't have the entry  
21     there.  
22            A.     Okay.  
23            Q.     So it's just a question of filling in  
24     the numbers, right?  
25            A.     Well, you know, I'm not sure.

1 Q. Okay.

2 A. I think may -- first of all, I don't  
3 know -- I didn't prepare this chart. I don't know  
4 what was in the minds of people that did.

5 Q. I understand.

6 A. But my assessment is -- or my  
7 interpretation would be this was still under  
8 discussion whether one would be needed or not.

9 Q. There are some numbers associated with  
10 2009, aren't there?

11 A. Yes.

12 Q. And there are some numbers associated  
13 with 2010, right?

14 A. That's correct -- wait a minute. Yes.

15 Q. And some with 2011?

16 A. That's correct, uh-huh.

17 Q. Now, 2012 doesn't have any numbers  
18 associated with it?

19 A. That's correct.

20 Q. Were you planning -- that's the period  
21 of time that the customers would start getting what I  
22 would call their pie in the sky. Had you planned a  
23 rate decrease there, is that what those dashes mean?

24 A. The thing is --

25 Q. No. Yes, no, maybe or I don't know.

1 MR. ZOBRIST: Judge, the --

2 MR. CONRAD: He can explain when you  
3 either deal with him or --

4 JUDGE DIPPELL: Excuse me, Mr. Conrad.  
5 I'm gonna let Mr. Zobrist make his remark.

6 MR. CONRAD: All right.

7 MR. ZOBRIST: I just have an objection  
8 to lack of foundation. This is in evidence but  
9 Mr. Chesser said he didn't prepare it and I thought  
10 he said he was not familiar with it.

11 MR. CONRAD: Well, he can tell me he  
12 doesn't know then if he doesn't know.

13 JUDGE DIPPELL: I'll overrule and let  
14 him --

15 THE WITNESS: I was trying to be  
16 helpful. I don't know.

17 MR. CONRAD: Okay. That's what we want  
18 here is honest answers.

19 THE WITNESS: That's right.

20 MR. CONRAD: And, your Honor, I'm trying  
21 to go through these quickly to shorten up our time.  
22 I next need to go to what's been marked as an  
23 Exhibit 31 to this gentleman's deposition, and see if  
24 that's -- that has, by my notes, been declassified  
25 and also assigned as Exhibit 105.

1 JUDGE DIPPELL: It has been declassified  
2 and 105 has been admitted.

3 BY MR. CONRAD:

4 Q. Now, that also is a Project Asteroid  
5 Management Presentation, that's the cover, Mr.  
6 Chesser, dated January 8th, 2007?

7 A. Right.

8 Q. I think inside that presentation you'll  
9 find a page in the lower right-hand corner, if you  
10 turn it horizontally, is numbered 9?

11 A. Right.

12 Q. And just look at that page. I'm not  
13 gonna -- since you didn't prepare this, I'm sure,  
14 there is mention there of a 2000 rate case and  
15 that's, again, for Asteroid or Aquila, right?

16 A. There is mention of it, yes.

17 Q. Now, the page that follows that by about  
18 two has the number -- it's kind of hard to find, but  
19 it's page 11.

20 A. Right.

21 Q. "Visit with regulators."

22 A. Right.

23 Q. And then there -- you say, "Consummation  
24 of a merger for three reasons," and then you have  
25 four bullets?



1           A.     Right.

2           Q.     So somebody's not --

3           A.     Hopefully I didn't prepare that one.

4           Q.     Maybe the same people prepared that as

5     some other things. But in the very first bullet,

6     right half, "Material rate increases are needed to

7     support investment."

8           A.     Right.

9           Q.     What's a material rate increase?

10          A.     Well, again, I didn't prepare this and I

11     don't know what's in --

12          Q.     If you don't know --

13          A.     -- what's in the name of -- yes, I don't

14     know.

15          Q.     And the second bullet talks about

16     amortization being necessary to achieve investment

17     grade status, right? You didn't prepare it so --

18          A.     I didn't prepare it, and I can't ...

19          Q.     Okay.

20          A.     I mean, can I -- can I comment on

21     whether I agree with it or not?

22          Q.     Well, why don't you let your counsel do

23     that and we'll try to move along.

24          A.     Okay.

25                 JUDGE DIPPELL: Yeah. Please,

1 Mr. Chesser, only answer the questions asked.

2 BY MR. CONRAD:

3 Q. Now, I'm gonna jump you ahead to  
4 page 19. I believe it's of that same packet. And  
5 this is captioned Detailed Timeline. If you go to a  
6 page that says Appendix, you've gone too far.

7 A. Okay.

8 Q. It's the page right before that.

9 A. Page 19.

10 Q. Detailed Timeline.

11 A. I have it, yes.

12 Q. And there's a reference, "Exclusivity  
13 period, extension to allow for regulatory dialogue."

14 A. Right.

15 Q. Okay. Now, is that a different thing  
16 than -- somewhere in some of these materials, sir, I  
17 thought I saw that this transaction could be extended  
18 up to 18 months if it was necessary to do so for  
19 regulatory approval; is that correct?

20 A. I'm not sure. I think there is an  
21 extension. I'm not sure what the length of time is.

22 Q. How -- this was filed in April, let's  
23 assume early April.

24 A. Right.

25 Q. April is month four, so we're about

1 eight months into this give or take?

2 A. Right.

3 Q. So if I'm right and your recollection  
4 seems to suggest that there is some provision to  
5 that, although you're not clear as to time.

6 A. Right.

7 Q. There is -- there is at least some --  
8 some time to work on this, isn't there?

9 A. Well, it depends on what you mean,  
10 "There is some time." I think everybody loses the  
11 longer it takes.

12 Q. I appreciate that.

13 A. But according to the agreement, there's  
14 some time to work on it.

15 Q. There is some time to work on it.

16 A. Right.

17 Q. Okay. Now, I think shortly after  
18 that I find page number 21, and this has kind of  
19 come up before. And this is the -- entitled  
20 "Accretion/Dilution Sensitivities"?

21 A. Right.

22 Q. Actually, I think I was seeing something  
23 else. I may have passed it too quickly. Be patient  
24 with me for a second. Well, we'll work with that.

