

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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5 TRANSCRIPT OF PROCEEDINGS  
6 Evidentiary Hearing  
7 December 3, 2007  
8 Jefferson City, Missouri  
Volume 2

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

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

15 JEFF DAVIS, Chairman,  
16 CONNIE MURRAY,  
LINWARD "LIN" APPLING,  
17 TERRY JARRETT,  
COMMISSIONERS.  
18

19 REPORTED BY:  
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1 P R O C E E D I N G S

2 JUDGE DIPPELL: This is Case No.

3 TO-2001-467 in the matter of the investigation of the  
4 state of competition in the exchanges of South -- I'm  
5 sorry. Obviously I'm looking at the wrong paper. I'm  
6 having a Monday.

7 MR. CONRAD: Let's go ahead and do that  
8 one.

9 JUDGE DIPPELL: Okay. In the Matter of the  
10 Joint Application of Great Plains Energy Incorporated,  
11 Kansas City Power & Light Company and Aquila, Inc. for  
12 approval of the merger of Aquila, Inc. with a subsidiary  
13 of Great Plains Energy Incorporated and for other related  
14 relief, Case No. EM-2007-0374.

15 My name is Nancy Dippell. I'm the  
16 Regulatory Law Judge assigned to this case, and we've come  
17 here today for an evidentiary hearing. We're going to go  
18 ahead and begin with entries of appearance. If we could  
19 start with Staff.

20 MR. THOMPSON: Thank you, your Honor.  
21 Kevin Thompson, Steven Dottheim, Nathan Williams, Sarah  
22 Kliethermes with the Staff of the Missouri Public Service  
23 Commission, Post Office Box 360, Jefferson City, Missouri  
24 65102.

25 JUDGE DIPPELL: And if we can just continue

1 along. Public Counsel?

2 MR. MILLS: On behalf of Office of the  
3 Public Counsel and the public, my name is Lewis Mills,  
4 Post Office Box 2230, Jefferson City, Missouri 65102.

5 JUDGE DIPPELL: And just go back to you,  
6 Mr. Lumley.

7 MR. LUMLEY: Thank you, Judge. Carl Lumley  
8 appearing on behalf of Dogwood Energy, LLC, 130 South  
9 Bemiston, Suite 200, Clayton, Missouri 63105.

10 MR. COFFMAN: Appearing on behalf of the  
11 individuals described as South Harper Residents, I'm  
12 John B. Coffman. My address is 871 Tuxedo Boulevard,  
13 St. Louis, Missouri 63119.

14 MR. CONRAD: And on behalf of Industrial  
15 Intervenors, Ag Processing, SIEUA, which is shorthand for  
16 the Sedalia Industrial Energy Users Association, and  
17 Praxair, Inc, Stuart W. Conrad and David Woodsmall, both  
18 with the law firm of Finnegan, Conrad & Peterson, 3100  
19 Broadway, Suite 1209, Kansas City, Missouri 64111.

20 JUDGE DIPPELL: Mr. Fischer, go ahead.

21 MR. FISCHER: On behalf of Great Plains  
22 Energy Incorporated and Kansas City Power & Light Company,  
23 let the record reflect the appearance of William G.  
24 Riggins, Curtis Blanc, Carl Zobrist, Roger Steiner and  
25 myself, James M. Fischer. Our addresses are on the

1 written entries of appearance.

2 MR. BOUDREAU: Let the record reflect the  
3 appearance of Paul Boudreau and Jim Swearngen of the law  
4 firm of Brydon, Swearngen & England, P.C., Post Office  
5 Box 456, 312 East Capitol Avenue, Jefferson City,  
6 Missouri, on behalf of Joint Applicant Aquila, Inc. Also  
7 appearing today on behalf of Aquila, Inc. is Renee  
8 Parsons, senior attorney with Aquila, 20 West Ninth  
9 Street, Kansas City, Missouri 64105.

10 MS. DAVENPORT: On behalf of Black Hills  
11 Corporation, Aimee Davenport and Paul DeFord with the law  
12 firm of Lathrop & Gage, 314 East High Street, Jefferson  
13 City, Missouri 65101.

14 JUDGE DIPPELL: Mr. Steinmeier?

15 MR. STEINMEIER: Please let the record  
16 reflect the appearance of William D. Steinmeier and Mary  
17 Ann (Garr) Young of William D. Steinmeier, PC, Jefferson  
18 City, on behalf of the City of St. Joseph.

19 MR. COMLEY: Good morning, Judge Dippell.  
20 Let the record reflect the entry of Mark W. Comley, Newman  
21 Comley & Ruth, 601 Monroe, Suite 301, Jefferson City,  
22 Missouri, on behalf of the City of Kansas City.

23 Also representing the City in this matter,  
24 but not appearing today, are Willy E. Shepherd, Raymond L.  
25 Gifford, Adam Peters and Amy M. Daniel of the Kamlet,

1 Shepherd and Reichert firm in Denver, Colorado. Their  
2 address is 1515 Arapahoe, Suite 1600. Their zip code is  
3 80202.

4 JUDGE DIPPELL: Mr. Comley, are you only  
5 for the City of Kansas City?

6 MR. COMLEY: Let me introduce Alicia Turner  
7 who will be entering her appearance on another client that  
8 may be of interest to the court.

9 MS. TURNER: On behalf of Cass County,  
10 Missouri, let the record reflect the entry of Alicia  
11 Embley Turner with Newman, Comley & Ruth. Business  
12 address is 601 Monroe, Suite 301, Jefferson City, Missouri  
13 65101. And also representing Cass County but not  
14 appearing today are Debra Moore, Cass County Counselor,  
15 Cass County Courthouse, 102 East Wall, Harrisonville,  
16 Missouri 64701, and Cindy Reeves Martin, 408 SE Douglas,  
17 lee's Summit Missouri 64063.

18 MS. ROBY: Good morning, your Honor. Debra  
19 Roby with Jennings, Strouss & Salmon on behalf of the City  
20 of Independence, Missouri, 1700 Pennsylvania Avenue,  
21 Suite 500, Washington, D.C. 20005.

22 Also with me today is Dayla Bishop Schwartz  
23 of the City of Independence, Missouri. Her contact  
24 information has been given to the court reporter.

25 MR. STEWART: On behalf of the Missouri

1 Joint Municipal Electric Utility Commission, Charles Brent  
2 Stewart, the law firm of Stewart & Keevil, and my address  
3 has been given to the court reporter.

4 JUDGE DIPPELL: All right. Who have -- who  
5 else do we have? Is there anyone else to make an entry of  
6 appearance? I believe the only other party I had listed  
7 was the U.S. Department of Energy. I see no one here for  
8 them. The City of Lee's Summit? Did we get the City of  
9 Lee's Summit? See no one here for them. And --

10 MR. FISCHER: I think there may be also  
11 some local union representatives.

12 JUDGE DIPPELL: That's correct. Is there  
13 anyone here for the unions? All right.

14 MR. BOUDREAU: Judge, I believe their  
15 counsel said that they'll show up later in the  
16 proceedings. I would anticipate the union's counsel to  
17 show up sometime this morning.

18 JUDGE DIPPELL: All right. Obviously if  
19 parties aren't here to present their statements or  
20 evidence to the Commission, then they just miss their  
21 opportunity.

22 All right. We had a Motion in Limine filed  
23 requesting that the proceeding be limited in scope  
24 basically, and I see there were some filings made in  
25 response to that.

1                   MR. CONRAD: Judge, I guess as the moving  
2 party there, I have not seen the responses, so I don't  
3 know --

4                   JUDGE DIPPELL: Mr. Conrad, could I get you  
5 speak in your microphone a little bit?

6                   MR. CONRAD: Sure. How's that? But I did  
7 notice one typo that probably needs to be at least  
8 corrected, and it appears on the second page of that  
9 motion toward the end of paragraph 3 in the last sentence,  
10 and I think it just needs to say any actions. I think the  
11 rest of the motion that's probably pretty clear.

12                  JUDGE DIPPELL: Okay. I'm going to --  
13 since I'm not sure that the Commission has had a chance to  
14 read all those responses, right now I'm going to wait to  
15 rule on that until after opening statements at this point.  
16 So the information in the Motion in Limine that's asked to  
17 be excluded will be allowed in the opening statements.

18                  MR. ZOBRIST: Judge, for the record,  
19 Applicant Great Plains Energy and KCPL filed their  
20 opposition last night, I think about six or seven o'clock,  
21 and we'll do our best to distribute hard copies as soon as  
22 we can this morning.

23                  JUDGE DIPPELL: Okay.

24                  MR. COFFMAN: Your Honor, if it be  
25 appropriate, my client would like to state their support

1 of Mr. Conrad's in limine motion, just for the record.

2 JUDGE DIPPELL: And there was also a motion  
3 from the Office of the Public Counsel filed on Saturday  
4 regarding the declassification of some documents, some  
5 deposition documents. Also in order to give the  
6 Commission an opportunity to make a thoughtful review of  
7 that motion and give the parties an opportunity to  
8 respond, I'm not going to rule on that at this time.

9 Those documents will go ahead and be  
10 treated as highly confidential. If they come up during  
11 the course of this hearing or that information, if it --  
12 if you can identify it, then if later that information is  
13 declassified, it will make it easier to do so. But for  
14 now, we're going to go ahead and consider that information  
15 confidential. If that comes up in your opening  
16 statements, you need to treat it as so.

17 And I will ask each of you to help me with  
18 the confidential information. You'll need to let me know  
19 if there's something that needs to be -- to go in-camera.  
20 Also ask you to turn off your wireless devices, especially  
21 when we're in-camera, because of the fact it can interfere  
22 with our recording equipment.

23 And then finally as a housekeeping matter,  
24 if each party would give me a business card preferably  
25 with a cell phone and an e-mail address on it for one

1 contact point person for that party in case of weather  
2 emergencies or other types of emergencies later. There is  
3 some winter weather possibly in the next couple of weeks.  
4 So that would be helpful at the first break or before the  
5 end of the day, if you could give me one contact person  
6 that I can get ahold of in case of emergencies.

7 We'll take the witnesses basically in the  
8 order provided, and we'll try to work with witness  
9 schedules, but ultimately it's up to the party to have  
10 their witness available when they need to testify, and we  
11 will try to follow the numbered exhibits that the parties  
12 have provided as ordered. Also if you have witness --  
13 other witness conflicts or transportation issues, you need  
14 to let me know that as we go along.

15 We'll also follow the order of opening  
16 statements that was proposed, and so I believe we're ready  
17 to go ahead and get started with that. Mr. Fischer?

18 MR. FISCHER: Mr. Riggins will present the  
19 opening for Great Plains and Kansas City Power & Light.

20 MR. COMLEY: Your Honor, before the opening  
21 statements, let me ask the Commission, the City of Kansas  
22 City would prefer to defer its opening in the interest of  
23 time today and also for the sake of the Commission to the  
24 time its witnesses appear next week. They're scheduled to  
25 appear on the 12th, as I recall, and because of that, and

1     because Kansas City has limited its issues to a very  
2     narrow group, I would ask on behalf of the City that I  
3     could be excused from the hearing during the course of  
4     this week. We may come in from time to time, but I have  
5     no cross-examination for witnesses this week.

6                     JUDGE DIPPELL: So you're asking to not  
7     only be excused, but also to defer your opening statement  
8     until next week?

9                     MR. COMLEY: Yes.

10                    CHAIRMAN DAVIS: Judge, I think I'm going  
11    to object. I'd like Mr. Comley to stay here.

12                    MR. COMLEY: I appreciate the  
13    Commissioner's remarks. I think he's sensitive to the  
14    fact I do have a child in college at the same time. I  
15    would renew my request with gratitude.

16                    JUDGE DIPPELL: I'm going to ask you to go  
17    ahead and make your opening statement today with the  
18    others, and I'm not going to be -- I'm not going to stand  
19    back at the door and keep people from coming and going as  
20    they wish, but if something comes up, it's your party's or  
21    your person's -- I'm not excusing anyone from the hearing.  
22    Let me put it that way. If you're not here, you miss your  
23    opportunities.

24                    MR. COMLEY: We certainly understand that  
25    we would waive any cross-examination to the extent no

1 one's here. I'll speak up for Cass County as well. Cass  
2 County does not have a witness sponsored in the case and  
3 has not submitted a brief on the issues involved, and to  
4 the extent our office is involved in that, we would also  
5 ask leave with respect to Cass County. But in the event  
6 that one of us is here, I suspect we probably should be  
7 considered in the order of cross-examination, and Cass  
8 County should be included.

9 JUDGE DIPPELL: All right.

10 MR. COMLEY: Thank you.

11 JUDGE DIPPELL: Is there anything else  
12 before we begin with opening statements? Great Plains?

13 MR. RIGGINS: Thank you and good morning.  
14 May it please the Commission? I am Bill Riggins. I'm  
15 general counsel for Kansas City Power & Light Company, and  
16 I'm appearing here on behalf of Kansas City Power & Light  
17 Company and Great Plains Energy.

18 JUDGE DIPPELL: Can you speak up just a  
19 little bit, sir?

20 MR. RIGGINS: Sure. First of all, I'd like  
21 to thank the other parties for their cooperation in  
22 working with the company in regards to scheduling  
23 conflicts with some of our witnesses, particularly  
24 Mr. Chesser and Mr. Downey, with regards to the year-end  
25 Great Plains Energy board of directors meeting which is

1 going on today and tomorrow. Mr. Chesser and Mr. Downey  
2 are here, but it took some maneuvering of their schedules  
3 both in terms of this hearing, we're changing a little  
4 bit. So again, I just want to thank the parties for  
5 working with us on that.

6 I'd like to take a few moments today and  
7 preview for you what you will hear from our witnesses  
8 during the next few days, and those topics will include  
9 our rationale for the transaction, the financial impact of  
10 the transaction on Great Plains, why we propose to  
11 maintain KCPL and Aquila as separate subsidiaries for some  
12 period of time after the transaction closes, and how those  
13 subsidiaries will operate, the benefits to customers from  
14 the transaction, and the standard by which this Commission  
15 should view our request. I will also briefly summarize  
16 our specific requests and respond briefly to the positions  
17 of some of the other parties in this case.

18 Aquila continues to suffer from its past,  
19 and some parties in this case seem to assume that Aquila  
20 and its investors can continue to operate indefinitely  
21 under a construct of high cost, non-investment-grade debt  
22 and rates that don't recover actual debt expense and other  
23 costs. That assumption's unrealistic. That construct is  
24 not sustainable. A weak, non-investment-grade utility  
25 which is the status quo that some parties are attempting

1 to justify is not the best long-term interest of Aquila's  
2 customers, its investors or the communities that it  
3 serves.

4                   Aquila did and does have a standalone plan,  
5 and that standalone plan was included in the proxy  
6 statement that their shareholders received before voting  
7 on this transaction. But neither Aquila's board of  
8 directors nor its shareholders viewed that standalone plan  
9 as the best opportunity for the future. Instead, they  
10 approved this transaction, as have numerous other federal  
11 and state regulatory agencies.

12                   An auction process demonstrated that the  
13 Great Plains Energy and Black Hills proposal was superior  
14 to other proposed transactions, and that shouldn't be  
15 surprising because obviously Great Plains Energy is in a  
16 unique position, a better position than any other  
17 potential buyer to realize savings from the transaction,  
18 and all you have to do to realize that that is true is to  
19 look at this chart.

20                   The green service territory is Aquila's.  
21 The blue is Kansas City Power and Light's. They fit  
22 together like this (indicating). This is downtown Kansas  
23 City, Missouri where both corporate headquarters are  
24 located. This is the Iatan plant, Iatan 1 and Iatan 2  
25 currently under construction in which both utilities are

1 partners.

2                   The Great Plains board of directors  
3 obviously has no interest in overpaying for Aquila, and  
4 they authorized final offer \$4.54 a share. And although  
5 some Aquila shareholders subsequently sued Aquila arguing  
6 that that offer was too low, as I stated, shareholders for  
7 both companies ultimately approved the transaction.

8                   It was true that, because of Aquila's  
9 financial situation, Great Plains was uncomfortable with  
10 the prospect of absorbing all of the company while  
11 maintaining an investment grade rating. That's one reason  
12 we decided to partner with Black Hills to achieve a more  
13 optimal solution.

14                  The Staff has alleged that the transaction  
15 will seriously weaken the financial condition of Great  
16 Plains Energy and Kansas City Power & Light. The only  
17 statement offered in support of that proposition is that  
18 Standard & Poor's put Great Plains on credit watch  
19 following -- with negative implications following the  
20 announcement of the transaction, and I think most of you,  
21 however, are aware that this routinely happens in  
22 acquisitions.

23                  As our witnesses will testify, the fact of  
24 the matter is that the overall risk profile of Great  
25 Plains is expected to improve as a result of this

1 transaction because Great Plains will own a higher  
2 percentage of regulated business and because it will  
3 spread the business risk of its nuclear asset over a  
4 broader asset and revenue base.

5                   At the time we were considering the deal  
6 and while we were negotiating it, one of the issues we  
7 considered was whether to merge Aquila and KCP&L as part  
8 of the transaction. It was obvious that there were some  
9 short-term reasons not to merge the two. The first reason  
10 and the most important one was the protection of Kansas  
11 City Power & Light.

12                   Aquila still has numerous significant  
13 potential liabilities related to its trading operations.  
14 Merging Aquila into KCP&L would have transferred those  
15 potential liabilities to KCP&L. In addition, merging a  
16 non-investment-grade utility into KCP&L could have  
17 endangered KCP&L's credit rating.

18                   Finally, we were concerned that merging the  
19 two could have caused some parties to argue that KCP&L's  
20 commission-approved regulatory plan was no longer binding.

21                   Secondly, there were some operational  
22 reasons not to immediately merge the two, the most  
23 prevalent of which was the fact that KCP&L is in the SPP  
24 and Aquila is not. Aquila's long-term status regarding  
25 RTOs is uncertain at this point in part because of the

1 pending Commission proceeding that's addressing that  
2 issue.

3 A third reason for not immediately merging  
4 the two was that we assessed, and it turns out it was  
5 correct, that the FERC's market power concerns would be  
6 lessened if we didn't immediately merge the control areas  
7 of the two companies.

8 And finally there were some administrative  
9 closing issues. This is a complex three-way transaction  
10 that involves separating Aquila's non-Missouri properties  
11 from its Missouri properties, and for those non-Missouri  
12 properties there are a large number of franchises and  
13 contracts that need to be assigned, and frankly, closing  
14 within the year to year and a half contemplated by the  
15 merger agreement would have been difficult if, in addition  
16 to all that work, we would have also had to have  
17 transferred and assigned Missouri assets as well as  
18 obtaining financing consents or arranging new financings  
19 for outstanding issuances.

20 After we started looking at the savings, we  
21 realized that most of the savings could be achieved out of  
22 the transaction without actually merging Aquila and KCP&L,  
23 and without having to deal with the short-term risks and  
24 complications.

25 So as contemplated and as filed with this

1 Commission, after the transaction Aquila will remain as a  
2 separate subsidiary of Great Plains with the assets, the  
3 liabilities and the rate schedules that it has today. It  
4 will be renamed for legal purposes. KCP&L employees,  
5 including many former Aquila employees, will operate the  
6 systems of both subsidiaries, and as is the case today,  
7 they will use KCP&L's cost allocation manual, which is on  
8 file with this Commission, to charge time and expense  
9 between KCPL's current system, Great Plains and the former  
10 Aquila system.

11               There have been some allegations made in  
12 this case regarding this legal issue of corporate  
13 structure and a related legal issue of corporate  
14 governance, and those have been extensively addressed  
15 multiple times in legal pleadings. So in terms of my  
16 opening statement, all I'm going to say about that is that  
17 it is true that many of the savings will come from  
18 integrating various functions of KCPL and Aquila, but that  
19 doesn't require the merger of KCPL and Aquila.

20               Bringing KCPL and Aquila under common  
21 ownership is what enables those savings, and KCPL has, in  
22 fact, requested the necessary approvals in their  
23 application to integrate the operations.

24               In addition, there is an allegation that  
25 Great Plains somehow influenced KCP&L outside the

1 parameters of independent corporate governance, and I  
2 think that that allegation at best demonstrates a lack of  
3 understanding of fiduciary and statutory duties because  
4 KCPL and Great Plains are not independent. Great Plains  
5 is a sole owner and shareholder of KCP&L and, as such,  
6 KCPL's directors, officers, employees owe their fiduciary  
7 and statutory duties to Great Plains. It's a holding  
8 company structure that the MPSC Staff supported and the  
9 MPSC approved.

10                   The most apparent benefit to customers from  
11 this transaction is savings. The savings are significant.  
12 There are economies of scale and efficiencies that will  
13 ultimately result in lower costs of operation and rates  
14 that will be lower than they would have been without the  
15 transaction.

16                   I think it's significant that Public  
17 Counsel witness Dittmer acknowledges that the acquisition  
18 will produce significant savings, and, in fact, I don't  
19 think any of the parties have really disputed that fact.  
20 The major areas of cost reductions will occur in labor --  
21 and that's with regard to management positions as opposed  
22 to union positions; union positions won't be reduced as a  
23 result of the transaction -- facilities, implementation  
24 and automation of meter reading for Aquila customers,  
25 strategic sourcing and procurement and a number of

1 specific integration projects that will either reduce the  
2 purchased power expense or increase revenue.

3 To estimate the savings, we used a  
4 bottom-up process using functional teams from both  
5 companies. We then hired an outside expert to review  
6 those savings estimates, and he's filed testimony in this  
7 case. He views them as conservative but consistent with  
8 industry practice, and he also says they're more detailed  
9 and better supported than most transactions with which he  
10 is familiar.

11 Another benefit to customers from this  
12 transaction is improved quality of service. KCPL has a  
13 deserved reputation as one of the top utilities in the  
14 country, if not the top utility in terms of reliability,  
15 and that's been evidenced not only by our performance but  
16 by several recent awards, and the policies and the  
17 practices and the projects that got us there will be  
18 extended to the Aquila system.

19 We expect improved customer service to  
20 result from this transaction. Several key leaders at  
21 Aquila who were instrumental in achieving Aquila's high  
22 level of customer service have agreed to continue with the  
23 merged entity. As I said, we plan to expand KCPL's  
24 metering technology into Aquila's service territory.

25 In addition, we'll be extending the energy

1 efficiency programs that we're offering now that we have  
2 under development to Aquila's customers. And finally, we  
3 plan to continue a strong program of community service  
4 that we both stress in our organizations, both through  
5 financial contributions and through volunteer work.

6                   The standard that the Commission must use  
7 in considering this request is whether it's -- whether it  
8 is a net detriment to the public interest, and the public  
9 interest requires balancing the interests of customers and  
10 investors, and it requires looking at all the likely costs  
11 and benefits, both short-term and long-term, and it  
12 requires weighing all of those.

13                   That's the analysis that we've presented to  
14 you in our testimony and exhibits in this case. But some  
15 parties to this case seem to have assumed a standard that  
16 no company acquiring Aquila could ever meet because they  
17 simply look at increases in cost in isolation and conclude  
18 that the transaction is detrimental.

19                   And this relates back to one of my first  
20 points, which is that, once again, no potential buyer of  
21 Aquila would be willing to continue to operate the company  
22 under a scenario in which it's not recovering its costs.  
23 In fact, any company acquiring Aquila would need  
24 regulatory support.

25                   We proposed in this case what we believe to

1 be reasonable regulatory support. We're proposing to  
2 share savings for five years. Specifically we propose to  
3 retain 50 percent of the savings for the first five years.  
4 After the first five years, customers receive all the  
5 benefits.

6 In terms of numbers, 305 million during the  
7 first five years will be subject to sharing, and of the  
8 total 755 million in estimated savings, 603 million would  
9 accrue to customers during the ten-year period covered by  
10 our analysis. The net present value of those benefits to  
11 customers is 341 million.

12 A proposal to share savings as a result of  
13 a merger is not an unusual request to state commissions,  
14 including this Commission in the past, and we believe it's  
15 a reasonable proposal for the rising unit cost environment  
16 that both companies are in.

17 Second, we've asked to recover transaction  
18 and transition costs over a five-year period. Transaction  
19 costs are incurred to complete the acquisition, and  
20 they're necessary to create the benefits that investors  
21 and customers will see because of the transaction. We  
22 estimate those transaction costs at 95 million. They  
23 include investment banker, consulting and legal fees,  
24 severance and change of control items, of which Black  
25 Hills will contribute 40 percent.

1                   I also think it's important to point out at  
2   this point that it seems that Staff is confusing the  
3   distinction between transaction costs and acquisition  
4   premium, and make it sound as if we're trying to recover  
5   the latter. They're not the same thing. We're not  
6   seeking to recover an acquisition premium. In fact, an  
7   acquisition premium does not exist in this case.

8                   In terms of transition costs, those, in  
9   contrast to transaction costs, are the costs that will be  
10  incurred to integrate the Great Plains and Aquila  
11  operations and, again, without incurring these costs the  
12  companies couldn't achieve the savings while at the same  
13  time maintaining reliability or improving reliability for  
14  KCPL and Aquila customers, and those transactions --  
15  excuse me, transition costs are estimated at \$45 million.

16                  We've also asked to recover actual interest  
17  expense costs, and parties who are opposing this request I  
18  believe have wrongly focused in isolation on one debt  
19  issuance of \$500 million that carries a 14.875 percent  
20  coupon. The fact is that post closing Great Plains will  
21  be reducing Aquila's debt significantly. However, this  
22  one issuance is likely the only material piece of  
23  outstanding debt that we're not going to be able to  
24  refinance economically because of high repurchase cost.  
25  Any company acquiring Aquila would be faced with the same

1 issue.

2 I would note, however, that because post  
3 closing Aquila will achieve investment grade status, the  
4 interest rate on that debt that I referenced is expected  
5 to fall by 300 basis points, but it will still be  
6 relatively high, and it will still be over the amount that  
7 Aquila is currently recovering through rates.

8 But we believe that as a part of an  
9 investment grade portfolio, that issuance should be viewed  
10 in the context of an acquisition that will again produce  
11 far greater savings than the cost associated with a single  
12 debt issuance.

13 The final point I'd make about that is,  
14 again, this is a short-term issue. That particular series  
15 of notes mature in 2012, which is about four years after  
16 the transaction is expected to close, and after that, the  
17 benefits of Aquila's ability to raise capital at  
18 investment grade rates will accrue entirely to customers.

19 We also are requesting the opportunity to  
20 use the additional amortization mechanism for Aquila in  
21 future rate cases if necessary. The additional  
22 amortization mechanism has not been used for Aquila  
23 because it was designed to maintain investment grade  
24 status and Aquila's not investment grade.

25 And certain parties are opposing this

1 request because they believe it will be used to enable  
2 Aquila to achieve investment grade status, and that's  
3 either a misunderstanding or a mischaracterization of our  
4 request. We received confirmation from Standard & Poor's  
5 and from Moody's that Great Plains Energy will remain  
6 investment grade after the acquisition. Our request is to  
7 use the additional amortization mechanism to support that  
8 investment grade rating for Aquila, as is currently done  
9 for KCP&L, primarily for the same investment, the retrofit  
10 of Iatan 1 and construction of Iatan 2.

11 In conclusion, as I was reviewing the  
12 testimony and the Briefs of the parties the last couple of  
13 days, it appears to me that the concerns of the other  
14 parties are primarily centered around the short-term  
15 impact that some of Great Plains Energy's cost recovery  
16 requests may have on rates.

17 We've discussed a five-year time frame in  
18 the context of shared benefits and the proposed time  
19 period for recovery of transaction and transition costs,  
20 but we've never suggested that a five- year time frame be  
21 used exclusively to look at the costs and benefits of this  
22 transaction. That would not tell the whole story because  
23 the benefits of this acquisition will continue for many  
24 years.

25 And I think that is perhaps the core task

1     that we are presenting to the Commission in this case,  
2     finding the best way to work through short-term issues so  
3     that we can build a stronger regional utility  
4     headquartered in Kansas City, Missouri, that will bring  
5     benefits to customers and communities and investors for  
6     many years to come.

7                     I thank you for your time and attention to  
8     this important case.

9                     JUDGE DIPPELL: Thank you. Aquila?

10                    MR. BOUDREAU: May it please the  
11     Commission? I'm going to do everybody a favor here and  
12     try not to repeat too much of the topics that Mr. Riggins  
13     has so ably addressed this morning. I will keep my  
14     comments very short because I think he's done a nice job  
15     of describing the various elements of the case before the  
16     Commission.

17                    He observed, I think, in his opening  
18     comments a couple of observations about Aquila, and it is  
19     true, as we all know and as you are quite familiar, that  
20     Aquila has suffered some financial setbacks in recent  
21     years, but those circumstances are largely behind it. As  
22     Mr. Riggins observed, the company did have a standalone  
23     plan and its restructuring plan, as the company has  
24     referred to it, has put it on the road to financial good  
25     standing. So I think I would just like to point out that

1 it would not be appropriate, I think, to view this  
2 transaction as the rescue of a troubled utility.

3 On the -- to the contrary, I think it is  
4 rather justified on its own merits because of the natural  
5 efficiencies and the synergies that can be realized from  
6 bringing both of the operating subsidiaries of GPE under  
7 the proposed structure under common ownership.

8 And I've circulated a map, which is a much  
9 more stylized version of what Mr. Riggins used to make the  
10 point, and I think the point is self apparent. If you  
11 look at the service territories of these two companies, it  
12 captures the simple logic of the transaction. It proposes  
13 to consolidate two electric utilities in western Missouri.  
14 The properties are contiguous, largely contiguous and in  
15 some cases overlapping even within the city limits of the  
16 city of Kansas City. This creates the best opportunity to  
17 generate both savings and operational efficiency to  
18 benefit customers.

19 Now, the merger provides the opportunity to  
20 combine two utilities that have complimentary strengths,  
21 and I think that's the point I'd like to emphasize, to  
22 combine them into a single utility that provides long-term  
23 benefits for customers. For example, with respect to  
24 Aquila, Aquila has outstanding customer service that's  
25 reflected in objective performance standards that are

1 monitored by this Commission. It also has an operational  
2 expertise with respect to combustion turbine technology.

3 KCP&L, GPE's operating subsidiary, on the  
4 other hand has an operational expertise with respect to  
5 coal-fired generation and more depth of experience with  
6 energy efficiency and renewables.

7 Now, this is not an exhaustive list, I'm  
8 just using this to illustrate the point that these two  
9 companies have strengths that they both bring to the  
10 table.

11 Now, the testimony over the next two weeks  
12 will show how the two companies, Aquila and Great Plains,  
13 have been diligently working for the past several months  
14 to identify best practices, to create a new utility that  
15 can operate more efficiently and effectively in serving  
16 customers than either of the current utilities can do on a  
17 standalone basis.

18 You know as well as anybody and probably  
19 better than most here in this room that we're in an era of  
20 increasing investments and generation, which creates  
21 upward pressure and rates for customers. The  
22 opportunities to bring two utilities under the common  
23 ownership of Great Plains and create opportunities for  
24 substantial savings in efficiencies for customers will  
25 help mitigate the increasing price environment, and this

1 is critical.

2 This transaction provides that, this  
3 Commission with an opportunity to do exactly that. That's  
4 all I have. Thank you.

5 JUDGE DIPPELL: Thank you. Black Hills?

6 MS. DAVENPORT: Your Honor, we will waive  
7 opening statement.

8 JUDGE DIPPELL: Staff?

9 MR. THOMPSON: May it please the  
10 Commission? It is Staff's position that this is a bad  
11 deal for ratepayers and a bad deal for Missouri and that  
12 this Commission should reject the proposed transaction.

13 What you're going to hear over the next two  
14 weeks is that this is a bad deal because, in Staff's view,  
15 Great Plains has agreed to pay too much for Aquila, a  
16 troubled company that comes complete with a very large  
17 debt burden, subject to high interest rates. Rather than  
18 agreeing to pay more than the assets of that company are  
19 worth, Great Plains, in fact, should acquire Aquila at a  
20 significant discount.

21 It's a bad deal because it will result in  
22 higher rates. Missouri families will pay more for the  
23 same services if this deal is allowed to go through. It's  
24 a bad deal because ratepayers are going to be required to  
25 shoulder the very high interest rates that Aquila is

1 subject to because of its losses in unregulated  
2 enterprises. This is simply subsidization by ratepayers  
3 of the unregulated failures that Aquila has engaged in.

4 In the absence of this deal, Aquila's  
5 ratepayers are shielded from paying those very high  
6 interest rates because this Commission has used an imputed  
7 cost of debt in setting Aquila's rates. That protection  
8 will be lost if this deal goes forward.

9 It's a bad deal because ratepayers will be  
10 required to pay additional subsidies in the form of  
11 additional amortizations as part of Great Plains' scheme  
12 to restore Aquila to investment grade.

13 The ratepayers never stood to gain any  
14 benefit from those unregulated adventures that Aquila  
15 engaged in. Why should they shoulder the cost of the  
16 failure of those enterprises?

17 It's also a bad deal because ratepayers  
18 will be required to fund through artificially inflated  
19 rates a payout of so-called synergy savings to  
20 shareholders over a five-year period. This is  
21 unprecedented. Ratepayers will put up hard money, by that  
22 I mean a specific amount of money, in order to share with  
23 the shareholders a forecast, predicted, estimated level of  
24 synergy savings that may perhaps never be realized at the  
25 predicted level and which, in any event, cannot be

1 accurately tracked or measured.

2 In your fairly recent decision concerning  
3 Ameren's Metro East transaction, you used a cost/benefit  
4 analysis to determine whether or not to approve that  
5 transaction. You did that because that is what the  
6 Missouri Supreme Court has said is required, and I refer  
7 to the Utilicorp decision where the company that is now  
8 Aquila acquired St. Joseph Power & Light.

9 So that is the analysis you must engage in  
10 in this case. You must carefully add up the benefits in  
11 one column and the detriments in another and see which  
12 column is greater in the end.

13 Staff suggests that the detriment column  
14 will be greater. Staff's expert witness, Bob Schallenberg  
15 has testified that the net detriment to ratepayers in this  
16 case exceeds \$70 million annually over the first five  
17 years following the closing of the transaction. Maurice  
18 Brubaker, the expert witness of the Industrial  
19 Intervenors, has testified that the net detriment exceeds  
20 \$25 million annually.

21 Mr. Dittmer, the expert witness of the  
22 Office of Public Counsel, has testified that the net  
23 detriment to ratepayers in this case is nearly \$80 million  
24 over the first five years. Those are large numbers to ask  
25 people who are trying to raise families to reach into

1     their pocket and hand out to these companies.

2                     I suggest to you this is a very bad deal  
3     for Missouri and you should reject it. Thank you.

4                     JUDGE DIPPELL: Public Counsel?

5                     MR. MILLS: Good morning. May it please  
6     the Commission? Just sort of as a disclaimer before I  
7     begin my opening statement, I'm going to talk about some  
8     meetings that took place between utility executives and  
9     Commissioners, and I want to make it clear for the record  
10    that when I talk about Commissioners, I'm not including  
11    Commissioner Jarrett. These meetings took place before  
12    Commissioner Jarrett was appointed.

13                    It's simply just awkward to talk about the  
14    four Commissioners except not including Commissioner  
15    Jarrett. So when I'm referring to Commissioners and the  
16    meeting I'm going to talk about, I'm not including  
17    Commissioner Jarrett, and I hope the record is clear from  
18    this disclaimer that that's the case in my opening  
19    statement.

20                    Now, typically in an opening statement I  
21    would talk about the issues in the case, and I will  
22    certainly do some of that. You've already heard a lot  
23    about the issues this morning from the prior opening  
24    statements of GPE, KCPL and Aquila, as well as  
25    Mr. Thompson. Public Counsel's position on the major

1 issues is squarely in line with Staff's, so I will try to  
2 repeat -- try not to repeat much of what Mr. Thompson  
3 said. I didn't hear him say a single thing that I don't  
4 wholeheartedly agree with.

5                   Now, more in line with what I want to focus  
6 on in my opening statement, the point is that you-all have  
7 known about what the issues in this case are for longer  
8 than I have or for longer than any of the parties except  
9 for the applicants have.

10                   According to the sworn testimonies of  
11 utility executives, you met with the utility executives  
12 last January and they told you what they needed out of  
13 this deal, and it was critical to them that they walk away  
14 from those meetings knowing that you-all had no objections  
15 to the very ratemaking mechanisms that are now so hotly  
16 contested.

17                   Now, it is true that, as currently drafted,  
18 your rules do not prohibit these kind of meetings. But I  
19 think, at least I hope, that these meetings went far  
20 behind -- far beyond the typical kind of meeting that you  
21 have with the utility representative who's going to tell  
22 you the details of some transaction, and they went far  
23 beyond this in two respects.

24                   First is the unprecedented level of detail  
25 you were presented with. The CEOs told you not just about

1 the structure of the merger with KCPL and Black Hills and  
2 GPE, but also about the ratemaking treatment that they  
3 absolutely needed you to grant.