25 Would you agree with me in general, and

1 I understand you didn't prepare this, so I'm not  
2 gonna ask you anything in detail, but this is a --  
3 this is a fair presentation in the sense that it's  
4 one that you used to talk to your board?

5 A. In -- in January -- on January 8th, yes.

6 Q. About what you might expect "Giant  
7 accretion/dilution with synergies."

8 MR. ZOBRIST: I think it says  
9 "sensitivities."

10 MR. CONRAD: Yeah, I'm looking here,  
11 Counsel. There's a label on the left-hand side,  
12 "Giant accretion stroke (dilution with synergy)."

13 MR. ZOBRIST: I see it.

14 THE WITNESS: With synergy, right.

15 BY MR. CONRAD:

16 Q. And just so we're all on the same  
17 place --

18 A. Yes.

19 Q. "Each of these has some pro formas that  
20 indicate an illustrative acquisition price and what  
21 might reasonably be expected so far as accretion and  
22 dilution"; is that fair?

23 A. I think that's fair, yes.

24 Q. Okay. With one exception, are all the  
25 numbers positive indicating an accretion?

1           A.       Yes, they are.

2           Q.       And that one exception is way out on the  
3       very -- right -- under the -- right above the first  
4       big black line it shows up here.   Because it's black  
5       I can't read the numbers in it.   But there's a -- one  
6       penny in parens which would be in a dilution?

7           A.       Uh-huh, right.

8           Q.       And that's at the high end of the price  
9       range which is not where you've -- where you've  
10       settled?

11          A.       Right.

12          Q.       Which of those columns is closest to the  
13       price that you settled on?

14          A.       The middle column.

15          Q.       4.50?

16          A.       Uh-huh.

17          Q.       So if we move down from that, we're  
18       seeing positive numbers all the way down, aren't we?

19          A.       We are, yes.

20          Q.       And I guess it stands to reason that an  
21       accretion in that sense is a good thing?

22          A.       It's -- it's necessary to compensate the  
23       shareholder for the added risk that they take on in  
24       the merger.

25          Q.       And that's a good thing, right?

1           A.       If it's --

2           Q.       That's a good thing in your book?

3           A.       If it's enough, yes.   Just a little bit  
4 isn't a good thing because it doesn't compensate the  
5 risk.

6           Q.       Well, where I grew up, sir, half a loaf  
7 is better than none.

8           A.       Right, okay.

9                   MR. CONRAD:   That's all that I have.  
10 Thank you.

11                   THE WITNESS:   Okay.

12                   JUDGE DIPPELL:   Public Counsel?

13                   MR. MILLS:   Thank you.

14 CROSS-EXAMINATION BY MR. MILLS:

15           Q.       Good evening.

16           A.       Good day, sir.   Good evening.

17           Q.       And this is probably not a big deal in  
18 the grand scheme of things, but do you recall at your  
19 deposition having some uncertainty as to whether or  
20 not you met with the Commissioners on January 17th or  
21 January 24th of 2007?

22           A.       I do.

23           Q.       Have you taken any steps since that time  
24 to try and firm up that date?

25           A.       Actually, I have not, I really have not.

1           Q.       If there is evidence in the record from  
2   Mr. Green who testified that he met with the  
3   Commissioners on January 24th and that you met the  
4   same day, would that tend to make you -- would that  
5   refresh your recollection at all as to whether or not  
6   it was the 17th or the 24th?

7           A.       Yeah, I -- I can just tell you. I don't  
8   remember the exact date that I met. I mean, I -- I'm  
9   not gonna argue that he -- that that was what he  
10   says, but I can't say with certainty that that's the  
11   day we came down here.

12          Q.       Okay. Now, when you did come down here,  
13   I believe you testified either earlier this week or  
14   in your deposition that you met with each of the  
15   Commissioners individually and maybe caught two of  
16   them together at one point; is that correct?

17          A.       That's correct.

18          Q.       Did you tell all of the Commissioners  
19   the same thing?

20          A.       To my knowledge, we did. We had -- we  
21   wanted to -- as I said before, we wanted to go  
22   through the parameters of the deal to make sure they  
23   understood the parameters of the deal --

24                   THE COURT REPORTER: Sir, I'm sorry.

25                   JUDGE DIPPELL: Mr. Chesser --

1                   THE WITNESS: We wanted to make sure we  
2 understood the parameters of the deal and wanted to  
3 make sure that they understood the major components  
4 that we were gonna be asking for.

5 BY MR. MILLS:

6           Q.       Okay. Why didn't you meet with them all  
7 together and save time?

8           A.       I -- I wasn't involved in setting up the  
9 meeting.

10          Q.       Wouldn't it be more efficient for your  
11 use of time if you could just say the same thing once  
12 instead of five times?

13          A.       Well, as I say, I wasn't involved in  
14 setting up the meeting. I came down here, relied on  
15 our regulatory people to set the meetings up and the  
16 way they saw --

17          Q.       Did that seem odd to you?

18          A.       Worked out best for the regulators. It  
19 seemed to me that some people were available at times  
20 and others were available at other times. So I  
21 didn't -- I wasn't surprised that we couldn't get  
22 them all together at the same time, but I didn't  
23 question it.

24          Q.       Now, you walked out of those meetings  
25 thinking that there was no major objection on the



1 part of any of the Commissioners, right?

2 A. I walked out of there not having heard  
3 any major objection.

4 Q. Now, I believe you just a few minutes  
5 ago told Mr. Conrad that you walked away from your  
6 meetings with Commissioners thinking that they were  
7 going to look at the merits of the deal, correct?

8 A. That was -- that was the feeling that I  
9 had, yes.

10 Q. Do you have any reason to believe that  
11 they wouldn't look at the merits of the deal if you  
12 didn't meet with them individually?

13 A. Actually, this was not intended to have  
14 them look at the merits of the deal. This was to  
15 make sure that they weren't surprised, as I said, in,  
16 you know, similar processes I followed in other  
17 mergers where we make sure the regulators are advised  
18 ahead of time before it's announced in the press.

19 Q. Now, when you met with the  
20 Commissioners, did the -- did the -- Aquila's high  
21 cost of debt come up in those conversations?

22 A. No, it did not.

23 Q. Did you talk to the Public Service  
24 Commission Staff?

25 A. We did.

1           Q.       Did the topic of Aquila's high cost of  
2   debt come up in those conversations?

3           A.       It may have in conversations that other  
4   people from Great Plains had.  I --

5           Q.       I'm just asking about ones you were  
6   personally involved with.

7           A.       In my -- in my recollection, the -- I  
8   don't recall -- I can't say for sure that it didn't,  
9   but I don't recall it coming up.

10          Q.       Okay.  Now, if as a result of the  
11   application that we're considering today, if the PSC  
12   approves this merger but denies amortizations, denies  
13   actual debt cost and denies synergy savings, is GPE  
14   required under the terms of the merger agreement to  
15   go forward and close?

16          A.       I don't believe that we are.

17          Q.       Okay.  Under what circumstances can  
18   GPE -- in terms of approval by the Commission, what  
19   does the merger agreement provide in terms of what --  
20   what GPE has to get out of that approval?

21          A.       I'm not -- I'm not aware of the specific  
22   wording in that agreement.

23          Q.       Okay.  But if you don't get  
24   amortizations, actual debt costs and synergy savings,  
25   you believe that you're not required to close?

1           A.       I don't know. Personally, I don't  
2 believe we are. I don't know for sure.

3           Q.       Okay. Now, I believe when -- when you  
4 were asked some questions by Mr. Williams earlier  
5 this week about your meetings with Commissioners, you  
6 told Mr. Williams that you did not hear anything  
7 significantly negative. Do you recall using that  
8 phrase?

9           A.       Yes.

10          Q.       Did you hear anything insignificantly  
11 negative?

12          A.       I heard nothing.

13          Q.       Does GPE pay dividends quarterly or  
14 yearly?

15          A.       Quarterly.

16          Q.       When was the last time GPE missed paying  
17 a dividend?

18          A.       I don't know. It hasn't been since I've  
19 been here. I think it's probably been many years.

20          Q.       How many years has GPE been in  
21 existence?

22          A.       This is our 125th anniversary.

23          Q.       Of GPE?

24          A.       Oh, no. Oh, you're talking about GPE.  
25 I'm thinking of KCPL. Okay. KCPL is 125. Great

1 Plains, again, I'm not sure exactly when it was  
2 formed. I think it was formed back in the 2000 time  
3 frame, 2001.

4 Q. And are you aware of it ever having  
5 missed a dividend payment?

6 A. Great Plains, I'm not, no.

7 Q. Okay. How about KCPL?

8 A. I don't know. I don't -- over the 125  
9 years, I'm not sure.

10 Q. But you don't know of any times --

11 A. I don't know of any times, no.

12 Q. And it certainly hasn't happened under  
13 your watch?

14 A. That's for sure.

15 Q. Okay. Now, I believe earlier you  
16 testified that dividends have been running  
17 approximately 5 to 5 and a half percent of the stock  
18 value; is that correct?

19 A. That's correct.

20 Q. Is that an annual figure or a quarterly  
21 figure?

22 A. It's an annual -- I'm trying to think.  
23 It's an annual figure.

24 Q. Okay. So each quarterly payment isn't  
25 5 percent --

1           A.       No.

2           Q.       -- it's 5 point -- okay.  Now, when you  
3   were going -- when you, being GPE, was going through  
4   the bid process, did you have actual knowledge of  
5   other players in that process?

6           A.       No.

7           Q.       Did you have any indications from --  
8   from short of actual knowledge about who or how many  
9   might have been in the process?

10          A.       No.

11          Q.       Now, the -- the direct testimony that  
12   GPE filed in this case was essentially based on a  
13   five-year analysis of benefits; is that correct?

14          A.       I don't think that is correct.  I think  
15   the direct testimony talked about a ten-year analysis  
16   of cost and benefits as well as a five-year.

17          Q.       But the five-year was in there?

18          A.       The five-year was in there but there was  
19   also a ten-year.  And as you've heard me say earlier,  
20   I think that's -- you know, the long range is the  
21   appropriate time frame.

22          Q.       Did the Staff or the Office of Public  
23   Counsel tell you to put in a five-year analysis?

24          A.       I don't know.

25          Q.       Did you ever personally have any direct

1 conversations with -- with Rick Green about whether  
2 or not Aquila would file what's been called the 2007  
3 rate case which on some of these documents appears to  
4 be actually a 2008 rate case?

5 A. Yeah. In Rick's testimony -- and by the  
6 way, I was asked this in the deposition and I didn't  
7 recall that conversation. But in Rick's testimony,  
8 he talked about a breakfast that we had and that did  
9 stir my memory that we had talked about it at the  
10 breakfast, and pretty much agreed, as he said, that  
11 we would then assign it to our financial teams to  
12 look at the merits along with all the other options  
13 we were looking at.

14 Q. Has -- has KCPL or GPE made any  
15 commitments in this case that they won't seek  
16 recovery of the South Harper litigation costs?

17 A. Have we made -- I don't know. I don't  
18 know the answer to that.

19 Q. Are you willing to make that commitment?

20 A. Again, it has to be in the context of  
21 the whole package, you know. All the -- all the  
22 stream transactions costs, transition costs, those  
23 kind of commitments we have to look at as a package.  
24 There's a risk and a cost associated with that.

25 Q. Are you familiar with an investigation

1     into market manipulation that involves Aquila?

2             A.       I have heard about it. I'm not familiar  
3     with about it in detail.

4             Q.       Okay. Has KCP&L or GPE made any  
5     commitments in this case that they won't seek any  
6     costs associated with that to be recovered from  
7     ratepayers?

8             A.       I believe I said in the past that  
9     anything that doesn't directly -- isn't directly  
10    related to KC -- Aquila ratepayers, we would not seek  
11    recovery through Aquila ratepayers.

12            Q.       Hang on just a second. Let me see if I  
13    can dig out an exhibit here. Mr. Chesser, do you  
14    have a copy of Exhibit 118 there? Was it marked as  
15    Exhibit 16?

16            A.       I think I will shortly. Thank you.

17            Q.       Have you seen this before?

18            A.       I have not.

19            Q.       At the bottom paragraph on the first --  
20    well, go ahead and take a minute to take a look  
21    through it because I don't want to ask you  
22    questions --

23            A.       Is there any particular paragraph that  
24    you --

25            Q.       In particular. The bottom paragraph on

1 the first page, continuing onto the second page.