4 And second, from the CEO's point of view,  
5 these were not just meetings to inform you. These  
6 meetings were a litmus test. If they did not get the  
7 reaction that they wanted from all of you, they may not  
8 have gone forward with the deal or they may have  
9 restructured it in a way that was more fair to ratepayers.

10 Ironically, it is only because it was so  
11 absolutely critical to have the Commissioners not opposing  
12 the ratemaking treatment that we will have the documents  
13 in the record about these meetings with the Commissioners.  
14 If GPE and Aquila had not needed so desperately to  
15 reassure their boards that Commissioners were okay with  
16 the anti-consumer regulatory treatments that are central  
17 to this deal, we may never have known that these meetings  
18 took place.

19 The Commissioners never provided notice in  
20 this case, and it's only because they're reflected in the  
21 board minutes and other company documents that we're able  
22 to put together an outline of what went on and why.

23 Now, many of these documents are still  
24 classified as highly confidential. I hope the Commission  
25 will quickly rule on the motions I filed yesterday to make

1    them public. But without getting into the highly  
2    confidential information, here's a high level sketch of  
3    the timeline of this merger. Mike Chesser met with Rick  
4    Green in the spring of 2006 to informally discuss the idea  
5    of acquisition or integration of the two operations.  
6    Mr. Green told Mr. Chesser that a formal process of  
7    putting Aquila up for sale would commence in a few months  
8    and GPE would be welcome to participate in that process.

9                   That process started in the summer of 2006.  
10   Only a handful of potential buyers participated, and they  
11   all quickly dropped out except for GPE. By the fall, only  
12   GPE was left. Well, we may never know for sure why there  
13   was so few to begin with and why they all dropped out so  
14   quickly. It's a fair surmise that the others didn't see  
15   much chance of getting approval for the kinds of novel  
16   regulatory treatment that GPE is seeking and they couldn't  
17   see any way to offer an acceptable price without them.

18                   From the very beginning, as early as the  
19   summer of 2006, GPE knew the Commissioners' response to  
20   these regulatory treatment was a very important  
21   consideration in deciding whether it would be able to move  
22   forward with the merger. In fact, it was so important  
23   that just last week Mr. Chesser couldn't even say that GPE  
24   would have proceeded with the merger if he had gotten  
25   negative feedback from the Commissioners when he met with

1 you-all to talk about these ratemaking issues.

2                   So GPE and Aquila developed a plan to meet  
3 with Commissioners to explain what these ratemaking  
4 requests were going to entail and to judge Commissioner  
5 reactions. As you know, these meetings were held last  
6 January, just before the merger was announced.  
7 Mr. Chesser and Mr. Downey met with each of you, except  
8 for Commissioner Jarrett of course, and Mr. Green only met  
9 with Chairman Davis.

10                   As far as I know, there are no recordings  
11 or transcriptions of these meetings, and so the public  
12 will never know exactly what transpired. But what we do  
13 know is the CEOs came away with positive feelings,  
14 continued to work on ironing out details and announced the  
15 merger publicly in early February 2007. The merger  
16 application that started this case was filed in April of  
17 2007.

18                   Now, with respect to the contested  
19 ratemaking issues in this case, let me start out with the  
20 synergies. As you know, the synergies are one of the  
21 three or four big issues in this case. Public Counsel  
22 asserts that GPE's estimates of synergies are overly  
23 optimistic and don't include savings that could and should  
24 be achieved even without this proposed merger.

25                   Contrast these optimistic estimates of

1 synergies with the known transition and transaction costs  
2 that GPE will ask for recovery of. The applicants have  
3 proposed recovery of transaction costs that includes  
4 payments to investment bankers, lawyers and the like.  
5 Also included are change in control payments to Aquila  
6 executives. The Commission has not historically allowed  
7 recovery of transaction costs in merger transactions, and  
8 if it approves this merger over the objections of every  
9 expert who has objectively analyzed it, the Commission  
10 should not approve them in this case.

11 Another of the novel ratemaking proposals  
12 is the idea that you should allow Aquila post merger to  
13 take advantage of the regulatory amortizations that KCPL  
14 negotiated for in EO-2005-0329. There was, I'm sure, a  
15 lot of give and take in that case before the regulatory  
16 amortizations were agreed upon. In this case, GPE wants  
17 to jump right to the take part of the give and take and  
18 forego the give part entirely.

19 The Commission should, if it approves this  
20 merger, decline to impose a poorly fleshed out  
21 amortization proposal on Aquila's ratepayers.

22 Finally, the last big issue in terms of  
23 ratemaking is the question of Aquila's high cost debt.  
24 Aquila has for many years pledged to insulate its Missouri  
25 ratepayers from Aquila's ventures into foreign markets to

1 the unregulated businesses. Aquila will readily concede  
2 that one of the consequences of those ventures is very  
3 high, relative to other utilities, cost of debt.  
4 Aquila has even filed rate cases in which its filing was  
5 based on a hypothetical, a lower than actual cost of debt.

6 This Commission has been very firm about  
7 holding Aquila to that commitment and setting rates based  
8 on a cost of debt consistent with an investment grade  
9 utility rather than Aquila's cost of debt. You should not  
10 abandon that practice now.

11 So where does that leave you? Mr. Riggins  
12 referred to Aquila as a, quote, weak, non-investment grade  
13 utility. If it's a weak, non-investment grade utility,  
14 why is GPE paying retail? GPE is proposing to pay  
15 Dillard's prices for an old, tired Salvation Army coat,  
16 and GPE with KCPL construction activities can't  
17 realistically absorb the difference between the Salvation  
18 Army price tag and the Dillard's price tag.

19 If you approve the merger with the  
20 ratemaking treatment proposed by the applicants,  
21 ratepayers will absorb all these costs, and if you deny  
22 the proposed ratemaking treatment and GPE goes forward  
23 with the merger, KCPL will likely fall below investment  
24 grade and this will create costs for ratepayers, create  
25 risk for KCPL's current construction projects and future

1 projects. The only way out is for the Commission to deny  
2 the approval. Thank you.

3 JUDGE DIPPELL: Ag Processing?

4 MR. CONRAD: May it please the Commission?  
5 I'm going to presume that when you call Ag Processing,  
6 that you're calling the group?

7 JUDGE DIPPELL: I am, and I should have  
8 said that in the beginning, that if I abbreviate the group  
9 of clients that you represent, I am intending to include  
10 all of those clients.

11 MR. CONRAD: Well, I'll have a couple of  
12 abbreviations, too, so I'll be happy to extend the  
13 envelope.

14 This seems to present -- this package seems  
15 to present a proposed marriage between what I've called  
16 the Golden Child and Chucky. Now, we all know that Aquila  
17 and Aquila's management have presented problems for this  
18 Commission for the last several years. That does not,  
19 however, justify solving those problems on the backs of  
20 the ratepayers. You can pay too much to solve a problem.

21 First of all, it isn't you who would be  
22 paying. Rather, it is the captive ratepayers and the  
23 captive ratepayers of the Golden Child and of Chucky. And  
24 then if it's all wrong, as Mr. Lewis -- Mr. Mills  
25 eloquently states, you may end up screwing up both

1 companies by jeopardizing the financials of the Golden  
2 Child.

3 Now, there may be a way to solve Chucky's  
4 problem but without doing so on the backs of the  
5 ratepayers. Recall Mr. Riggins' statement that the Golden  
6 Child needed what he calls regulatory support.

7 Now, let's translate that. That's called a  
8 rate increase. Think about KCPL for a moment. In 2009,  
9 per their regulatory plan, they will come in here, maybe a  
10 little bit later, with a whopping big plant addition, and  
11 they will want that plant investment to be reflected and  
12 recovered in rates. This would saddle yet additional  
13 costs onto the KCPL ratepayers, setting aside the issue of  
14 the Aquila ratepayers.

15 Now, our testimony through Mr. Brubaker  
16 shows that it is a net detriment of roughly 20 to  
17 \$25 million per year for the addition -- for the initial  
18 five years. Now, you've heard Mr. Riggins, and he came  
19 about as close as anybody could without saying it, but the  
20 phrase that I want you to think about is pie in the sky by  
21 and by. Oh, you're going to pay for the first five years,  
22 oh, yes, we acknowledge that, says Mr. Riggins, but the  
23 pie is out there, and oh, it is a good pie, but it is in  
24 the sky and it is by and by. So don't look, don't look at  
25 the man behind the curtain and don't look at the first

1 five years, and don't look at that. Look instead at this  
2 beautiful pie out there. Oh, it's a juicy pie.

3 Well, the problem that you have with that  
4 is the case that I believe I have referred to as AGP  
5 versus Missouri Public Service Commission which Staff  
6 counsel referred to as the UtiliCorp decision. Seems to  
7 me to suggest that you have to do the math, as Staff  
8 counsel suggested, but you can't look down the pike and  
9 see a pie in the sky by and by and use that to punt and  
10 solve your problem.

11 Now, I said earlier that there might be a  
12 way to solve the Aquila problem. When we sat down to try  
13 to solve KCPL's problem, we did it through a collaborative  
14 process. To mention another utility that had a similar  
15 problem, we sat down in a collaborative process and  
16 apparently solved, maybe not terribly satisfactory to all,  
17 but at least made a pass at solving Empire's problem. And  
18 indeed Aquila came in after those two and said, oh, we  
19 want one of those, too.

20 And I think people were more than happy to  
21 have preserved Aquila's credit rating. After they thought  
22 about it a little bit, they decided they didn't want to  
23 preserve that. But we also did a financing package for  
24 Aquila on a collaborative basis. No collaboration here.  
25 None at all, save the potential collaboration to which

1 Mr. Mills refers, and that was not with the parties.

2 I would also suggest to you that the  
3 package that is proposed and the way it is proposed may be  
4 a question of legality. We've raised the issue about what  
5 393.190 says. The KCPL plan, the regulatory plan was a  
6 result of the collaborative process. That agreement does  
7 not include financial protection to allow KCPL, Great  
8 Plains Energy, they seem to use the terms interchangeably,  
9 but KCPL got no protection under that plan to go out and  
10 acquire other utilities, nor did GPE. That was to support  
11 their credit metrics, and they may have been impacted by a  
12 construction program.

13 That will not be the case for Aquila. It  
14 will have to stand on its own, and any modification to  
15 that plan will not be the plan that my client in that case  
16 sought. And I do not believe as I stand here before you,  
17 while this Commission has significant power, it does not  
18 have the power to force parties to sign a new agreement.  
19 That just is not going to happen. An attempt to modify  
20 that may violate that package and allow the signatories to  
21 walk away from it. So if you see that package as having  
22 benefits for KCPL, think twice.

23 The Commission may think that it cannot be  
24 bound, but you will recall that in the language of the  
25 regulatory plan approved for KCPL, there was language that

1 said the parties submit this to you for your unconditional  
2 approval, and it was so approved. Now, it ended up being  
3 with some dissents, but there was a majority in favor of  
4 that. It does not follow that a year or so after this  
5 Commission has the power to come back and change that  
6 decision.

7                   And again, Commission has great power, but  
8 there are limits to it, and as the Commission and Aquila  
9 found in the AGP case, there are some legal ones. And if  
10 I were KCPL, I'd be kind of worried about those, because I  
11 wouldn't want to have a deal approved -- the old joke is  
12 that doctors take their mistakes down and bury them, and  
13 we lawyers take ours down to the courthouse and record  
14 them on public record.

15                   It strikes me that if I were doing this  
16 deal, I would want to have a clean deal that wasn't  
17 subject to legal challenge, that wasn't about to be  
18 shredded by the Western District of the Missouri Supreme  
19 Court at some point in time.

20                   Which takes me to my final point. Even the  
21 claims of benefits here, which are illusory as best, as  
22 Mr. Brubaker's testimony points out, are predicated upon a  
23 business combination and an integration, that seems to now  
24 be the word, approval of which has not been sought. There  
25 appears to be an argument about what 393.190 requires. At

1   least one of you has -- well, perhaps two, and  
2   Commissioner Clayton, who's not here, has substantial  
3   experience in drafting legislation.  When the Legislature,  
4   when the General Assembly uses the terms director and  
5   direct, I kind of think they know what they mean.

6                   So you can't do an end run around this.  
7   You can't merge companies and call it an integration.  You  
8   can't combine their operations and call it some other  
9   label and thereby evade the consumer protection that we  
10  have legislated here in 393.190.

11                   In short, it is possible to pay too much to  
12  solve a problem.  It is particularly easy to fall into  
13  that when you're paying it with somebody else's money.  
14  Ratepayers must depend on this Commission to protect their  
15  interests.  I'll be blunt here.  I usually am not accused  
16  of being politically correct.  The politics are not going  
17  to favor an appointed commission or a governor who is  
18  seeking reelection whose actions result in significant  
19  additional rate increases and may well jeopardize the  
20  financial status of one of the utilities that is regulated  
21  by this Commission and serves a lot of Missourians.

22                   Thank you very much.

23                   CHAIRMAN DAVIS:  Mr. Conrad, can I ask you  
24  a question?

25                   MR. CONRAD:  You sure can, sir.

1                   CHAIRMAN DAVIS: Okay. Based on what we  
2 have seen and read so far, and then based on I think  
3 something you said early on in your opening statement, can  
4 you conceive of a set of conditions where this transaction  
5 could be made palatable to the ratepayers? If the answer  
6 is no, that's fine.

7                   MR. CONRAD: The answer has to be at this  
8 point no, but let me tack onto that this addendum: When  
9 we first started out, Commissioner Davis, Chairman Davis,  
10 to deal with what ultimately became the KCPL regulatory  
11 plan, the answers there were pretty strongly no.

12                  CHAIRMAN DAVIS: Right.

13                  MR. CONRAD: But through a long, perhaps,  
14 very long, drawn-out process, not only did the parties  
15 come to understand what the utility needed or felt that it  
16 needed and through that process were able to validate that  
17 or vet it, that seems to be the term now, but the utility  
18 also was able to find out what the customers would do and  
19 the structure of how they would agree to do it.

20                  So in saying no, I'm really addressing the  
21 direct question that you asked in the context of the  
22 proposal that is before you.

23                  CHAIRMAN DAVIS: Right.

24                  MR. CONRAD: I do not know, sir, honestly  
25 what proposal might come out. I have been in this

1 business, though, for over 30 years, and I have seen very  
2 few problems that are totally insoluble when we get a room  
3 full of pretty active and intelligent and informed people  
4 working on it. Is that a fair answer?

5 CHAIRMAN DAVIS: That is a fair answer, and  
6 I have one question to follow up. Let me think just a  
7 moment. Without divulging anything that may have been  
8 said in the confidence of any proposed settlement  
9 negotiations that might have happened, do you believe that  
10 KCP&L, Aquila, Great Plains, that they have a plan B or a  
11 plan C?

12 MR. CONRAD: Based on what I have heard, I  
13 do not understand there to be one. We have not -- even  
14 though that has been amply asked for, it's been asked for  
15 from testimony, people have responded in the context of,  
16 Mr. Chairman, this plan that's been proposed. I want to  
17 be clear that we haven't been asked to opine on other  
18 plans. We haven't been presented with other plans. We  
19 certainly have not -- have not been involved in any kind  
20 of a give and take process.

21 Whoever it was, whether it was counsel  
22 Thompson or counsel Mills that said this is supposed to be  
23 or should be a give and take as the regulatory plan was,  
24 the applicant seem to have come in just on the take side.  
25 There's not been a -- there's not been a back and forth.

1                   CHAIRMAN DAVIS: Okay. And so once again  
2     you've just echoed the sentiments of Mr. Schallenberg's  
3     testimony, that there's no way for the -- for the  
4     ratepayers to swallow a billion dollars worth of Aquila's  
5     unregulated debt and this be a good deal for -- or to be  
6     not detrimental to the ratepayers?

7                   MR. CONRAD: Think what you're doing.  
8     We've already got -- we know KCPL, this company with  
9     Iatan 2, and that's been coming in little slices, but  
10    there is a great big chunk yet to come. And then you put  
11    this on top of it, I wouldn't -- I wouldn't want to be the  
12    Governor, even though there might be some other perks.

13                  CHAIRMAN DAVIS: Thank you, Mr. Conrad.

14                  JUDGE DIPPELL: City of Independence?

15                  MS. ROBY: Your Honor, may it please the  
16    Commission? The City of Independence has filed its  
17    prehearing brief and its position is stated therein, so I  
18    will keep this as brief as possible. We've limited our  
19    issues to Issues 8 and 9 of the issues list, and those  
20    issues deal primarily with what's missing in the  
21    application.

22                  You've heard Staff and office of the  
23    people's counsel get into the financials of this  
24    application, and what has not been addressed fully is the  
25    applicant's intent with respect to RTO participation and

1 joint dispatch and interconnection issues. You've heard  
2 the companies talk about synergies that can be achieved  
3 even though they're not proposing to merge the two  
4 companies, they want to integrate them into -- under the  
5 same ownership. Well, how can those synergies be achieved  
6 without a clear plan on RTO participation? And in the  
7 applicant's application, they're noncommittal on this  
8 point.

9                   They're not sure which way they want to go,  
10 yet their testimony appears to slant towards participation  
11 in Southwest Power Pool. KCP&L's already in the Southwest  
12 Power Pool. Synergies can be achieved if Aquila  
13 participates under the Southwest Power Pool. Now, that's  
14 what they're implying in this proceeding, yet we know in a  
15 separate proceeding before this Commission Aquila has  
16 applied to become a member of the Midwest ISO.

17                   Now, the company will say, well, the issues  
18 in this case, seems like most of the Intervenors are  
19 focusing on the short-term issues and we should look  
20 beyond that and look at the long term. And we submit that  
21 an RTO selection is no trivial matter. It is not a  
22 short-term decision. It's not one where you flip a coin  
23 and you decide which RTO do we want to become a part of.  
24 The Southwest Power Pool is not the same as the Midwest  
25 ISO. The Midwest ISO has different markets and operation

1     than the Southwest Power Pool. They have different  
2     transmission plan and horizons. Southwest Power Pool has  
3     a different transmission plan and horizons than Midwest  
4     ISO. They have different transmission committees,  
5     different transmission processes, different tariffs.  
6     They're different provisions in each of the tariffs.

7                     So the key issue here is, how can we  
8     evaluate whether this application is not detrimental to  
9     the public interest if we don't know what those plans are,  
10    what those long-term plans are? There's no question that  
11    there are costs and -- associated with the selection of an  
12    RTO. The question is, what are those costs? What are the  
13    benefits of joining the Midwest ISO versus the Southwest  
14    Power Pool, and how do they affect this proposal when you  
15    look at the two companies together?

16                    Those questions haven't been answered.  
17    They've been noncommittal on those. They would have this  
18    Commission approve the merger and then just deal with that  
19    separately, deal with it at a later time. At that point,  
20    the merger is not -- your ability to protect ratepayers  
21    at that point is lessened by the fact that that decision  
22    is already over.

23                    Similarly, with joint dispatch, the  
24    companies are noncommittal on that point. And at this  
25    point they say, well, we're going to keep them in two

1 different control areas. We have no plans on joining  
2 those operations together. Might deal with that down the  
3 road, but again, they would have this Commission approve  
4 that merger and then down the road, your ability to deal  
5 with what the impacts of those joint operations are going  
6 to be are going to be hampered by the fact that that merger  
7 is already through.

8                   So we submit that at least on the RTO  
9 question, that a decision on this application should be,  
10 if not dependent upon the RTO issue in a separate  
11 proceeding, at least should be delayed until that  
12 proceeding has concluded since it is already going. Thank  
13 you very much.

14                   CHAIRMAN DAVIS: Real quick, can I ask her  
15 one question?

16                   JUDGE DIPPELL: Sure.

17                   CHAIRMAN DAVIS: Ma'am, I'm sorry, I don't  
18 recall your name.

19                   MS. ROBY: Debra Roby with Jennings  
20 Strouss & Salmon.

21                   CHAIRMAN DAVIS: Have you considered the, I  
22 guess what is now floating around there as sort of the  
23 MISO hybrid membership, is that part of your analysis, to  
24 what's apparently on the table to maybe Mid America and  
25 Duquene and maybe some other people that are on the

1 fringes of the MISO system?

2 MS. ROBY: The City is evaluating what RTO  
3 selection for the companies, how it may impact the City  
4 and customers, and it's not foreclosing any particular  
5 decision. It's not -- at this point in time, the City is  
6 not taking a position that it should be Southwest Power  
7 Pool over the Midwest ISO in this proceeding, but it is  
8 something that should be explored.

9 CHAIRMAN DAVIS: And so you're not basing  
10 it on any one Midwest ISO proposal?

11 MS. ROBY: That's correct.

12 CHAIRMAN DAVIS: Thank you.

13 MS. ROBY: Thank you.

14 JUDGE DIPPELL: Dogwood Energy?

15 MR. LUMLEY: Good morning, Commissioners.  
16 Dogwood Energy is a subsidiary of Kelson Energy and it's  
17 the owner of the 600 megawatt combined cycle generator  
18 facility that's located in Pleasant Hill, Missouri, which  
19 is within Aquila's service territory and it was formerly  
20 known as the Aries facility. And in this proceeding  
21 Dogwood has presented the testimony of Kelson vice  
22 president Robert Jansen.

23 In our testimony, we address two issues.  
24 First, that the approval of the merger should be made  
25 subject to the condition that Aquila join the Southwest

1 Power Pool RTO with current member Kansas City Power and  
2 Light. Secondly, that the approval of the merger be  
3 subject to the condition that Aquila and KCP&L consolidate  
4 their balancing authority areas. The merger presents the  
5 Commission with an unique opportunity to knock down  
6 obstacles that have been created by Aquila's now stale  
7 commitments to the Midwest ISO and require the sensible  
8 outcome of Aquila joining the Southwest Power Pool where  
9 KCP&L is already a member and Aquila already has close  
10 association. Joint membership of Aquila and KCP&L in the  
11 SPP in consolidation of their balancing authority areas  
12 equals maximum efficiency and public benefit from the  
13 merger. Including for Dogwood facility. The records  
14 demonstrate that Southwest Power Pool is the clear choice  
15 and that delay in this decision is not in the public  
16 interest. As mentioned, Aquila's pending application to  
17 join the Midwest ISO would subordinate the public interest  
18 to outdated contractual obligations that do not bind this  
19 Commission. In essence, they urge a BCS type decision  
20 that uses complicated calculations and imaginations which  
21 ignore the obvious correct choice. Aquila should join the  
22 Southwest Power Pool. As part of the obvious fit that's  
23 been presented to you today between KCP&L and Aquila that  
24 both Mr. Riggins and Mr.  
25 Boudreau referenced.

1                   Further the record shows that by requiring  
2   Aquila and KCP&L to consolidate their balancing authority  
3   areas, the Commission will assure a greater public benefit  
4   from the merger. Dogwood supports these two conditions in  
5   addition to whatever other conditions the Commission  
6   determines are appropriate in connection with its approval  
7   of the merger. And we've explained our position in  
8   greater detail in our prehearing brief and in Mr. Jansen's  
9   testimony. Thank you.

10                  JUDGE DIPPELL: Just one moment, Mr.  
11   Lumley, just so the record is clear, I'm a Tiger fan, but  
12   I don't know what BCS stands for. Can you tell me?

13                  MR. LUMLEY: Do you want the actual? The  
14   actual is the bowl championship series, as a dues paying  
15   member of the Mizzou community, it stands for something  
16   else as well today.

17                  JUDGE DIPPELL: Thank you very much.

18                  JUDGE DIPPELL: Missouri Joint Municipals.

19                  MR. STEWART: May it please the Commission?  
20   I'm Brent Stewart representing the Missouri Joint  
21   Municipal Electric Utility Commission. This is a  
22   organization political subdivision of the state of  
23   Missouri that has 59 member municipalities that operate  
24   their own municipally owned utilities, electric utility  
25   systems, and out of that group, approximately half are

1   also members of the Missouri Electric Municipal Electric  
2   Power Pool. We call it MOPEP. The -- my client's  
3   interest in this proceeding is extremely limited. We have  
4   intervened primarily to monitor, and at this stage of the  
5   proceeding to let the Commission know that we are in  
6   support of the positions taken by the city of Independence  
7   and Dogwood Energy. We have filed one very brief piece of  
8   testimony in this case by Mr. John Grotsinger who is our  
9   chief engineer. I did not, your Honor, file an exhibit  
10   list as a list contemplates more than one item, so just  
11   for the record, I would let you know that Mr. Grotsinger's  
12   cross surrebuttal testimony would be marked as Exhibit 800  
13   per the pre -- the assignment of exhibit numbers, and I  
14   would be presenting that testimony, offering that  
15   testimony at the time Mr. Grotsinger takes the stand.

16                   For concluding my opening statement, I  
17   would just say that the Joint Municipal Utility Commission  
18   concurs in the statements made by the city of Independence  
19   and by counsel for Dogwood Energy, including his comments  
20   about the big 12.

21                   JUDGE DIPPELL: City of Kansas City?

22                   MR. COMLEY: May it please the Commission?  
23   Currently Kansas City Power & Light and Aquila provide  
24   service to the City of Kansas City under separate electric  
25   franchise agreements. Because the proposed merger will

1 effectively unite KCP&L and Aquila as affiliated entities  
2 with significant integration of operations between the  
3 two, Kansas City proposes that the City itself should be  
4 able to deal with the affiliated entities under a single  
5 franchise agreement. The City has made this one of its  
6 principal conditions upon approval of the merger.

7 By way of background, the City's electric  
8 franchise agreement with Aquila expired on December 31st,  
9 2006. Although the City recently commenced negotiations  
10 for a new franchise of Aquila, these negotiations have  
11 been delayed, and once the transaction between Aquila and  
12 Great Plains was announced, we have not had any  
13 negotiations since.

14 The City and Aquila continued to operate  
15 under the terms and obligations of the expired agreement.  
16 The City's electric franchise agreement with KCP&L was  
17 granted in 1881 and does not contain a term limit. The  
18 KCPL agreement, which is less than two pages in length,  
19 contains almost no information on how the parties intend  
20 to operate and is truly antiquated.

21 While the City and KCPL negotiated an  
22 ordinance in 1996 that would have served as an operational  
23 agreement between the parties, KCP&L has failed to execute  
24 that agreement. Accordingly, the original franchise  
25 agreement still controls the relationship between the

1 parties. This arrangement stands in stark contrast with  
2 municipal utility relations under modern franchise  
3 agreements. Modern franchise agreements, which are no  
4 longer executed for indefinite periods of time, include  
5 terms and conditions that assure the quality and  
6 reliability of electrical service as well as provision of  
7 customer service through simplified billing and prompt  
8 outage restoration.

9                   Modern franchise agreements provide clear  
10 definitions, time frames and procedures that reduce  
11 potential for confusion or disagreement and promote  
12 efficient and timely service, thereby reducing cost to  
13 consumers. Finally, modern franchise agreements typically  
14 incorporate requirements to municipalities and utilities  
15 to implement renewable energy programs, establish basic  
16 commitments to community development and include other  
17 related provisions that reflect issues important to  
18 utilities, local governments and consumers alike.

19                   The possible existence of two utilities  
20 acting under separate franchise agreements forces the City  
21 to expend additional resources and taxpayer money in order  
22 to manage its rights of way. City departments and  
23 personnel must work to meet two separate sets of differing  
24 obligations and responsibilities and must duplicate  
25 efforts to monitor and manage two entities providing the

1 exact same type of service to its customers. The cost of  
2 monitoring and coordination, not to mention confusion, is  
3 likely to increase if there are two separate legal  
4 entities with significantly integrated operations.

5                   Thus, it's our argument that a unitary  
6 franchise is a common sense solution that will ameliorate  
7 these issues for the City and the combined utility.

8                   KCP&L witness John Marshall has testified  
9 from a community and communication perspective, since the  
10 majority of KCPL customers live in the same metropolitan  
11 area, the merger would enable more effective interaction  
12 with them and a more coordinated role in supporting the  
13 needs of our community. To the same extent, effective  
14 interaction and coordination are vital elements to the  
15 utilities' relationship with the City.

16                   The condition of the uniform or the unitary  
17 franchise is timely in this matter. Despite its  
18 projections of hundreds of millions of dollars in  
19 synergies resulting from the integration and consolidation  
20 of KCP&L and Aquila's operations, KCP&L is asking the  
21 Commission to ignore the practical effect of the  
22 transaction on the City's management of its rights of way.  
23 The franchise relationship between the utilities and the  
24 City must change to properly reflect KCP&Ls plans for a  
25 single experience for all customers.

1                   Accordingly, if the Commission should  
2   approve this transaction, it should condition its approval  
3   on KCP&L/Aquila negotiating a single unitary franchise  
4   with Kansas City, Missouri within nine months of  
5   Commission approval of that merger.

6                   The City views the Great Plains/Aquila  
7   merger as providing an opportunity for the City and the  
8   merged utility to reduce the City's energy use by ensuring  
9   that city departments are on the appropriate tariffs.  
10   KCP&L has stated that it intends to realize energy  
11   efficiency through the offering of its affordability,  
12   energy efficiency, and demand response programs within  
13   Aquila's service territory, and augmenting this customer  
14   service program with additional Aquila offerings is  
15   appropriate.

16                  The City's extremely interested in  
17   achieving a greater level of energy efficiency that has  
18   not been possible for the City in the past given its  
19   service from two different providers. The City is one of  
20   the largest customers of these utilities. It is critical  
21   for the City to ensure that it is acquiring and utilizing  
22   energy as efficiently as possible in the event that the  
23   merger is approved.

24                  The City should have the opportunity to  
25   receive an aggregate rate for all of its uses or at the

1   very least take advantage of its consolidated purchasing  
2   power, a comprehensive energy audit which addresses the  
3   City's concerns and allow for the City and newly merged  
4   utility to begin with a clean slate with regard to city  
5   energy profile. Ultimately, an energy audit would result  
6   in a reduction in taxpayer burden and increase the City's  
7   role as a green citizen of the environment.

8                   The City has asked that if approval of the  
9   merger is granted, that a condition on performance of the  
10   energy audit within six months be added.

11                  The joint applicants' proposal currently  
12   lacks specificity regarding rate integration, system  
13   integration, customer service integration and a meaningful  
14   commitment to compensate customers. Certain service  
15   quality standards aren't maintained or improved as a  
16   result of the merger. When regulated monopolies propose  
17   mergers that allege significant synergies and cost  
18   savings, it would be incumbent upon this Commission to  
19   ensure that service quality to captive customers does not  
20   deteriorate.

21                  The joint application fails to establish  
22   obligatory service quality standards that would put some  
23   teeth into requirements that the utility meet minimum  
24   service quality targets post merger. Customers should be  
25   provided the safeguards to guarantee service quality, and

1 in the event these safeguards are not met, the utility  
2 should be obligated to provide compensation for the  
3 diminution in utility services.

4               The Commission should therefore require the  
5 company as a condition of approval to file an application  
6 for a quality service plan with the appropriate standards  
7 and customer remedies within 90 days of the final decision  
8 of this proceeding. While the City is not suggesting that  
9 the joint applicants are doing anything wrong now, this  
10 measure is being proposed to avoid any potential problems  
11 in the future.

12              Regulatory guidelines, fines, awards and  
13 penalties are best established when the utility has  
14 additional motivation for compliance, such as during a  
15 merger case that the utilities are strongly pursuing here.

16              In the application Great Plains has  
17 asserted substantial benefits to itself, its shareholders,  
18 KCP&L's customers and Aquila's customers. Included in the  
19 filing are requests for special regulatory treatment of  
20 certain costs and revenues. In this instance, a better  
21 approach is for customers to share in any improved cost  
22 structure through a mechanism that annually evaluates the  
23 earnings picture of the company, and earnings that are  
24 realized in excess of the company's authorized rate of  
25 return, then customers receive a portion of that excess.

1                   The Commission should therefore require the  
2 merged entities to commit to an earnings sharing mechanism  
3 that timely returns excess earnings above an authorized  
4 level to customers. An earnings sharing mechanism would  
5 work like this: On an annual basis, KCP&L/Aquila would  
6 file financial data with the Commission, and the  
7 Commission Staff and other interested parties would have  
8 an opportunity to review and validate the figures  
9 supplied.

10                   The procedure would be subject to contested  
11 procedures. The more likely outcome is the parties to the  
12 proceeding would come to some understanding of appropriate  
13 costs and revenues and establish those amounts subject to  
14 distribution to customers and the utility. The Commission  
15 would then issue a decision ordering the merged entity to  
16 return the proper portion of excess earnings to customers.

17                   The most successful earnings sharing  
18 mechanism would include a reverse taper for determining  
19 rewards for customers and the utility. This method  
20 utilizes the authorized return on equity, a threshold  
21 above which excess earnings are either retained by the  
22 utility or returned to customers.

23                   In light of the fact that the easiest  
24 earnings to achieve are the next several dollars above the  
25 authorized level, this reverse taper returns to customers

1 a greater share of those dollars. After greater excess  
2 earnings are achieved, more is retained by the utility.

3           If the utility does not experience a period  
4 of excess earnings during a particular year, this should  
5 not imply that the earnings mechanism has no value as a  
6 regulatory tool. While excess earnings may occur and  
7 would be distributed under the years, the opportunity for  
8 Staff and other parties to validate the utility's costs  
9 and revenues following the annual filing provides an  
10 additional regulatory benefit.

11           While Great Plains has briefly alluded to  
12 the topic of rate integration in its testimony and  
13 responses to discovery, its proposal lacks details and  
14 discussions of timing, improved rate designs and improved  
15 collection of customer data. The company should be  
16 dealing now with notions of how this significant  
17 transformation can be achieved with optimum result for the  
18 company and its customers.

19           Rate integration can be an important step  
20 toward a total company effort to improve electric system  
21 operations and enhance utilization of generation and  
22 transmission resources. Great Plains has stated it will  
23 file cases for the separate operations of KCPL/Aquila  
24 following the merger, but the savings associated with rate  
25 integration should not be deferred to another day.

1                   The Commission should, therefore, order the  
2   company to file a proposal to integrate financial  
3   operations and electric system operations into a cost  
4   structure that can be comprehensively evaluated for  
5   efficiencies and improved operations. Following a brief  
6   period of tracking to evaluate data, the company should be  
7   obligated to file a comprehensive rate case for its merged  
8   operations within three years of the Commission's approval  
9   of the merger if it is approved.

10                  The analysis of the new cost structure  
11   should lead to more equitable assignment or allocations of  
12   costs to the appropriate service territories and customer  
13   classes of the new entity. The Commission does not need  
14   to mandate a uniform rate structure designed throughout  
15   the territories. Rationally justified differentials due  
16   to geographic or other system differences should be  
17   allowed.

18                  In closing, I want to tell the Commission  
19   that in general the City of Kansas City is in favor of  
20   this merger. Nonetheless, you should take my -- you  
21   should interpret my remarks to mean that the conditions we  
22   have talked about just now in my remarks are important to  
23   avoid any detriment to the public interest should the  
24   Commission enter an order approving, and we would ask that  
25   those conditions be part of the order.

1                   CHAIRMAN DAVIS: Mr. Comley, do all your  
2 arguments go away if the merger application is rejected?

3                   MR. COMLEY: Yes, I think so. I think the  
4 conditions that we are asking would be presuming that the  
5 Commission did approve the merger. Of course, a great  
6 deal of thoughtfulness has gone into the conditions that  
7 we've asked for. I think that these are timely issues for  
8 the City to bring to the Commission. Again, if the  
9 Commission does not approve the merger, yes, these  
10 conditions disappear.

11                  CHAIRMAN DAVIS: Okay. Now, has Aquila's  
12 franchise agreement with the City expired?

13                  MR. COMLEY: Yes, sir, it has. And the  
14 City and Aquila are acting under the terms of that  
15 agreement even though it has expired.

16                  CHAIRMAN DAVIS: And KCPL's agreement is  
17 for all perpetuity?

18                  MR. COMLEY: That's what I understand.  
19 We'll be offering copies of that franchise. It is for an  
20 indefinite period of time.

21                  MR. KEEVIL: Thank you, Mr. Comley.

22                  MR. COMLEY: Cass County has no opening  
23 statement.

24                  MS. PARSONS: If I may, just for  
25 clarification purposes, this is Renee Parsons with Aquila.

1 It is my understanding that we have reached an agreement  
2 with the City of Kansas City to delay any further  
3 negotiations until December of 2008 after this docket is  
4 resolved.

5 MR. COMLEY: I think that's correct.

6 JUDGE DIPPELL: Thank you. Is there anyone  
7 present with IBEW locals?

8 (No response.)

9 JUDGE DIPPELL: All right. Then City of  
10 St. Joseph?

11 MR. STEINMEIER: The city St. Joseph waives  
12 opening statement, your Honor. Thank you.

13 JUDGE DIPPELL: City of Lee's Summit?

14 (No response.)

15 JUDGE DIPPELL: No one from City of Lee's  
16 Summit. Cass County has waived its opening. South Harper  
17 residents?

18 MR. COFFMAN: My clients also waive an  
19 opening statement.

20 JUDGE DIPPELL: And is there anyone present  
21 with the Department of Energy?

22 (No response.)