2 A. Okay.

3 JUDGE DIPPELL: Let me interrupt just  
4 one moment. There appears to be a severe weather  
5 warning siren going on outside. I don't know if that  
6 is a --

7 MR. ZOBRIST: I think it's a vacuum  
8 cleaner.

9 MR. MILLS: We're hoping it's a vacuum  
10 cleaner.

11 JUDGE DIPPELL: Oh, okay. Okay. I was  
12 just going to say that in case of severe weather, we  
13 are in a severe weather shelter, so continue on.

14 THE WITNESS: Okay. We could be here  
15 all night.

16 MR. MILLS: So with the vacuum cleaner,  
17 are we okay?

18 JUDGE DIPPELL: With the vacuum cleaner,  
19 we are okay unless they come in the room.

20 BY MR. MILLS:

21 Q. Okay. With respect -- this is an e-mail  
22 from -- from Rick Green to members of the board as of  
23 December 27th, 2006.

24 A. Right.

25 Q. Is his description of the regulatory



1 strategy that he gives in that e-mail consistent with  
2 your understanding of how it was intended to be at  
3 that the point in time?

4 A. And this is dated -- again, I was not  
5 directly involved in this strategizing. I was aware  
6 that they were looking at a lot of options, including  
7 possibly filing a rate case, but I can't attest to  
8 the timing and I can't attest to that's exactly what  
9 we were proposing on that date. I wasn't involved in  
10 that end of it all.

11 Q. Okay. Do you see anything in there that  
12 looks as though it's definitely wrong?

13 A. Or right. I mean, like I say -- yeah.

14 Q. Well, that's what I'm asking. You don't  
15 know that it's accurate but you can't say that it's  
16 inaccurate?

17 A. Right.

18 Q. Okay. Fair enough. And I touched on  
19 this just a little bit earlier. Do you know the  
20 circumstances under which the -- the merger doesn't  
21 close but GPE does not have to pay a breakup fee?

22 A. I don't know the specific wording on  
23 that.

24 Q. Let -- let me back up a little bit. Is  
25 there a provision for a breakup fee in the agreement?

1           A.       There -- there is a provision for what  
2 they call a MAC.

3                   THE COURT REPORTER: A what, sir?

4                   THE WITNESS: A MAC, a material adverse  
5 clause, I guess.

6 BY MR. MILLS:

7           Q.       And according to that clause, if --  
8 under some circumstances if the merger doesn't close,  
9 GPE has to pay a fee to Aquila; is that correct?

10          A.       There are -- there are some  
11 circumstances. I don't know what the circumstances  
12 are.

13          Q.       Okay. Do you know what the amount is  
14 that you have to pay?

15          A.       I don't know exactly. I think it's in  
16 the neighborhood of \$50 million.

17          Q.       And let me -- let me come at this from a  
18 slightly different direction. Do you know under what  
19 circumstances GPE can terminate the merger agreement  
20 without paying that fee?

21          A.       I don't know the specific circumstances.

22          Q.       Do you know whether or not GPE can  
23 terminate the agreement without GPE board's approval?

24          A.       I don't know. I doubt we could.

25          Q.       Okay. So you think if you wanted to

1 terminate, you'd need board approval?

2 MR. ZOBRIST: Judge, we're just getting  
3 into speculation. He said he doesn't know.

4 THE WITNESS: Speculation. I don't -- I  
5 don't know for sure.

6 BY MR. MILLS:

7 Q. Do you know whether or not you would  
8 need a share --

9 JUDGE DIPPELL: I'll sustain the  
10 objection.

11 MR. MILLS: Well, he said he doesn't  
12 know.

13 THE WITNESS: Now, that I don't know,  
14 that I don't know.

15 BY MR. MILLS:

16 Q. Okay. And just so the record is clear,  
17 I asked do you know about shareholder approval.

18 Has GPE taken any steps to seek  
19 regulatory approval of the functional integration of  
20 KCPL and Aquila?

21 A. I have to think about that. Have we  
22 taken any steps to seek regulatory approval of the  
23 functional integration? Can you help me understand a  
24 little bit more that you're asking there?

25 MR. ZOBRIST: Well, Judge, if that's

1 asking for a legal conclusion, I'd be glad to address  
2 that. But I -- if it's something else, then I don't  
3 have an objection but it sounds like it's asking for  
4 a legal conclusion.

5 MR. MILLS: Well, it's a question of  
6 what steps they've taken and whether he knows whether  
7 or not they have taken any steps to seek regulatory  
8 approval.

9 JUDGE DIPPELL: You can answer,  
10 Mr. Chesser, if you know.

11 THE WITNESS: Yeah. I don't  
12 sufficiently understand the question to be able to  
13 answer it.

14 BY MR. MILLS:

15 Q. Well, I'm not gonna -- I'm not gonna try  
16 to take you to places where you don't feel  
17 comfortable answering.

18 A. Okay. Okay.

19 Q. If the merger goes through as -- as the  
20 joint applicants have proposed, will Aquila have its  
21 own board of directors post-merger?

22 A. My expectation is -- again, I'm not 100  
23 percent sure of this, but my expectation is that they  
24 would be structured the way KCPL is today where KCPL  
25 has a board of directors, and they are a subset of

1 the Great Plains board of directors. I would expect  
2 their same -- that same board would be a board of  
3 directors of Aquila for legal purposes. But again,  
4 we'd be operating strategically as a fully integrated  
5 company.

6 And I might share with you, if I could,  
7 a parallel that's this my mind around this. I think  
8 it might help provide clarity. When I was at GPU, I  
9 was the CE -- I was a CEO of a utility operations  
10 that had three independent companies: Metropolitan  
11 Edison, Jersey Central Power & Light and Pennsylvania  
12 Electric. We had individual boards for all three of  
13 those companies, but we had a common management team,  
14 a fully integrated operation and the customers  
15 benefited from that scale. So that's really the  
16 model that we're envisioning.

17 Q. Okay. Thank you. Do you have a copy of  
18 Exhibit 105 that Mr. Conrad asked you about? That's  
19 the January 8th, 2007 presentation.

20 A. I don't believe I -- I do? Inside? Okay.

21 MR. ZOBRIST: You've got it.

22 MR. MILLS: Project Asteroid Management  
23 Presentation.

24 MR. ZOBRIST: It has an exhibit sticker  
25 that's true says Exhibit 31.

1                   THE WITNESS: That helps, yes, I have  
2 that.

3 BY MR. MILLS:

4           Q.       And if I can get you to turn back to  
5 page 11, and on that page the presentation is talking  
6 about visit with regulators?

7           A.       Right.

8           Q.       And I think maybe I understood your  
9 testimony to Mr. Conrad that when -- when you talk  
10 about regulators, you're talking about Staff rather  
11 than Commissioners?

12          A.       Yeah.

13          Q.       Is this meeting a meeting that was to --  
14 I mean, is this a discussion, a visit, I should say,  
15 with -- with the Commissioners or with Staff?

16          A.       We were -- we were -- at this point in  
17 time we were still envisioning that we would be able  
18 to sit down with the Staff and go through and have a  
19 discussion around these points. And we were hoping  
20 that we would get the approval, you know, and the  
21 lifting of the confidentiality requirement to allow  
22 us to do that.

23          Q.       And did you -- did you ever seek  
24 agreement with Aquila to lift the confidentiality  
25 agreement to let that happen?

1           A.       Yes, we did. We did.

2           Q.       And they turned you down?

3           A.       Yes.

4           Q.       Did they say why?

5           A.       Well, they thought it was premature. It  
6 was just a different -- you know, it was a  
7 competitive process, there may have been other  
8 players still they were considering. I don't know.

9           Q.       And this is as of January 8th, 2007?

10          A.       January 8th, 2007.

11          Q.       And to the best of your recollection,  
12 you may have met with Commissioners nine days later  
13 on January 17th?

14          A.       Things were moving quickly. This would  
15 have been still enough time, but in the end we met  
16 with Commissioners right before the merger  
17 announcement.

18          Q.       Okay. But as of -- as of January 8th  
19 it's your testimony that Aquila turned you down on  
20 this request because at that point it was premature?

21          A.       Yes.

22          Q.       Okay. Now, to get back to this  
23 slide 11, is it your testimony that when you talk  
24 about a visit with regulators that you're talking  
25 about Commissioners or Staff there?

1           A.       I -- again, going back to what I said  
2 before, all through the process, my vision was to  
3 meet with the Staff and try to engage them in a  
4 discussion as we did with the comprehensive energy  
5 plan and hopefully create some understanding of  
6 what -- what kind of a framework would make sense.

7           Q.       So you're saying that the reference to  
8 regulators here --

9           A.       Is Staff.

10          Q.       -- is to Staff? Okay. Was your  
11 deposition taken last week?

12          A.       It was.

13          Q.       Were you under oath at the time?

14          A.       I was.

15          Q.       Can I show you a copy of your  
16 deposition?

17          A.       Sure.

18                   MR. ZOBRIST: I think he's already got  
19 one.

20 BY MR. MILLS:

21          Q.       Do you have a copy there?

22          A.       Yeah, I do.

23          Q.       Let me have you turn to page 63. And  
24 you may have to go back, actually, to page 61 to pick  
25 up a reference to the fact that Mr. Williams is



1 asking you about Exhibit 31. And then on page 62 he  
2 identifies that he's talking about slide 11 regarding  
3 visits with regulators. Are you with me so far?

4 A. On page 62 --

5 Q. At line --

6 A. -- line 11.

7 Q. 62 at lines 14 through 16 --

8 A. Okay.

9 Q. -- Mr. Williams identifies that he is  
10 asking you about Exhibit 31, slide 11.

11 A. 11.

12 Q. Are you with me so far?

13 A. I am, yes.

14 Q. Okay. And on 63 --

15 A. Uh-huh.

16 Q. -- still talking about slide 11 --

17 A. Uh-huh.

18 Q. -- at lines 23 to 24 --

19 A. Right.

20 Q. -- you say, "These were the dimensions  
21 of the deal that we needed to communicate to the  
22 Commissioners." Was that true?

23 A. Well, yeah, I think these are the same  
24 dimensions that --

25 MR. MILLS: I don't have any more

1 questions, then. Thank you.

2 JUDGE DIPPELL: All right. Are there  
3 any additional questions from the Bench?  
4 Commissioner Appling?

5 COMMISSIONER APPLING: No questions.

6 JUDGE DIPPELL: Commissioner Jarrett?

7 COMMISSIONER JARRETT: No questions.

8 JUDGE DIPPELL: Is there any additional  
9 cross-examination based on Chairman Davis' earlier  
10 questions from the Bench? From Aquila?

11 MS. PARSONS: No questions.

12 JUDGE DIPPELL: Black Hills?

13 MR. BOUDREAU: No questions.

14 JUDGE DIPPELL: Ag Processing?

15 MR. CONRAD: No, ma'am. But before we  
16 went to the counsel for redirect, and I realize I'm  
17 out of order, I have missed one -- one exhibit and I  
18 wonder if I could briefly address that with the  
19 witness. I know, it's late. It's late for me too.

20 JUDGE DIPPELL: Quickly, Mr. Conrad.

21 MR. CONRAD: I -- I wanted -- thank you.

22 ADDITIONAL CROSS-EXAMINATION BY MR. CONRAD:

23 Q. I wanted to address, I think, what's  
24 been marked here 119 and it's Exhibit 17 from -- I  
25 don't know, again, whose deposition that is. I think

1 it might be Mr. Green's.

2 JUDGE DIPPELL: It's marked as  
3 Exhibit 17. It's been declassified.

4 MR. MILLS: Do you have a copy,  
5 Mr. Chesser?

6 THE WITNESS: I'm not sure if I do or  
7 not.

8 BY MR. CONRAD:

9 Q. Mr. Chesser, have you been provided a  
10 copy of that? I'll be happy to let you take a moment  
11 to look at it.

12 A. I have it, yes.

13 Q. What I'm actually gonna be looking at is  
14 the second paragraph.

15 A. Okay.

16 Q. You may recall a little bit of  
17 discussion that I had with Mr. Green about that.

18 A. Right.

19 Q. Let me know when you're ready.

20 A. Okay. I'm ready.

21 Q. In the -- in that second paragraph, the  
22 second sentence refers to a discussion that you,  
23 apparently, and Mr. Green had sometime on or prior to  
24 January 23.

25 A. Right.

1           Q.       Which mentioned the term "discretionary  
2   capital" that's currently in -- and I take it this  
3   would be GPE's or KCPL's rate plan. Do you see that?