23 JUDGE DIPPELL: Okay. Seeing no one. Then  
24 I believe, unless someone tells me otherwise, that that is  
25 all of the opening statements. So we're at a convenient

1 place, then, to take a little break. Let's break for 15  
2 minutes. Come back at 20 'til. Off the record.

3 (A BREAK WAS TAKEN.)

4 JUDGE DIPPELL: Let's go back on the  
5 record. We took a break there, and the Chairman had a  
6 brief discussion with the attorneys off the record, and I  
7 want to go ahead and put that back on the record just to  
8 make sure it's clear. He thought we were on the record,  
9 but I'd already told the court reporter to stop recording.

10 So Mr. Chairman, did you want to ask your  
11 question of Mr. Mills?

12 CHAIRMAN DAVIS: Judge, I guess what I  
13 would like -- what I'd like to see here is I'd like to  
14 see, one, if any of the parties have any objections to  
15 declassifying Exhibits 17, 18 and 20 immediately, and then  
16 I don't know, whatever you think is the appropriate time  
17 for -- because I don't believe there are any numbers  
18 contained in those documents, but --

19 JUDGE DIPPELL: Okay. With regard to the  
20 motion to declassify, the Chairman is talking about the  
21 motion that has Exhibit 17, 18 and 20 from the  
22 depositions. He was wondering if you can make a brief  
23 review of that and see if there's anything objectionable  
24 to declassifying in those three documents.

25 With regard to the rest of the documents,

1 I'm going to give the company a chance to respond before  
2 we rule on that. I'm going to give the company until in  
3 the morning, at the start of the hearing in the morning to  
4 make a statement as to their other documents.

5 MR. CONRAD: Judge Dippell, first of all, I  
6 think we're -- I didn't get a long time to study  
7 Mr. Mills' motion, but the motion itself is not terribly  
8 long. The understanding that I have is that there needs  
9 to be justification for the application of the highly  
10 confidential status in the first instance. It would seem  
11 to suggest, then, that that justification existed already  
12 and exists already.

13 I don't -- I don't know that I want to be  
14 heard to say that the company shouldn't have or anybody  
15 opposing the motion shouldn't have some opportunity to  
16 respond to the motion, but I think the question really is,  
17 and I think Mr. Mills' motion does make it clear, that  
18 there was no written justification for the classification  
19 of these documents in the first place. And it's a little  
20 late to come back and say, oh, by the way, now we're going  
21 to supply that justification.

22 I don't do a lot of practice anymore in  
23 federal court, but I have -- I have been in courtrooms in  
24 which federal judges have simply looked at a stack of  
25 documents that somebody comes in and says, well, all of

1 those are highly confidential, and they'll look at two or  
2 three and if they find that it's been overdesignated,  
3 they'll declassify the entire stack on the basis that it's  
4 been overly done. If there's a word or phrase or  
5 something, that's really what we were about, rather than  
6 just apply an HC stamp to the entire thing.

7                   When we do testimony, and by your own  
8 rules, we're expected to label a page as being HC that has  
9 HC material on it, but we're also expected to identify the  
10 specific number or phrase or word that is claimed to be  
11 highly confidential. And it just seems to me that we need  
12 to deal with that issue, and we need to deal with it  
13 fairly quickly before we go very much further in this  
14 hearing.

15                   We support Public Counsel's motion. I'm  
16 trying to respond, I guess, in the context of your  
17 suggestion that they have until tomorrow morning. I don't  
18 know that that's a huge problem, but the further we get  
19 into this proceeding before those things are ruled, I  
20 guess my general concede, if you will, is that this is a  
21 public service commission and this is a public utility and  
22 the public's business ought to be done in the public view.

23                   JUDGE DIPPELL: I agree with those  
24 statements, Mr. Conrad. However, as you realize, we are  
25 not a federal court.

1 MR. CONRAD: I understand.

2 JUDGE DIPPELL: We are an administrative  
3 agency and --

4 MR. CONRAD: Praise the Lord.

5 JUDGE DIPPELL: We try to make -- we want  
6 to make sure this is all in the public interest, and we  
7 don't want to declassify something that might hurt this  
8 company or other companies or future negotiations just  
9 because there was a rule that was maybe not complied with.  
10 Let's make the punishment fit the crime. And I think they  
11 need an opportunity respond. I think they do need to  
12 respond in a manner that would say, these items need to be  
13 kept confidential and these items don't, and explain why.

14 MR. MILLS: Judge, if I may?

15 JUDGE DIPPELL: Mr. Mills.

16 MR. MILLS: Rather than simply  
17 automatically giving them to tomorrow morning, could we  
18 perhaps inquire of GPE, KCPL and Aquila whether they need  
19 that much time and whether they object to declassifying  
20 this information?

21 JUDGE DIPPELL: Certainly. That's a very  
22 good suggestion.

23 MR. MILLS: They may very well be prepared  
24 to address it right now, and I agree with Mr. Conrad, they  
25 should be because they should have known at the time they

1    were designated why the stuff was highly confidential.  
2    We're not asking them to look at it all and figure out why  
3    it was confidential, but simply to reiterate why they  
4    initially called it highly confidential. That really  
5    shouldn't take very long. They may very well be prepared  
6    and we can move forward.

7                   JUDGE DIPPELL: Thank you, Mr. Mills.  
8    That's a good suggestion, and I will ask GPE and Aquila to  
9    respond to that.

10                  MS. PARSONS: Your Honor, if I may? This  
11    is Renee Parsons on behalf of Aquila. We didn't receive  
12    the motion until yesterday, and we haven't had a chance to  
13    go through it in detail, and to look at all of the  
14    exhibits in detail to make a determination for specific  
15    portions of it that may be declassified.

16                  In addition, we would like an opportunity  
17    to respond in detail to the list of documents that have  
18    been -- that Mr. Mills has requested to be declassified.  
19    There's a big stack here. All of these materials include  
20    board materials that were -- including board minutes,  
21    board presentations, that contain financial information.  
22    There's e-mails here that were sent to and from board  
23    members.

24                  And so we would have -- we do have an  
25    objection to declassifying any of these documents at this

1 point in time. I don't see any prejudicial value in -- I  
2 don't see any prejudice in continuing with the proceedings  
3 without addressing the motion at this time. Mr. Mills  
4 will have an opportunity to cross-examine any of the  
5 witnesses over any of the material that's in here. We'd  
6 just ask that it be done in-camera so that there is no --  
7 none of the information is disseminated to the public.

8 But again, we would need an opportunity to  
9 respond and we request an opportunity to respond if the  
10 Commission would allow us to.

11 JUDGE DIPPELL: GPE?

12 MR. ZOBRIST: On behalf of Great Plains  
13 Energy and KCPl, we would agree with that position. There  
14 should be an understanding that these documents were not  
15 produced in response to a typical Data Request. They were  
16 produced, my understanding is, in response to the document  
17 request that was attached to the notice to take  
18 depositions, and it was in the course of the depositions  
19 that they were deemed to be highly confidential for  
20 purposes of that examination.

21 We believe that either an HC designation or  
22 a proprietary designation is appropriate because at this  
23 time at least the Great Plains Energy documents were  
24 written, the matter was subject to confidential  
25 confidentiality agreements between the parties. Contract

1 negotiations were going on, if you will, settlement  
2 discussions. And given the fact that the merger has not  
3 been approved and may not be approved or may be subject to  
4 conditions and the parties may choose to negotiate later  
5 on, I think this would have a chilling effect upon  
6 negotiations between Great Plains Energy and Aquila.  
7 There would be no delay if we would begin examination of  
8 these documents right now in closed session.

9 MR. CONRAD: Well, again, it's not my  
10 motion, Judge, and I'll certainly defer to Mr. Mills, but  
11 I think it deserves to be pointed out that the reason that  
12 this is -- this is out there is because the content of  
13 these documents has a tendency to reveal contacts between  
14 the applicants, at the highest level the applicants and  
15 the Commissioners who are deciding this case.

16 And I think that the problem there is that  
17 the public ought to know what's going on, and if there is  
18 a basis for a Commissioner to recuse, I'm not saying there  
19 is, I'm not saying there isn't, but if there's a basis,  
20 then it would behoove us to deal with that right now  
21 rather than after we're halfway in the proceeding and the  
22 whole record has been -- has been contaminated by that.

23 JUDGE DIPPELL: Well, this is the reason  
24 that the Chairman suggested that you look at Exhibits 17,  
25 18 and 20, those specifically involving those

1     communications.  Mr. Mills?

2                     MR. MILLS:  I was just going to respond  
3     briefly to Mr. Zobrist's characterization of the chilling  
4     effect.  I don't -- I don't see how there would be a  
5     chilling effect because any of this information that's  
6     discussed would be discussed in-camera, and the people  
7     that are likely to be doing the negotiations have already  
8     seen this information, will be in here during the  
9     in-camera session, and whether or not it's public or  
10    private, the negotiators and the parties involved will be  
11    privy to it.  So I don't think that's a valid argument for  
12    not moving forward.

13                    And furthermore, there are only seven  
14    categories under the Commission's rule that could cause  
15    this stuff to be designated as highly confidential.  I  
16    don't think it would be too much to ask for either Aquila  
17    or GPE to point out which ones they think might apply and  
18    why they would still apply to documents that may have been  
19    subject to confidentiality agreement when the negotiations  
20    were going on, but now that the merger has been announced,  
21    the final documents are there and the regulatory treatment  
22    is applied for, I don't think those confidentiality  
23    agreements any longer apply.

24                    MR. ZOBRIST:  If I may respond on behalf of  
25    Great Plains Energy and KCPL.  There are some very

1 important parties who are not here in closed session, and  
2 that is the investing public, that is Wall Street, that is  
3 other third parties who could have a tremendous amount of  
4 influence upon the future of this transaction.

5 I do believe that under the confidential  
6 information rule 4 CSR 240-2.135, at least under the  
7 proprietary information section, that there are items of  
8 financial and business information that would be highly  
9 confidential or proprietary, pardon me, proprietary, and  
10 I'd be glad to go through those one at a time. I don't  
11 have all those documents right in front of me right now.

12 Certainly there's nothing delaying the  
13 proceedings right now if we want to continue in closed  
14 session.

15 JUDGE DIPPELL: Okay. I'm going to give  
16 Great Plains and Aquila, KCPL, until in the morning to  
17 review -- to respond in detail to the motions. With  
18 regard to -- I don't believe I got the question answered,  
19 though, with regard to those three specific items, can you  
20 do a quick review of that and tell us, do you need more  
21 time on that as well?

22 MS. PARSONS: Yes, we would need more time,  
23 because that would also go to the reason why all of the  
24 other documents that are attached to that motion would  
25 also be confidential, and we would not want to declassify

1 any of those documents.

2 MR. COFFMAN: Your Honor?

3 JUDGE DIPPELL: Mr. Coffman.

4 MR. COFFMAN: If I might ask for a point of  
5 clarification. It doesn't seem unreasonable to give KCPL  
6 a chance to designate certain materials. What does this  
7 mean for today's proceeding? It seems to me that the  
8 public certainly has a right to hear as much as can  
9 possibly be open to the public as far as cross-examination  
10 involving these documents, particularly as they relate to  
11 the integrity of the Public Service Commission  
12 proceedings.

13 JUDGE DIPPELL: For today, they would be  
14 treated as confidential. They would -- any examinations  
15 would be in-camera for today until the motion is ruled  
16 upon.

17 MR. COFFMAN: So there would need to be  
18 another motion to declassify those materials?

19 JUDGE DIPPELL: No. If the motion should  
20 prevail, then I would -- the Commission would declassify  
21 those items. But yes, as far as today's transmission  
22 goes, it would be in-camera. We could declassify the  
23 transcript and so forth when that's completed. Let me --  
24 I'm going to go off the record just briefly to poll the  
25 Commissioners and then come back on to a witness.

1 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

2 JUDGE DIPPELL: On the record.

3 CHAIRMAN DAVIS: Okay. For the record --  
4 well, I guess for the record I've already stated my  
5 position, that the documents should be declassified, and  
6 certainly in light of the content of those documents, if  
7 any of the parties make a motion or if any of the parties  
8 wish for me to recuse myself, then I will certainly do so.

9 JUDGE DIPPELL: Okay. I'm going to go back  
10 off the record just a moment.

11 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

12 JUDGE DIPPELL: Okay. Once again, my  
13 ruling is going to be that, with regard to the motion, I'm  
14 going to rule on that tomorrow after Great Plains has had  
15 a chance to respond in detail, but with the exception  
16 there are certain pages, specifically being pages -- or  
17 Exhibits 17, 18 and 20, which deal with conversations with  
18 the Commission, which seems to be -- which is a concern  
19 for the Commissioners as well as the parties with regard  
20 to the appearance of impropriety.

21 And wanting that to be open, the  
22 Commission's ruling is going to be that, with regard to  
23 those three items, the specific parts of those regarding  
24 conversations with the Commissioners are going to be  
25 made -- are going to be declassified. The other portions

1 of those, including the attachments, are going to remain  
2 classified until further ruling. Have I made that  
3 completely unclear?

4 MR. BOUDREAU: I think it's unclear to me  
5 because I'm not sure what portions you are talking about  
6 specifically. I think one of the things that I was  
7 interested in is to have an opportunity, depending on what  
8 the Commission is ruling, to take a look at the documents  
9 because not all of it necessarily -- I mean, deals with a  
10 variety of topics. So perhaps I'm looking for a little  
11 bit more guidance from the Commission about what portions  
12 of the documents specifically you're referring to.

13 JUDGE DIPPELL: And I'm going to  
14 specifically get copies of the document and redact the  
15 highly confidential portions and leave the other portions  
16 available and we'll get that, it will probably be after  
17 our lunch break. But in the meantime, I'm telling you  
18 that the portions dealing with conversations with the  
19 Commissioners is going to be considered public  
20 information.

21 Okay. The next issue was the witness  
22 order.

23 MR. ZOBRIST: Judge, we're prepared to put  
24 Mr. Chesser and Mr. Downey on the stand. They are present  
25 in the hearing room.

1 JUDGE DIPPELL: And is there a problem with  
2 the other parties with those parties basically coming now  
3 out of order compared to the way they were presented in  
4 the issues list?

5 MR. MILLS: There certainly is some  
6 problem. For one, I was prepared to go forward with  
7 Mr. Empson and Mr. Green before we got to Mr. Chessser and  
8 Mr. Downey. It would be difficult for me to rearrange my  
9 questioning to do it the other way around.

10 And second, I never received any  
11 notification that this change was in the works officially  
12 until this morning. When I came in the hearing room this  
13 morning, counsel for KCPL or GPE showed me a copy of an  
14 e-mail that was sent, I believe, to the general delivery  
15 e-mail address of Public Counsel at about seven o'clock  
16 Friday evening. Of course, that didn't get forwarded to  
17 me because it wouldn't get forwarded after hours.

18 GPE knew that there was a problem with  
19 transmission because apparently it tried to go out earlier  
20 in the day and didn't get to parties. I think if they  
21 really wanted this to happen, they could have bothered  
22 with a follow-up phone call over the weekend to make sure  
23 everybody knew this was happening and had a chance to  
24 prepare. I'm simply not very well prepared to move  
25 forward with Mr. Chessser and Mr. Downey, who were

1 scheduled to be here on Wednesday. I don't have any  
2 problem if the Commission wants to talk to them today with  
3 doing that, so long as they are available again later in  
4 the week if necessary.

5 JUDGE DIPPELL: Mr. Thompson, you look like  
6 you had a response earlier? No?

7 MR. THOMPSON: I have a different issue to  
8 bring to your attention.

9 JUDGE DIPPELL: Okay. Let's deal with this  
10 one first.

11 MR. ZOBRIST: Well, as far as the inability  
12 to get an e-mail to Mr. Mills, we certainly apologize for  
13 any oversight. We thought that we had communicated that.  
14 I apologize to Mr. Mills if we didn't place a phone call  
15 to him. Last week he did participate in the depositions  
16 of Mr. Chesser and Mr. Downey, which lasted about four  
17 hours apiece, so he's generally familiar not only with  
18 Mr. Downey's prefiled testimony but what they testified to  
19 in the depositions.

20 The gentlemen are available today. I would  
21 urge the Commission to go forward, and if we have an issue  
22 that we need to deal with later and if they have to be  
23 brought back, we'll certainly do that if that is the order  
24 of the Commission.

25 JUDGE DIPPELL: Mr. Conrad?

1                   MR. CONRAD: Yes. And forgive me for going  
2 a little bit out of order here, but we too did not get  
3 this e-mail that seems to be floating around somewhere.  
4 We did get it ahead of Mr. Mills. I think it showed up in  
5 my box or in box sometime Saturday morning.

6                   JUDGE DIPPELL: Mr. Conrad, I need you  
7 speak into the microphone.

8                   MR. CONRAD: Yeah. It probably came in  
9 sometime, showed up in my in box about Saturday morning.  
10 It's certainly true that at the outset of this proceeding  
11 your Honor indicated that we would go per the order, and  
12 that's what we had to some extent prepared for. I  
13 appreciate the fact that these gentlemen are here today  
14 and would, I guess, endorse Mr. Mills' suggestion that if  
15 they want to go forwarded to and the Commission wants to  
16 talk to them today, that's fine, but I'd like to have an  
17 opportunity to put some cross together on them, which in  
18 the sequence of things we really didn't have.

19                   I didn't attend, by the way. My associate  
20 did, the then he immediately went to San Antonio.

21                   JUDGE DIPPELL: Okay. Are there any other  
22 objections to the witness order?

23                   MR. BOUDREAU: I don't know if it's an  
24 objection. Just an observation. I think the only reason  
25 that Mr. Chesser and Mr. Downey were originally indicated

1 as being available or here on the 5th was because of some  
2 availability issues, which have since been resolved. So  
3 it seems to me in terms of order of evidence it makes  
4 sense to do that.

5 As far as e-mails kind of rambling around  
6 in ether, we didn't get these motions on declassification  
7 until yesterday either.

8 JUDGE DIPPELL: Okay. I've had enough  
9 fighting about the e-mail timing. The issue at hand is  
10 who's going to be the first witness. Commissioners, do  
11 you have a preference?

12 CHAIRMAN DAVIS: Judge, my recommendation  
13 is you either follow the witness list that was set or, if  
14 Mr. Mills wants to, given the allegations raised in his  
15 motion, if he wants to take Mr. Green first and voir dire  
16 Mr. Green, you know, I think you should give due deference  
17 to Mr. Mills' request.

18 JUDGE DIPPELL: Commissioner Murray?

19 COMMISSIONER MURRAY: I don't disagree with  
20 that.

21 JUDGE DIPPELL: Commissioner Appling?

22 COMMISSIONER APPLING: Not a problem with  
23 me.

24 JUDGE DIPPELL: Mr. Mills, would you prefer  
25 Mr. Green go or would you prefer to wait until after the

1 Commission rules on your motion?

2 MR. MILLS: I certainly don't mind  
3 following the order of witnesses that we agreed upon and  
4 filed with the Commission. So far as I know, I have not  
5 made any motion or any allegations at this point other  
6 than a motion to declassify some of this information, and  
7 that's based primarily on the fact that it doesn't seem to  
8 have any reasonable basis that it be classified as  
9 confidential and the fact that neither company provided  
10 any reason according to the Commission's rules.

11 I understand that you're going to give them  
12 some time, but really all they have to do is not figure  
13 out why it's confidential, but simply tell you why they  
14 thought it was confidential when they marked it that way.  
15 And that's the only motion I have outstanding, and there  
16 really aren't any allegations in that.

17 JUDGE DIPPELL: Okay. We're going to go  
18 forward with the order of witnesses that was proposed.  
19 Mr. Dottheim?

20 MR. DOTTHEIM: Yes, Judge. I'd like to  
21 clarify one thing, because the order of witnesses that was  
22 agreed to, I put together the order of witnesses.

23 JUDGE DIPPELL: Yes, Mr. Dottheim.

24 MR. DOTTHEIM: And it was done, I was  
25 working from a schedule as to availability, and I believe

1 the document that was filed late on Wednesday, the 21st,  
2 indicated that very possibly parties would want to address  
3 the order of witnesses, and I expected that last week that  
4 the order of witnesses might be under some review.

5 I did not hear from anyone regarding the  
6 order of witnesses myself until I had a conversation with  
7 Mr. Fischer for KCPL on Thursday afternoon. And I myself  
8 didn't receive the change proposed by the company in the  
9 list of witnesses until Friday afternoon. There evidently  
10 was some difficulty that KCPL was experiencing in having  
11 the e-mail delivered because I was expecting it, did not  
12 receive it. I called Mr. Fischer. It was sent out again.  
13 I received it because it was forwarded specifically to me.  
14 We received the two e-mails that were sent out 7 p.m.  
15 Friday night, which possibly was the earliest that other  
16 people may have received it.

17 So I'm sorry, that may not add much  
18 clarity, but when people talk about or when the Bench  
19 refers to the order of witnesses that was agreed to, I  
20 thought that last week hopefully earlier in the week there  
21 might be some possibility for modifying the schedule of  
22 witnesses.

23 JUDGE DIPPELL: I appreciate that,  
24 Mr. Dottheim. I appreciate how difficult it was to put  
25 together that list given the number of conflicts that were

1 on it. So at this point we're not going to get to any of  
2 the witnesses if we don't actually get one on the stand.  
3 So I'm going to go forward with the order as it was  
4 proposed. If you-all want to discuss over your lunch  
5 break any changes and get people to agree to them, then we  
6 can go forward with those changes.

7 MR. THOMPSON: Your Honor, if I could bring  
8 one thing to your attention?

9 JUDGE DIPPELL: Yes, sir. You said you had  
10 another issue.

11 MR. THOMPSON: I do, and it has nothing to  
12 do with e-mails, lost or found. Staff at this time wants  
13 to state that it fully supports the motion in limine filed  
14 by Mr. Conrad on behalf of his several clients, and we  
15 would urge you, Judge, to rule on that before we impanel  
16 the first witness. Thank you.

17 JUDGE DIPPELL: Thank you for bringing that  
18 up, Mr. Thompson. I am going to rule on Mr. Conrad's  
19 motion. I appreciate -- I want to say that I appreciate  
20 Mr. Conrad having filed his motion when he did because  
21 that was the kind of motion that I had anticipated in the  
22 procedural schedule when I encouraged the parties to do  
23 so.

24 However, I believe this is a legal question  
25 as to whether or not there is a merger, consolidation or

1    whatever, but it is a legal question that cannot be  
2    answered without having the facts being heard.  And,  
3    therefore, we are not -- we're going to overrule the  
4    motion and allow the synergies to be discussed.

5                   MR. ZOBRIST:  Judge, may I ask a point of  
6    clarification?  If we're proceeding with the list as  
7    prepared by Mr. Dottheim, I believe the first witness  
8    would be Chris Giles, and if that is so, if you would  
9    indicate that, and then also advise me if Mr. Chessser and  
10   Mr. Downey may be excused until Wednesday, because they  
11   are here if anyone wants to, but if we're reverting  
12   strictly speaking to the list of issues and the order of  
13   witnesses, I just need to know that.

14                  MR. MILLS:  If this may, and this I hope  
15   will clarify things rather than muddy them further.  My  
16   objection is not to having Mr. Chessser and Mr. Downey  
17   testify today.  I think had we greed to that up front, I  
18   think that would make sense.  That's when they should be  
19   here.  My only problem is I didn't find out that this was  
20   happening until too late for me to prepare with them  
21   today.

22                  I would be perfectly happy to try to get  
23   ready over the lunch hour to cross Mr. Chessser and  
24   Mr. Downey so that their trip won't be wasted.  It may be  
25   that all the other parties and the Bench is perfectly

1 ready to go forward with them, and I'll try to do the  
2 same. I'm just hoping that in exchange for me doing that,  
3 that GPE and KCPL will make them available when they were  
4 scheduled to be available if there is further questions  
5 for them.

6 JUDGE DIPPELL: All right. Would that be  
7 agreeable, Mr. Zobrist?

8 MR. ZOBRIST: I think so, Judge, but I  
9 would want to know, for example, the nature of the issue  
10 that Mr. Mills felt he was unable to inquire of the  
11 witnesses. I think that sounds like a reasonable  
12 solution. I just don't want to waste these gentlemen's  
13 time. I appreciate Mr. Mills' comments to that effect.

14 JUDGE DIPPELL: I don't think their time  
15 will be wasted.

16 MR. ZOBRIST: No, no. I'm sorry. I just  
17 meant sitting having a cup of coffee and not talking to  
18 the Commissioners and answering questions.

19 JUDGE DIPPELL: I understand. We're going  
20 to need all of the witnesses to remain flexible throughout  
21 this hearing because, as you can see, sometimes things get  
22 off to a slow start. So yes, let's go forward with  
23 Mr. Giles first, just because that's what everybody was  
24 prepared to do. Let's -- I'm not going to excuse those  
25 witnesses now. Let's discuss it over the lunch hour and

1 see if we can't get them on the stand still today, and  
2 with the caveat that they may be recalled on Wednesday  
3 when they were expected to be here.

4 MR. ZOBRIST: So my question is, you want  
5 Mr. Chesser and Mr. Downey to remain here because they may  
6 go on right after lunch rather than going on right now?

7 JUDGE DIPPELL: Yes. Let's get started  
8 with the first witness. Mr. Conrad?

9 MR. CONRAD: This is in the interest of  
10 expedition. I understand your Honor's ruling with respect  
11 to the motion in limine, and rather than have to go  
12 through the process of up and down objection, objection,  
13 objection, would your Honor grant me a continuing  
14 objection along the same lines so we don't have to go  
15 through that --

16 JUDGE DIPPELL: Certainly.

17 MR. CONRAD: -- process each time and let  
18 it be understood that it is subject to the objection?

19 JUDGE DIPPELL: Certainly. Let it be  
20 stated for the record that Mr. Conrad has a continuing  
21 objection to the -- similar to his notion in limine to any  
22 evidence that comes in regarding the synergies and that  
23 specific testimony, and that that continuing objection is  
24 continually overruled.

25 MR. CONRAD: Thank you.

1                   MR. ZOBRIST: Judge, one final point, and  
2 obviously we'll accommodate and follow your rulings.  
3 Mr. Giles did present only surrebuttal testimony. If we  
4 could take a break now, we could certainly make  
5 Mr. Chessser and Mr. Downey available first and then  
6 Mr. Giles right after that. I see Mr. Dottheim nodding.  
7 It might be a little more in order to have the CEO of  
8 Great Plains Energy and then the CEO of KCPL and then  
9 Mr. Giles testify.

10                  JUDGE DIPPELL: Mr. Mills, any objection?

11                  MR. MILLS: I don't object to that.

12                  JUDGE DIPPELL: So you're suggesting an  
13 early lunch?

14                  MR. ZOBRIST: Yes, your Honor.

15                  JUDGE DIPPELL: If we can get off on a  
16 better start after lunch, let's just do that. Let's break  
17 until 12:30.

18                  MR. ZOBRIST: And go forward with  
19 Mr. Chessser?

20                  JUDGE DIPPELL: And I will be here and you  
21 all be here at 12:30, too?

22                  MR. ZOBRIST: And we will go forward with  
23 Mr. Chessser at that time, Judge; is that correct?

24                  JUDGE DIPPELL: Yes. Off the record.

25                  (A BREAK WAS TAKEN.)

1 JUDGE DIPPELL: I passed out to the parties  
2 today the Bench's copy of Exhibit 17, 18 and 20 that are  
3 the subject of the Motion to Declassify with all the  
4 portions redacted except those dealing with the  
5 conversations with the Commission. This is a preliminary  
6 version subject to further declassification after ruling  
7 on the motion. And is there comment?

8 MS. PARSONS: Yes, I would like to respond  
9 if I could.

10 JUDGE DIPPELL: Okay.

11 MS. PARSONS: After reviewing what's been  
12 redacted, I would also have an objection to leaving any  
13 information regarding the KCC and communications with the  
14 KCC. That's not the subject of these proceedings, and I  
15 don't think relevant to these proceedings. So I would  
16 also argue that that information should be redacted from  
17 Exhibit 17, Exhibit 18 and Exhibit 19 -- excuse me,  
18 Exhibit 20.

19 JUDGE DIPPELL: Well, it's not being  
20 admitted as evidence, so whether or not it's relevant will  
21 come up later. Right now we're just talking about whether  
22 or not it should be made public, and I see no reason to  
23 keep conversations with the Kansas Corporation Commission  
24 or that there were scheduled meetings with them public.

25 MS. PARSONS: And I would also argue that

1 some of the redacted material is still -- in this form is  
2 still legible. I can still read many of the references  
3 that have been crossed out. I would just encourage the  
4 Commission to maybe black out those sections that have  
5 been redacted.

6 JUDGE DIPPELL: I will be happy to make my  
7 lines thicker and blacker before this is -- I guess what  
8 I'll do is submit this version with a short notice or  
9 whatever about the ruling and just go ahead and submit it  
10 to EFIS so that it's clear on the record what is redacted  
11 for my preliminary ruling.

12 MS. PARSONS: Well, if I understand you  
13 correctly, you're going to file your copy of this thin  
14 line redacted version where some of the references can  
15 still be read?

16 JUDGE DIPPELL: No. I would black it out  
17 before I submitted it to EFIS.

18 MS. PARSONS: Excuse me. I misunderstood.

19 JUDGE DIPPELL: I guess I'm saying, if you  
20 can read the words there, I apologize. Please keep the  
21 copies that you have to yourselves and not -- maybe I'll  
22 ask you to return those all to me at the end of the day so  
23 that I can make a better version where you can't read the  
24 words, and I will file that in EFIS. You-all can make  
25 your copies off of EFIS.

1 All right. Until tomorrow's ruling, and I  
2 will remind the company to -- in your response, if there's  
3 information that is proprietary instead of highly  
4 confidential or that's your argument, then designate that  
5 as such, and anything that is not falling under one of  
6 those categories needs to be so specified so that it can  
7 be made public. Okay. Let's go ahead and get started  
8 with a witness.

9 MR. ZOBRIST: Great Plains Energy would  
10 call Michael J. Chesser to the stand at the request of  
11 Staff or simply make him available to Staff. I presume  
12 you want to call him.

13 MR. WILLIAMS: Staff calls Michael Chesser.

14 JUDGE DIPPELL: Thank you.

15 (Witness sworn.)

16 JUDGE DIPPELL: Thank you. Mr. Williams,  
17 you may go ahead.

18 MICHAEL CHESSER testified as follows:

19 CROSS-EXAMINATION BY MR. WILLIAMS:

20 Q. What is your name?

21 A. Name is Michael Joseph Chesser.

22 Q. And how do you spell your name?

23 A. C-h-e-s-s-e-r.

24 Q. Who employs you and in what capacity?

25 MR. CONRAD: Judge, forgive me. I'm sorry,

1 I wasn't quick with my finger, but the question came up  
2 over the break of witnesses that are called by Staff I  
3 presume are being called adverse, as adverse witnesses.  
4 That hasn't been stated, but I just -- if that's not the  
5 case, I guess I'd like to know, A, and B, what order of  
6 cross then are we using?

7 I had talked over the break with counsel  
8 for GPE and counsel for Aquila as well as Mr. Dottheim for  
9 Staff, and it was the sense that we would use the order of  
10 cross that was set up for other Staff witnesses, with the  
11 exception that -- excuse me, other GPE or Aquila  
12 witnesses, with the exception that Staff would be -- would  
13 be leading off, and I think that's -- that's kind of where  
14 we left it. I throw it out before we get off into lala  
15 land here. I apologize. I know you're trying to get to  
16 witnesses.

17 JUDGE DIPPELL: No. That's fine. That's  
18 fine. I was assuming that Mr. Chesser was appearing at  
19 the request of Staff and so we would go in the order of  
20 cross-examination as if he were a Staff witness. No.

21 MR. ZOBRIST: As if he were a Great Plains  
22 Energy witness who prefiled testimony.

23 JUDGE DIPPELL: Okay. Mr. Williams, is  
24 that your understanding?

25 MR. WILLIAMS: That's fine, whatever the

1 parties want to do.

2 JUDGE DIPPELL: Except that Staff is  
3 leading off. And for those of you who don't usually  
4 practice before the Commission, we, after  
5 cross-examination, have Commission questions, and then we  
6 will have further cross-examination and then we allow  
7 redirect. At that point, is this Staff's witness for  
8 redirect?

9 MR. ZOBRIST: No. It's my witness for  
10 redirect, Judge.

11 MS. PARSONS: Judge, we would ask to use  
12 that same procedure for the Aquila witnesses Mr. Empson  
13 and Mr. Green.

14 JUDGE DIPPELL: Are you saying --

15 MR. WILLIAMS: Staff's calling them as  
16 witnesses as well.

17 JUDGE DIPPELL: For Staff. Okay. The ones  
18 that Staff is calling. Do I have any objection to that  
19 procedure?

20 MR. MILLS: I don't have an objection. I'm  
21 not sure I understand it. Who does redirect, and they do  
22 redirect without having done direct, is that how we're  
23 going to do it?

24 JUDGE DIPPELL: They're going to do  
25 redirect instead of cross.

1 MR. MILLS: At what point?

2 JUDGE DIPPELL: At the end.

3 MR. MILLS: The very end. Okay. Got you.

4 JUDGE DIPPELL: And we'll just give  
5 Staff -- when we get to cross, because Staff is starting  
6 with their cross basically. Okay.

7 CHAIRMAN DAVIS: Can I -- did Mr. Chesser  
8 prefile testimony?

9 MR. ZOBRIST: He did not.

10 JUDGE DIPPELL: No.

11 CHAIRMAN DAVIS: Okay. I didn't have it,  
12 so I was -- but we're treating as if he did; is that  
13 correct?

14 JUDGE DIPPELL: Yes.

15 MR. WILLIAMS: Procedurally.

16 JUDGE DIPPELL: We're going to treat the  
17 Staff's questions now as if it were his prefiled  
18 testimony.

19 MR. ZOBRIST: No. I'm sorry. The Staff is  
20 the main cross-examiner, but instead of going last,  
21 they're going first. So the order will be as if  
22 Mr. Chesser had prefiled testimony, except Staff will go  
23 first, but I still, as GPE's counsel, have the right to do  
24 redirect at the end of Commissioner questions and full  
25 cross-examination. That's my understanding.

1                   MR. CONRAD: And that then clarifies, I  
2 think, that Staff's examination here is in the nature of  
3 cross-examination rather than direct.

4                   JUDGE DIPPELL: Yes. Yes.

5                   MR. CONRAD: Trying to avoid an objection.

6                   JUDGE DIPPELL: Thank you. Okay.

7 Mr. Williams, are you clear?

8                   MR. WILLIAMS: I think I have a question  
9 pending, but I'll go ahead and reask it.

10                  JUDGE DIPPELL: Go right ahead.

11 BY MR. WILLIAMS:

12                  Q.       Who employs you and in what capacity?

13                  A.       Great Plains Energy is my employer, and I  
14 serve as chairman of the board and chief executive  
15 officer.

16                  Q.       What are your duties as CEO and chairman of  
17 the board of Great Plains Energy?

18                  A.       My responsibility is to chart the long-term  
19 strategy for the company, to hire, develop key executive  
20 talent and to make sure that the key stakeholders, the  
21 employees, the customers, the shareholders and the  
22 community all receive significant value from the company.

23                  Q.       What is the business purpose of Great  
24 Plains Energy?

25                  A.       The purpose of Great Plains Energy, Great

1 Plains is a holding company, and its primary subsidiary is  
2 Kansas City Power & Light. It also has a subsidiary  
3 called Strategic Energy. So it's best expressed in the  
4 business purposes of both of those entities.

5                   For Kansas City Power & Light, the purpose  
6 is to provide electric service to the customers across the  
7 Kansas City service area that we -- that we serve, and in  
8 the process to provide reliable power at the lowest  
9 possible cost and at the same time provide support for the  
10 economic growth of the region. In the case of Strategic  
11 Energy, they -- they are competitive suppliers in states  
12 where the market is not regulated, and they work on behalf  
13 of commercial and industrial customers to purchase power  
14 and, on their behalf, to make sure it's delivered in the  
15 time, in the framework that they require.

16               Q.       When did Great Plains Energy first become  
17 interested in acquiring Aquila?

18               A.       I came on board in October of 2003, and  
19 beginning in 2004 we began a long-term strategic review  
20 for Great Plains Energy going forward. And in that  
21 review, one of the natural things we looked at is were  
22 there any combinations that would make sense that would  
23 add value to our customers and our shareholders. A wide  
24 variety of possible combinations were looked at, including  
25 Aquila.

1                   So I guess it's fair to say that we were  
2     evaluating alternatives all the way back to then. Now, in  
3     this specific case, in terms of level of interest, the  
4     interest was heightened in, I think it was spring of 2006  
5     when it became clear that Aquila was going to look at  
6     strategic alternatives themselves. So we began to engage  
7     more intently in specific opportunity that Aquila  
8     presented.

9                   Q.       When did Great Plains Energy first start  
10    considering requesting sharing of synergies and a  
11    regulatory amortization in connection with acquiring  
12    Aquila?

13                  A.       During the process of our assessment of the  
14    alternative during the summer, fall of 2006, we were  
15    trying to develop a business model that would ensure that  
16    we were able to deliver the value to all the stakeholders.  
17    So we wanted to make sure we could show significant  
18    savings to customers, maintain the financial integrity of  
19    the company, and a significant construction program, and  
20    we looked at what we thought would be a fair and  
21    reasonable regulatory agreement around that, and we  
22    identified those two items that you're talking about as  
23    helping to achieve that balance.

24                  Q.       And at that time, did you also identify  
25    recovery of actual interest expense as opposed to some

1 imputed credit worthy interest expense?

2 A. Right. Those were the three primary areas,  
3 the sharing synergy savings, providing amortization for  
4 the significant capital investments that Aquila was going  
5 to have to be making, and realizing interest savings.

6 MR. WILLIAMS: I'm going to need to get  
7 some exhibits marked.

8 JUDGE DIPPELL: All right.

9 MR. WILLIAMS: If it's been collated  
10 properly, there should be eight here total.

11 JUDGE DIPPELL: And previously Staff had  
12 just previously marked Exhibit No. 100, correct?

13 MR. WILLIAMS: Yes.

14 JUDGE DIPPELL: So your first exhibit  
15 number is 101?

16 MR. WILLIAMS: That's my understanding.

17 JUDGE DIPPELL: Mr. Williams, you've handed  
18 us all a packet of eight different exhibits, but it's just  
19 the first one?

20 MR. WILLIAMS: I'll break it down. Yes, it  
21 will be the first one.

22 MR. ZOBRIST: Judge, I would note that  
23 within these -- this group, Exhibit 101, there are at  
24 least three exhibits that are currently HC. I believe  
25 they all may be if they were using Mr. Chesser's

1 designation. Until the Commission rules on the motion of  
2 Mr. Mills, I would request that that HC status be  
3 maintained.

4 JUDGE DIPPELL: And it will be so,  
5 Mr. Williams.

6 MR. WILLIAMS: Actually, the first exhibit  
7 was Exhibit No. 26 during the depositions.

8 JUDGE DIPPELL: And is that -- so it's  
9 Exhibit No. 101 for the hearing?

10 MR. WILLIAMS: And it's also currently  
11 designated highly confidential.

12 MR. ZOBRIST: Judge, I want to make certain  
13 I understand. Is this Exhibit 26 or is this Exhibit 101?

14 JUDGE DIPPELL: It's Exhibit No. 101HC at  
15 this moment.

16 MR. MILLS: Wasn't there a piece of  
17 prefiled testimony marked as Exhibit 101 or numbered as  
18 Exhibit 101?

19 JUDGE DIPPELL: Not unless Staff --

20 MR. FISCHER: Marked as 100, I believe,  
21 Judge.

22 MR. MILLS: Okay. I thought the testimony  
23 and the report was marked.

24 (EXHIBIT NO. 101 WAS MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 BY MR. WILLIAMS:

2 Q. Mr. Chesser, I've handed you a stack of  
3 documents, and the first one has been marked for  
4 identification as Exhibit No. 101HC. Without getting into  
5 the content of that, what is that exhibit?

6 A. This says Exhibit 26 on here, right?.

7 Q. That was marked as a deposition exhibit at  
8 a deposition taken on November 28th of this year.

9 A. All it says on the bottom of the page is  
10 Exhibit 26, 11/28/07. Yes.

11 Q. What is the date of the exhibit?

12 A. July 19, 2006.

13 Q. And what is it?

14 A. It's a memo to the board of directors, and  
15 it says regarding board call materials.

16 Q. And whose board of directors is the memo  
17 directed to?

18 A. Great Plains Energy board of directors.

19 Q. And does this memorandum describe the  
20 process that was being used in -- that's going to be  
21 employed by Aquila in soliciting bids and reaching a  
22 potential acquisition of Aquila agreement?

23 A. I think it represents a process that we  
24 envisioned at the time.

25 Q. And does it indicate in the document

1     that -- I'm not sure we need to go into HC for this or  
2     not. Turning to the last page of that document, is there  
3     a discussion of what at that point in time Great Plains  
4     Energy was contemplating in terms of its position on what  
5     would be required in acquiring Aquila with regard to  
6     regulatory matters such as -- let me back up.

7                     Did it set out some assumptions that Great  
8     Plains Energy had made regarding regulatory treatment for  
9     making a decision about acquiring Aquila?

10            A.       Yeah, it says for the --

11                     MR. ZOBRIST: Mr. Chesser, the details are  
12     HC. I think you can answer his question without going  
13     into HC.

14                     THE WITNESS: Right. Well, first of all,  
15     I'd like to emphasize the first phrase. It says, for the  
16     purposes of the attached analysis. We conducted in this  
17     process a lot of different analysis, a lot of different  
18     scenarios. So for the purpose of that particular analysis  
19     that we were sharing with the board, we made these  
20     assumptions around ROE, equity and sharing of synergies,  
21     and it was intended to give them an order of magnitude  
22     what the potential financial plan would look like.

23     BY MR. WILLIAMS:

24            Q.       And is there a statement in there that,  
25     quote, the regulator's response to this plan and its

1 concepts will be critical to our final evaluation of the  
2 transaction, close quote?

3 A. Yes.

4 Q. And does that immediately follow those  
5 assumptions that were set out in the analysis?

6 A. It does, but keep in mind there's no timing  
7 on that. In other words, it will -- their response to the  
8 plan, this concept will be critical to our final  
9 evaluation whether we go forward with the transaction,  
10 which has not been made at this point.

11 Q. And who is the memorandum from?

12 A. Chief financial officer.

13 Q. Chief financial officer of Great Plains  
14 Energy?

15 A. Of Great Plains Energy.

16 Q. So this is a management memo to the board  
17 of directors of Great Plains Energy?

18 A. It was, and just to reiterate again, he was  
19 communicating to the board was that, you know, here's an  
20 analysis based on these assumptions, and that in the end,  
21 the decision, the final decision to go forward with the  
22 transaction would be dependent on regulatory treatment,  
23 which I think is certainly appropriate.

24 Q. Would you take a look at the next document  
25 that I provided to you, and it's marked down at the bottom

1 as Exhibit No. 27, but for purposes of the proceedings  
2 here today, it should be marked as Exhibit 102HC.

3 (EXHIBIT NO. 102HC WAS MARKED FOR  
4 IDENTIFICATION BY THE REPORTER.)  
5 BY MR. WILLIAMS:

6 Q. And without getting into the content of  
7 that document, what is it?

8 A. It's a letter from James Metcalfe and  
9 Raffiq Natthoo, and it is -- it's a letter to them from us  
10 dated November 15, 2006, and as I recall, this is the  
11 final bid that we submitted in accordance with the  
12 guidelines they had set forth to us.

13 Q. I believe it's described as a final  
14 nonbinding indication of interest?

15 A. Final nonbinding, yes.

16 Q. And what's the date of that correspondence?

17 A. November 15, 2006.

18 Q. And on the second page of the document,  
19 does it describe a regulatory strategy?

20 A. Yes, it does.

21 Q. And does it address treatment of synergies?

22 A. Yes. It lays out a set of assumptions  
23 around synergies.

24 Q. Does it also lay out --

25 A. All three, the amortization and the

1 interest.

2 Q. And this correspondence was provided to  
3 whom?

4 A. Provided to James Metcalfe of Lehman  
5 Brothers and Raffiq Natthoo of the Blackstone Group.

6 Q. And who are they representing?

7 A. Aquila.

8 Q. And who is this correspondence from?

9 A. This letter was prepared -- signed by me  
10 and prepared under my oversight.

11 Q. And turning back to the second page, under  
12 the regulatory strategies section -- just a moment.

13 I've just checked with counsel for Great  
14 Plains Energy, and my next question I think will elicit,  
15 well, probably the question itself will contain HC  
16 material and certainly the response. So I guess we need  
17 to go in-camera for this.

18 JUDGE DIPPELL: All right. We can go ahead  
19 and go in-camera, if I could ask those of you who are not  
20 available to hear highly confidential information to leave  
21 the room. I'll ask the attorneys to help me police that.  
22 All right.

23 CHAIRMAN DAVIS: Judge, can I ask, is it  
24 appropriate if we're going to be asking Mr. Chesser  
25 questions, if we think that Mr. Green may later give

1 conflicting evidence, is it appropriate to have him here  
2 in the room listening? Do the parties want to respond to  
3 that at all?

4 MR. CONRAD: Customarily I think that's  
5 referred to as the rule.

6 JUDGE DIPPELL: Can you speak up a little?

7 MR. CONRAD: Yeah. I think it's referred  
8 to as the rule. I had raised that question at I believe  
9 the outset of one set of depositions that I had attended  
10 with respect to, I think, Mr. Empson and Mr. Green. It  
11 certainly is no less appropriate here. I think the point  
12 is well made by the Chairman. We ought not to have  
13 witnesses --

14 MR. GREEN: I'll voluntarily leave.

15 MR. CONRAD: Whether Mr. Green voluntarily  
16 withdraws is not the question. It would be as ordered by  
17 the Commission. I'll make the motion to request if that's  
18 what we're looking for.

19 JUDGE DIPPELL: All right. Would there be  
20 any objection to excusing -- I assume at this time we're  
21 just talking about Mr. Green, excluding Mr. Green from the  
22 testimony of Mr. Chesser?

23 MR. CONRAD: Well, I don't know who else is  
24 subject to this right now. If we're talking about  
25 transactions along the line of what Chairman Davis was

1 talking about, he may be the only one. If we're talking  
2 about other things, then there may be other Aquila  
3 personnel that should not be here.

4 MR. BOUDREAU: I think it's routine in  
5 Commission proceedings -- I'm not familiar with this.  
6 This appears to be a new process. This is not a  
7 deposition. This is the actual hearing. It's fairly  
8 common practice for other witnesses to sit in and hear  
9 what other witnesses are saying on the stand. So I don't  
10 know why this would be a special circumstance. Both the  
11 gentlemen have already been deposed. They're on record.  
12 To the extent that anybody thinks that maybe there's  
13 conflicting statements, the depositions are available for  
14 that purpose. I'm not sure there's any reason to exclude  
15 Mr. Green at this point.

16 MR. CONRAD: It's customarily done when you  
17 have a trial without regard to whether there's been  
18 discovery or interrogatories or depositions or what. If  
19 you have witnesses who have purportedly observed the same  
20 circumstances or have the same circumstance -- the same  
21 sets of conversations, they don't deserve to hear what the  
22 other guy says, just for the same reason that the  
23 wonderful folks in the intelligent folks down in Aruba are  
24 excluding the Kalpo brothers from Mr. Vandersloot.

25 MR. BOUDREAU: This is not a court of law,

1 as you pointed out. It's an administrative proceeding.  
2 So -- and frankly, even in legal proceedings before courts  
3 it's not --

4 MR. CONRAD: Your Honor, the truth is at  
5 trial here.

6 MR. BOUDREAU: I would like to be able to  
7 have my statements heard without interruption with the  
8 same courtesy I did for Mr. Conrad.

9 Now, I haven't seen this process in any  
10 other Commission proceedings. Like I said, both men have  
11 been deposed. If there's conflicting statements that  
12 somebody wants to confront them with, that opportunity is  
13 already there, let's exclude him. If he chooses to leave,  
14 that's one thing, but to exclude him as a matter of  
15 protocol is unprecedented and inappropriate.

16 CHAIRMAN DAVIS: It's up to you, Judge.

17 JUDGE DIPPELL: I agree that it's  
18 unprecedented in Commission proceedings to exclude  
19 witnesses, and these witnesses have previously been  
20 deposed. So any potential conflicts in testimony should  
21 be able to come out in that. So I'm not going to exclude  
22 witnesses from the hearing at this time.

23 (REPORTER'S NOTE: At this point, an  
24 in-camera session was held, which is contained in  
25 Volume 3, pages 123 through 127 of the transcript.)

1 JUDGE DIPPELL: All right. Go ahead,  
2 Mr. Williams.

3 BY MR. WILLIAMS:

4 Q. Can you turn to, I believe it's the last  
5 document in the stack I provided you. It should be marked  
6 as Exhibit 33, Great Plains Energy meeting of the board of  
7 directors, October 8, 2007.

8 JUDGE DIPPELL: And Mr. Williams, I'm going  
9 to ask -- I'm going to ask everyone to speak up and speak  
10 into your microphones. When the fans kick on, we can't  
11 hear up here.

12 BY MR. WILLIAMS:

13 Q. Do you see that document?

14 A. I'm getting there. It's not the last  
15 document, but I see Exhibit 33.

16 Q. All right. And what is -- that would be  
17 marked for purposes of this case as -- or this hearing as  
18 Exhibit 103HC?

19 (EXHIBIT NO. 103HC WAS MARKED FOR  
20 IDENTIFICATION BY THE REPORTER.)

21 BY MR. WILLIAMS:

22 Q. And what is Exhibit 103HC?

23 A. It's the minutes of a special telephonic  
24 meeting of the board of directors of Great Plains Energy  
25 on October 8, 2007.

1 Q. And are there statements attributed to you  
2 in that -- in those minutes?

3 A. Yes, there are.

4 Q. Would you turn to that paragraph that  
5 begins with Mr. Chesser?

6 A. Uh-huh.

7 Q. And would you read the last two sentences  
8 of that paragraph, and it would begin with, he overviewed  
9 several.

10 A. He overviewed several matters related to  
11 assumptions underlying previous valuation analyses, adding  
12 that none were material in nature, and also discussed the  
13 possible implications of several regulatory scenarios.  
14 Mr. Chesser noted that the recovery of Aquila's actual  
15 interest costs will be a key issue in the regulatory  
16 process.

17 Q. Were those statements made with reference  
18 to the acquisition of Aquila by Great Plains Energy?

19 A. Yes.

20 Q. And --

21 A. To my knowledge, yes.

22 Q. Are these minutes accurate?

23 A. You're asking me is that sentence accurate?

24 Q. Is that what you did, in fact, say at that  
25 point in time?

1           A.       I'm sorry. That -- I think he was talking  
2 about -- let's see. The sentence I just read is  
3 attributed to Mr. Bassham, is it not, the way that's  
4 worded?

5           Q.       The first one?

6           A.       Right.

7           Q.       Apparently was attributed to Mr. Bassham?

8           A.       Right. So the second one, Mr. Chesser  
9 noted that the recovery of Aquila's actual interest costs  
10 will be a key issue in the regulatory process.

11          Q.       Is that accurate?

12          A.       To my recollection, that's accurate.

13          Q.       And it was Mr. Bassham who relayed the  
14 information in the preceding sentence?

15          A.       That's my understanding, that's my  
16 recollection.

17          Q.       And is that sentence accurate as well?

18          A.       It rings true to me. He certainly will be  
19 available to testify to you on what he meant by that, but  
20 it's certainly -- it rings true to me.

21          Q.       And who is Mr. Bassham again?

22          A.       Mr. Bassham is the chief financial officer  
23 of Great Plains Energy.

24          Q.       Would you turn to the exhibit that's marked  
25 as Exhibit No. 29 for the purposes of the November 28,

1 2007 deposition?

2 A. Uh-huh.

3 Q. Do you have that?

4 A. Exhibit 29, yeah.

5 MR. WILLIAMS: That would be for purposes  
6 of this hearing Exhibit No. 104HC?

7 (EXHIBIT NOS. 104HC WAS MARKED FOR  
8 IDENTIFICATION BY THE REPORTER.)

9 JUDGE DIPPELL: That's correct.

10 MR. MILLS: I'm sorry. This exhibit was  
11 not marked HC when it was provided to me. I don't know  
12 that there's any reason to mark it HC now.

13 MR. ZOBRIST: I'm under the understanding  
14 that all the documents we provided in response to the  
15 Deposition Notice were provided as HC. And this  
16 particularly has a vast amount of financial information.  
17 It's clearly an HC document.

18 MR. MILLS: It's not marked as such, it was  
19 not provided as such. As a result, it was not mentioned  
20 in my document as one that I wanted to declassify because  
21 there is no indication that it is classified.

22 MR. ZOBRIST: I have no objection to  
23 Mr. Mills amending his motion, if that's what he chooses  
24 to do. But all the documents that Great Plains Energy  
25 provided in response to the notice of depositions of

1 Mr. Chesser and Mr. Downey were produced HC. We advised  
2 Staff of that designation.

3 MR. MILLS: Whether or not that's the case,  
4 they certainly didn't advise me or the court reporter or  
5 the other people attending the deposition who have  
6 received transcripts and received exhibits that are not  
7 marked highly confidential.

8 MR. ZOBRIST: Well, I stated several times  
9 during the deposition that all the exhibits were to be  
10 considered as HC.

11 JUDGE DIPPELL: Have the transcripts of the  
12 depositions been returned?

13 MR. MILLS: They have.

14 MR. WILLIAMS: I have the originals right  
15 here.

16 MR. CONRAD: If you give me a moment, I'll  
17 try to find this Exhibit 29 and see what's said about it.

18 MR. COFFMAN: Your Honor, I believe there  
19 is precedent for the Commission treating a response to a  
20 data request that's not designated as not HC.

21 JUDGE DIPPELL: I agree. I guess I'm --  
22 I'm wanting to make sure that it was, in fact, not  
23 designated.

24 MR. ZOBRIST: Well, Judge, I don't -- I  
25 don't have a record cite from the deposition right now,

1 but clearly off the record I advised everyone at the  
2 beginning of these depositions that all this material was  
3 being produced to Staff as HC. I mean, I just suggest we  
4 can take the time to look at that perhaps at the break.  
5 I'd be glad to do that.

6 JUDGE DIPPELL: I'm going to mark it once  
7 again as HC. Consider this document as part of Mr. Mills'  
8 Motion for Declassification, and you can argue the points  
9 of whether or not it has already been made public to me in  
10 the morning along with your response. So for now, it's  
11 Exhibit 104HC.

12 MR. CONRAD: Well, I appreciate that,  
13 Judge. I'm looking at page 6 of Mr. Chessser's deposition,  
14 and a quote appears there from Mr. Zobrist. Just let  
15 me -- let me just clarify that in response to paragraphs  
16 of Mr. Chessser's Notice of Deposition, we have produced  
17 additional documents that were contained within the  
18 request that had not been produced earlier because they  
19 had not been created or requested. We objected to a few  
20 requests but produced no documents, some -- excuse me,  
21 produced some documents in response to that, and we  
22 advised Staff last week that we would not be reproducing  
23 anything that we had previously produced to them.

24 That ends that quote, and there is no  
25 mention of HC. Now, if Mr. Zobrist has some other

1 direction he wants to point us to at the deposition, I was  
2 not there, so I'm looking at the deposition record.

3 MR. ZOBRIST: Well, I think Mr. Conrad is  
4 correct, but I also think that a number of these materials  
5 were previously provided by the company in response to  
6 data requests, and I am absolutely positive that this  
7 Exhibit 29 was produced by Great Plains Energy in the  
8 course of this docket as an HC document.

9 JUDGE DIPPELL: Okay. I have marked this  
10 as HC, and I have said that I am going to include it in  
11 Mr. Mills' motion and that you-all will respond to it and  
12 that I will rule on it. I'm not ruling on it right now.  
13 It is marked HC. Mr. Williams, continue.

14 BY MR. WILLIAMS:

15 Q. Is what's been marked as Exhibit No. 104HC  
16 a presentation that Great Plains Energy management made to  
17 its board of directors on February 1, 2007?

18 A. Yes, it is.

19 Q. Do you know who made that presentation?

20 A. I believe that our chief financial officer,  
21 Terry Bassham, made the presentation, but I can't remember  
22 for sure.

23 Q. And on the -- this doesn't include the  
24 entire presentation, does it?

25 A. I don't know. I mean, I see pages.

1           Q.       It appears to just include selected pages,  
2 does it not?

3           A.       It's hard to say. It's hard to say,  
4 because a lot of the pages aren't numbered. I can't say  
5 whether it's the entire presentation that was made or not.

6           Q.       Is there a page that has at the top of it  
7 process update?

8           A.       Yes, there is.

9           Q.       And does it indicate a date that there was  
10 a meeting between Great Plains Energy management and  
11 regulators?

12          A.       Yes, January 24.

13          Q.       Do you know if that date's correct?

14          A.       I do not know whether it was January 24th  
15 or not. I don't -- I can't -- I don't have direct access  
16 to my calendar of what happened that day. I think it was  
17 around that time.

18          Q.       Would you turn to that packet and see if  
19 you find a document marked as Exhibit No. 31, which is all  
20 or parts of a -- apparently a management presentation to  
21 the Great Plains Energy board of directors on January 8th  
22 of 2007?

23          A.       Yes, I have that.

24                   MR. WILLIAMS: That would be Exhibit 105HC?

25                   JUDGE DIPPELL: Sorry. Which exhibit

1 number was that, Mr. Williams?

2 MR. WILLIAMS: I believe we're up to 105.

3 (EXHIBIT NO. 105HC WAS MARKED FOR  
4 IDENTIFICATION BY THE REPORTER.)

5 JUDGE DIPPELL: But it was No. 31 at the  
6 deposition?

7 MR. WILLIAMS: Correct.

8 JUDGE DIPPELL: Thank you.

9 MR. CONRAD: Your Honor, just so a record  
10 is made, that document also, if I'm looking at the same  
11 one, does not bear an HC designation. I don't want to  
12 replay that argument, but Mr. Mills can speak, but I do  
13 object, frankly, to after the fact designation of these  
14 materials. It creates a problem for other attorneys who  
15 may receive these, make distribution of them, discuss them  
16 with clients based on the absence of a designation as HC,  
17 which is the sole responsibility of the party who has that  
18 job under the rule. It is not, with all due respect, it  
19 is not your Honor's responsibility to protect them from  
20 their own failures. It is not my responsibility to assume  
21 that everything everywhere in the case is HC and so  
22 regarded, because at some point in time in the hearing  
23 somebody may come up and say, oh, I forgot, and then the  
24 RLJ decides, well, I'm going to allow you to redesignate  
25 that. And whether or not you allow Mr. Mills to amend his

1 motion is between you and him, but I need that statement  
2 on the record in the form of an objection.

3 MR. ZOBRIST: Judge, I would just say that  
4 I think Staff will confirm that these last two documents  
5 that are in controversy were produced by Great Plains  
6 Energy to Staff in a highly confidential status.  
7 Throughout the deposition indeed Mr. Williams had only one  
8 copy because he stated it was Staff's position they would  
9 not make extra copies and hand them to the deponent for  
10 examination. So although Mr. Conrad is correct this  
11 doesn't have an HC, I'm absolutely positive this was  
12 produced by the company in an HC status to Staff.

13 MR. CONRAD: That may very well be, your  
14 Honor, but that's between Staff and the company. Staff  
15 and the company are not the only parties in this case.  
16 And that somehow seems to be forgotten in some of this  
17 process. I know they seem to kind of like to regard it  
18 that way, but that's not the case, and that's why we have  
19 that rule that it is their responsibility to mark  
20 documents that they want to be treated as HC or P so  
21 marked. It's their responsibility. It is not the Bench's  
22 responsibility. It is not the Commission Staff's  
23 responsibility. It is not my responsibility. It is  
24 solely theirs.

25 JUDGE DIPPELL: Mr. Conrad, I agree it is

1     their responsibility.  However, this Commission does have  
2     a responsibility to protect the public interest, and so if  
3     that means that something has been messed up but we have  
4     an opportunity to correct it, we will do so.

5                     MR. WILLIAMS:  Judge, if I may?

6                     JUDGE DIPPELL:  I'm not finished  
7     Mr. Williams.

8                     If Mr. Mills -- this was also one of those  
9     that you assumed, Mr. Mills, was not HC and needs to also  
10    be included in the motion, I will do so.

11                    MR. MILLS:  Just so the record is clear, if  
12    it is the Judge's intention to treat it at this point as  
13    highly confidential, then yes, I would like to have it  
14    included in my motion.  I would like to seek the removal  
15    of the designation of highly confidential.

16                    JUDGE DIPPELL:  And I agree that there is  
17    certainly information that can be made public even if  
18    there is some highly confidential information included in  
19    it.  Mr. Williams.

20                    MR. WILLIAMS:  What I was going to say is  
21    it's my understanding that the information was provided by  
22    the company with Staff's understanding that it was highly  
23    confidential.  We did create the exhibits that were used  
24    at the depositions.

25                    JUDGE DIPPELL:  I'm sorry?

1                   MR. WILLIAMS: Staff did create the copies,  
2 the copies that were used during the depositions, just for  
3 point of clarification.

4                   JUDGE DIPPELL: All right. Let's go  
5 forward. It's marked as HC pending the motion.

6 BY MR. WILLIAMS:

7                   Q. Exhibit 105HC is a copy of all or parts of  
8 a management -- Great Plains Energy management  
9 presentation to the Great Plains Energy board of directors  
10 on January 8th of 2007 regarding the acquisition of  
11 Aquila, is it not?

12                  A. That's correct.

13                  Q. Can you turn to the page that has at the  
14 top visit with regulators, and it appears that it's page  
15 11 of that presentation. Does that page reflect the  
16 rationale of Great Plains Energy management for why there  
17 was a need for conversations with regulators before doing  
18 a final merger -- or acquisition agreement?

19                  A. If you look at the page -- let me read this  
20 first one. This page reflects the elements of regulatory  
21 support that we believe were fair and would allow a  
22 reasonable distribution of benefits between the customer  
23 and the shareholder.

24                  Q. That was as of January 8th of 2007?

25                  A. That's correct.

1           Q.       And is it still Great Plains Energy's  
2     position that these are the regulatory treatment that's  
3     required or supported?

4           A.       It's our position that this would  
5     constitute fair treatment. It is not our position that  
6     it's required for the combination of the two companies or  
7     the merger. They're two separate issues there. You know,  
8     the first is what we think would constitute fair  
9     regulatory treatment based upon treatment that's been  
10    given to utilities in similar situations around the  
11    country and also based on some of the unique circumstances  
12    here in Missouri. So yeah, that's one piece, would  
13    constitute fair treatment, but it does not mean that every  
14    one of these has to be granted in the way that they're  
15    described in order for the merger to make sense.

16          Q.       These documents indicate that Great Plains  
17    Energy management felt there was a need to have  
18    conversations with regulators as -- they had that belief  
19    there was a need for that as early as July of 2006. When  
20    did they have those conversations?

21          A.       As I said, my understanding is somewhere in  
22    January, late January, at one time -- one document said  
23    January 24th, but I seem to remember in the deposition  
24    there was something else said January 27th. I can't  
25    really remember which of the two dates it was, but we had

1 the conversation. We came down and met with the  
2 regulators and the Staff of Missouri, then we went and met  
3 with the regulators and the Staff at Kansas.

4 The purpose of both of those meetings was  
5 to make sure that they fully understood the rationale for  
6 the merger, the benefits of the merger and the structure  
7 that we were asking for. We -- in those meetings, we  
8 asked for no commitments, we received no commitments, but  
9 it was important that we -- that they understand the ask,  
10 and it was also our assumption that if there were any  
11 significant objections that we were not aware of,  
12 significant problems, significant issues that would impede  
13 the merger, that they would -- that they were aware of  
14 they would share with us. We didn't hear that. We didn't  
15 hear anything significant, significantly negative. But we  
16 did not receive any, you know. The depth of discussion  
17 did not go to asking or receiving commitments.

18 Q. You said you were looking to see if there  
19 were going to be any significant issues of which you were  
20 not aware. What significant issues were there of which  
21 you were aware?

22 A. We weren't aware of any significant issues.  
23 We assumed that the benefits of this merger would speak  
24 for themselves. The long-term savings for the customers  
25 and the improvement in quality of service for the Aquila

1 customers we thought would be a significant -- significant  
2 benefit of the merger that would be seen by all involved.

3 Q. Let me turn your attention to another one  
4 of the documents I've provided you. It has down in the  
5 lower right Exhibit No. 28 from the deposition. Is that a  
6 data request that was response -- that was provided to the  
7 Missouri Public Service Commission Staff in response to  
8 Data Request 357?

9 A. Yes.

10 Q. And does that response indicate that you,  
11 Bill Downey and Chris Giles met with individual Missouri  
12 Public Service Commission and Kansas Corporation  
13 Commission Commissioners on January 17, 2007 to inform  
14 them of ongoing negotiations to acquire Aquila?

15 A. Yeah, that was -- that's the difference in  
16 date I was referring to, two different dates.

17 MR. WILLIAMS: May I have that exhibit  
18 marked as Exhibit No. 106, please?

19 THE WITNESS: But we met -- I can tell you  
20 we met one time. It was either -- it was sometime in mid  
21 to late January. I can't remember the exact date.

22 BY MR. WILLIAMS:

23 Q. And when was that data request response  
24 provided, if you know?

25 A. Does it say on here?

1 Q. If you don't know, that's fine.

2 A. Yeah, I don't know.

3 MR. MILLS: Judge, just as a housekeeping  
4 matter, wouldn't this be 106HC? It was provided at the  
5 deposition.

6 JUDGE DIPPELL: It was a response to a data  
7 request. Was it provided as HC in the Data Request?

8 MR. MILLS: I don't know, but it's my  
9 understanding from our conversation today that everything  
10 provided in the deposition was HC, and so --

11 JUDGE DIPPELL: That was not my ruling,  
12 Mr. Mills.

13 MR. MILLS: No. I understood that to be  
14 Mr. Zobrist's position that everything that he provided at  
15 the deposition was HC. I'm trying to get clear whether or  
16 not this or is not.

17 MR. ZOBRIST: To be clear, I don't think I  
18 provided this at the deposition. Staff did. We have no  
19 objection to this being marked as just Exhibit 106.

20 JUDGE DIPPELL: This is Exhibit 106.

21 (EXHIBIT NO. 106 WAS MARKED FOR  
22 IDENTIFICATION BY THE REPORTER.)

23 BY MR. WILLIAMS:

24 Q. You should have also a Data Request  
25 response from Great Plains Energy, Kansas City Power and

1 Light Company to Staff Data Request No. 318. Do you have  
2 that document?

3 A. 319. 318.

4 Q. And who is it indicated provided that Data  
5 Request response?

6 A. Information -- who provided it?

7 Q. Yes.

8 A. Says information provided by Tim Rush,  
9 requested by Bob Schallenberg.

10 Q. And who is Tim Rush?

11 A. Tim Rush is a director in our regulatory  
12 department.

13 Q. Of Great Plains Energy?

14 A. Great Plains Energy.

15 Q. And does that Data Request response  
16 indicate that no specific meetings were held as of at  
17 least the date of that response with the Missouri Public  
18 Service Commission or Kansas Corporation Commission to  
19 discuss methodology, approach, measurement or details  
20 regarding the cost and synergy of the proposed acquisition  
21 of Aquila by Great Plains Energy?

22 A. Yes, it does.

23 Q. And is that response accurate?

24 A. Of course, Mr. Rush will be a good person  
25 to talk to about exactly what he meant, but the way I read

1 this, getting into any detail around the costs and the  
2 synergies did not occur at the early stages.

3 Q. Have they occurred at any stage?

4 A. This Data Response was 5/27/2007. So I'm  
5 not sure, you know, at what point we began to engage with  
6 the Commission and the Staff. I don't know that.

7 Q. Well, what steps --

8 A. I don't remember those details.

9 Q. Let's go to the last Data Request response.  
10 You should have another document that's a response to  
11 Staff Data Request 319?

12 A. Right.

13 Q. Do you have that in front of you?

14 A. I do.

15 Q. And does it indicate that Kansas City Power  
16 & Light Company has not met with anyone to discuss a  
17 framework for regulatory plan related to the application  
18 in this case for Great Plains Energy to acquire Aquila?

19 A. Yes, it does.

20 Q. And is that response accurate?

21 A. Again, you'll have to talk to Mr. Rush  
22 about what he meant by that. As I shared with you, we did  
23 meet in January with the Commissioners and the Staff with  
24 Missouri and Kansas prior to announcing our intent to  
25 pursue the merger, and in that meeting we talked about the

1    general framework of what we were proposing at a high  
2    level.  So you know, it may be the framework he's talking  
3    about is a more detailed framework, but I'm pretty sure  
4    everybody knew that we had that one meeting.

5           Q.       Can I have for purposes of identification  
6    the data response to Staff Data Request 318 marked as  
7    Exhibit 107 and the response to Data Request 319 marked as  
8    Exhibit 108.

9                   JUDGE DIPPELL:  Yes, those are so marked.

10                   (EXHIBIT NOS. 107 and 108 WERE MARKED FOR  
11    IDENTIFICATION BY THE REPORTER.)

12    BY MR. WILLIAMS:

13           Q.       We've gotten through a number of documents  
14    that indicate that Great Plains Energy considered it very  
15    important to get feedback from regulators, have we not?

16           A.       I wouldn't use the word feedback.  We  
17    weren't looking for a specific feedback.  What we were  
18    looking -- we were intending to do was make sure, A, the  
19    regulators understood the benefits of the deal and the  
20    general framework of what we were going to be asking for  
21    and why, and we -- I also wanted to make sure that if  
22    there was any significant issues that might impact the  
23    merger that we weren't aware of, that we would find out  
24    about that.  And again, we weren't asking -- we didn't ask  
25    for any commitments.  We just assumed that any significant

1 issues that would be -- that were there would be brought  
2 up.

3 Q. How long have you worked for regulated  
4 utilities?

5 A. Since 1971.

6 Q. Have you ever seen a regulatory  
7 amortization such as the one that's been proposed in this  
8 case and in any prior -- any before in your experience for  
9 the past 30-plus years?

10 A. The first amortization like this that I've  
11 seen occurred in KCP&L's stipulation, and it was a result  
12 of a discussion that we had with many parties that was  
13 intended to find a way for us to take on the risk and  
14 provide the lowest cost power possible for our customers  
15 by building a coal plant, and the same time give our  
16 creditors assurance we maintain our debt rating, and so,  
17 you know, coming out of that, those discussions, this  
18 concept of regulatory amortization was developed, and it  
19 seemed to work very well.

20 The credit agencies have received it well.  
21 It is keeping the costs of our borrowing low. It has  
22 given us the assurances we need as we build this plan.  
23 Since Aquila was a direct partner in this plant and also  
24 in both Iatan 1 and Iatan 2, it seemed to us as they came  
25 on board with Great Plains that those same benefits could

1 extend to their customers and our shareholders. That was  
2 the basis for the ask.

3 Q. Are you referring to the -- what's been, I  
4 think, described by this Commission as the Kansas City  
5 experimental regulatory plan that came about as a result  
6 of a collaborative process by a number of affected  
7 parties?

8 A. I am, yes.

9 Q. Was there a reason that you didn't engage  
10 in such a collaborative process in this acquisition of  
11 Aquila case where you're seeking to use that, a regulatory  
12 amortization mechanism?

13 A. We took the same step here that we took  
14 initially with the comprehensive energy plan. The first  
15 thing that you need to identify if you're going to engage  
16 in a collaborative process is to make sure there's a  
17 potential for a common ground between ourselves and the  
18 Staff since they would be driving and have significant  
19 influence over the process.

20 So we reached out to my -- as has been  
21 reported back to me, we reached out to the Staff on  
22 numerous occasions and asked if they would be willing to  
23 sit down and in a similar kind of a way to look at what  
24 would make sense that would be a fair balance -- a fair  
25 deal for the shareholders and the customers and would

1 allow us to go forward.

2 Repeatedly the information I've gotten back  
3 is the Staff's position was we paid too much for Aquila  
4 and, therefore, if we weren't willing to reduce our price,  
5 which we obvious -- already were contractually committed  
6 to, then there would be no room for negotiation.

7 So based on that, we just did not see that  
8 there was a potential for common ground. And the worst  
9 thing you can do in a collaborative process is bring a  
10 group of people in with the hope of reaching common ground  
11 and, you know, having it not be achievable, having  
12 people's position cast in concrete from the beginning. So  
13 that's why we did not do it. We believe in collaboration.  
14 We're ready, willing and able at any time to collaborate  
15 around this process.

16 Q. Did you seek any input from any of the  
17 parties that were going to be interested or affected by  
18 the acquisition of Aquila prior to the January date where  
19 you met with Commissioners?

20 A. Obviously up until that January date, we  
21 were prohibited by the competitive process that we were  
22 engaged in. We signed confidentiality agreements, and we  
23 were prohibited from having dialog with anyone. That's  
24 the nature. I don't know of a merger where people have  
25 gone in and talked to the regulators while they were in

1 the process of a competitive bidding. So we came in at  
2 the earliest possible time that we could to make the  
3 regulators and the Staff, the Commissioners and the Staff  
4 aware of this opportunity.

5 Q. When did you begin participating in the  
6 competitive bidding process?

7 A. I think as we went back before the initial  
8 process started, sometime in the July 2006 time frame.

9 Q. Does Great Plains Energy have an interest  
10 in dividend income from its subsidiaries?

11 A. Great Plains Energy has an interest in  
12 income from its subsidiaries. I'm not sure what you --  
13 you know, how you would define dividend from an accounting  
14 standpoint, but we're interested in having our  
15 subsidiaries be profitable.