4           A.       Right. I do see it.

5           Q.       Mr. Green, understandably, did not  
6   understand what -- what you may have meant by  
7   discretionary capital. What did you mean by  
8   discretionary capital?

9           A.       I did not mean discretionary capital. I  
10   meant necessary capital.

11          Q.       Okay.

12          A.       So it could have been a difference in  
13   interpretation. This is capital that we thought  
14   either needed to be invested in order to achieve a  
15   level of service for liability that our customers --  
16   that we provide our customers at KCP&L including  
17   replacing, upgrading transformers, distribution lines  
18   and so forth, and also capital that would -- if  
19   invested, would reduce the long-term cost to  
20   ratepayers, such as upgrading the capacity of the  
21   power plant.

22          Q.       Okay. But this is something that's  
23   apparently currently in your rate plan. Is the rate  
24   plan that's referred to there, is that the regulatory  
25   plan, the experimental regulatory plan?

1           A.       No, I don't -- I don't think -- not in  
2     the KCP&L rate plan. This is -- this is capital that  
3     we would be investing in Aquila's system.

4           Q.       Okay. So the phrase there "in their  
5     rate plan" refers to something that doesn't yet  
6     exist?

7           A.       Must have been our rate planning  
8     strategy for -- for the merger.

9           Q.       And he used the term discretionary  
10    capital twice, that sentence and the next sentence.

11          A.       Uh-huh.

12          Q.       Both references are mistaken?

13          A.       Yeah.

14                 MR. ZOBRIST: You know, Judge, I object.  
15    He didn't write this. He --

16                 MR. CONRAD: I understand. I  
17    understand. And I --

18                 MR. ZOBRIST: He's --

19                 MR. CONRAD: -- I misspoke.

20                 JUDGE DIPPELL: I'll sustain the  
21    objection.

22                 MR. CONRAD: I misspoke.

23    BY MR. CONRAD:

24          Q.       The -- Mr. Green used that term in two  
25    different sentences, right?

1           A.       Yes.

2           Q.       And the first one you addressed, and  
3 he's also misunderstood your -- your term in a second  
4 sentence, I guess.

5           A.       And where -- where is that second  
6 sentence just so I can --

7           Q.       Right -- following -- "we agreed that  
8 our" blah, blah, blah, "to address both the 2007 rate  
9 case and discretionary capital."

10          A.       Yeah, I -- I -- I did not view the  
11 capital discussion we had as discretionary in either  
12 case.

13          Q.       Okay. Well, you didn't view the  
14 discussion as discretionary, but --

15          A.       I didn't view the capital requirement as  
16 discretionary.

17                   MR. CONRAD: Okay. Just so we're clear.  
18 Your Honor, I appreciate your patience and forgive me  
19 for missing that. I just needed to kind of close  
20 that gap. Thank you.

21                   JUDGE DIPPELL: Is there any additional  
22 cross-examination based on the Chairman's earlier  
23 questions from Public Counsel?

24                   MR. MILLS: There probably are but I  
25 don't remember now, so I'll have to say no.

1 JUDGE DIPPELL: Staff?

2 MR. WILLIAMS: No.

3 JUDGE DIPPELL: Is there redirect?

4 MR. ZOBRIST: Yes, there is, just  
5 briefly, though.

6 REDIRECT EXAMINATION BY MR. ZOBRIST:

7 Q. Mr. Chesser, Mr. Mills cut you off as  
8 you were trying to explain in response to his  
9 question about your testifying in your deposition,  
10 quote, there were dimensions of the deal that we  
11 needed to communicate to the Commissioners, closed  
12 quote. Would you finish your response to him about  
13 that?

14 A. Sure. I mean, in the deposition as I  
15 was focusing on the question, I was looking at the  
16 four elements and realizing that they were the four  
17 elements that we were gonna be communicating in our  
18 courtesy visit to the Commissioners, you know, in the  
19 coming dates. That was the context of my -- my  
20 response there.

21 Q. All right.

22 A. Earlier discussion was that at that  
23 particular meeting, my recollection is we would have  
24 still had time to sit down and engage in that  
25 collaborative discussion with the -- with the Staff.

1           Q.       You were handed Exhibit 105 which has --  
2       had been marked as deposition Exhibit 31. There was  
3       a reference to additional amortizations that you said  
4       you weren't familiar with but you were familiar with  
5       the concept of additional amortizations and why it  
6       was positive. What were your feelings on that issue?

7           A.       Right. And again, this has been a  
8       puzzle to me because I think everybody involved in  
9       our comprehensive energy plan has seen that  
10      amortization is good for everybody, that, in effect,  
11      having the ability to advertise, even if you don't  
12      use it, allows you to maintain a better credit rating  
13      which keeps interest rates low.

14                   And the second point is, that we have  
15      every incentive not to use it because when we use it,  
16      in effect, it serves to reduce our future rate base.  
17      So we -- we only would ask for it or only would  
18      require it if it were necessary to maintain the rate  
19      coverages. So I think it does help customers as well  
20      as all the other stakeholders.

21          Q.       On that same exhibit you were asked  
22      about the exclusivity period and an extension allowed  
23      for regulatory dialogue. Is it your understanding  
24      that the time period runs from the filing of this  
25      case or from the signing of the merger agreement?



1           A.       I really don't know the answer to that.

2           Q.       Then finally, I think Mr. Mills asked  
3   you about a market manipulation commodities case that  
4   was filed against Aquila with regards to certain  
5   unregulated operations.  What is the company's  
6   position with regard to that as far as Missouri  
7   property and Missouri ratepayers?

8           A.       Any -- any losses or negative impacts  
9   from Aquila's nonregulated operations that are not --  
10   not directly related to Missouri ratepayers, we would  
11   not seek recovery from Missouri ratepayers.

12                   MR. ZOBRIST:  Okay.  Thank you.  Nothing  
13   further, your Honor.

14                   THE WITNESS:  Okay.

15                   JUDGE DIPPELL:  Thank you.  Okay.  I  
16   believe that that concludes Mr. Chesser's testimony.

17                   MR. ZOBRIST:  May he be excused?

18                   JUDGE DIPPELL:  And he may be excused.

19                   THE WITNESS:  Great.

20                   JUDGE DIPPELL:  Okay.  I have a whole  
21   list of housekeeping things here before we start  
22   getting rid of counsel, the first of which is who's  
23   up next?

24                   MR. RIGGINS:  Our understanding is it  
25   would be Mr. Downey.

1 JUDGE DIPPELL: I was gonna say we have  
2 Mr. Kemp on the schedule, but Mr. Downey has to do  
3 with this same issue, and I would prefer to go ahead  
4 and do Mr. Downey.

5 MR. RIGGINS: That would be our  
6 preference.

7 JUDGE DIPPELL: And then do Mr. Kemp.

8 MR. CONRAD: And I had been earlier  
9 asked by counsel for KCPL by Mr. Marshall, and we --  
10 and -- that he was -- indicated to me an overview  
11 person also that we did not have -- as it turns out,  
12 we don't have a problem with going ahead and taking  
13 him. He may or may not be out of order, but to try  
14 to clear up this overview issue, I had been,  
15 unfortunately, somewhat tardy in being able to get  
16 back to counsel about that.

17 JUDGE DIPPELL: Okay. I'm sorry. So  
18 Mr. Marshall is also about the first issue?

19 MR. CONRAD: It's not -- yeah, it's not  
20 really my issue, and Mr. Blanc, I think, is here and  
21 he can speak to it.

22 MR. BLANC: I discussed with the  
23 parties, your Honor, the possibility of having  
24 Marshall follow Kemp.

25 JUDGE DIPPELL: Oh, is he --

1                   MR. BLANC: So the order for tomorrow  
2 would be Downey, Kemp, Marshall, Zabors and I think  
3 everyone's in agreement that's okay.

4                   JUDGE DIPPELL: Okay. Is -- is there  
5 any objection to going in that order, Downey, Kemp,  
6 Marshall, Zabors tomorrow?

7                   (NO RESPONSE.)

8                   JUDGE DIPPELL: All right. That sounds  
9 like a -- sounds like we have a plan and we'll write  
10 it down so we don't forget. Okay.

11                  There has been a motion for summary  
12 determination filed with a request for an expedited  
13 decision by the Commission. Given the Commission's  
14 schedule and everything, I'm inclined to order  
15 responses to be filed on Tuesday. I realize that's  
16 not in time probably to deal with the issue which the  
17 motion deals with the additional amortizations.  
18 Hopefully we will have actually gotten to that issue  
19 by Tuesday. But I just -- I wanted to prewarn you  
20 about that.

21                  There were also some additional e-mails  
22 about witness availability and so forth. Please  
23 check your e-mail and respond to those, and if  
24 there's witnesses we can completely do away with,  
25 that's great. I mean, in the form of testimony, not

1 in the literal sense. It would be the attorneys that  
2 I want to --

3 MR. CONRAD: Under the heading of  
4 collaboration.

5 MR. FISCHER: Judge, Judge, along that  
6 line, we've got quite a number of folks that deal  
7 with specific areas of synergy impacts, and I don't  
8 know whether there will be a lot of cross for all of  
9 those. If there are some we can waive, it would help  
10 with the schedule.

11 MR. WILLIAMS: I'm not prepared to waive  
12 anything.

13 JUDGE DIPPELL: I agree. Please --  
14 please look at those witnesses and see if there's any  
15 that you did not intend -- or after the testimony  
16 you've already heard need to cross. Okay.

17 Public Counsel, you had Exhibit 207. I  
18 have on my master list that you offered it, but I did  
19 not actually check that I had received it. Do you  
20 know the status of that? I can check back on the  
21 transcript.

22 MR. MILLS: I don't recall, honestly.

23 JUDGE DIPPELL: Okay. I'll check back  
24 on the transcript.

25 MR. MILLS: I -- I -- I'm quite certain

1 that we didn't have any objections to it because I  
2 would have remembered that.

3 JUDGE DIPPELL: Tomorrow afternoon there  
4 is a 40 percent chance of some snow showers but  
5 hopefully, they will not affect us here.

6 MR. CONRAD: As long as we're staying  
7 here --

8 JUDGE DIPPELL: And also some Public  
9 Service Commission employee holiday activities  
10 planned in the lobby area tomorrow during the lunch  
11 hour. Just wanted you to be aware of that.

12 There's also -- I have an unavoidable  
13 conflict myself tomorrow afternoon, so after lunch  
14 there may be another judge sitting in here for the  
15 rest of the afternoon.

16 And I think that's all the housekeeping  
17 matters I had. Was there anything else before we go  
18 off the record?

19 MS. PARSONS: I have one, one  
20 clarification, your Honor.

21 JUDGE DIPPELL: All right.

22 MS. PARSONS: As to the motion that  
23 was -- or excuse me, as to the order that was filed  
24 on Monday with respect to some e-mails that were  
25 public, I was just looking for clarification or some

1 indication of when that would be.

2 JUDGE DIPPELL: In the morning. In the  
3 morning I will have submitted -- I will have redacted  
4 those e-mails -- I'm sorry. I cut you off. Was that  
5 your question?

6 MS. PARSONS: (Nodded head.)

7 JUDGE DIPPELL: I can't get it done  
8 before then, but those e-mail addresses will have  
9 been replaced, and I'll file a notice in the EFIS  
10 docket sheet explaining what I have done.

11 MS. PARSONS: Thank you.

12 MR. MILLS: And, Judge, I mean, I  
13 don't -- I don't know if this will help, but I  
14 certainly would have no objection to pulling those  
15 out of the public record immediately and then putting  
16 them back up tomorrow. If it's -- if it's faster to  
17 put them -- to pull them out, I don't have any  
18 problem with doing that now just to limit the  
19 exposure of those e-mail addresses to the public.

20 JUDGE DIPPELL: If I knew how to do  
21 that -- I will -- I will see if I can contact someone  
22 to pull those out tonight so that they're not out  
23 there any longer than they have to be.

24 Also we're down to Exhibit -- from the  
25 deposition, Exhibits 11, 12, 13, 19 and 26 as highly

1 confidential. I would appreciate it if counsel  
2 responsible for those depositions would, again, give  
3 me a clean redacted copy of those that I can use as  
4 the public version in the transcript.

5 MS. PARSONS: Will you -- will you read  
6 the numbers again?

7 JUDGE DIPPELL: Yeah. It's 11, 12, 13,  
8 19 and 26. I apologize for making you give me copies  
9 again, but it's been a little confusing up here. All  
10 right. That's all I had. Was there anything else?