16 Q. How does Great Plains Energy get income  
17 from its subsidiaries?

18 A. You'll have to discuss the mechanics of  
19 that with our chief financial officer, Terry Bassham.

20 Q. Are you saying you don't know?

21 A. I have a general sense. I don't have the  
22 specific mechanics. I know income flows up to the  
23 corporate earnings statement. Those earnings are made  
24 available to our shareholders.

25 Q. Does Great Plains Energy have an interest

1 in providing dividends to its shareholders?

2 A. We have an interest in providing growth in  
3 shareholder value to our shareholders. Comes in two  
4 forms. Comes in the appreciation of the stock and also  
5 dividends that we were to pay out.

6 Q. Does Great Plains Energy currently pay  
7 dividends to its shareholders?

8 A. Yes, we do.

9 Q. How much do you pay on an annual basis?

10 A. Well, on a per share basis -- I'm trying to  
11 think what the exact number is. It amounts to roughly a 5  
12 to 5 and a half percent yield on stock.

13 Q. If the acquisition of Aquila closes, won't  
14 there be more Great Plains Energy shares out there than  
15 there are currently?

16 A. We're going to finance the deal with stock  
17 and with debt, so there will be ultimately more shares,  
18 and there will be more income available to provide a  
19 return on those shares.

20 Q. Is Aquila currently paying any dividends on  
21 its shares?

22 A. They have a different financial structure  
23 right now. They are a combination of many companies, not  
24 just Missouri Public Service. They have gas companies in  
25 multiple states. They have residual financial issues. So

1 it's not directly comparable.

2 Q. I just asked whether Aquila's currently  
3 paying a dividend on its shares.

4 A. I don't believe they are.

5 Q. Does Great Plains Energy plan on changing  
6 the dividend its paying on its shares if it acquires  
7 Aquila?

8 A. No, it does not. We intend to make the  
9 dividend available to all Great Plains Energy  
10 shareholders.

11 Q. What, if any, position do you hold at  
12 Kansas City Power & Light Company and Strategic Energy?

13 A. Since KCP&L is a registered subsidiary of  
14 Great Plains Energy, I'm Chairman of the Board of Kansas  
15 City Power and Light. Strategic Energy is not a  
16 registered subsidiary. They have a CEO who reports to me  
17 as CEO of Great Plains.

18 Q. Do you know the value of the assets of  
19 Great Plains Energy and its subsidiaries on a consolidated  
20 basis?

21 A. You'll have to -- I don't know the exact  
22 number on that.

23 Q. Do you know the amount of the liabilities  
24 that Great Plains Energy and its subsidiaries have on a  
25 consolidated basis?

1           A.       I don't have the exact number on that.

2           Q.       Do you know who would have that number?

3           A.       Terry Bassham, the chief financial officer.

4           Q.       That would be to both questions?

5           A.       Yes.

6           Q.       Do you know the value of Aquila's assets?

7           A.       I do not. I don't have the exact answer on

8   that.

9           Q.       Do you know who would?

10          A.       I would assume someone in Rick Green's area

11   would have that.

12          Q.       Do you know the value of Aquila's regulated

13   utility assets in Missouri?

14          A.       I don't have the specific number on that.

15          Q.       Do you know the amount of Aquila's

16   liabilities?

17          A.       I don't have the specific number on that.

18          Q.       Which has a larger service area -- larger

19   electric service area in Missouri, Aquila or Kansas City

20   Power & Light Company?

21          A.       Is that by volume or by number of

22   customers?

23          Q.       By geographic area.

24          A.       By geographic area, I believe if you look

25   at the map, Aquila's is larger.

1           Q.       Do you know who serves more electric  
2 customers in Missouri, Aquila or Kansas City Power & Light  
3 Company?

4           A.       In Missouri? Probably Aquila.

5           Q.       Does Great Plains Energy manage or operate  
6 Kansas City Power & Light Company?

7           A.       They oversee the operation of Kansas City  
8 Power & Light. It's managed by the chief executive  
9 officer and management team of KCP&L.

10          Q.       Do Kansas City Power & Light Company  
11 employees provide services to Great Plains Energy?

12          A.       Yes, they do.

13          Q.       Is there any written agreement that governs  
14 their provision of services to Great Plains Energy?

15          A.       To my knowledge, there is a cost transfer  
16 agreement process. I think we referenced that earlier.

17          Q.       Is that what you call a cost allocation  
18 manual?

19          A.       Cost allocation manual, yes.

20          Q.       Is there any other document?

21          A.       I don't know.

22          Q.       Did Kansas City Power & Light Company agree  
23 that it is incumbent upon Kansas City Power & Light  
24 Company to take prudent and reasonable actions that do not  
25 place its investment grade debt rating at risk as part of

1 its experimental regulatory plan in Missouri the  
2 Commission approved in Case No. EO-2005-0329?

3 A. Yes, I believe that provision is in there.

4 Q. As part of its experimental regulatory plan  
5 in Missouri, didn't Kansas City Power & Light Company  
6 agree that any negative impact from its failure to be  
7 adequately insulated from Great Plains Energy's business  
8 risks as perceived by the debt rating agencies will not be  
9 supported by its Missouri jurisdictional customers?

10 A. Say that -- say that one more time. I  
11 thought I knew where you were going, but I dropped it at  
12 the end.

13 Q. As part of its experimental regulatory plan  
14 in Missouri, didn't Kansas City Power & Light Company  
15 agree that any negative impact from its failure to be  
16 adequately insulated from Great Plains Energy, Inc.'s  
17 business risks as perceived by debt rating agencies will  
18 not be supported by its Missouri jurisdictional customers?

19 A. I believe I understand what you're saying  
20 there, and I think the answer to that is yes.

21 Q. Are the applicants in this case proposing  
22 that if Great Plains Energy is authorized to acquire  
23 Aquila, Aquila's actual debt interest costs is to be  
24 included in Aquila's cost of service in post acquisition  
25 rate cases?

1           A.       That's the proposal.

2           Q.       Are the applicants in this case proposing  
3   that if Great Plains Energy is authorized to acquire  
4   Aquila, regulatory amortization be available in future  
5   rate cases to enable Aquila post acquisition to have  
6   sufficient cash flow to maintain credit ratings during  
7   periods of construction?

8           A.       That's the proposal.

9           Q.       Are you aware that the Missouri Public  
10   Service Commission Staff took the position in Aquila's  
11   last rate case that Aquila's rates for Aquila Network -  
12   MPS should be based on the cost of five combustion  
13   turbines on a site such as South Harper owned by Aquila  
14   rather than the three combustion turbines Aquila actually  
15   installed plus purchased power agreements?

16          A.       No, I'm not.

17          Q.       Before you began working for Great Plains  
18   Energy, where were you employed?

19          A.       I was employed at a company called United  
20   Water, Harrington Park, New Jerry, owned by Suez.

21          Q.       What were your dates of employment at  
22   United Water?

23          A.       The -- I can give you estimated numbers  
24   here. 2001 to 2003.

25          Q.       And what was the nature of your duties when

1     you were employed at United Water?

2             A.       I was chairman and chief executive officer.

3             Q.       And before you were employed at United  
4     Water, where were you employed?

5             A.       I was employed at Great Plains Energy.

6             Q.       Before?

7             A.       I'm sorry. They are very similar. GPU,  
8     which is an energy company headquartered in Barstow, New  
9     Jersey, and the utility headquarters were in Redding,  
10    Pennsylvania.

11            Q.       What were your dates of employ there?

12            A.       I was the chief executive officer at the  
13    utility operations.

14            Q.       I think you gave me what your job duties  
15    were. What were your dates of employment?

16            A.       19 -- 2000 to 2000 and -- 1999 to 2001.

17            Q.       Before I get too far afield, why was it  
18    that you left United Water?

19            A.       I left United Water because they had a  
20    restructuring, and I left as a part of an employment  
21    agreement during that restructure.

22            Q.       Did you go directly from United Water to  
23    employment with Great Plains Energy?

24            A.       There was a window of time there. Probably  
25    four or five months.

1 Q. Four or five months that you didn't have  
2 employment or --

3 A. Right. I was between jobs, yeah.

4 Q. Then why did you leave GPU?

5 A. First Energy acquired GPU and I left as a  
6 result of that merger.

7 Q. And did you immediately then became  
8 employed by United Water?

9 A. I'd say there were maybe two to three  
10 months in between.

11 Q. And have you already relayed -- well, what  
12 were your job duties at GPU?

13 A. GPU. I was the chief executive officer of  
14 their utility operations.

15 Q. And what did you do as chief executive  
16 officer?

17 A. Oversaw the planning, execution of electric  
18 service to customers in Pennsylvania and New Jersey.

19 Q. And before you became employed by GPU,  
20 where did you work?

21 A. I was the CEO of Itron.

22 Q. What were your dates of employment at  
23 Itron?

24 A. Dates of employment at Itron were 1998 to  
25 1999.

1 Q. Why you did leave Itron?

2 A. And I was recruited to GPU to become chief  
3 executive of their utility operations.

4 Q. What were your job duties at Itron?

5 A. I was chairman and CEO.

6 Q. And what did you do as chairman and CEO?

7 A. Oversaw the strategy development, execution  
8 of the business, which was primarily automated meter  
9 reading equipment.

10 Q. And by whom were you employed before you  
11 began your employment with Itron?

12 A. I was employed by Atlantic Energy.

13 Q. What were your dates of employment with  
14 Atlantic Energy?

15 A. 1994 to 1998.

16 Q. What were your job duties at Atlantic  
17 Energy?

18 A. I was chief operating officer of the  
19 utility operations.

20 Q. What was the nature of the utility  
21 operations?

22 A. Utility operations were providing electric  
23 service to the greater Atlantic City region.

24 Q. Why did you leave Atlantic Energy?

25 A. Atlantic Energy was acquired by Delmarva

1 Power, and I left as a result of the merger.

2 Q. Voluntarily?

3 A. Voluntarily with an employment agreement.

4 Q. And before you became employed with

5 Atlantic Energy, who were you working for?

6 A. I was working with Baltimore Gas and

7 Electric.

8 Q. How long did you work for Baltimore Gas and

9 Electric?

10 A. 1971 to 1994.

11 Q. And when you left Baltimore Gas and

12 Electric in 1994, what was your job title?

13 A. Vice president of marketing.

14 Q. What were your job duties?

15 A. Oversee the customer relations, large

16 customer relationships. We also had a gas service

17 business, and we also had a merchandising business,

18 Appliance sales. I oversaw all that.

19 Q. Why did you leave Baltimore Gas and

20 Electric?

21 A. For the opportunity to become chief

22 operating officer of Atlantic Electric.

23 Q. Did you have any earlier utility-related

24 experience?

25 A. No, I do not.

1 Q. So you've been involved in two mergers?

2 A. I have, yes.

3 Q. Were you ever involved in the process post  
4 merger?

5 A. No. Both of those mergers, they were -- I  
6 was leaving as a result of the mergers. I was involved in  
7 the planning but not the execution.

8 Q. Do you know if any commission in this  
9 country has authorized a regulatory amortization as part  
10 of authorizing the acquisition or merger of a regulated  
11 utility?

12 A. I don't know if they have or not.

13 Q. What's your understanding of the regulatory  
14 amortization that the applicants are seeking in this case?

15 A. My understanding is that in the event that  
16 we were to -- we're in a rate case and we asked for -- we  
17 were granted a rate increase that didn't provide  
18 sufficient debt coverages to maintain the credit  
19 guidelines, then we would be allowed to get additional  
20 cash through rates, through this regulatory amortization  
21 mechanism, which in effect would mean that we were getting  
22 the cash today, but long-term that piece would not be in  
23 rate base and we wouldn't earn a return on it. So it  
24 would be a way to maintain our liquidity, but it wouldn't  
25 be in anybody's best interests to use it if it wasn't

1 necessary.

2 Q. I believe you testified that you spoke with  
3 Rick Green in the spring of 2006 about the possibility of  
4 acquiring Aquila?

5 A. Yes, we had breakfast in the spring of  
6 2006.

7 Q. At that point in time, were you considering  
8 any of the synergy -- synergy sharing, actual interest  
9 costs and regulatory amortization in connection with  
10 acquiring Aquila?

11 A. No. We -- it was strictly at the level of  
12 inquiring whether he would be interested in looking at the  
13 potential benefits of bringing the two companies together.  
14 We had no concept in mind what the framework would be. At  
15 least I didn't.

16 Q. Was acquisition the only thought you had in  
17 mind at that point?

18 A. No. We were obviously exploring from the  
19 standpoint of we have, you know, very closely related  
20 service areas, the potential obviously for reduced cost,  
21 both of us going into a climate of increasing rates. Once  
22 there's something we can do to bring the two companies  
23 together, it would help us reduce those costs and allow,  
24 you know, customer rates not to go up as much, and at the  
25 same time potentially benefit our shareholders who share

1 in the savings, was that high level concept. Had nothing  
2 to do with structure.

3 Q. Did Great Plains Energy and Aquila announce  
4 the proposed acquisition of Aquila on February 7, 2007,  
5 publicly announce it?

6 A. As I said, earlier in February, I don't  
7 know. I don't happen to recall the exact date.

8 Q. Was there a joint investor conference call  
9 following the announcement?

10 A. Yes, there was.

11 Q. And in response to a question regarding  
12 interacting with regulators on merger savings, did you  
13 indicate that your approach to working with regulators was  
14 not to come in with a hard and fast proposal and try to  
15 sell them on it, but to sit down and look at all the  
16 benefits that were being generated, the need to maintain  
17 credit rating for finances and work with them in a give  
18 and take mode and collaborate to come up with something  
19 that is mutually agreeable to all?

20 A. Absolutely.

21 Q. What steps have you taken to work in a give  
22 and take mode?

23 A. To move back to what I was talking about  
24 earlier, from the beginning it was made clear to us, the  
25 feedback I get, I had no direct conversations with Staff,

1 but feedback I've gotten from my people is that it was  
2 made clear to us that without reducing the price of the  
3 deal, then they didn't see any way that we would be able  
4 to share savings, you know, change the formula for shared  
5 savings, or change the way interest was treated, that none  
6 of those would be productive, would work for KCP&L, unless  
7 we were willing to reduce the price, which, as I say, we  
8 contractually weren't able to do. So it prevented us from  
9 engaging in a collaborative process, which is something we  
10 deeply believe in.

11 Q. But didn't you create the situation of not  
12 being able to engage in a collaborative process by  
13 entering into an agreement before seeking input from those  
14 parties?

15 A. Again, contractually we were prevented from  
16 seeking that input, and we were in a competitive bid  
17 process. There were other players in the bid, and, you  
18 know, we had signed a confidentiality agreement and there  
19 was just no way that -- in all the experience I've had and  
20 everything I've read, you know, people in the middle of  
21 that kind of a process do not go and talk to the  
22 regulators or staff or anybody else. You're violating  
23 your confidentiality agreement. You're violating your  
24 potential competitive position. At that stage, the bid  
25 gets, you know, held very tightly.

1           Q.       If I understood your testimony correctly,  
2   you had an interest in Aquila well before you engaged in  
3   the competitive bidding process, didn't you?

4           A.       No, I did not say we had an interest in  
5   Aquila. I said we pursued -- we considered the  
6   possibility of all sorts of possible combinations, Aquila  
7   and other companies, as a possible growth strategy, but we  
8   did not have, you know, an interest in that we were coming  
9   forward making a specific proposal.

10                   When I met with Rick in May, you know,  
11   again, generally exploring is there a potential for  
12   sharing the benefits between the two companies, you know,  
13   if, you know, there's social considerations, there's all  
14   sorts of things that take place in that kind of a  
15   discussion that, you know, we were -- I was inviting him  
16   to explore. And you know, that would have had to have  
17   happened before I would be able to say I had an interest  
18   in acquiring Aquila.

19           Q.       But you didn't solicit from Missouri  
20   regulators the input as to what it -- what their reaction  
21   might be at that point in time, did you?

22           A.       I will say this, that in -- I've had  
23   reported back to me comments from Staff that they would --  
24   you know, from a year before, that they would be  
25   interested in seeing us do something to help strengthen

1     Aquila and make savings available to customers.

2                     Now, that was -- I had no direct  
3     communications on that, but that had been -- conversations  
4     have been reported back to me. So my general belief was,  
5     that, you know, that Staff would be supportive.

6             Q.     But you didn't follow up on those and find  
7     out under what sorts of circumstances might be supportive  
8     of something like that?

9             A.     No. That's not how I've seen mergers  
10    develop in the past. Typically the response from the  
11    Staff is that they want to know something specific. The  
12    devil's always in the details. Just talk about general  
13    terms is not something that they are supportive of. And  
14    as I said, in this case we couldn't collaborate around the  
15    specific terms because we were prevented from doing that  
16    by the confidentiality agreement.

17            Q.     What are the details about the regulatory  
18    amortization that you're proposing in this case?

19            A.     You'll have to get into those details with  
20    Terry Bassham, our chief financial officer.

21            Q.     Are the applicants in this case proposing  
22    that if Great Plains Energy is authorized to acquire  
23    Aquila, the Commission assume there will be merger synergy  
24    savings of about 305 million over five years and include  
25    one-half the annualized amount in Aquila's cost of service

1 as 50 percent of merger synergy savings regardless of what  
2 synergy savings are realized?

3 A. What we are projecting, as you'll hear  
4 testimony on is that there are savings that go on into  
5 perpetuity. The first five years, I think 305 is what's  
6 being quoted. Out beyond that, I think we heard earlier  
7 today 600 million over ten years, and then it continues  
8 beyond that.

9 So, you know, one of the big issues that I  
10 have is that this is a long-term investment. It's -- you  
11 know, looking at only five years of payback would be  
12 similar to building a base load coal plant and expecting  
13 all the benefits to be paid back in five years. It  
14 doesn't -- that's not the reason you make the investment.  
15 You make the investment for the long-term benefits to flow  
16 to the customers, and these benefits are just as real as  
17 the lower prices coming out of a coal plant. So I think  
18 that's a -- that's an important context to set.

19 Q. And again, my question is, is Aquila -- are  
20 the applicants asking roughly 30 million be included in  
21 Aquila's cost of service for merger synergy savings  
22 regardless of what synergy savings are actually realized?

23 A. The approach that we've taken, and we're  
24 open to other approaches, but the approach that we've  
25 taken is, we've had teams do a detailed study of all ends

1 of the business from operations to power plant  
2 optimizations to supply chain, and we developed what we  
3 think is a very conservative estimate and very defensible  
4 estimate which is savings are likely to develop.

5                   We also had that looked at, we've gone the  
6 extra step and hired someone independent from the outside  
7 who's seen a lot of these merger, and you'll hear  
8 testimony from him later in the case, and had that  
9 validated that these are very reasonable and achievable  
10 savings. In fact, I believe he'll say that there's  
11 likelihood the savings will be beyond that.

12                   So our thought is rather than put a  
13 tracking mechanism in, which can be very cumbersome and  
14 bureaucratic, to take a conservative approach to  
15 identifying the savings and agree on those up front, we  
16 think that would be the most straightforward way to do it,  
17 but we're open to other approaches.

18           Q.       Well, have the parties agreed to those up  
19 front?

20           A.       That's -- that's what this proceeding is  
21 about. The parties have said to me, have said to us, not  
22 to me, to us, that engaging in those discussions would be  
23 fruitless if we weren't willing to reduce the price.

24           Q.       What assurance are the applicants giving  
25 the Commission that they will actually realize this

1 30 million per year that they're asking the Commission to  
2 include in Aquila's cost of service for merger synergy  
3 savings?

4 A. Well, there's a couple of ways of looking  
5 at it. First, of course, the estimate itself is  
6 conservative. It clearly is in our best interests to  
7 deliver those savings. If you look at our track record as  
8 a company, we operate in a way to try to achieve top tier  
9 performance in cost and service and reliability. So our  
10 track record is obvious, such that we will achieve that.

11 We also have a process in place where each  
12 of our officers have signed up to the pieces of the  
13 synergies that they would be accountable to, and you know,  
14 it would be part of their performance evaluation to  
15 deliver their savings. Our board is also very interested  
16 in making sure their savings are delivered, because to the  
17 extent their savings are delivered, our costs are kept  
18 lower, our rates are kept lower, and the quality of our  
19 earnings to our customers is higher. So there's every  
20 business reason to pursue that.

21 Q. Are the applicants in this case proposing  
22 that if Great Plains Energy is authorized to acquire  
23 Aquila, the Commission amortize the amount of about  
24 95 million over five years for recovery of the transaction  
25 cost for the acquisition and include the annualized amount

1 in Aquila's cost of service for recovery in rates?

2 A. That is part of what I would call the cost  
3 to build the power plant. It's the cost to be able to  
4 reach the long-term savings that I talked about. We  
5 are -- just as we would expect to recover the costs on  
6 building a plant, we'd expect to recover the cost  
7 associated with this transaction.

8 Q. I haven't asked how you would characterize  
9 it. I just asked whether or not that's what the  
10 applicants are requesting.

11 A. Well, yes, it is what we're requesting.

12 Q. Are the applicants in this case proposing  
13 that if Great Plains Energy is authorized to acquire  
14 Aquila, the Commission amortize the amount of about  
15 45 million over five years for recovery of the transition  
16 costs of the acquisition and include the annualized amount  
17 in Aquila's cost of service for recovery in rates?

18 A. Yes, we are.

19 Q. Didn't Great Plains Energy originally plan  
20 in the summer of 2006 to have the issues of the use of  
21 Aquila's actual debt cost for regulatory amortization for  
22 meeting credit metrics, sharing of synergies and recovery  
23 of transaction costs be addressed in an Aquila rate case  
24 that would be pending at the same time Great Plains  
25 Energy's request for authorization to acquire Aquila was

1 pending?

2 A. My recollection is that was one of the  
3 options that we were looking at, but I can tell you I  
4 had -- I approved no final strategy to propose that.  
5 That's one of the options we were looking at. Again, what  
6 we were trying to do was find a way to make sure that the  
7 financials would lead to, you know, maintaining our  
8 investment grade credit rating. We plan on bringing  
9 Aquila to investment grade when we acquire them, and we  
10 wanted to make sure that on a going forward basis we could  
11 maintain that credit rating.

12 Q. And wasn't that an option that you relayed  
13 to Aquila?

14 A. I did not personally, but my understanding  
15 is that our transaction team led by Terry Bassham did have  
16 conversations with Aquila around that option.

17 Q. And didn't Aquila oppose that option?

18 A. My understanding is that there was back and  
19 forth discussions around the benefits and the risks. So I  
20 mean, I can't say for sure. I have no firsthand knowledge  
21 that they opposed it, but I know there was back and forth  
22 discussion around benefits and risks.

23 Q. Did you participate in that discussion?

24 A. No, I did not.

25 Q. Did you participate in the decision about

1 whether or not to pursue Aquila filing a rate case in  
2 conjunction with the acquisition case?

3 A. As I said before, I was briefed on the  
4 options that were being evaluated, but I did not, you  
5 know, participate in any decision that said we need to --  
6 we absolutely need to pursue a rate case. I just knew  
7 that was one of the options on the table.

8 Q. Did you ever speak with anyone at Aquila  
9 about it?

10 A. No, I did not.

11 MR. ZOBRIST: Judge, I'm going to object to  
12 any further line of questioning on this particular issue  
13 since it's not a part of the joint application or the plan  
14 of merger.

15 MR. WILLIAMS: That's fine. I wasn't  
16 planning on pursuing it any further.

17 MR. ZOBRIST: Then I'll withdraw the  
18 objection.

19 BY MR. WILLIAMS:

20 Q. Is there a requirement that Kansas City  
21 Power & Light Company and Aquila have common ownership  
22 before the regulated utility operations in Missouri can be  
23 merged?

24 A. Okay. Now, say that one more time.

25 Q. Sure. Is there a requirement that Kansas

1 City Power & Light Company and Aquila have common  
2 ownership before their regulated utility operations in  
3 Missouri can be merged?

4 A. I don't understand the question. Maybe I  
5 just don't have the legal insight to what you're asking.

6 Q. Well, in this case aren't you proposing  
7 that Kansas City Power & Light Company and Aquila merge  
8 their regulated utility operations in Missouri?

9 A. We're proposing that they integrate the  
10 operations, that they be managed by a common management  
11 structure, and that they integrate them in a way that they  
12 can deliver the operational efficiencies, the supply chain  
13 efficiencies, and power plant efficiencies I talked about  
14 earlier.

15 Q. Let me try this question, then. Is there a  
16 requirement -- is there any requirement that Kansas City  
17 Power & Light Company and Aquila have common ownership  
18 before the regulated utility operations in Missouri can be  
19 integrated?

20 MR. ZOBRIST: I object. It calls for a  
21 legal conclusion.

22 THE WITNESS: I don't know, is the answer  
23 to that.

24 JUDGE DIPPELL: I was going to sustain the  
25 objection, but since the witness answered --

1 BY MR. WILLIAMS:

2 Q. Didn't Aquila and Kansas City Power & Light  
3 Company seek to merge about ten years ago?

4 A. As I say, I came here in 2003. What I know  
5 is what I read in the newspapers, and I recall reading  
6 something to that effect in the newspapers.

7 Q. Do you know if that merger closed?

8 A. I don't believe it did, no.

9 Q. The applicants in this case are asserting  
10 there will be many types of merger synergies if Great  
11 Plains Energy acquires Aquila as proposed in this case,  
12 are they not?

13 A. The applicants are asserting that there  
14 will be many merger synergies --

15 Q. Many types of merger --

16 A. Many types of -- yes.

17 Q. Wouldn't many of those same types of merger  
18 synergies have been available ten years ago?

19 A. I don't know. I don't know what the  
20 circumstance was ten years ago.

21 Q. Is it your position that quality of service  
22 to ratepayers will be improved if Great Plains Energy  
23 acquires Aquila?

24 A. I believe it will, yes.

25 Q. How will it be improved?

1           A.       Well, I think the one key thing to look at  
2   is our service reliability track record at KCPL, and that  
3   comes from a whole series of processes and practices that  
4   we have in place, both currently and in the future. So if  
5   you think about the -- recently we had PA Consulting  
6   Company come in and take a look at our operations along  
7   with 150 other utilities around the country, and a  
8   benchmark -- not just our track record, which is one of  
9   the best in the country, but also the practices that we  
10  have in place that will allow us to use future technology  
11  and future communication with customers to proactively  
12  identify potential problems, resolve them before they  
13  happen.

14                   And in that process they identified us to  
15  be the No. 1 utility in the country in terms of not just  
16  track record but our processes. We received the service  
17  reliability award. And I think those practices and  
18  processes will be able to be made available to Aquila  
19  customers. So they will -- their service will be  
20  improved. On the other hand, our understanding of how  
21  Aquila processes customer inquiries, customer service  
22  inquiries is top tier. They've done a very good job in  
23  improving call times and, you know, responding to the  
24  first time to customer requests, and I think our customer  
25  call center will be able to learn from those, so I think

1    what -- KCPL and Aquila customers will see improved  
2    quality of service.

3           Q.       Does Kansas City Power & Light Company  
4    operate utility property better than Aquila does?

5           A.       In some areas, we work better.  In other  
6    areas, they work better.

7           Q.       And assuming the acquisition takes place,  
8    what do you plan to do on those areas where Aquila  
9    operates better than Kansas City Power & Light Company and  
10   Kansas City Power and Light Company operates better than  
11   Aquila?

12          A.       Yeah.  We have the same employee teams that  
13   are in place in helping us develop the synergies will be  
14   used to identify best practices from both companies and  
15   implement those best practices and net result will be, I  
16   think we gave a couple of examples earlier, we'll probably  
17   improve the operation of our combustion turbines.  The  
18   Aquila coal plant will probably operate more effectively  
19   because of the process that KCPL has.  So, you know,  
20   coming out of this, there will be that kind of a win/win  
21   assessment and implementation.

22          Q.       Who makes the ultimate decision that Kansas  
23   City Power and Light Company will file a rate case in  
24   Missouri?

25          A.       The recommendation to proceed with a rate

1 case is made by the CEO of KCP&L, and ultimately is  
2 brought to the Great Plains Energy strategy team because  
3 it obviously is a key strategic initiative for Great  
4 Plains, and you know, I, as leader of that strategy team,  
5 CEO of the company, make the ultimate decision.

6 Q. If Great Plains Energy acquires Aquila,  
7 presently who is to be the person who ultimately decides  
8 when Aquila will file a rate case in Missouri?

9 MR. ZOBRIST: Judge, I object. I think  
10 that question is not relevant to this proceeding, when in  
11 the future who's going to decide if a rate case is filed.

12 MR. WILLIAMS: And I think management  
13 is clearly relevant in this proceeding.

14 JUDGE DIPPELL: I think the issue of future  
15 rate cases is set out as one of the listed issues, so I'm  
16 going to allow them to answer and overrule the objection.

17 THE WITNESS: I would plan to use the same  
18 process that we use for KCP&L, which would be the  
19 management of the utility operations would make that  
20 judgment for both KCPL's territory and Missouri Public  
21 Service's territory, and they would bring that to the  
22 Great Plains strategy team, and we would -- ultimately I  
23 would make the decision based on their recommendation.

24 BY MR. WILLIAMS:

25 Q. What is Great Plains Energy's strategic

1 intent?

2           A.       We have a -- a diagram that demonstrates  
3 that most effectively, and in effect, as you go around the  
4 diagram is a circle with an item in the center. So as you  
5 go around the circle, on the top left you have top tier  
6 performance of both cost and service quality, and as you  
7 come around that diagram, you have the comprehensive  
8 energy plan, which is, in effect, increasing our -- the  
9 assets of the company to meet the energy needs and the  
10 environmental needs of the community.

11                   You have, going down the other side of that  
12 circle, you have the -- what we call the community,  
13 political and regulatory process, which is the bill  
14 credibility within the community and respect within the  
15 community, trust within the community, and we do our job  
16 there, then the -- the outgrowth of that will be  
17 supportive regulation. We don't do our job there, then,  
18 you know, the outgrowth would not be supportive.

19                   So that's another key component. The  
20 fourth component is growing the value of Strategic Energy,  
21 and in the center of that circle is what we call winning  
22 culture, and there what we're talking about is an engaged  
23 collaborative culture with employees, with the community,  
24 with the shareholders, so that, you know, we're unleashing  
25 the greatest thinking power and the energy and potential

1 of all of our stakeholders, so that's basically the  
2 strategic intent.

3 Q. Where do utility customer rates fit within  
4 Great Plains Energy's strategic intent?

5 A. The top tier in terms of cost, top tier in  
6 terms of rates. Our rates are 20 percent below the  
7 national average at this point in time.

8 Q. Have you had any utility merger involvement  
9 beyond that to which you've already testified?

10 A. To my knowledge, no.

11 Q. Other than this case, have you ever been  
12 involved in any utility merger activities in Missouri?

13 A. No.

14 Q. What assurance can you provide this  
15 Commission that the merger synergy estimates provided by  
16 applicants' witnesses in this case will be met or exceeded  
17 within the time frames they set out?

18 A. Well, again, the greatest -- there's two  
19 ways to achieve comfort. No. 1, is, you know, our  
20 superior operating track record, that we have been able to  
21 deliver significant improvements in cost and in terms of  
22 reliability, there's reason to believe -- and since it is  
23 inherently in our self interest to deliver that, there  
24 would be no reason to believe we'd continue to pursue that  
25 with all -- with all of our efforts.

1                   Secondly, I think the nature of the  
2 estimates as I talked about earlier are very conservative,  
3 and as you'll hear from the expert testimony, there is  
4 actually a very strong probability that more savings than  
5 what we're asking to share will develop and materialize  
6 over time. So conservative nature of our approach and our  
7 track record in producing operating results would be the  
8 two assurances.

9                   Q.       Who suffers the consequences if those  
10 estimated merger synergy levels are not achieved and  
11 reflected in future rate cases?

12                  A.       I think all the stakeholders suffer the  
13 consequences. I think, obviously, the customers' rates  
14 would be higher. If customers rates are higher, our  
15 treatment, the treatment of our shareholders is not going  
16 to be as strong. Like I said, our returns and profits  
17 won't be as strong if customer rates are higher than they  
18 need to be, and the community as a whole suffers from the  
19 economic development of the community. So I think, you  
20 know, all the stakeholders suffer in that situation, which  
21 is why we would make sure it didn't happen.

22                  Q.       In your synergies savings proposal, why  
23 aren't all the costs to achieve subtracted from synergies  
24 before being split 50/50?

25                  A.       Just a way of looking at the sharing of the

1    benefits, equitable sharing of benefits between the  
2    customer and the shareholder. And I can tell you that, as  
3    I say, this is a long-term investment with long term  
4    payoff, so, you know, many more benefits are -- the  
5    investment period are going to apply to the customer than  
6    to the shareholder, but we feel like it's fair that the  
7    shareholders' benefits -- or the shareholder does benefit  
8    in some way to compensate them for the added risk that's  
9    been taken more than the merger.

10            Q.            What has Great Plains Energy done to  
11    initiate a collaborative process involving stakeholders  
12    with the goal of developing an appropriate regulatory  
13    amortization for Aquila if Great Plains Energy acquires  
14    Aquila?

15            A.            Again, I'll go back to the same approach.  
16    The -- we intended to reach out and collaborate around all  
17    the issues that we've been asking, and, you know, as we  
18    reached out, it came back to us that if we weren't willing  
19    to reduce our price, there wasn't any potential for common  
20    ground, and with no potential for common ground, we  
21    thought it would be counterproductive to try to engage in  
22    a collaborative process.

23            Q.            When has Great Plains Energy met with  
24    Missouri Public Service Commission Staff to discuss  
25    methodology approach, measurement, or details regarding

1 the costs and synergies of the proposed acquisition of  
2 Aquila by Great Plains Energy?

3 MR. ZOBRIST: Judge, that's been asked and  
4 answered. That was a subject of, I believe, an hour and a  
5 half ago on Data Requests and responses from the company.

6 JUDGE DIPPELL: I'm sorry, Mr. Williams,  
7 would you repeat your question?

8 MR. WILLIAMS: When has Great Plains Energy  
9 met with Public Service Commission Staff to discuss  
10 methodology approach, measurement, or details regarding  
11 the costs and synergies of the proposed acquisition of  
12 Aquila by Great Plains Energy?

13 JUDGE DIPPELL: I think there was a general  
14 question about when they had met with Staff. I don't  
15 think it was quite that specific. I'm going to overrule  
16 the objection. Go ahead. You may answer the question.

17 THE WITNESS: My answer to that is, I don't  
18 know. I know that it happened. I don't know the time  
19 frame exactly when it happened. Chris Giles, who is the  
20 head of our regulatory, would be able to give you specific  
21 timetable on that information.

22 BY MR. WILLIAMS:

23 Q. Didn't you testify in your deposition last  
24 week that if Great Plains Energy acquires Aquila, Aquila  
25 will not seek recovery from ratepayers of commodity

1 trading market manipulation -- let's try that again.

2                   Didn't you testify at your deposition last  
3 week that if Great Plains Energy acquires Aquila, Aquila  
4 will not seek recovery from ratepayers of commodity  
5 trading market manipulation claims?

6           A.       I believe it was a four-hour testimony, a  
7 lot of questions. I mean, that certainly -- as I hear you  
8 say the question, that would be my intent. But anything  
9 that's not related to Missouri customers would not be  
10 passed on to -- or would not be sought for recovery from  
11 the Aquila ratepayers.

12          Q.       Well, let me ask this question then. If  
13 Great Plains Energy acquires Aquila, will Aquila seek  
14 recovery from ratepayers of commodity trading market  
15 manipulation claims?

16          A.       Any claims that are not related to employee  
17 ratepayers -- I mean to Missouri ratepayers, would not be  
18 sought for recovery from Missouri ratepayers. That's the  
19 best way I can answer that question.

20          Q.       Would that include commodity trading market  
21 manipulation claims?

22          A.       If they -- to my knowledge, none of that is  
23 related to Missouri ratepayers. Therefore, that -- we  
24 would not seek recovery from that through rates. I think  
25 I'm getting to what you are asking there.



1 Great Plains Energy or KCPL have objections to the  
2 admission of any of the exhibits that have been discussed  
3 with Mr. Chesser, except for, again, the HC  
4 declassification issue.

5 JUDGE DIPPELL: Let me ask just generally,  
6 then, are there any objections to 101 through 108?

7 MR. ZOBRIST: None by Great Plains Energy/  
8 KCPL.

9 JUDGE DIPPELL: Other than the highly  
10 confidential. All right. Seeing no objections, I will  
11 receive Exhibits 101HC, 102HC, 103HC, 104HC and 105HC at  
12 least as those are designated now, 106, 107 and 108 into  
13 the record.

14 (EXHIBIT NOS. 101HC, 102HC, 103HC, 104HC  
15 AND 105HC, 106, 107 and 108 WERE RECEIVED INTO EVIDENCE.)