11 (NO RESPONSE.)

12 JUDGE DIPPELL: We'll return at 8:30 in  
13 the morning. Thank you. We can go off the record.

14 (WHEREUPON, the hearing of this case was  
15 recessed until December 6, 2007, at 8:30 a.m.)

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1 I N D E X

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## 1 KCPL'S EVIDENCE (CONTINUED)

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MICHAEL CHESSER

3 Questions by Chairman Davis 811

Cross-Examination by Mr. Conrad 820

4 Cross-Examination by Mr. Mills 859

Additional Cross-Examination by Mr. Conrad 879

5 Redirect Examination by Mr. Zobrist 884

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1 EXHIBIT DECLASSIFICATION NOTE:

2 The following exhibits initially marked HC have been  
declassified:

3 Exhibit No. 4 (Unknown Hearing Exhibit Number)  
Exhibit No. 5 (Hearing Exhibit No. 121)  
4 Exhibit No. 7 (Unknown Hearing Exhibit Number)  
Exhibit No. 8 (Unknown Hearing Exhibit Number)  
5 Exhibit No. 14 (except with the deletion  
of the e-mail addresses)  
6 (Hearing Exhibit No. 207)  
Exhibit No. 15 (Hearing Exhibit No. 302)  
7 Exhibit No. 16 (Hearing Exhibit No. 118)  
Exhibit No. 17 (Hearing Exhibit No. 119)  
8 Exhibit No. 18 (Hearing Exhibit No. 203)  
Exhibit No. 20 (Hearing Exhibit No. 304)  
9 Exhibit No. 21 (Hearing Exhibit No. 120)  
Exhibit No. 22 (Hearing Exhibit No. 301)  
10 Exhibit No. 23 (Hearing Exhibit No. 303)  
Exhibit No. 24 (Unknown Hearing Exhibit Number)  
11 Exhibit No. 27 (Hearing Exhibit No. 102)  
Exhibit No. 30 (Unknown Hearing Exhibit Number)  
12 Exhibit No. 29 (Hearing Exhibit No. 104)  
Exhibit No. 31 (Hearing Exhibit No. 105)

13  
The following exhibits initially marked HC  
14 remain HC:  
Exhibit No. 11 (Hearing Exhibit No. 204 HC)  
15 Exhibit No. 12 (Hearing Exhibit No. 205 HC)  
Exhibit No. 13 (Hearing Exhibit No. 206 HC)  
16 Exhibit No. 19 (Hearing Exhibit No. 207 HC)  
Exhibit No. 26 (Hearing Exhibit No. 101 HC)

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EXHIBITS INDEX

19

20		MARKED	REC'D
21	Exhibit No. 14		
22	Direct testimony of R. Thomas Fleener	664	616
23	Exhibit No. 32		
24	Application	565	**
25	Exhibit No. 33		
	Transition Services		

1	EXHIBITS INDEX (CONTINUED)		
2		MARKED	REC'D
3	Exhibit No. 34 Proxy Statement	565	**
4	Exhibit No. 35		
5	Pages 9 through 11, 20,		
6	21, 26, 27, 47 through 50 of Mr. Oligschlaeger's testimony	692	691
7	Exhibit No. 118		
8	December 27, 2006 e-mail	*	569
9	(see exhibit declassification note above)		
10	Exhibit No. 119		
11	E-Mail from Richard Green to the Aquila board of directors	572	574
12	(see exhibit declassification note above)		
13	Exhibit No. 120		
14	Board packet for a special board of directors meeting on January 20th, 2007	577	580
15	(see exhibit declassification note above)		
16	Exhibit No. 121		
17	Document on Great Plains letterhead signed by		
18	Mr. Chesser		
19	(see exhibit declassification note above)	645	646
20	Exhibit No. 203		
21	E-Mail to Aquila board of directors from Richard Green dated January 25	***	738
22	(see exhibit declassification note above)		
23	Exhibit No. 204 HC		
24	E-Mail that Richard Green sent on August 9th to board		
25	of directors and some		

EXHIBITS INDEX (CONTINUED)			
		MARKED	REC'D
1	Exhibit No. 205 HC		
2	E-Mail that Richard Green sent		
3	to the board of directors on		
4	September 19th, 2006	759	761
5	Exhibit No. 206 HC		
6	E-Mail that Richard Green sent		
7	to the board of directors on		
8	October 20th, 2006	761	763
9	Exhibit No. 207 HC		
10	E-Mail sent from Christopher		
11	Reitz to Richard Green and		
12	other board members	771	****
13	Exhibit No. 301		
14	E-Mail from Richard Green		
15	to the Aquila board of		
16	directors dated Nov. 30	622	****
17	(see exhibit declassification		
18	note above)		
19	Exhibit No. 302		
20	E-Mail to the Aquila board		
21	of directors from Richard Green		
22	dated November 22nd, 2006	696	698
23	(see exhibit declassification		
24	note above)		
25	Exhibit No. 303		
26	Letter to the board of		
27	directors of Aquila from		
28	Richard Green dated		
29	December 7, 2006	718	720
30	(see exhibit declassification		
31	note above)		
32	Exhibit No. 304		
33	E-mail from Nancy		
34	Manion to Richard Green	743	745
35	(see exhibit declassification		
36	note above)		
37	* Marked for identification in Volume 4.		
38	** Received into evidence in Volume 4.		
39	*** Not marked by reporter.		
40	**** Not received into evidence.		

## 1 CERTIFICATE OF REPORTER

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3 STATE OF MISSOURI )

4 ) ss.

5 COUNTY OF COLE )

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8 I, PAMELA FICK, RMR, RPR, CSR, CCR #447,

9 within and for the State of Missouri, do hereby

10 certify that the foregoing proceedings were taken by

11 me to the best of my ability and thereafter reduced

12 to typewriting under my direction; that I am neither

13 counsel for, related to, nor employed by any of the

14 parties to the action to which this hearing was

15 conducted, and further that I am not a relative or

16 employee of any attorney or counsel employed by the

17 parties thereto, nor financially or otherwise

18 interested in the outcome of the action.

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23 PAMELA FICK, RMR, RPR, CSR, CCR #447

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