16 MR. ZOBRIST: Judge, might this be a good  
17 time to take a break?

18 JUDGE DIPPELL: That was going to be my  
19 next statement. We're going to take a short break this  
20 time, though, come back in ten minutes, that will be about  
21 13 minutes to the hour.

22 CHAIRMAN DAVIS: Judge, when we go back on  
23 the record, can I ask Mr. Chesser a few questions just to  
24 follow up on Mr. Williams' testimony? I think they're  
25 timely enough, I'd like to get to them. It may prompt the

1 other parties to ask a couple of questions.

2 JUDGE DIPPELL: That'll be fine. When we  
3 begin, we'll start with the Chairman's questions. We can  
4 go ahead and go off the record.

5 (A BREAK WAS TAKEN.)

6 JUDGE DIPPELL: Let's go ahead and go back  
7 on the record, and we were going to return from the break  
8 with questions from the Chairman.

9 QUESTIONS BY CHAIRMAN DAVIS:

10 Q. Good afternoon, Mr. Chesser.

11 A. Good afternoon.

12 Q. Okay. Real quickly, I believe you told  
13 Mr. Williams that there were roughly \$600 million worth of  
14 synergies to be achieved. Do you recall making that  
15 statement?

16 A. Yes, over a ten-year period.

17 Q. Over a ten-year period?

18 A. Right.

19 Q. Okay. And KCP&L in this case is seeking to  
20 recover half those proposed synergies over the first five  
21 years, correct?

22 A. That's correct.

23 Q. Now, what is -- and I'm going to try to do  
24 this without asking a question that would require us to go  
25 in a highly confidential -- I'm going to try to do this

1 without having to go into closed proceedings.

2 Aquila's debt alone that you would be  
3 asking the ratepayers to take on in this case is  
4 substantially more than any of the synergies that you have  
5 recognized or listed for the first ten years, correct?

6 A. I'm trying to think of how to answer that.  
7 I don't have the -- I don't have the financials in front  
8 of me about how it all breaks down.

9 Q. Can somebody provide --

10 A. Sure.

11 Q. Can somebody provide Mr. Chesser with a  
12 copy of, I believe it's Mr. Cline's supplemental direct  
13 testimony, and I would refer you to Attachment 6, MWC-6.

14 A. I need to get something else also if I may  
15 from my seat.

16 Q. Go ahead.

17 MR. FISCHER: I'm sorry, Mr. Chairman,  
18 what schedule did you refer to?

19 CHAIRMAN DAVIS: MWC-6, Cline's  
20 supplemental direct testimony. Mr. Fischer, do I need to  
21 just hand him my document?

22 MR. FISCHER: No, sir. I've got it. I'm  
23 sorry. There's just a lot of schedules here.

24 CHAIRMAN DAVIS: I don't want MC-5. I want  
25 him to look at MC-6.

1 MR. FISCHER: I'm there just about, Judge.

2 Is it 2 of 25 pages, is that what you have?

3 THE WITNESS: That's MWC-7.

4 CHAIRMAN DAVIS: I'm looking at MWC-6?

5 THE WITNESS: I've got it.

6 CHAIRMAN DAVIS: You've got it?

7 THE WITNESS: I've got it.

8 MR. FISCHER: Sorry for the delay.

9 BY CHAIRMAN DAVIS:

10 Q. Now, there are two totals listed on that  
11 page, correct, Mr. Chesser?

12 A. That's correct.

13 Q. The one in the middle of the page?

14 A. Right.

15 Q. Is that roughly the correct number that we  
16 are supposed to assume that that's the amount of Aquila  
17 debt that you'll be asking the ratepayers to assume?

18 A. I don't believe it is, and again,  
19 Mr. Bassham and Mr. Cline will be able to give you more  
20 insight into this, but my understanding is in the process  
21 of acquiring Aquila, we will be retiring much of that debt  
22 and financing with additional equity. So that in effect,  
23 I think the only surviving debt will be the \$500 million,  
24 not the 1.08 billion. But, again, I think they'll be able  
25 to give you more detail on that. That's my understanding.

1           Q.       Okay. So what's going to happen to that  
2 other amount which -- what's going to happen to everything  
3 but that 500 million?

4           A.       That will be retired in the process of the  
5 acquisition.

6           Q.       Okay. And who's paying for that?

7           A.       My understanding is that we will issue  
8 equity and probably some lower cost debt to handle that.  
9 So you have to talk with Mr. Bassham or Mr. Cline to get  
10 the exact breakdown. But some of that will be replaced by  
11 equity, and it will be shareholders who are making that  
12 investment for the possibility of getting a return on the  
13 investments that will be made.

14          Q.       Okay. Mr. Chesser, let me ask this  
15 question another way, and if we need to go to HC, I guess  
16 we need to go to HC, but what price, what is the total  
17 price that KCP -- or that GXP, KCP&L, whoever, what is the  
18 total price that they are paying for this transaction?

19          A.       It's on a per share basis, \$4.50.

20          Q.       What is the --

21          A.       I don't have the exact absolute dollar  
22 value.

23          Q.       Okay. Well, can you look at Mr. Cline's  
24 Schedule 4?

25          A.       Schedule 4. Okay. MWC-4.

1 Q. Okay. First full paragraph under the  
2 heading Scenario 2.

3 A. Right.

4 Q. You don't know what happened to Scenario 1,  
5 do you?

6 A. No.

7 Q. So you don't know. Okay.

8 A. No.

9 Q. Do you know if there were Scenarios 3 and 4  
10 or 5 or more?

11 A. I don't know.

12 Q. You don't know?

13 A. I don't know.

14 Q. So Mr. Cline, he'll have to answer that?

15 A. He'll have to answer that for you.

16 Q. Okay. First full paragraph under Scenario  
17 2, last sentence, line 4 of that paragraph, does that  
18 number contained in that sentence reflect the total  
19 transaction cost, to the best of your knowledge?

20 A. Says total transaction cost. Okay. We  
21 don't want to get into the detail.

22 Q. Including assumed debt?

23 A. Yeah. Let me read this, make sure.  
24 I believe that includes obviously the total  
25 cost including what we will then get compensated from

1 Black Hills.

2 Q. Okay. So that includes the compensation  
3 from Black Hills?

4 A. Right.

5 Q. And, in essence, the compensation from  
6 Black Hills is kind of a wash, though, it goes in, it  
7 comes out, correct?

8 A. Right. But it makes that last number in  
9 terms of the impact on KCP&L a lot lower.

10 Q. But that is the total transaction cost,  
11 right?

12 A. Right. That's my -- to the best of my  
13 knowledge.

14 Q. And then you've got to subtract the Black  
15 Hills cash and the Black Hills assets, correct?

16 A. Right.

17 Q. So -- and then paragraph 2 there, is that  
18 number roughly fair to say what the Black Hills  
19 contribution is there?

20 A. Yes.

21 Q. Okay. Now, what value -- first of all, to  
22 the best of your knowledge, did Lehman Brothers, or -- I'm  
23 sorry, I'm -- my recollection --

24 A. Blackstone.

25 Q. Yes. Did Lehman Brothers or Blackstone

1 Group put a valuation on the remaining assets to this  
2 transaction?

3 A. I believe I remember seeing that in the  
4 proxy.

5 Q. Okay. And do you recall what that  
6 valuation was?

7 A. There was a range.

8 Q. A range?

9 A. And I believe it was anywhere from 3.80 to  
10 4.20 on a stand-alone basis.

11 Q. Okay. So who's going to make up the  
12 difference?

13 A. The difference will be the enabled savings  
14 that the shareholders will -- will have access to over the  
15 long-term, as well as the growth opportunities the  
16 shareholders have access to over the long-term.

17 Q. Okay. But --

18 A. And I think, as I say, other witnesses will  
19 be able to talk you through that. I think you'll be able  
20 to see where, you know, the net value of \$4.50 a share  
21 provides, you know, if you look at it on future earnings  
22 projections, future growth opportunities, it -- you'll see  
23 where we'll be able to achieve a reasonable rate of  
24 earnings growth and at the same time maintain debt  
25 coverages. And we had our investment bankers that helped

1 us, you know, think that through.

2 Q. But those investment bankers are getting  
3 paid for the transaction, too, correct?

4 A. Both sets of such investment bankers are  
5 getting paid for the transaction.

6 Q. I guess, Mr. Chesser, you're the CEO, and  
7 I'm just asking you if you can construct for me a scenario  
8 whereby you can add up the value of these properties  
9 combined with any amount of synergies that you -- that has  
10 been listed by KCP&L in this filing to get to a number  
11 that is equal to the transaction costs as listed in, I  
12 guess, Mr. Cline's Exhibit 4, when you either -- when you  
13 try to make the apples to apples comparison?

14 A. Well, the best thing I can say is we work  
15 the financial models. We took into account the equity  
16 that we would have to raise, the debt that we would have  
17 to refinance. We looked at what that would result in in  
18 terms of earnings growth over the, you know, certainly  
19 longer than a five-year period. I think we looked out  
20 over a ten-year period, and we looked at what the net  
21 present value -- we looked at a number of different ways  
22 of getting -- assessing that 4.54. One is net present  
23 value of future earnings. That's one standard that they  
24 use. We also looked at times EBITDA multiples relative to  
25 the market. We believe that --

1           Q.       Okay. I'm not -- I'm not asking you if  
2 this is a good deal for KCP&L or Aquila shareholders.

3           A.       Okay.

4           Q.       And are you -- first of all, are you  
5 familiar with what the Commission's standard is for  
6 approving this transaction?

7           A.       Yes, no harm to the KCPL or Aquila  
8 customers, as I understand it.

9           Q.       Okay. And so hypothetically speaking, if  
10 we -- if we assume, you know, that these, you know, the  
11 assets are worth, you know, say \$1.6 billion, if you  
12 assume that that is the case, and then you subtract out  
13 the cash to Aquila shareholders, the GPE stock, the  
14 transaction and restructuring costs, the transition costs  
15 and the Aquila debt that GPE is going to have to assume,  
16 and if you're asking the ratepayers to back that up, how  
17 does that equation ever get back to zero for the  
18 ratepayers?

19          A.       I honestly believe as you -- as we can go  
20 through those details with you, which I don't -- I'm  
21 probably not the best person to do today, but as I've  
22 looked at the numbers, take into account all these costs,  
23 a difference between market rate and Aquila debt, whatever  
24 that would be, I think we're going to be able to reduce  
25 that, the 14 percent debt down to 11 percent.

1           Q.       Right. And that's factored in on Cline's  
2     Schedule 6, but there's still -- there's still a limit to  
3     the amount that you can restructure that debt to?

4           A.       Well, you can bring it down to 11 instead  
5     of whatever.

6           Q.       Right. And that's already factored in in  
7     Mr. Cline's testimony?

8           A.       Right. But if you take that all into  
9     account, you take the added interest costs, you take the  
10    transaction costs, the transition costs and the split  
11    savings, and you use, and this is, I think, critical as I  
12    said before, you have to use a longer time frame than five  
13    years. You have to look out over, you know -- it goes  
14    into perpetuity. As an example, we used ten years as a  
15    time frame to look at this over, because this is an  
16    investment very much like building a power plant where you  
17    make the investment in the short term and the benefits  
18    accrue for many years.

19          Q.       Okay. But isn't -- isn't the -- the debt  
20    service on, you know, a billion dollars worth of  
21    unregulated activity that you're asking -- I mean, it's my  
22    impression that you're asking the ratepayers to pick that  
23    up, and I guess I'm asking you is, can you put paper -- or  
24    pencil to paper and can you construct a scenario for me on  
25    that blackboard that shows that a scenario where

1 ratepayers actually come out ahead financially? Because  
2 even if you go over ten years, you know, and assume  
3 that -- assuming you -- that all of KCP&L's numbers are  
4 valid, I still can't construct a scenario to get the  
5 ratepayers back to even over the ten-year period.

6 A. I'm very confident we can do that, and I  
7 really think the best person to do that would be the  
8 people that are closest to the numbers are Terry Bassham,  
9 our chief financial officer, Mike Cline. I'm very  
10 confident they'll be able to go through a ten-year period  
11 and add all those costs up and address all of those, you  
12 know, debt cost and debt issues that you're talking about,  
13 and you'll see, not only even, you'll see a significant  
14 benefit to both KCP&L and Aquila customers.

15 Q. Okay.

16 A. We'll be happy to do that.

17 Q. Now, real quick, and that -- Aquila's  
18 shareholders -- let me just -- they get \$1.80 a share? Is  
19 that correct, do you recall? Is that roughly correct?

20 A. I'm trying to work the numbers here with  
21 you without all the numbers in front of me. I don't  
22 remember the exact.

23 Q. Okay. Do you know how many Aquila  
24 shareholder -- how many Aquila shares are outstanding?

25 A. No. I mean, as I say, I don't have those

1 numbers at my fingertips.

2 Q. Okay. Do you remember what any of the big  
3 round numbers are?

4 A. Sure. They're \$4.50 a share, is what I  
5 remember.

6 Q. Okay. And is that -- let me see if I can  
7 do some math here. So you said 4.80 a share?

8 A. 50 cents.

9 Q. \$4.50 a share?

10 A. Actually, I believe it's 4.54. I think  
11 that's it.

12 Q. So if it's 4.54, and if there are roughly,  
13 what, 375 million shares out there, is that right? Does  
14 that sound --

15 A. I don't know the exact number.

16 Q. But you have no reason to doubt that  
17 that's --

18 A. No. I'm willing to go along with it for  
19 you.

20 Q. You're willing to go along with it for  
21 purposes of --

22 A. Discussion.

23 Q. I'm trying to see if I can get to a number  
24 that you can recognize here. I come up with about  
25 \$1.7 billion. Does that number sound right? Does that

1     number ring any bells?

2             A.       Well, it's pretty close, yeah.

3             Q.       Okay.  So now, who -- and of that 4.54  
4     split, now then, some of that cash to Aquila shareholders  
5     and the rest is in GPE equity; is that correct?

6             A.       That's correct.

7             Q.       Okay.  So who's paying the 600 -- and I'm  
8     sorry, I don't even know if that's a highly confidential  
9     number or not.  But who's paying the cash to the Aquila  
10    shareholders?

11            A.       Most of the cash is coming from the sale of  
12    the gas properties.

13            Q.       Okay.  All right.  And then the GPE stock,  
14    how does that shake out?

15            A.       That's --

16            Q.       So are you saying that you know you're  
17    going to issue roughly more than a billion dollars worth  
18    of equity and are Missouri ratepayers going to be expected  
19    to pay the same dividends on that equity that they are  
20    currently paying?

21            A.       Yeah.  We're asking for a return -- I  
22    believe the new company will be -- have a roughly  
23    55 percent equity ratio, and we're expecting that, you  
24    know, similar returns will be gotten to KCPL, would be  
25    gotten at Aquila.  I mean, that's one scenario.  As I say,

1 we're talking about ranges of possibilities here.

2 Q. Okay. So having had the opportunity to  
3 review Ms. Cheatum's testimony, Mr. Dittmer's testimony,  
4 Mr. Schallenberg's testimony, Mr. Cline's testimony,  
5 Mr. Bassham's testimony, you know, do you have another --  
6 do you have another planning -- what is KCP&L's -- KCP&L  
7 or GPE's intentions if this Commission just rejects this  
8 proposal?

9 A. There's two pieces to that answer, if I  
10 could. First piece is the proposal as we presented it,  
11 and I look forward to having people lay out to you the  
12 benefits to the Missouri, to Aquila and KCPL customers,  
13 the proposal as we presented it has significant benefits  
14 for both sets of customers, and what we're proposing for  
15 the shareholders is a sharing of those benefits.

16 Q. But it's just the sharing over the first  
17 five years, correct?

18 A. Exactly. But the benefits to the customer  
19 go out, you know, in perpetuity. So I'm just saying, this  
20 is one, you know, effort that we've made to show what a  
21 reasonable balance between benefit to the shareholder and  
22 benefit to the customer would be.

23 Now, the second part to your question, if  
24 we don't get that, if we get something different, some  
25 different form, some higher or lower amount, you know,

1 we're not saying that we're not going forward with the  
2 deal. So there's two pieces here. One, what is the fair  
3 allocation of benefits between shareholder and customer,  
4 and then the other issue is, does the deal move forward or  
5 not.

6                   And we would have to take what we've got,  
7 work it through the financial models to see if it  
8 continued to make sense for the shareholder. A lot has  
9 changed. So we're asking for in the way of amortization  
10 -- by the way, I think amortization helps customers and  
11 the shareholder.

12                   Interest costs recovery and shared  
13 synergies is just our step at what would be a fair  
14 distribution. As I said all along, this is -- we've tried  
15 to convey to Staff, we're open to discussing what a better  
16 distribution of that would be.

17           Q.       Are you open to assuming all of the -- are  
18 you open to GPE assuming all of Aquila's unregulated debt  
19 for whatever interest rates you can get?

20           A.       As I say, there's three pieces to that pie,  
21 and I'd like to talk about all three of them. In other  
22 words, if we give here versus give there, there's an issue  
23 of transaction costs and transition costs and how they're  
24 recovered. I think we have to look at it as a package,  
25 but we're open to considering any one of those or all of

1     those elements.

2             Q.     Are you waiting for someone to come make  
3     you an offer?

4             A.     Well, no.  What I said is, and as  
5     frequently -- recently as this weekend, we've gone back to  
6     the Staff and we've said, you know, we'd like to discuss  
7     options around this, talk about some of these options that  
8     I talk about, and the feedback that we've gotten  
9     consistently is, we don't see a way you can make it work  
10    for the -- for KCP&L unless you drop the price, unless you  
11    drop the purchase price, and we're -- it's not worth  
12    negotiating on any of these other items unless we're  
13    willing to drop the purchase price.  Of course, we're  
14    contractually not allowed to do that.  So we think --

15            Q.     Should we just reject this proposal that's  
16    before us and then wait to see if the asking price gets  
17    lower?

18            A.     No.  No.  No.  I think the asking price is  
19    fixed.  I think the things that we're asking for in the  
20    way of interest recovery, synergy sharing, those are all  
21    open for negotiation.

22            Q.     Okay.  Mr. Chesser, what is your mental  
23    impression of what happens to Aquila if we just outright  
24    reject this deal?

25            A.     My sense is there would be -- it would be

1     problematic for them in a couple of different ways. They  
2     have significant investment requirements going forward,  
3     both Iatan units. They will have to have environmental  
4     investments in their coal units, they have significant  
5     growth going on in their service area. And for them to  
6     raise that amount of money in a scenario where they're not  
7     investment grade I think would be problematic.

8                     I think it could result in continued higher  
9     interest costs, and I think it would be a problem for  
10    their shareholders to continue to support that without it  
11    being recovered in rates. So I think you would see an  
12    upward pressure on rates in that way. And I think that,  
13    you know, the pressure on service quality would be there  
14    as well, frankly. So I think when they come with us, I  
15    think their rates would be overall lower over the  
16    long-term, significantly lower, and service quality would  
17    be better.

18            Q.       But you're saying that long-term?

19            A.       Ten years, and I think five years, you  
20    know, service quality would improve very quickly, and  
21    rates would be -- I mean, I'd be willing to --

22            Q.       Mr. Chesser, I'm going to cut you off  
23    there. I'll let your counsel, he can let you talk as long  
24    as you want to.

25            A.       Okay.

1           Q.       But if this is -- if this deal is so good,  
2     why can't one of the parties here advocating for any  
3     consumer interest or the Staff recognize it?

4           A.       I really don't know the answer to that. To  
5     me, it clearly has benefits. Hopefully the case we  
6     present to you this week will demonstrate that. But  
7     again, we remain willing to talk, collaborate on any of  
8     these points, but the one thing that we are contractually  
9     not able to do at this point is reduce the purchase price.  
10    We think there's plenty of value in here for the customer  
11    and the shareholder at this purchase price.

12          Q.       And in terms of the intangible value, you  
13    know, improved customer service, you know, maybe we won't  
14    have anything happen like South Harper again, can you --  
15    can you put a dollar value on that? Do you think that's  
16    worth, I don't know, \$100 million over ten years?

17          A.       You certainly -- I'd say the way I would  
18    look at that from a customer perspective is the risk of  
19    negative impacts would be lower. So we're a strong  
20    regional utility with a demonstrated track record, working  
21    with the community would result in, you know, a lower risk  
22    of adverse impacts, and it is hard to assign a dollar  
23    value to that, but I certainly think it is a -- it  
24    certainly is a subjective item on top of the financial  
25    benefits I believe we're going to be able to demonstrate

1 to you.

2 Q. And it's going to be -- it's going to be in  
3 live testimony. It's not already encompassed in the  
4 direct, the rebuttal or the surrebuttal testimony that  
5 we've already seen filed here?

6 A. When you say it's going to be --

7 Q. Whatever you're hoping to prove to me?

8 A. Oh, the financials, yes. I believe we can  
9 do that in live testimony, yeah. That's our -- that's our  
10 purpose in this hearing is to demonstrate that. The only  
11 thing that I ask is that we not get to this idea of we're  
12 going to -- you have to make investments today and they  
13 have to get paid back in five years, because I think that  
14 this is very much like other long-term investments we make  
15 as a utility. This is an investment for long-term  
16 benefits, and the financial benefits --

17 Q. But you'd also recognize that there are  
18 also long-term costs?

19 A. Absolutely.

20 Q. Associated --

21 A. Absolutely, and we have to net present  
22 value all of that, too, you know. You just don't make it  
23 absolute dollars.

24 Q. Okay. Well, you've -- we see the net  
25 present value of 340 million in your -- that's been

1       referenced in your prehearing brief here?

2               A.       Right.

3               Q.       What's -- what's the net present value of  
4       the Aquila debt?

5               A.       Well, one thing I'll say about the Aquila  
6       debt --

7               Q.       Do you know what the net present value of  
8       that debt is, yes, no --

9               A.       I can characterize it.

10              Q.       -- maybe?

11              A.       Can I characterize it?

12              Q.       You can characterize it as being more or  
13       less than that net present value of 341 million.

14              A.       Well, the debt retires in 2012, the part  
15       that's not going to be refinanced during the purchase is  
16       going to retire in 2012. It becomes due in 2012. That's  
17       when we can refinance to a competitive rate, assuming  
18       we're an investment grade company. So it's a cost of  
19       carrying that debt between now and 2012 that's a real cost  
20       to the customer.

21              Q.       Okay.

22              A.       And the cost of carrying that debt, you  
23       know, today it's 14 and a half percent. When it comes --

24              Q.       And best you can get is to --

25              A.       11 percent.

1           Q.       11 percent, and that will be carried out to  
2   2012?

3           A.       It's the difference between 7, which is  
4   market rate, and 11 for four years, or five, yeah, four  
5   years.

6           Q.       Okay.

7           A.       So that's -- that cost has to go into the  
8   cost column.

9           Q.       Right.

10          A.       Along with transaction costs and the  
11   transmission costs, and then we have to on the benefit  
12   column have this \$346 million net present value, and I  
13   believe that if you -- we can demonstrate to you that the  
14   benefits are going to significantly outweigh the costs.

15          Q.       What happens if you don't do that?

16          A.       They're going to have to first explain to  
17   me why they can't, because I have seen it and it's -- it  
18   works, but if not -- but I honestly believe that we'll be  
19   able to do that. Now, again, you know, once we do that,  
20   then the question is, well, what's fair and reasonable?  
21   How do these benefits get split between the customer and  
22   the shareholder, and that's -- that's another large part  
23   of the case, but we have to make that first hurdle, I  
24   agree with you.

25          Q.       Let me ask you this: If this merger

1 acquisition is not approved, what is your mental  
2 impression of what happens to Aquila in 2012 when that  
3 debt comes due?

4 A. That's a -- that's a big projection. I  
5 believe in 2012 they will be faced with significant  
6 capital requirements, you know, environmental investments  
7 and growth investments, and I believe, you know, a company  
8 their size will have trouble maintaining investment grade  
9 credit, meeting those requirements. Therefore, I think  
10 their --

11 Q. They're not investment grade now?

12 A. I mean reaching investment grade credit,  
13 keeping interest rates low. So I think their rates will  
14 be up higher, and I think their -- the financial risk of  
15 the enterprise will be significant. I mean, that's how  
16 I -- you're asking me for my judgment.

17 Q. But I guess if we go back to this whole --  
18 this whole idea of additional risk, this is additional  
19 risk that Aquila management assumed on their own?

20 A. Right.

21 Q. So ratepayers aren't responsible for that  
22 risk currently?

23 A. Correct. Correct. But I guess this is a  
24 different --

25 Q. You're not -- you're not -- you're not

1 saying that people should -- that companies should receive  
2 extra compensation for risks they voluntarily assume, are  
3 you?

4 A. No, I am not saying that.

5 CHAIRMAN DAVIS: All right, Judge. I'm  
6 done for the time being, but I'm probably going to have a  
7 lot more questions for Mr. Chesser after the other  
8 parties.

9 JUDGE DIPPELL: All right. Are there --  
10 would any of the other Commissioners like to ask questions  
11 at this time or shall I proceed with cross-examination?

12 COMMISSIONER MURRAY: Proceed on my behalf.

13 JUDGE DIPPELL: All right. Let's go ahead  
14 then and return to our cross-examination. I guess we'll  
15 begin with Public Counsel. No. I'm sorry. We begin with  
16 Aquila; is that correct?

17 MR. BOUDREAU: Thank you. No questions.

18 JUDGE DIPPELL: And Black Hills?

19 MR. DeFORD: No questions, your Honor.

20 JUDGE DIPPELL: And I'm assuming Department  
21 of Energy, the Unions and Dogwood Energy are still absent?  
22 Can you come forward? I'll let you go ahead and make your  
23 entry of appearance.

24 MS. WILLIAMS: Jane Williams from the law  
25 firm Blake & Uhlig, and I represent the five IBEW unions

1 here today. You want me to name their numbers?

2 JUDGE DIPPELL: No. That's fine. I'll let  
3 you make a written entry of appearance for the court  
4 reporter later.

5 MS. WILLIAMS: Okay. Thank you.

6 JUDGE DIPPELL: And you didn't have any  
7 cross-examination?

8 MS. WILLIAMS: I do not. Thank you.

9 JUDGE DIPPELL: Joint Municipals? Are they  
10 gone, too? City of St. Joe? City of Lee's Summit? City  
11 of Independence? City of Kansas City? Cass County?  
12 South Harper residents?

13 MR. COFFMAN: No questions, thank you.

14 JUDGE DIPPELL: Ag Processing, et al?

15 MR. CONRAD: Judge, I need to inquire, I  
16 guess to begin with, when we had broached this topic  
17 before, before this gentleman took the stand, there was  
18 indication he was going to be reoffered on Wednesday at  
19 the original time. Is that still the plan or --

20 JUDGE DIPPELL: There was an indication  
21 that if necessary he could be recalled. Are you telling  
22 me that you're not prepared to question him?

23 MR. CONRAD: Well, the problem is that I  
24 have some -- I have some notes here but they're not  
25 thorough. I've just been able to do them while the -- the

1 examination was going on. I could ask a few questions on  
2 those, but it may spawn others, and I have -- I haven't  
3 had a chance yet to look through this stack of exhibits.  
4 We just got these.

5 JUDGE DIPPELL: I understand.

6 MR. CONRAD: Just a day or about a day and  
7 a half ago. So you tell me, what's your pleasure?

8 JUDGE DIPPELL: I would prefer you ask the  
9 questions that you can ask now, Mr. Conrad, and then if  
10 you feel you haven't had a sufficient time, you let me  
11 know, and after we're finished with the cross-examination  
12 so forth I'll let you know whether we need to call  
13 Mr. Chesser back.

14 MR. CONRAD: Well, okay. I guess if that's  
15 how we're going to leave it, then perhaps I had better  
16 just say I need to reserve them until Wednesday, because  
17 to me, it's not the Bench's choice, it's mine as to how I  
18 represent my client.

19 JUDGE DIPPELL: I believe I'm the one  
20 that's controlling the process here today, Mr. Conrad.

21 MR. CONRAD: That's right, ma'am, but I'm  
22 the one that can make objections to it, and I made an  
23 objection earlier this morning and that was the  
24 accommodation that was agreed to.

25 JUDGE DIPPELL: Well, at this time I'm

1 going to overrule your objection from this morning and  
2 tell you that if you would like to cross-examine this  
3 witness, you may do so right now. If at the end of that  
4 cross-examination you feel that you haven't had a fair  
5 opportunity, please let me know. Then I will, at the end  
6 of the cross-examination, determine whether we need to  
7 call him back for further questions on Wednesday.

8 CHAIRMAN DAVIS: Judge, I'm going to  
9 object. I think at some point you need to pull this in.  
10 These parties obviously didn't have notice, and I don't  
11 know that I feel comfortable with you directing Mr. Conrad  
12 to proceed if he says he's not adequately prepared to do  
13 so.

14 JUDGE DIPPELL: Well, then, Mr. Conrad, do  
15 you feel that you're not adequately prepared, is that what  
16 you're telling me?

17 MR. CONRAD: Yes, ma'am, that is the  
18 objection I made earlier which you now overruled on the  
19 record.

20 JUDGE DIPPELL: Well, I'm reconsidering  
21 that objection in light of the Chairman's statements.

22 Mr. Mills, are you prepared to do your  
23 cross-examination?

24 MR. MILLS: Judge, as I said earlier, I am  
25 prepared to do some cross-examination. I think it will

1     probably be that I'm -- certainly if Mr. Chesser is going  
2     to be recalled on Wednesday anyway, I imagine I will have  
3     more given more time to prepare, but I do have some ready  
4     to go now and I'm willing to go forward with it.

5                     MR. ZOBRIST:   Judge, my only concern is two  
6     bites at the apple.  And I appreciate the Chairman's point  
7     about if we have parties that are unprepared, but, I've  
8     not consulted with my witness, but I understand everybody  
9     needs to have a fair opportunity to ask him questions, but  
10    I really don't want to offer everybody two bites at the  
11    apple.

12                    JUDGE DIPPELL:  I don't either.  I want to  
13    do whatever's most expedient, and it appears at this time  
14    that that would be to just recall Mr. Chesser on Wednesday  
15    when everyone was expecting him to be here in the first  
16    place.

17                    THE WITNESS:  That's fine.

18                    JUDGE DIPPELL:  So at this point --

19                    MR. MILLS:  Can I ask for a clarification?  
20    Does that mean that if I'm -- if there's any chance that I  
21    might have more questions on Wednesday, I shouldn't even  
22    start now, is that where we are, or should I start now?

23                    JUDGE DIPPELL:  I think we'll just wait  
24    until Wednesday.

25                    MR. MILLS:  Okay.

1 JUDGE DIPPELL: If there's a chance that  
2 they may have more questions.

3 THE WITNESS: Judge, I would like to  
4 apologize for messing up the schedule.

5 JUDGE DIPPELL: Mr. Chesser, that's fine.

6 THE WITNESS: I made an effort to -- I  
7 thought this was better. Okay.

8 JUDGE DIPPELL: It's not your fault.

9 Do you have something else, Mr. Zobrist?

10 MR. ZOBRIST: I have no redirect. Unless  
11 the Commissioners have questions, I guess it's Staff's  
12 witness, I don't want to impugn Mr. Williams.

13 JUDGE DIPPELL: We haven't completed his  
14 cross-examination. If there's going to be further  
15 cross-examination on Friday, you can --

16 MR. ZOBRIST: Wednesday.

17 JUDGE DIPPELL: I'm sorry, Wednesday. I'll  
18 confuse it even more.

19 MR. ZOBRIST: May Mr. Chesser be excused  
20 until Wednesday then, with the exception --

21 JUDGE DIPPELL: Are there any additional  
22 questions from the bench before I excuse Mr. Chesser until  
23 Wednesday? Commissioner Murray?

24 COMMISSIONER MURRAY: I might just go ahead  
25 and ask a couple.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Mr. Chesser, I'm having a little problem  
3 understanding the structure that's being proposed here.  
4 Is that better?

5 A. That's better. Yes. Thank you.

6 Q. The synergies that are contemplated are  
7 from the consolidation of -- or the integration of KCP&L  
8 and Aquila; is that correct?

9 A. The integration of the operations of KCP&L  
10 and Aquila, yes.

11 Q. And is there not some integration of assets  
12 as well?

13 A. Well, the assets will be owned either by  
14 KCPL or Aquila under Great Plains, as I understand it.

15 Q. You're not asking to merge KCP&L and  
16 Aquila?

17 A. Right, just integrate the operations.

18 Q. And how will the costs be allocated between  
19 the two entities for ratemaking purposes?

20 A. The -- we have this cost control -- I can  
21 never remember the name.

22 MR. ZOBRIST: Cost allocation.

23 THE WITNESS: Cost allocation agreement  
24 where people keep their time and they focus on whether  
25 they're spending time working on Aquila facilities or time

1 working on KCP&L facilities, and then, when in the case of  
2 back office like accounting or whatever, they're  
3 distributed, they allocate their time between the two  
4 facilities. We do that today. We -- it's a method that  
5 we -- our people know, we have confidence in them, we  
6 believe will work and be able to be tested.

7 BY COMMISSIONER MURRAY:

8 Q. And as the two entities exist today with  
9 the ownership structure that we have today, could there be  
10 the same kind of integration?

11 A. I think you need to have a common ownership  
12 and a common management oversight to decide on what  
13 operating practice you're going to use on a power plant,  
14 what call center practice you're going to use in a call  
15 center. You really need to have that common ownership,  
16 common management to implement the changes. These are  
17 cultural changes and they're not easy to make, and you  
18 need to -- I've never seen a situation where two companies  
19 can share decision-making responsibility and make  
20 something like that work effectively.

21 Q. So the decision-making responsibility will  
22 be at the parent level?

23 A. Decision-making responsibility will be at  
24 the KCPL -- in other words, the way -- I don't know if you  
25 have an organization structure in your front of you, but

1     you have --

2             Q.       I've seen it.

3             A.       KCPL, you have KCPL central operations.

4     You have KCPL regional operations. The management of both  
5     of them will be identical. It will be the person who's  
6     now CEO of KCPL, Bill Downey. So they will be  
7     operationally, the CEO of KCPL will be calling the shots  
8     for all those operations, and there will be joint  
9     integrated operations. And then dispatching crews,  
10    managing the fleet of power plants. It will be  
11    transparent to our employees, it will be transparent to  
12    our customers. In their eyes, they'll be dealing with one  
13    KCPL, the distinction here is really a legal distinction.  
14    It's not an operational distinction.

15            Q.       And what -- why should we allow two  
16    nonmerged entities, even if they have common ownership, to  
17    integrate their operations?

18            A.       Well, as I say, I think the benefits there  
19    for both groups of customers will be significant, and  
20    that's what we have to demonstrate to you, that it's --  
21    the cost will be lower, the rates will be lower than they  
22    otherwise would be, and the quality of service will be  
23    better. That's the real driving force for the  
24    integration.

25            Q.       You indicated when you were -- I believe

1     you were speaking to Chairman Davis earlier that the price  
2     is not -- purchase price is not subject to negotiation but  
3     the other elements are, for example, the sharing  
4     percentages. Now, if -- if those items are open for some  
5     changes to be made to the proposal, wouldn't Great Plains  
6     Energy be subjecting itself to weakening its financial  
7     status?

8             A.       That's -- that was a point that I was  
9     making earlier. We would have to look at what we  
10    ultimately were able to agree to, work that through our  
11    financial models to make sure that it wasn't impacting the  
12    credit rating for either KCPL or the new organization.  
13    And we believe at this point those are two different  
14    issues; one is what's fair and reasonable, and the other  
15    is what's needed to maintain the financial integrity of  
16    the new company. So we're not saying that unless we get  
17    all this, we can't maintain the financial integrity. So I  
18    hope that answers your question.

19            COMMISSIONER MURRAY: Thank you. I think  
20    that's all I'm going to ask right now.

21            THE WITNESS: Great. Thank you.

22            JUDGE DIPPELL: Thank you. Commissioner  
23    Appling, did you have anything?

24            COMMISSIONER APPLING: No questions.

25            JUDGE DIPPELL: Commissioner Jarrett?

1 COMMISSIONER JARRETT: No.

2 CHAIRMAN DAVIS: I've got more questions,  
3 Judge.

4 JUDGE DIPPELL: Mr. Chairman.

5 FURTHER QUESTIONS BY CHAIRMAN DAVIS:

6 Q. So Mr. Chesser, what issues are negotiable  
7 for you?

8 A. The package.

9 Q. The package?

10 A. Package.

11 Q. The package is negotiable?

12 A. The package is negotiable.

13 Q. Okay. And without divulging any  
14 attorney/client communications, Mr. Chesser, do you really  
15 believe that this Commission has the authority to order  
16 amortizations to support Aquila in a construction project  
17 without the unanimous consent of all parties to the case?

18 A. I have been advised that you do, but I'm  
19 not a legal expert.

20 Q. You've been advised -- you've been advised  
21 that you do -- we do?

22 A. That you do.

23 Q. Was your mental impression of that advice,  
24 was it certain, was it rock solid?

25 A. It was sufficiently strong to have that be

1 a part of the proposal, so I -- there's no guarantees on  
2 any of this, but I -- I consider it to be highly likely  
3 that you had the authority to do it.

4 Q. And to the best of your knowledge, had it  
5 ever been done in Missouri prior to the KCPL regulatory --  
6 experimental regulatory plan?

7 A. Well, as I indicated earlier, I don't know  
8 where it's been done anywhere prior to the experimental  
9 regulatory plan.

10 Q. Okay. So if what you're saying is true,  
11 then Empire Electric and Aquila could have come in and  
12 asked for it previously in rate cases and they chose not  
13 to, correct?

14 A. That would be my assumption, yeah. I mean,  
15 I think we've plowed new ground there, and the reason --  
16 can I --

17 Q. Sure.

18 A. The reason I felt like there was a good  
19 chance for acceptance is because it has strong benefits  
20 for everybody. It's not just the ratepayer that is -- I  
21 mean the shareholders benefiting from that. It's the  
22 ratepayer, because it keeps long-term borrowing costs  
23 down. That was, I think, one of the attractions to all  
24 the parties, they saw that amortization really, the way it  
25 worked, kept long-term rates down. So I believed it would

1 be -- this would be something that would be good for  
2 everybody, not just for the shareholder.

3 Q. And you can't understand why they're just  
4 not jumping all over it here?

5 A. I believe that keeping the price where it  
6 is, there is room for a win/win out of this, to create a  
7 package that will help, you know, give everybody what they  
8 need, maintain the financial integrity of the company, and  
9 to prove to you that, you know, there's significant  
10 long-term benefits for the customers, and I don't  
11 understand why they're not willing to engage in that  
12 without having a requirement you have to reduce the  
13 purchase price.

14 Q. Do you think it could be because they don't  
15 feel that the law and the facts are on your side?

16 A. Well, as applied to amortization?

17 Q. As applied to the whole transaction in  
18 general?

19 A. I-- it's a puzzle to me why -- since there  
20 are precedents around the country on shared savings, it  
21 would be a puzzle to me why that wouldn't be seen as  
22 something to negotiate around.

23 Q. Okay. Mr. Chesser, are you familiar with  
24 Schedule 14A that was filed by Aquila with the Securities  
25 Exchange Commission on March 7th of this year?

1 A. No, I'm not.

2 Q. Okay. So you don't know what -- what  
3 Blackstone, Lehman Brothers and Evicore had to represent  
4 about the -- the value of Aquila?

5 A. I think I said earlier that I have a  
6 general range in my mind.

7 Q. Okay. And is that a -- is that a public  
8 number?

9 A. I think it is. It was in the proxy  
10 statement.

11 Q. Okay. And what was that -- what was that  
12 number again?

13 A. Again, this is just what's in my mind, this  
14 isn't fact in front of me, but in my mind, it's 3.80 to  
15 4.20, somewhere in that area.

16 Q. And are those --

17 A. On a stand-alone basis. That's -- that's  
18 cents per share.

19 Q. Okay. Cents?

20 A. Dollars.

21 Q. Cents per share?

22 A. Dollar and cents per share.

23 Q. Okay. Okay. So what was the range again?  
24 \$3.80 per share to what?

25 A. I apologize. I turned this off, so -- a

1 lot of people will tell you that is my pet peeve. Let me  
2 turn this off for good.

3 Q. Take your time, Mr. Chesser.

4 A. I'm trying. Okay. So it's dollars and  
5 cents per share.

6 Q. And what was that number, 3.80?

7 A. To 4.20 that's the range I have in my mind.

8 Q. To \$4.20 per share?

9 A. Uh-huh.

10 Q. Okay.

11 A. On a standalone basis.

12 Q. On a standalone basis. So that excludes  
13 the Black Hills properties, correct?

14 A. No. I think on a standalone it included  
15 the Black Hills properties.

16 Q. Okay. So -- I'm just trying to do the math  
17 again here. If we just -- let's say we take the midpoint  
18 of \$4 times 375 million shares, roughly. I'm going to say  
19 that gets us to 1.5 billion. Is -- does that sounds like  
20 a good enough number for --

21 A. Sounds a ballpark.

22 Q. That's a ballpark number?

23 A. Uh-huh.

24 Q. Okay. And then you assume that the cash in  
25 and the assets for Black Hills, you know, are more or less

1 a wash, you know, so you've got -- you're basically  
2 getting a billion and a half in assets and the  
3 transaction, the time you figure out that you're paying  
4 4.50 a share, that gets to 1.7 billion, plus roughly what  
5 is it, 90 million in transaction costs, 45 million in  
6 transition costs, and then assuming another substantial  
7 sum of -- of debt, and that number far outweighs the value  
8 of the company, doesn't it, Mr. Chesser?

9 A. I'm not sure you can add all that on as you  
10 were doing that. In other words --

11 Q. Okay. Well, I'm adding it all up together,  
12 and you tell me why that's not correct.

13 A. Feels to me like the -- we're paying, as  
14 you say, 1.7 billion. They assessed it, it was  
15 1.5 billion, according to your numbers.

16 Q. Right. That's --

17 A. So that's \$200 million in difference.

18 Q. That's the cash?

19 A. Yeah, that's the value of the assets.

20 Q. Okay.

21 A. So that's \$200 million in differential in  
22 value. Then the question is, how can the combined company  
23 create that \$200 of additional -- \$200 million of  
24 additional value?

25 Q. I mean, how do you get around the billion

1 dollars of additional Aquila debt that's going to have to  
2 be refinanced, it looks like even by Cline's testimony is  
3 still going to be out there at a substantial interest  
4 rate?

5 A. Well, as I said, half a billion dollars of  
6 it will get refinanced at time of purchase, so now you're  
7 left with the other half.

8 Q. Okay. But can you --

9 A. And the other half is -- goes down to  
10 11 percent for a four-year period.

11 Q. Right. But ratepayers aren't on the hook  
12 for that debt right now, are they?

13 A. So part of -- one of the requests that we  
14 have is that you would -- we're asking that we collect the  
15 difference between market, which is 7 percent, and  
16 11 percent for that four year period. That's one of the  
17 items in the package that we've asked for.

18 Q. Okay. So then who's going to be servicing  
19 that debt thereafter?

20 A. It will get brought down to -- it will be  
21 investment grade company, and that will then get  
22 refinanced down to investment grade, 7 percent. It's just  
23 the provisions only go out to 2012.

24 Q. And can you guarantee that?

25 A. My understanding is, yeah, I mean, the

1 contract as it's set up says that that requirement for  
2 interest rate will expire in 2012.

3 Q. Okay.

4 A. That's my understanding.

5 Q. The requirement for that interest rate will  
6 expire?

7 A. In 2012.

8 Q. In 2012. But do you know what interest  
9 rates are going to be in 2012?

10 A. Well, all I'm saying is at that point we'll  
11 be able to go down to a market-based rate, just as all of  
12 our other debt would be. Customers will not be paying any  
13 premium rate at that point.

14 Q. Okay. But as of right now, Missouri  
15 ratepayers are locked in at 7 percent on that debt?

16 A. Right.

17 Q. Correct?

18 A. Right.

19 Q. So are you saying that in 2012, when and if  
20 that debt gets refinanced and it's at a higher interest  
21 rate than 7 percent that Missouri ratepayers should bear  
22 those costs?

23 A. Again, I'm not sure what would happen in  
24 Aquila stand alone. My sense was that the understanding  
25 was that ratepayers should not be penalized for above

1 market interest costs. So in 2012, they'll have the  
2 opportunity to pay, to refinance that at market interest  
3 costs. It might be lower. It might be 6 percent, or it  
4 might be higher, but it will be market. They say there  
5 won't be any penalty from the unregulated operations.

6 Q. Okay. So if I understand your position  
7 correctly, it's that just you want the ratepayers to pick  
8 up the tab on the interest on that 500 million for the  
9 next four years?

10 A. Four years.

11 Q. And then you're going to refinance it, and  
12 if it -- if it gets refinanced at less than 7 percent,  
13 then ratepayers will benefit from a lower cost of service,  
14 but if it gets refinanced at more than 7 percent, then  
15 they are on the hook for that additional -- that  
16 additional sum of money, right?

17 A. That's -- they would be paying market rate,  
18 and I'm not sure how the current deal is. I'm not sure  
19 that that 7 percent is in perpetuity or just goes for  
20 the -- until those notes expire in 2012. That might be  
21 the case.

22 Q. In GXP's analysis, did you look and see  
23 what the effect of an Aquila bankruptcy would have?

24 A. Before the integration or after the  
25 integration? We didn't consider after --

1 Q. Either. I'm intrigued now.

2 A. We didn't consider it after, because we  
3 didn't think that would be --

4 Q. Okay. So if you -- what did you consider  
5 in the premerger that if Aquila would have gone bankrupt,  
6 what would happen then, would you --

7 A. We have a clause in there that says if  
8 there's a material adverse impact, which I think a  
9 bankruptcy would qualify for, then we would not be  
10 required to pay the breakup fee as part of the merger. So  
11 that's the way -- we wouldn't go forward with the merger  
12 if they had that material adverse impact, which I think a  
13 bankruptcy would --

14 Q. Okay. But that's really not the question I  
15 was trying to get at. Let me ask this another way. Has  
16 GXE, KCP&L, to the best of your knowledge, then, done any  
17 analysis as to what the value of Aquila would be in a  
18 bankruptcy setting? Would it be the same as, you know,  
19 that, you know, provided by Blackstone, Lehman Brothers  
20 and Evercore in the -- I think it's Schedule 14A filed  
21 with the SEC?

22 A. We haven't done that specific analysis, I  
23 think, to answer that question.

24 Q. You haven't done that?

25 A. We haven't. We have done scenarios around

1    what if, you know, earnings go up or down, affected by  
2    external events. We haven't done any -- taken it all the  
3    way to the point where they're actually in bankruptcy.

4           Q.       And Mr. Chesser, I've heard you testify  
5    here earlier that -- that everything is negotiable, so I  
6    understand that, and that's why I'm going to ask you this  
7    question one more time. Do you have a plan B or C, and if  
8    so, what is it?

9           A.       We honestly don't have a plan B or C. Our  
10   plan is to talk about what is a fair distribution of the  
11   benefits between the customers and the shareholders.

12          Q.       Okay. And can I cut you off there.  
13   Mr. Zobrist or Mr. Fischer can --

14                  Okay. I hear you talking about the fair  
15   distribution of the purported benefits, but what I -- but  
16   what I don't hear you addressing is a fair distribution of  
17   the proposed liabilities. Would you care to respond to  
18   that?

19          A.       Well, that's one of the reasons why I think  
20   that the shareholders for the most part are deserving to  
21   share some of the benefits, because I think they hold the  
22   bag on the liabilities. You know, there are issues that  
23   are not yet resolved that we take on as part of this  
24   merger. We need to be in a -- you know, it's our job --

25          Q.       But aren't you voluntarily assuming that

1 risk by entering into a merger with Aquila?

2 A. We are, and in return for assuming that  
3 risk, I think the shareholder needs to get a return on  
4 that -- that -- taking on that risk. I mean, it is -- the  
5 risks are not enormous. We feel like we've bounded them.  
6 They're manageable. But we do think therein lies the  
7 argument of why the shareholders should share in some of  
8 these benefits.

9 Q. Okay. But what about the liabilities?

10 A. The liabilities -- okay. Go ahead.

11 Q. Okay. So you've got the ratepayers picking  
12 up the tab for the interest on \$500 million for the next  
13 four plus years until 2012?

14 A. Right.

15 Q. You've got the ratepayers, I'm assuming,  
16 picking up the tab for another 5 to \$600 million in  
17 liabilities through refinancing or whatever that will  
18 occur here in the near future, or is that just anything  
19 above 7 percent?

20 A. Well, no. You're talking about the  
21 other -- are you talking about for that same 500 million?

22 A. No there's two?

23 A. Right.

24 Q. There's a big round -- there's a big round  
25 number that's --

1           A.     Right.

2           Q.     -- that's -- that's in the, I guess the ten  
3 digit range?

4           A.     Right. So again --

5           Q.     Count the digits?

6           A.     Black Hills cash goes to help us retire  
7 some of that debt.

8           Q.     Okay.

9           A.     And then some of the equity we will show  
10 will retire some of that debt. So it gets down to the --  
11 to the \$500 million we were talking about earlier.

12          Q.     Mr. Chesser, I guess we're -- you I know,  
13 I'm just from Mars and you're just from Venus or  
14 something, because I just don't think that we're having a  
15 meeting of the minds here concerning, you know, there --  
16 obviously -- I mean, it's -- this looks like it's a good  
17 deal for shareholders, but I'm still having difficulty  
18 coming to the -- to the realization or to the -- that  
19 there's a -- anything but a detriment to the ratepayers  
20 here in this case. So is there anything else in your  
21 testimony here that you haven't said yet that can offer me  
22 any reassurance, or have you already said it all?

23          A.     Well, let me summarize. If you take a look  
24 at the costs, take a ten-year time frame, take a look at  
25 the costs on one side, of the benefits on the other, the

1 shared savings up through five years and then all the  
2 benefits belong to the customer after that, I believe  
3 we'll be able to demonstrate to you conclusively that the  
4 benefits outweigh the costs, and that will come in future  
5 testimony.

6 Q. All right. And last -- and last but not  
7 least, so that other than the purchase price and what  
8 you're paying, everything else is on the table, correct?

9 A. Everything else is on the table.

10 Q. Okay. So hypothetically speaking, then,  
11 you know, it still seems like to me that you're waiting  
12 for this Commission to either tell you no, or waiting for  
13 Mr. Schallenberg and Mr. Conrad, Mr. Mills, Mr. Coffman,  
14 Mr. Williams and everybody else here to come up with a  
15 counter proposal, and is --

16 A. Let me --

17 Q. Is that what you're waiting on?

18 A. Can I just -- the thing that worked in the  
19 collaborative plan the first time we went through it was  
20 we sat around a table and neither one had a formal  
21 proposal or formal flag in the stand. We talked about  
22 different issues and what would be a possibility for a  
23 win/win. Let me give you an example. Let's say that  
24 there was concern about whether all the synergies could be  
25 achieved year one, that kind of thing would get brought to

1 the table, and we'd say, well, how would we deal with  
2 that? Well, maybe we can phase in the synergies instead  
3 of factoring it in year one. So it's a back and forth  
4 dialog where people are committed to try to come up with  
5 -- something that, you know, in that case it could be a  
6 win/win for the shareholder and the customer.

7 So we're absolutely open to that. And  
8 rather than one party or the other come forward with the  
9 first offer, my suggestion is the parties sit down at a  
10 table and engage like we did before.

11 Q. And is it your recollection, your mental  
12 impression that you as the moving party in this case have  
13 the burden of proof?

14 A. I believe that we need to be able to  
15 demonstrate conclusively to the Commission that there is  
16 no detriment in this case to the customers, and I have  
17 confidence we can do that.

18 Q. Okay. So you're acknowledging that you do  
19 have the burden of proof in this case, correct?

20 A. That's my mental impression, as you say.

21 Q. Okay. All right. So if anything else  
22 needs to be said to any of these parties, it's also your  
23 burden to go ask them to meet with you, correct?

24 A. Absolutely. Yeah. Absolutely.

25 Q. Yeah. Okay. All right. So if they do

1 nothing and this thing goes down in flames, then they're  
2 not really responsible, are they?

3 A. Repeat that one more time.

4 Q. I said if they do nothing and this proposal  
5 goes down in flames, they're not really responsible, are  
6 they?

7 A. I can commit to you now, we will go back  
8 again and ask to engage, but we have asked that. We will  
9 ask it again. I would say if they -- if they won't engage  
10 with us, that's the point of frustration.

11 CHAIRMAN DAVIS: Thank you, Judge. I don't  
12 know. You may -- I think it would be appropriate given  
13 the late hour that if attorneys want the opportunity to  
14 respond to any of the Commissioner questions today, I  
15 think it would be appropriate to offer them a timely  
16 opportunity to do so.

17 JUDGE DIPPELL: I was thinking the same  
18 thing, given that the questions are fresh in your minds.

19 COMMISSIONER MURRAY: Judge, may I --

20 JUDGE DIPPELL: Commissioner Murray, go  
21 ahead.

22 COMMISSIONER MURRAY: -- may I ask another  
23 question or two?

24 JUDGE DIPPELL: Go ahead.

25 COMMISSIONER MURRAY: Thank you. I think I

1 can make this short.

2 THE WITNESS: Sure.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. And you've probably explained this before,  
5 but in that Aquila had committed to hold ratepayers  
6 harmless for their below investment grade rating due to  
7 nonregulated activities, how does the lowering of the  
8 interest rate because of achieving investment grade status  
9 benefit the ratepayers, and at what point in time will  
10 they see that benefit?

11 A. I think -- my understanding is that the --  
12 Aquila had committed to carry the above market debt and  
13 only collect market rates. It was not my understanding  
14 that was in perpetuity.

15 Q. It was your understanding that was until  
16 2012?

17 A. 2012, yes.

18 Q. So you're saying that the ratepayers will  
19 begin to benefit in 2012?

20 A. Yeah.

21 Q. But isn't it also possible that the credit  
22 ratings of both KCP&L and Aquila could be negatively  
23 affected by this transaction?

24 A. I believe that it's going to be positively  
25 affected as opposed to negatively. I think our business

1 risks will go down. One of the key elements for a  
2 business risk in a credit rating is the percent of your  
3 total assets that are nuclear. So here we will actually  
4 have a lower percent of nuclear assets, and I believe that  
5 the, you know, the growth in the Aquila service area, the  
6 increased revenue, you know, the new company, the strong  
7 regional new company will be bigger, stronger, less risky  
8 and that our credit rating will, you know, my hope would  
9 be our credit risk score would improve as a result of  
10 that.

11 Q. You just said the strong regional new  
12 company. What entity are you referring to now?

13 A. I consider -- I think in terms of the  
14 strong regional utility that has Aquila properties, Aquila  
15 assets, KCPL assets, it's very similar to the company when  
16 I was at GPU where we had Metropolitan Edison, we had  
17 Pennsylvania Electric, all companies that had been  
18 separate companies, the assets and rates were different,  
19 but we operated as a combined entity. So this -- there's  
20 a precedent for this. This is not unprecedented and we've  
21 got all the synergies who operate as a combined entity.

22 Q. Without being a merged entity?

23 A. Right.

24 COMMISSIONER MURRAY: Thank you.

25 JUDGE DIPPELL: Okay. Commissioner

1 Appling, anything further from you?

2 COMMISSIONER APPLING: I'm going to let it  
3 go.

4 JUDGE DIPPELL: Commissioner Jarrett?

5 COMMISSIONER JARRETT: No.

6 JUDGE DIPPELL: All right. Would there be  
7 any cross-examination based on questions from the Bench  
8 from Aquila?

9 MR. BOUDREAU: Just a point of  
10 clarification. Mr. Chesser's going to be back on  
11 Wednesday?

12 JUDGE DIPPELL: He's going to be back on  
13 Wednesday, and there may very well be additional  
14 Commission questions after the additional cross-  
15 examination.

16 MR. BOUDREAU: That goes, I guess, to my  
17 follow up. Could I reserve the opportunity to see how  
18 that plays out? I understand that it may be some  
19 advantage to do it while it's timely and fresh, but if  
20 it's okay with you, I'd like to reserve that option.

21 JUDGE DIPPELL: That's fine.

22 MR. COFFMAN: Is that intended to be first  
23 thing Wednesday morning?

24 JUDGE DIPPELL: That's the way I had it on  
25 my schedule, yes.

1 THE WITNESS: I'm at your disposal.

2 JUDGE DIPPELL: Thank you. Would there be  
3 anything today from Black Hills based on questions from  
4 the Bench?

5 MR. DeFORD: None, your Honor.

6 JUDGE DIPPELL: Anything from the unions?

7 MS. WILLIAMS: No, your Honor.

8 JUDGE DIPPELL: Dogwood Energy, they're  
9 absent. Joint Municipals? I believe the cities and Cass  
10 County are all absent at this time. South Harper  
11 residents?

12 MR. COFFMAN: No, thank you.

13 JUDGE DIPPELL: Ag Processing?

14 MR. CONRAD: Sir, the question?

15 JUDGE DIPPELL: Any further  
16 cross-examination based on the questions from the Bench or  
17 would you like to reserve 'til Wednesday?

18 MR. CONRAD: I would, please.

19 JUDGE DIPPELL: Public Counsel?

20 MR. MILLS: I'd like to go now, thank you.

21 CROSS-EXAMINATION BY MR. MILLS:

22 Q. Mr. Chesser, you had some questions from  
23 Chairman Davis about the balancing of shareholder and  
24 ratepayer interest. Do you recall those?

25 A. Yes.

1           Q.       When do you expect the first benefits to  
2   turn up in ratepayers' pockets?

3           A.       My -- again, the Chairman talked about  
4   mental impressions, so I'll give you my mental impression  
5   of how this will play out. I think there will be benefits  
6   ands costs during the first five years, such that they  
7   were, you know, costs may be a little bit more than the  
8   benefits, but they will be roughly in balance, and then  
9   after the five year period, I think there will be a large  
10  stream of benefits.

11          Q.       Okay. Let me back up then. Do you believe  
12  that, absent this merger, Aquila's rates would be higher  
13  or lower over the next say five years?

14          A.       It's hard for me to speculate on what's  
15  going to come out of the rate case, but they may be  
16  marginally higher, but they would be significantly lower  
17  in the long-term.

18          Q.       What do you mean by the long-term?

19          A.       Perpetuity.

20          Q.       Beginning when? When will they begin to be  
21  lower?

22          A.       The mental image I have is after the  
23  sharing mechanism stops in the first five years and all  
24  the benefits start flowing to the shareholder -- I mean to  
25  the customer, at that point they would be lower, and they

1 would stay lower.

2 Q. So you think benefits will begin to -- will  
3 begin to outweigh costs after five years; is that correct?

4 A. I think they would roughly be in balance  
5 after -- in the first five years. There may be a marginal  
6 higher depending on how you look -- how you calculate it,  
7 but beyond that, I think they would be significantly in  
8 the category of benefitting the ratepayer.

9 Q. Let's ask the same question for KCPL  
10 ratepayers. Will rates for KCPL ratepayers in the first  
11 five years be higher or lower because of the merger?

12 MR. ZOBRIST: I just want to object. I'm  
13 going to object to the witness asking questions, but is  
14 the presumption no rate cases are filed or we follow the  
15 schedule of rate cases in the regulatory plan? In other  
16 words, is the question, will they be higher than what they  
17 might ordinarily be with the rate cases planned or would  
18 they be less than they're expected to be?

19 MR. MILLS: I don't know if that's an  
20 objection or not. Did you understand my question?

21 MR. ZOBRIST: I object to lack of  
22 foundation because I don't think it's a clear question.

23 THE WITNESS: Let me clarify. I was  
24 answering, not absolutely whether --

25 JUDGE DIPPELL: Just a moment, Mr. Chesser.

1 I have an objection pending. I believe that the question  
2 that Mr. Mills was asking was relevant to questions from  
3 the Commissioners. So if that's your objection, it's  
4 overruled.

5 BY MR. MILLS:

6 Q. You can go ahead and answer.

7 A. First of all, the context is I'm answering  
8 higher than they otherwise might be, not in the absolute  
9 sense, because there is embedded rate increases that will  
10 happen as a result of construction.

11 Q. I understand.

12 A. So are they higher or lower than they  
13 otherwise might be? And I'm trying to think through how  
14 that would be accounted for. Again, my sense sitting here  
15 is that both sets of customers would have costs and  
16 benefits that were roughly equivalent -- costs may be  
17 slightly higher than the benefits during the first five  
18 years, not a material difference, and then beginning year  
19 ten, I mean, year five, significant benefits flow to both  
20 sets of ratepayers.

21 Q. And when you say costs and benefits in the  
22 first five years, are you talking about dollar benefits or  
23 are you talking about benefits in terms of service quality  
24 or --

25 A. Dollar.

1 Q. You're talking about dollar benefits.

2 Okay.

3 A. The service benefits on top of that would  
4 be -- will begin, you know, year one.

5 Q. Do you know what the term accretive means?

6 A. Yes, I do.

7 Q. When will the transaction be accretive for  
8 GPE shareholders?

9 A. I believe we projected being accretive,  
10 slightly accretive in year two.

11 Q. So that would be 2009?

12 A. Right.

13 Q. So in terms of benefits beginning to flow  
14 to shareholders, that will come in 2009, after approval  
15 sometime in 2008?

16 A. But it will end at the end of that  
17 five-year period. That's my point.

18 Q. The benefit to shareholders will end at the  
19 five years period?

20 A. The financial benefit will end at the  
21 five-year period because you have -- I mean, as you're  
22 calculating them, the shared savings only gets shared over  
23 five years, and after that, all the benefits go to the  
24 ratepayer.

25 MR. MILLS: I'd like have an exhibit

1 marked.

2 JUDGE DIPPELL: All right.

3 JUDGE DIPPELL: I believe Public Counsel's  
4 next Exhibit No. is 202.

5 JUDGE DIPPELL: Dare I ask, is this public?

6 MR. MILLS: This is public.

7 (EXHIBIT NO. 202 WAS MARKED FOR  
8 IDENTIFICATION BY THE REPORTER.)

9 BY MR. MILLS:

10 Q. Mr. Chesser, do you recognize what's been  
11 marked as Exhibit 202?

12 A. Yes, I do.

13 Q. Is this a presentation that you gave to the  
14 Edison Electric Institute a little less than a month ago  
15 or I should say you and in combination --

16 A. Yeah, in combination with others.

17 Q. And the others are?

18 A. Bill Downey, I believe, and Shiid Mallik  
19 (phonetic).

20 Q. And both of those individuals are direct  
21 reports to you?

22 A. Yes.

23 Q. Can you show me where in this exhibit that  
24 it shows that the benefits to KCPL shareholders stops  
25 after five years?

1 A. The benefit of the merger?

2 Q. Yes.

3 A. Right. Okay. I don't think it  
4 differentiates. I don't think it lays out the benefits of  
5 the merger that I know of. If you look at the last page,  
6 it says Great Plains standalone for earnings range.

7 Q. Can you turn to the third page of the  
8 exhibit under the bullet enhanced shareholder returns?

9 A. Uh-huh.

10 Q. Does that indicate that the Aquila  
11 acquisition is expected to be accretive 2009 and beyond?

12 A. Yes.

13 Q. Does it also indicate that the combined  
14 KCPL equivalent rate base is anticipated to grow to  
15 5.6 billion by 2010?

16 A. Right.

17 Q. And if you will look at the last page of  
18 the exhibit, does the last bullet on the last page say  
19 Aquila transaction is anticipated to be accretive to this  
20 path in 2009 forward?

21 A. Yes.

22 MR. MILLS: Judge, with that I'd like to  
23 offer Exhibit 202 into the record.

24 JUDGE DIPPELL: Would there be any  
25 objection to Exhibit No. 202?

1 MR. ZOBRIST: No objection.

2 JUDGE DIPPELL: Seeing none, I will receive  
3 it into evidence.

4 (EXHIBIT NO. 202 WAS RECEIVED INTO  
5 EVIDENCE.)

6 BY MR. MILLS:

7 Q. Mr. Chesser, one of the last things I think  
8 you talked about with Chairman Davis was GPE's or KCPL's  
9 or both companies' willingness to sit down and talk with  
10 other parties. Do you recall that?

11 A. Yes.

12 Q. If you were to take up that action now,  
13 would you be willing to suspend the hearings while these  
14 negotiations were taking place and reschedule them at a  
15 later time?

16 A. For a period of time. We have an  
17 obligation to try to get this merger approved in a  
18 reasonable time frame. But if there were fruitful  
19 opportunities to do that without the criteria you had to  
20 -- we had to reduce the purchase price, for a reasonable  
21 period of time, I would be willing to do that.

22 MR. MILLS: Those are all the questions I  
23 have in response to the questions from the Bench most  
24 recently.

25 JUDGE DIPPELL: All right, then. What

1 about Staff, is there further cross-examination based on  
2 questions from the Bench?

3 MR. WILLIAMS: No.

4 JUDGE DIPPELL: And does Great Plains have  
5 redirect based on those questions from the Bench?

6 MR. ZOBRIST: Not at this time, Judge.

7 JUDGE DIPPELL: All right. Seeing nothing  
8 further, then, for Mr. Chesser, I'm going to let him step  
9 down for today and ask him to return Wednesday morning.

10 THE WITNESS: I will.

11 JUDGE DIPPELL: Yes, Mr. Zobrist?

12 MR. ZOBRIST: My thought is, since it's  
13 about 4:30 and although Mr. Downey is here, it would be --  
14 I'm doing this without consulting with Mr. Downey, but I'm  
15 thinking perhaps bring both Mr. Chesser and Mr. Downey  
16 back on Wednesday, if that was your thought, Mr. Giles was  
17 to have been, I think, our first tendered witness, and if  
18 the Commission chose, we could proceed with him, but I  
19 would just like to hold Mr. Downey until Wednesday since a  
20 number of the parties indicated they were not prepared to  
21 cross-examine him.

22 JUDGE DIPPELL: I think that that is a  
23 reasonable way to proceed given that it's almost 4:30 now.  
24 Would there be any problem, and I'm going to kind of look  
25 over here at the court reporter, with going a little late

1 today? Okay. What we might do then is go ahead with  
2 Mr. Giles.

3 MR. ZOBRIST: Could we take a short break,  
4 Judge?

5 JUDGE DIPPELL: Okay. This is my thought  
6 and I'll let you-all discuss it after a short break, that  
7 we go ahead with Mr. Giles, we try stay a little bit late,  
8 make up a little bit of our time today so that we're not  
9 here forever. And are there any other procedural process  
10 concerns or questions before we take a short break?

11 All right, then, let's go ahead and take a  
12 ten-minute break there about, come back at 20 'til.

13 (A BREAK WAS TAKEN.)

14 (EXHIBIT NO. 15NP AND HC WAS MARKED FOR  
15 IDENTIFICATION BY THE REPORTER.)

16 JUDGE DIPPELL: Let's go ahead and go back  
17 on the record. We were going to talk a little bit about  
18 the rest of the procedure for today and starting tomorrow  
19 and so forth. Mr. Boudreau, were you wanting to say you  
20 had --

21 MR. BOUDREAU: I had a question. As usual,  
22 it's a self interest in terms of basis for it. I need a  
23 little bit of clarification. We're still expected to file  
24 a response to Public Counsel's motion tomorrow morning, so  
25 we have that homework assignment in front of us, so I

1 wanted to get some guidance from you, No. 1, about when  
2 the motion ought to be filed in terms of do we have an  
3 hour, a time in mind tomorrow; and No. 2, keep that in  
4 mind in terms of how late we go tonight. We do need to  
5 retire and take care of that bit of business.

6 JUDGE DIPPELL: All right. Yeah. I wasn't  
7 planning on going really late tonight. Six would be as  
8 late as I would have us go. Is 8:30 all right for a start  
9 time tomorrow? All right. We plan to start at 8:30, and  
10 I would expect your response by 8:30. So would there be  
11 any problems with --

12 MR. ZOBRIST: Judge, I was going to say  
13 that if we choose to just make an oral presentation, or  
14 are you requiring us to have a written presentation?

15 JUDGE DIPPELL: I would like you to go ahead  
16 and do it in writing if you can. It was originally  
17 supposed to be in writing.

18 MR. CONRAD: We'll waive your oral  
19 presentation.

20 MR. ZOBRIST: Thank you.

21 JUDGE DIPPELL: Also, I have -- I have my  
22 version of everyone's exhibit list with the prenumbered  
23 exhibits on it, if that would be helpful to the parties,  
24 I'd be happy to make you copies of that. All right. And  
25 I passed out the version of the notice with the thickened

1 black lines, and I won't tell you what my secretary said  
2 about that, but -- and that was -- I filed that in EFIS.

3 And Mr. Zobrist, earlier I believe I  
4 misunderstood your objection. You were making an  
5 objection to foundation and I'm just going to overrule  
6 that, too.

7 Okay. Let's go ahead and just get started  
8 with Mr. Giles and then we'll see how it goes about 5:30  
9 to 6:00. If there's a breaking point in there somewhere,  
10 we'll stop.

11 MR. RIGGINS: Judge, just as a preliminary  
12 matter, I think Mr. Giles is actually the first witness  
13 who prefiled testimony and those pieces have been marked  
14 as Exhibits 15HC and 15NP.

15 In some previous cases the parties  
16 sometimes dispensed with the formalities of asking all the  
17 form and foundation questions as a means to save a little  
18 bit of hearing room time. It doesn't matter to me which  
19 way we do it, but I just thought I'd raise the question  
20 since this is the first opportunity that we've had to  
21 discuss it.

22 JUDGE DIPPELL: Would anyone have an  
23 objection to waiving those preliminary questions? We will  
24 assume that the witness is finding the information to be  
25 true and accurate, and I'll assume if you have any

1 corrections you'll bring those up. All right, then.

2 MR. CONRAD: I don't think we do, just to  
3 be clear. It's just who are you, did you prepare this --

4 JUDGE DIPPELL: Correct.

5 MR. CONRAD: -- under your direction and  
6 supervision, if I were to ask you the same questions I  
7 asked you a few minutes ago in the hall, would your  
8 answer's be the same?

9 JUDGE DIPPELL: That's correct, Mr. Conrad.

10 MR. CONRAD: That's fine. I often make the  
11 same suggestion and I do think it -- when you have a bunch  
12 of witnesses, it does save some time. Thank you.

13 (Witness sworn.)

14 JUDGE DIPPELL: With that, Mr. Riggins, do  
15 you have any corrections or are you ready to tender him?

16 MR. RIGGINS: I don't believe so.  
17 Mr. Giles is available for cross-examination on his  
18 surrebuttal testimony.

19 JUDGE DIPPELL: Okay. Mr. Giles is not one  
20 of the witnesses that Staff is calling?

21 MR. RIGGS: No.

22 JUDGE DIPPELL: I had that written down  
23 wrong. I'm sorry. All right, then. Cross-examination by  
24 Aquila?

25 MS. PARSONS: We have no cross for

1 Mr. Giles.

2 JUDGE DIPPELL: Black Hills?

3 MR. DeFORD: No questions.

4 JUDGE DIPPELL: The unions?

5 MS. WILLIAMS: No questions, your Honor.

6 JUDGE DIPPELL: And I believe Department of  
7 Energy, Dogwood Energy, Joint Municipals and the cities  
8 and Cass County are all absent. Anything from South  
9 Harper residents, who I also do not see their attorney?  
10 Ag Processing?

11 MR. CONRAD: Very quick.

12 CHRIS GILES testified as follows:

13 CROSS-EXAMINATION BY MR. CONRAD:

14 Q. Mr. Giles, do you know a Mr. Bassham?

15 A. I didn't hear you.

16 Q. Do you know a Mr. Bassham?

17 A. Yes.

18 Q. And what position does he hold with your  
19 company?

20 A. Mr. Bassham is the chief financial officer  
21 of Kansas City Power & Light and Great Plains Energy.

22 Q. Would you consider him to be fairly  
23 knowledgeable with respect to the structure of this  
24 transaction?

25 A. I would.

1           Q.       Indeed, would you agree that he was the  
2       primary negotiator of the transaction?

3           A.       I would agree with that, to the best of my  
4       knowledge he was, yes.

5                   MR. CONRAD:  Thank you, that's all, your  
6       Honor.

7                   JUDGE DIPPELL:  Public Counsel?

8                   MR. MILLS:  Just a couple.

9       CROSS-EXAMINATION BY MR. MILLS:

10          Q.       Mr. Giles, why wasn't an actual merger of  
11       Aquila and KCPL into a single utility proposed?

12          A.       I believe Mr. Riggins listed several items  
13       in his opening statement regarding that.

14          Q.       And I don't recall those.  Do you know what  
15       they are?

16          A.       I have his opening statement.  I can reread  
17       them if you would like.

18          Q.       Do you know of them independently or are  
19       you just relying on what Mr. Riggins said?

20          A.       I am familiar with them.

21          Q.       Okay.

22          A.       And I know what he wrote and I agree with  
23       what he wrote.

24          Q.       If you can please tell me what they are.

25          A.       Would you like for me to read these?

1           Q.       Well, if that's the way you would like to  
2   answer my question, that would be fine.  What Mr. Riggins  
3   said in his opening statement is not a matter of record in  
4   this case.  It's not evidence.  So to the extent that he  
5   said it, if you agree with it, and you read it into the  
6   record, then it can become evidence.

7           A.       I was just wondering whether I can  
8   paraphrase.

9           Q.       Paraphrase is fine.

10          A.       He lists about four items in his opening  
11   statement.  The first one was, it was important protection  
12   for Kansas City Power & Light based on the numerous  
13   significant potential liabilities related to Aquila.

14                   He also indicated that there was an  
15   operational issue in that KCPL is in the SPP and Aquila is  
16   not.  There's some debate about that issue of which my --  
17   whether Aquila will join MISO or SPP and that matter's  
18   before the Commission now.

19                   His third item was that potential concerns  
20   with FERC market power would be lessened if we didn't  
21   merge the control areas of the two companies.  And  
22   finally, he listed a series of administrative closing  
23   issues that had to do with contracts and various other  
24   assignments and finances.

25          Q.       Okay.  With respect to the question of a

1 FERC finding of market power issues, on what was -- what  
2 are the advantages to the present structure -- presently  
3 proposed structure as opposed to the straightforward  
4 merger with respect to market power issues?

5 A. Well, under a merger, we probably would  
6 have had to merge the control areas, and that was the  
7 reason why we didn't, or that's the issue with FERC. As  
8 it turns out, FERC approved the transaction as we filed  
9 it, and frankly, I'm not sure there is a significant  
10 concern from FERC about market power issues. To err on  
11 the side of caution, we took the approach we did.

12 Q. Was there some concern that some parties to  
13 the regulatory plan would view that, view a  
14 straightforward merger as a reason to void the regulatory  
15 plan?

16 A. I believe Mr. Riggins mentioned that, and  
17 that also was a subject of debate, whether that would, in  
18 fact, occur, and it was a concern as well.

19 Q. Do you think that's a significant concern?

20 A. Significant in the sense of what? I'm not  
21 sure I understand the question.

22 Q. Do you think it's a significant risk that  
23 parties to the regulatory plan would take that view?

24 A. I don't know that I would consider it a  
25 significant risk.

1           Q.       Did you talk to any of the parties to the  
2 regulatory plan to find out if they would take that view?

3           A.       No. As Mr. Chesser indicated earlier, I  
4 was under a confidentiality agreement. I did not discuss  
5 it with anyone.

6                   MR. MILLS: Those are all the questions I  
7 have right now, thank you.

8                   JUDGE DIPPELL: Thank you. Staff?

9 CROSS-EXAMINATION BY MR. DOTTHEIM:

10           Q.       Good afternoon, Mr. Giles.

11           A.       Good afternoon.

12           Q.       Mr. Giles, the questions that Mr. Mills  
13 just asked you, the -- the reasons for which GPE fashioned  
14 the transaction in the manner it did, not as a merger of  
15 Aquila and KCPL, who made that decision, or what  
16 individuals made the decision as far as the ultimate  
17 structure of the transaction?

18           A.       I don't know. I know people that were  
19 involved, but I don't know who made the ultimate decision.

20           Q.       Who are the people who were involved that  
21 you can identify?

22           A.       Mark English is the general counsel for  
23 Great Plains Energy, and I believe he was involved. I  
24 believe Bill Riggins, as well as Terry Bassham, CFO, John  
25 Marshall, senior vice president. There may have been

1 others. I was in a few meetings where we discussed the  
2 structure. I was not present in all of them.

3 Q. Did those individuals have a name where  
4 they were referred to as a regulatory team or group?

5 A. Not that I recall.

6 Q. Was there a group that worked specifically  
7 on the transaction itself with Aquila?

8 A. There were a series of individuals that  
9 worked on the transaction. I'm not sure there was a  
10 specific group. Terry Bassham was the primary focal point  
11 for the company on the transaction. There were others  
12 involved at various points in time. I was involved on  
13 several occasions, not in every case, but on many.

14 Q. Mr. Giles, can you identify what  
15 approximate date was your earliest involvement?

16 A. My earliest involvement?

17 Q. Yes, your earliest involvement in the  
18 process that ultimately led to the transaction which is  
19 the subject of this proceeding?

20 A. It would have been right before we made the  
21 first indication of a bid.

22 Q. And can you identify a date?

23 A. I can't in particular a date, but it was  
24 sometime in the early summer, mid summer of 2006. May  
25 have even been as early as the spring. I'm not sure.

1           Q.       Were there others who were working on the  
2 matter at an earlier date than that?

3           A.       I don't believe so.

4           Q.       Mr. Giles, you're an employee of KCPL?

5           A.       That's correct.

6           Q.       You're not an employee of GPE, are you?

7           A.       No, I'm not.

8           Q.       What are your responsibilities regarding  
9 regulation in Missouri for KCPL?

10          A.       I am the officer in charge of all  
11 regulatory activities for Kansas City Power & Light, both  
12 Missouri, Kansas and FERC.

13          Q.       What is the status of the proceeding in the  
14 state of Kansas before the Kansas Corporation Commission  
15 where GPE/KCPL/Aquila are seeking authorization of the  
16 transaction?

17          A.       The schedule in Kansas is behind the  
18 schedule in Missouri about roughly a month. Hearings are  
19 scheduled in Kansas City in mid January. The process is  
20 still in the discovery stage at this point.

21          Q.       Has the Kansas Staff and the Intervenor  
22 filed their cases in Kansas as yet?

23          A.       No, they haven't.

24          Q.       When are they scheduled to file?

25          A.       I believe it's around the middle of

1 December. I don't know the date specific offhand.

2 Q. Is the date that the Kansas Staff and other  
3 parties in Kansas are scheduled to file their cases after  
4 the hearings conclude in Missouri?

5 A. I believe that's the case.

6 Q. Is that a schedule that GPE, KCPL and  
7 Aquila wanted in Kansas, or accepted in Kansas because of  
8 other parties wanting that schedule?

9 A. KCPL and GPE agreed to that schedule. We  
10 certainly were attempting to get an earlier schedule. Our  
11 intent was to have hearings in December, and similar to  
12 the schedule that we're working with here, it was our  
13 intent to have them almost simultaneously. We weren't  
14 able to accomplish that primarily because the Kansas Staff  
15 felt like they needed some additional time with Black  
16 Hills.

17 Q. Is the Kansas Corporation Commission other  
18 than the Missouri Public Service Commission the only  
19 remaining regulatory agency left to make a determination  
20 respecting the pending transaction?

21 A. I don't believe that's the case. I believe  
22 Colorado is still pending. I don't believe that an Order  
23 has actually been issued in Colorado, and I'm not sure of  
24 the status of all the other states.

25 Q. Is there still a possibility or is there in

1 the procedural schedule in Kansas any time available for  
2 negotiations of a possible settlement?

3 A. I don't believe there was a scheduled  
4 settlement conference or prehearing conference related to  
5 settlement in Kansas. My understanding is that the Staff  
6 and Black Hills have had some discussions and just as  
7 recently as last week was informed by our attorney that we  
8 may need to discuss with Kansas as soon as next week.

9 Q. If you are able to negotiate a resolution  
10 in Kansas, and again, I realize I'm asking you about a  
11 resolution which I'm not providing you any details of, but  
12 if you could take this as a hypothetical, if you're able  
13 to reach a resolution in Kansas and reach some agreement,  
14 would you envision that you would offer those same terms  
15 in Missouri?

16 A. I can't speculate. The two are very  
17 different from the standpoint of KCPL and Aquila. Aquila  
18 has -- will have no remaining territory in Kansas, and  
19 acquisition is of a Missouri utility. So the  
20 circumstances are certainly quite a bit different.

21 Q. Presently, is the transaction that's before  
22 the Kansas Corporation Commission a mirror image as far as  
23 the components of the transaction that's pending before  
24 the Missouri Commission?

25 A. No.

1 Q. What are the differences?

2 A. Two differences that come to mind, and  
3 these may be the only two, the amortization provision is  
4 not required in Kansas, and the interest on debt was not a  
5 part of our Kansas request. I believe the other  
6 components are the same, to the best of my recollection.

7 Q. Mr. Giles, if I recall your surrebuttal  
8 testimony correctly, I think you indicate that you've been  
9 in the employ of Kansas City Power & Light since the mid  
10 '70s?

11 A. That's correct.

12 Q. In your time with Kansas City Power &  
13 Light, do you recall Kansas City Power & Light ever  
14 seeking to engage in a merger with any other utility?

15 A. Yes.

16 Q. Could you identify that situation or  
17 situations?

18 A. Well, I've been involved to some degree or  
19 another in the potential acquisition of Kansas Gas and  
20 Electric by Kansas City believe, in the late '80s, perhaps  
21 early '90s. I was involved to some extent in the  
22 UtiliCorp Kansas City Power & Light merger during the mid  
23 '90s. I was involved in two West Star mergers between  
24 West Star and Kansas City Power and Light. Those occurred  
25 after the UtiliCorp merger proposal, and those were

1     probably in the '97 to '98 time frame.

2             Q.       None of those merger activities ever were  
3     consummated, were they?

4             A.       No, they weren't.

5             Q.       So in your time with Kansas City Power &  
6     Light from the mid '70s on, you and the company in general  
7     don't have any experience regarding the consummation of a  
8     merger, do you?

9             A.       No.

10            Q.       You've never been involved in an effort to  
11    track actual merger synergies, over time, have you, Mr.  
12    Giles?

13            A.       No, I have not.

14            Q.       The additional amortization arrangement  
15    that Kansas City Power & Light presently enjoys is the  
16    result of a collaborative effort that resulted in a  
17    Stipulation & Agreement in the KCPL regulatory plan; is  
18    that correct?

19            A.       The amortization was developed and agreed  
20    to in that stipulation. I would not say that it's not a  
21    tool that can be used outside of the stipulation.

22            Q.       Do you recall approximately how long it  
23    took to negotiate the KCPL regulatory plan?

24            A.       I don't recall exactly. It was at least 12  
25    months. I expect it would be a little longer than that.

1           Q.       Would you agree that the additional  
2 amortization arrangement is set out in some detail in the  
3 Stipulation & Agreement in Case No. EO 2005-0329?

4           A.       Yes.

5           Q.       The additional amortization that GPE, KCPL,  
6 Aquila are proposing in this proceeding is not set out in  
7 comparable detail in any testimony or schedules, is it, in  
8 this proceeding?

9           A.       I'm not sure I understand what you mean by  
10 comparable detail?

11          Q.       There are attachments which provide  
12 examples as far as how to calculate the metrics that are  
13 involved in the additional amortization in the Stipulation  
14 & Agreement in Case No. EO-2005-0329. Do you recall that?

15          A.       Yes.

16          Q.       Is there any documentation of a comparable  
17 nature relating to the additional amortization that's  
18 proposed in this proceeding that has been filed by GPE,  
19 KCPL, Aquila?

20          A.       No, there was no need to.

21          Q.       Mr. Giles, there have been two rate cases  
22 that have effectuated the Stipulation & Agreement in Case  
23 No. EO-2005-0329; is that correct?

24          A.       There's been one rate case that an Order's  
25 been issued.

1           Q.       And -- excuse me. I usually remember the  
2 Case No.s. That's Case No. ER-2006-0314?

3           A.       That's correct.

4           Q.       And there's a -- another case which is  
5 pending before the Commission which is?

6           A.       That's correct.

7           Q.       Which is Case No. ER-2007-0271? Excuse  
8 me, I think it's 0291?

9           A.       I'm not sure of the number, but yes, I -- I  
10 will accept that.

11          Q.       In those two proceedings, have there been  
12 disputes amongst the parties regarding the implementation  
13 of the additional amortization?

14          A.       I wouldn't characterize them as disputes.  
15 I would characterize them as a differing interpretation of  
16 the document, but I wouldn't characterize them as  
17 disputes.

18          Q.       So even with the detail that was provided  
19 respecting the additional amortizations in the Stipulation  
20 & Agreement in Case No. EO-2005-0329, there have been  
21 differing interpretations regarding the determination of  
22 the additional amortization, has there not?

23          A.       There has been one that I'm aware of in the  
24 current case that's pending. I don't believe there's been  
25 any other disputes or interpretations.

1           Q.       Mr. Giles, do you know if -- if the  
2 Commission imposed an additional amortization for Aquila  
3 as GPE, KCPL and Aquila have proposed, whether the parties  
4 to the KCPL regulatory plan Stipulation & Agreement would  
5 be free to make arguments against the Aquila additional  
6 amortization that they had forgone regarding the KCPL  
7 additional amortizations?

8           A.       I presume they would. I have no reason to  
9 think otherwise.

10          Q.       Mr. Giles, I'd like to direct you to your  
11 surrebuttal testimony, which has been marked as Exhibit 15  
12 C, and I'd like to direct you to --

13                   JUDGE DIPPELL: Mr. Dottheim, let me  
14 interrupt a moment. In my rush to get the witness  
15 testifying, we forgot to actually offer and admit the  
16 exhibit, which was part of the preliminary questions. But  
17 I didn't want to give the parties an opportunity to miss  
18 their objections, so let me -- I assume Mr. Riggins is  
19 going to offer that?

20                   MR. RIGGINS: Yeah, you're right, Judge.  
21 That was an oversight on my part. The past couple cases  
22 I've been involved in, we waited until the witness  
23 testified all the times they were going to testify to  
24 offer it, and I forgot this time we're only using Mr.  
25 Giles once. So, is that true? Is he going to be back?

1 MR. MILLS: He's on the list a lot.

2 JUDGE DIPPELL: That wasn't the procedure I  
3 was --

4 MR. RIGGINS: So I guess I did know what I  
5 was doing, which was to wait until his final testimony,  
6 whatever point that occurs in the proceeding to offer it.

7 JUDGE DIPPELL: Is that the procedure that  
8 the parties were expecting to use?

9 MR. MILLS: I didn't have any expectations.  
10 That certainly is fine with me, and Mr. Giles testifies on  
11 a number of issues, and there may be parties that are  
12 interested in some of the other issues that aren't here  
13 now, that may have objections.

14 JUDGE DIPPELL: Okay. We'll just -- I'll  
15 hold the offering of exhibits 'til the last time the  
16 witness appears then -- I'm sorry to interrupt Mr.  
17 Dottheim. Go right ahead.

18 BY MR. DOTTHEIM:

19 Q. Pardon me a moment. Mr. Giles, again, if I  
20 could direct you to your surrebuttal testimony that's been  
21 marked Exhibit 15HC and NP and the portion I'm going to  
22 refer you to is NP. I'd like to refer you to page 12, and  
23 starting at line 6.

24 A. I don't believe I have the NP version with  
25 me.

1 Q. Okay. Well, they should be --

2 A. They should be about the same.

3 Q. Yes. They should be. If you've got the  
4 HC, then of course the HC is just identified with the  
5 double asterisk and the underlining.

6 A. Okay.

7 Q. And I'm just directing you to page 12,  
8 starting at line 6, which is not either highly  
9 confidential or proprietary, to that portion of your  
10 surrebuttal where you take issue with the statement in the  
11 Staff report that the Aquila additional amortization will  
12 not be used to support acknowledge prudent improvements in  
13 infrastructure.

14 JUDGE DIPPELL: Mr. Dottheim, can I get you  
15 to speak into your microphone?

16 MR. DOTTHEIM: I'm sorry.

17 BY MR. DOTTHEIM:

18 Q. Is that correct, that you address at that  
19 portion of your surrebuttal testimony, you take issue with  
20 the statement in the Staff report that the Aquila  
21 additional amortization will not be used to support  
22 acknowledge prudent improvements in infrastructure?

23 A. That's correct.

24 Q. Mr. Giles, are you aware that questions  
25 have been raised regarding the Aquila capacity expansion

1 program relating to the sales of the Aries unit and the  
2 construction of gas fired capacity?

3 A. No, I'm not.

4 Q. Mr. Giles, the Wolf Creek generating  
5 station is a nuclear generating unit, is it not?

6 A. It is.

7 Q. And you're familiar with how debt rating  
8 agencies view the business risk of owning a nuclear  
9 generating unit?

10 A. To some extent.

11 Q. Do debt rating agencies view utilities  
12 which own nuclear generating units as having a greater  
13 risk than those that do not?

14 A. I think generally that's the case.

15 Q. Mr. Giles, I asked you earlier regards a  
16 group which I termed the regulatory team, and in  
17 particular I think it was directing you towards the -- the  
18 present transaction that's pending before the Commission.  
19 Is there a group that's referred to as the regulatory  
20 team?

21 A. I'm not familiar with that term. We have a  
22 regulatory team that's my department. It can be referring  
23 to my regulatory team or some other team, I'm not familiar  
24 with it.

25 Q. Was there a group or an individual who was

1 principally responsible for determining the regulatory  
2 elements of the price that GPE offered to Aquila?

3 A. I believe the team you're referring to  
4 would be the team I mentioned earlier, that we all had  
5 input, and I particularly had some input into assumptions  
6 that we should model, and we modeled various assumptions  
7 based on certain elements that we might request, and I had  
8 input into that process and was a party.

9 Q. Did that team meet with members of the  
10 Missouri Commission Staff or the Kansas Commission Staff  
11 to see if their input for the development of  
12 recommendations regarding GPE, KCPL's possible acquisition  
13 of Aquila?

14 A. Prior to the actual transaction, we did  
15 not, and as Mr. Chesser indicated and which I am also  
16 aware, we were all under confidentiality agreements. That  
17 was a bidding process, it would not have been possible to  
18 have such meetings prior to the transaction.

19 Q. And that team did not meet with any other  
20 groups that are generally thought of as stakeholders in  
21 regulatory matters such as stakeholders who participated  
22 in the negotiations of the KCPL regulatory plan that was  
23 filed in Case No. EO-2005-0329?

24 A. No, for the same reasons I stated earlier.

25 Q. Mr. Giles, is there any precedent in

1 Missouri, and I mean P-R-E-C-E-D-E-N-T, any precedent in  
2 Missouri for the various components of the GPE/KCPL/Aquila  
3 proposed transaction, for example, the 50 percent of  
4 merger synergies being reflected in KCPL's Aquila's  
5 revenue requirement on a going forward basis?

6 MR. RIGGINS: At this point I'd like to  
7 interpose an objection, your Honor. I tried to give my  
8 friend Mr. Dottheim some deference here, but Mr. Giles  
9 testifies on four distinct issues in this case that are  
10 responsive to the witnesses of other testimonies filed by  
11 the Staff and filed by the city, I believe, of Kansas  
12 City, and he does not testify as to the appropriateness of  
13 our sharings proposal. He does testify to the  
14 amortization piece of the regulatory plans. I certainly  
15 don't object to questions about that piece of the  
16 regulatory plan, but I think the other pieces are outside  
17 the scope of his testimony.

18 JUDGE DIPPELL: Mr. Dottheim?

19 MR. DOTTHEIM: Well, Mr. -- Mr. Giles was  
20 listed as a policy witness, and in fact, if you -- and I  
21 say policy witness, if you turn to the cover page of his  
22 -- of his testimony, where it shows issue, it says policy.  
23 It doesn't say additional amortizations. It says policy.  
24 I think KCPL was interested in having Mr. Giles appear at  
25 the very beginning of the hearings as a policy witness,

1    which addresses the full panoply of the issues in the  
2    case, and I think the various components of the proposed  
3    transaction would be involved.

4                   MR. RIGGINS:    If I may refer your Honor to  
5    page 2 of Mr. Giles' prefiled testimony, where he responds  
6    to the question, what is the purpose of your testimony,  
7    and he specifically rebutting Staff and city of Kansas  
8    City, Missouri witnesses on four distinct issues.  I  
9    recognize it says policy on the front page of his  
10   testimony, I suppose you could argue that the additional  
11   amortization piece of our regulatory request for example,  
12   is policy.  I wouldn't dispute that, but I still don't  
13   see how the label applied to his testimony or where he's  
14   slotted in the order of witnesses can open him up to being  
15   cross-examined on testimony that he never filed.

16                   MR. DOTTHEIM:  Well --

17                   JUDGE DIPPELL:  Go ahead, Mr. Dottheim.

18                   MR. DOTTHEIM:  And -- well, also it's --  
19   item 4 is the city of Kansas City concerning the  
20   possibility of adopting an earnings sharing mechanism.  Of  
21   course, that's not the merger synergies that is  
22   specifically asked for, but again, Mr. Giles was listed  
23   and --

24                   JUDGE DIPPELL:  Mr. Dottheim, would you  
25   repeat your question for me?

1                   MR. DOTTHEIM: Yes. I asked Mr. Giles, as  
2 best I recall, whether he could identify -- or maybe I  
3 should ask that the court reporter read my question back?

4                   JUDGE DIPPELL: That would be fine.

5                   (THE REQUESTED TESTIMONY WAS READ BY THE  
6 REPORTER.)

7                   JUDGE DIPPELL: Okay. I will overrule the  
8 objection. I believe that Mr. Dottheim's question is  
9 sufficiently broad to cover the policy area that Mr. Giles  
10 has been testifying to. If he doesn't know about the  
11 synergy side of things, then he can -- he can state he  
12 doesn't know. You can answer the question, Mr. Giles.

13                  THE WITNESS: I don't recall what  
14 Commission Orders have actually authorized certain  
15 components of merger regulatory plans. I do know that in  
16 all the merger activity I've been involved in over the  
17 years and all of the mergers I've observed come before the  
18 Commission, they're all each unique to each individual  
19 circumstance, and they're certainly unique in terms of  
20 time frame of when those particular mergers were being  
21 reviewed by the Commission.

22                  And to give you a couple of examples, I do  
23 know of Staff testimony that supports 50 percent sharing.  
24 I believe it was Mr. Oligschlaeger testified in the  
25 St. Joe Light & Power case where Aquila was acquiring

1 St. Joe Light & Power. It's my belief that no matter  
2 which merger or which time frame one views, you're always  
3 looking to see how you can construct the benefits for  
4 shareholders, the benefits for customers, and balance  
5 those, and that's -- that's the uniform precedent that  
6 I've observed, whether there's any particular aspect, I  
7 wouldn't say there is any precedent.

8 MR. DOTTHEIM: First, in further response  
9 to Mr. Riggins' objection, if I could refer the Bench  
10 to --

11 JUDGE DIPPELL: Mr. Dottheim, you won.

12 MR. DOTTHEIM: Well, there is specific --  
13 there's specific -- Mr. Giles does have specific testimony  
14 on synergies savings on page 5 of his testimony.

15 JUDGE DIPPELL: Okay. I assume you're  
16 about to ask more questions about that?

17 MR. DOTTHEIM: I'd like to have marked for  
18 purposes of identification a couple of exhibits.

19 JUDGE DIPPELL: All right. I believe  
20 Staff's next exhibit number is No. 109.

21 (EXHIBIT NO. 109 WAS MARKED FOR  
22 IDENTIFICATION BY THE REPORTER.)

23 MR. DOTTHEIM: And I'd like to have a  
24 second exhibit marked as 110.

25 JUDGE DIPPELL: All right.

1 (EXHIBIT NO. 110 WAS MARKED FOR  
2 IDENTIFICATION BY THE REPORTER.)  
3 BY MR. DOTTHEIM:

4 Q. I've asked to be marked as Exhibit 109  
5 Staff's Data Request 9, which Mr. Giles, you have a copy  
6 of Staff Data Request No. 9 which has been marked as  
7 Exhibit 109?

8 A. Yes, I do.

9 Q. And I've also asked to be marked as Exhibit  
10 110, excuse me, yes, it's 110, Staff's Data Request 10,  
11 Mr. Giles, you have a copy of Staff Data Request 10, which  
12 is marked as Exhibit 110?

13 A. I do.

14 Q. And Exhibit 109, the question is: What  
15 precedent does GPE, KCPL rely upon to support its request  
16 to retain 50 percent of its estimated synergy savings for  
17 five years through future KCPL and Aquila rates, and the  
18 response is, GPE, KCPL do not rely upon any precedent.  
19 The request to retain 50 percent of its estimated synergy  
20 savings for five years is based on the overall plan to  
21 make the merger work for all stakeholders where benefits  
22 are provided to ratepayers and costs of the merger are  
23 recovered. Have I read that correctly?

24 A. Yes.

25 Q. And Exhibit 110, that question, Data

1 Request 10, the question is: What precedent does GPE/KCPL  
2 rely upon to support its proposed methodology to separate  
3 costs to achieve for 100 percent recovery from ratepayers  
4 from synergy savings of which 50 percent are to be  
5 retained by the regulatory, excuse me, by the regulated  
6 utility? Response: GPE/KCPL do not rely upon any  
7 precedent to support its methodology. The request for  
8 recovery of the cost to achieve and sharing of synergy  
9 savings is based on the overall plan to make the merger  
10 work for all stakeholders where benefits are provided to  
11 ratepayers and costs of the merger are recovered. Have I  
12 read that correctly?

13 A. Yes.

14 Q. I'd like to offer Exhibit 109 and 110 at  
15 this time.

16 JUDGE DIPPELL: Would there be any  
17 objection to Exhibit No. 109?

18 MR. RIGGINS: None from GPE and KCPL.

19 JUDGE DIPPELL: Seeing no objection, I'll  
20 receive it into evidence.

21 (EXHIBIT NO. 109 WAS RECEIVED INTO  
22 EVIDENCE.)

23 JUDGE DIPPELL: Would there be any  
24 objection to Exhibit No. 110? Seeing none, then I will  
25 receive that into evidence.

1 (EXHIBIT NO. 110 WAS RECEIVED INTO  
2 EVIDENCE.)

3 BY MR. DOTTHEIM:

4 Q. Mr. Giles, I asked you if you were aware of  
5 any precedents respecting in particular the company's GPE,  
6 KCPL, Aquila's proposal for retention of 50 percent of the  
7 merger synergies in the proposed transaction before the  
8 Commission. Are you aware of any precedent respecting the  
9 GPE/KCPL/Aquila proposal respecting recovery of the  
10 transaction costs?

11 MR. RIGGINS: Again, I'd like to interpose  
12 an objection, your Honor, once again, Mr. Giles does not  
13 direct -- excuse me. Mr. Giles does not address that  
14 issue in his testimony. He addresses the amortization  
15 issue, the affiliated transactions issue, the issue around  
16 whether GPE, KCPL have requested appropriate authority to  
17 operate as planned and finally some issues raised by the  
18 city of Kansas City, Missouri around earnings sharing  
19 mechanism in a rate case, he doesn't address the recovery  
20 of transaction and transition costs, and once again I  
21 would ask that the scope of his cross-examination be  
22 restricted to the scope of his testimony.

23 JUDGE DIPPELL: Mr. Dottheim, can you point  
24 me to where he discusses that in his testimony?

25 MR. DOTTHEIM: Well, again, my response in

1 particular is he has been characterized as a policy  
2 witness.

3 JUDGE DIPPELL: I don't believe that  
4 Mr. Giles addresses transaction costs in his testimony.  
5 And even though he's characterized as a policy witness, I  
6 believe those policy matters are limited to the ones in  
7 his testimony, so I'm going to sustain that objection.

8 BY MR. DOTTHEIM:

9 Q. Mr. Giles, it is true, is it not, that \$500  
10 million is the amount of merger synergies that GPE,  
11 KCPL/Aquila identified for the five-year period 2008 to  
12 2012 in the direct testimony that was filed in this  
13 proceeding?

14 A. I don't know. I don't think so. I don't  
15 believe that's the correct number.

16 Q. Do you know the amount of merger synergies  
17 that was identified by GPE/KCPL/Aquila in the supplemental  
18 direct testimony that was filed in this proceeding?

19 A. I believe those numbers were 305 million  
20 the first five years and an additional 302 million during  
21 the second five years; you can you check my numbers, but I  
22 believe that's what I recall.

23 Q. May I approach the witness?

24 JUDGE DIPPELL: Yes.

25 BY MR. DOTTHEIM:

1           Q.       Mr. Giles, I'm going to hand you the three  
2     ring binder that contains company's GPE/KCPL/Aquila direct  
3     testimony in this proceeding, and I've turned to  
4     Mr. Robert T. Zabors' direct testimony, his schedule  
5     RTZ-1, and I'd like to direct you to the right most  
6     column, shows total for nonfuel synergies, and ask you if  
7     he shows \$500 million listed as the merger savings?

8           A.       This is not the exhibit I was referring to.  
9     I did not prepare this exhibit, so you should probably ask  
10    that of Mr. Zabors.

11          Q.       The exhibit you referred me to, the \$305  
12    million is in the supplemental direct, is it not, is what  
13    you were referring to?

14          A.       I believe that's the case.

15          Q.       And that exhibit is also a schedule of  
16    Mr. Zabors'?

17          A.       Yes.

18          Q.       So you don't recognize or recall  
19    Mr. Zabors' schedule in his direct testimony, but you do  
20    recall his schedule in his supplemental direct?

21          A.       That's correct.

22          Q.       But it does on that page RTZ-1 show  
23    \$500 million savings, merger savings, nonfuel O&E, does it  
24    not?

25          A.       As I indicated, I don't know what this

1 schedule is. I didn't prepare it, and I'm not going to  
2 testify to the numbers on it.

3 Q. Did you prepare Mr. Zabors' schedule in his  
4 supplemental direct which you've referred to?

5 A. I did not prepare it, but I was much more  
6 involved in its preparation and I'm familiar with those  
7 numbers.

8 Q. Mr. Giles, you're an employee of KCPL,  
9 which you indicated, which I asked you one of the very  
10 first questions earlier this afternoon. Are you  
11 testifying on behalf of KCPL, KCPL and GPE, KCPL and GPE  
12 and Aquila or some combination of those three companies?

13 A. I'm testifying on behalf of KCP&L.

14 Q. Mr. Giles, I just a short while ago  
15 referred you to the company's direct filing, and then the  
16 company's supplemental direct filing. Could you explain  
17 why the company made a supplemental direct filing?

18 A. Yes. The initial filing was based in large  
19 part on the valuation and the early discussions held with  
20 Aquila and the supplemental direct was a follow-up, a more  
21 thorough review of all the synergies.

22 Q. Was the supplemental direct filing in any  
23 way related to the early prehearing conference that was  
24 held on May 9th of this year?

25 A. I don't recall that that was the driver of

1 the update.

2 Q. Does the supplemental direct testimony  
3 cover more subjects than were covered in the direct  
4 testimony filing?

5 A. I don't recall.

6 Q. Are there witnesses filed in the  
7 supplemental direct testimony who did not file direct  
8 testimony?

9 A. I believe so, but I'm not sure.

10 Q. Mr. Giles, is there any reason why you  
11 didn't file any direct or supplemental direct testimony?

12 A. No particular reason.

13 Q. May I have a moment, please?

14 BY MR. DOTTHEIM:

15 Q. Mr. Giles, earlier you indicated you're  
16 familiar with Mr. Zabors' supplemental direct filing, did  
17 you not?

18 A. Yes, I did.

19 Q. May I approach the witness?

20 JUDGE DIPPELL: Yes.

21 JUDGE DIPPELL: Staff's next exhibit  
22 number?

23 MR. DOTTHEIM: This is actually a schedule  
24 of Mr. Zabors' from his supplemental direct. It says  
25 Schedule RTZ-8.

1 JUDGE DIPPELL: So you don't need it marked  
2 as an exhibit?

3 MR. DOTTHEIM: No. In fact, the Bench, the  
4 Commissioners, Judge, you should have a copy of this,  
5 anyone who has Mr. Zabors' supplemental direct testimony  
6 should have a copy. I wanted to ask Mr. Giles some  
7 questions, and I didn't know whether --

8 JUDGE DIPPELL: That's fine.

9 MR. DOTTHEIM: People might have this  
10 schedule or not, so I ran copies.

11 JUDGE DIPPELL: Mr. Giles, have you had an  
12 opportunity to look at that?

13 THE WITNESS: Sorry, I didn't know you were  
14 waiting on me.

15 JUDGE DIPPELL: That's the reason I  
16 interrupted.

17 BY MR. DOTTHEIM:

18 Q. Mr. Giles, do you recognize the schedule  
19 RTZ-8, five-year synergy detail?

20 A. Yes, I do.

21 Q. And again, that is a schedule from  
22 Mr. Zabors' supplemental direct testimony, and if I could  
23 direct you to the bottom of the right hand corner, there's  
24 a number 305, \$305 million. Is that the number which you  
25 previously referred to as far as merger savings?

1           A.       Yes, it is.

2           Q.       And I was hoping you might be able to help  
3 me understand the company's proposal on -- on merger  
4 savings. If the company's proposal on merger savings is  
5 accepted by the Commission where let's take for example,  
6 in the year 2009, the column 2009, at the bottom of the  
7 column, 56, 56 million is shown. Assuming there is a rate  
8 case in 2009, would half of that number, 50 percent of the  
9 merger savings, which the company would be able to retain,  
10 would \$28 million be added to the revenue requirement for  
11 KCPL and Aquila to reflect that component of the merger  
12 transaction?

13          A.       I don't want to complicate my answer, but  
14 assuming perfect ratemaking, yes. When I say perfect  
15 ratemaking, I'm talking timing differences between test  
16 years and filing of the case, et cetera, but assuming 56  
17 million in 2009, our proposal would be 50 percent of that,  
18 28 million would be added to the cost of service. That's  
19 correct.

20          Q.       And the company's proposal is no merger  
21 savings tracking because that is recognized as being  
22 problematic, that these numbers be accepted as they are;  
23 is that correct?

24          A.       Well, we've indicated in testimony, not my  
25 particular testimony as Mr. Chesser indicated earlier, we

1 have not proposed a tracking mechanism in this case. We  
2 are going to be tracking these synergies internally.  
3 Whether or not there could ever become an agreement on how  
4 we might track to satisfy all the parties, I don't know.  
5 But as it stands, you're correct in your assessment.

6 Q. And in 2009, if there are not \$56 million  
7 in merger savings regardless of that, \$28 million is still  
8 added to the KCPL/Aquila revenue requirement, correct?

9 A. I think you're getting into a legal  
10 question or at least I interpret it as a legal question,  
11 and I don't know how to answer that legal question.

12 Q. Well, I won't -- I won't pursue that, then.  
13 But then you're indicating that possibly counsel for KCPL,  
14 GPE, Aquila might be able to answer that because you think  
15 it's a legal question?

16 A. I would think so, yes.

17 JUDGE DIPPELL: Mr. Dottheim, do you still  
18 have extensive cross-examination to go for Mr. Giles?

19 MR. DOTTHEIM: I don't know that I'd say  
20 it's extensive, but I still have more cross, your Honor.

21 JUDGE DIPPELL: I had indicated earlier that  
22 we would wrap up at 6:00 tonight, so if this is a good  
23 place to break, then we'll go ahead and break and continue  
24 with your cross-examination of Mr. Giles in the morning.  
25 I do have copies of, I hope, on the printer, of the

1 exhibit list that I made up that was a master exhibit of  
2 the ones you provided, I'll be happy to share those with  
3 the parties this evening if you'd like them. We'll begin  
4 tomorrow at 8:30. Anything further before we go off the  
5 record?

6 MR. BLANC: Just one scheduling question,  
7 your Honor. We have a number of witnesses obviously  
8 scheduled for today that we didn't get to, but I was going  
9 to inquire of the Commission and the other parties if  
10 there would be any objections to once we completed those  
11 witnesses, beginning with John Marshall and Robert Zabors,  
12 once we've completed the witnesses who were schedule for  
13 today?

14 JUDGE DIPPELL: Okay. Who were originally  
15 scheduled for Wednesday?

16 MR. BLANC: Correct. Who we may not get to  
17 until Wednesday realistically?

18 MR. CONRAD: I'm not sure what the question  
19 is?

20 JUDGE DIPPELL: The question is, after  
21 Mr. Giles and the other Mr. Green and Mr. Empson and  
22 Mr. Fleener and Mr. Kemp, if we could start with  
23 Mr. Zabors and Mr. Marshall who aren't scheduled to appear  
24 'til Wednesday. That would be skipping a substantial  
25 number of witnesses who were supposed to appear tomorrow.

1                   I'm seeing puzzled looks and I'm feeling  
2   that after today's confusion, that I would prefer to just  
3   stick to the list unless there is a specific conflict that  
4   someone can bring up that because of the schedule is going  
5   to cause a problem. I think from this point unless you  
6   guys can agree to it outside of in here, I'd rather just  
7   stick to the schedule.

8                   Mr. Conrad?

9                   MR. CONRAD: Please check me. We've got  
10 green, Empson, Fleener. This would be tomorrow?

11                  MR. DOTTHEIM: And Kemp.

12                  MR. CONRAD: And Kemp, but first you have  
13 to finish Mr. Giles.

14                  JUDGE DIPPELL: That's correct. Those were  
15 the witnesses that were to appear today.

16                  MR. CONRAD: So we're basically just  
17 sliding --

18                  JUDGE DIPPELL: We're just going to slide  
19 them until we run into a conflict.

20                  MR. CONRAD: Just so I've got a list,  
21 that's like you, I get -- I guess I get puzzled easily.

22                  JUDGE DIPPELL: Okay. Any other procedural  
23 questions? Order of witnesses, anything like that?

24                  (No response.)

25                  JUDGE DIPPELL: All right. Then return

1 tomorrow morning at 8:30. We'll go off the record.

2 WHEREUPON, the hearing of this case was  
3 recessed until December 4, 2007.

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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 ) ss.  
4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, and Notary Public within and for the State of  
8 Missouri, do hereby certify that I was personally present  
9 at the proceedings had in the above-entitled cause at the  
10 time and place set forth in the caption sheet thereof;  
11 that I then and there took down in Stenotype the  
12 proceedings had; and that the foregoing is a full, true  
13 and correct transcript of such Stenotype notes so made at  
14 such time and place.

15 Given at my office in the City of  
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR  
18 Notary Public (County of Cole)  
19 My commission expires March 28, 2009.  
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