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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

May 1, 2008
Jefferson City, Missouri
Volume 23

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

HAROLD STEARLEY, Presiding,
REGULATORY LAW JUDGE

CONNIE MURRAY,
ROBERT M. CLAYTON III,
TERRY JARRETT,
COMMISSIONERS.

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

2 JUDGE STEARLEY: Good morning. Today's
3 Thursday, May 1st. We are back on the record in Case
4 No. EM-2007-0374, starting with preliminary matters, my
5 usual caution to please have all Blackberries, cell
6 phones, other electronic devices shut off so that they
7 will not interfere with our webcasting and recording.

8 Instead of running through the roster of
9 parties as I've done every day throughout this hearing,
10 I'll just announce that any parties not present for the
11 examination of witnesses today will have been considered
12 to have waived that examination.

13 We are picking up today with the offer of
14 proof from Ag Processing on the additional amortization
15 issue. And if my witness list is correct, we have Cline,
16 Schallenberg and Trippensee.

17 MR. WOODSMALL: Yes, your Honor.

18 JUDGE STEARLEY: Is that the proper order,
19 Mr. Woodsmall?

20 MR. WOODSMALL: That's fine, whatever your
21 pleasure is.

22 JUDGE STEARLEY: Is there anything else we
23 need to take up before we start this morning?

24 MR. DOTTHEIM: Mr. Stearley?

25 JUDGE STEARLEY: Yes.

1 MR. DOTTHEIM: Judge, yeah. I have just a
2 housekeeping matter. I don't know what to call it other
3 than that. As part of creditworthiness, the company,
4 GPE/KCPL, has indicated that they will be filing a rate
5 increase case later this year. It's also an option under
6 the KCPL regulatory plans. The Staff fully intends to
7 file its direct case in that proceeding in report form as
8 it has been doing recently.

9 I think yesterday I indicated that the
10 company's most recent rate increase case, the Staff's
11 direct case was filed in report form by Mr. Mark
12 Oligschlaeger. It was filed by Mr. Steve Traxler. And it
13 would be the Staff's intent to file it in report form in
14 the company's next rate increase case, in report form with
15 some cover testimony by Mr. Steve Traxler.

16 If that format of filing the Staff's direct
17 case was going to draw an objection from Kansas City Power
18 & Light, which has not drawn an objection by any other
19 company, the Staff would ask that the company would extend
20 the Staff the courtesy of advising the Staff of that when
21 it files its 2008 rate increase case so that the Staff can
22 meet with the company about that matter and attempt to
23 address it at the beginning of that rate increase case and
24 not when the company raises the objection at the end of
25 the rate increase case. Thank you, Judge.

1 JUDGE STEARLEY: Okay. Thank you,
2 Mr. Dottheim. Anything else before we proceed? Hearing
3 nothing, Mr. Woodsmall, you may proceed.

4 MR. WOODSMALL: Thank you, your Honor.
5 Call Michael Cline to the stand, please. Just so the
6 record's clear, you Honor, this is an offer of proof, but
7 it is an offer of proof in the way of cross-examination.
8 So by me just saying that I'm calling Michael Cline, I'm
9 not calling him as my witness. He's still KCP&L's
10 witness, and I'm doing it for purposes of
11 cross-examination.

12 JUDGE STEARLEY: All right. Very good,
13 Mr. Woodsmall. And everyone present will have an
14 opportunity to examine this witness.

15 MR. WOODSMALL: Thank you.

16 JUDGE STEARLEY: And Mr. Cline, I believe
17 you have testified before us before, and you are reminded
18 that you're still under oath.

19 THE WITNESS: Yes. Thank you, your Honor.

20 JUDGE STEARLEY: Mr. Woodsmall, you may
21 proceed.

22 MICHAEL CLINE testified as follows:

23 CROSS-EXAMINATION BY MR. WOODSMALL:

24 Q. Good morning, sir.

25 A. Good morning.

1 Q. Can you tell me what your position is?

2 A. I'm the Vice President of Investor
3 Relations and Treasurer at Great Plains Energy. I'm the
4 Treasurer of Kansas City Power & Light.

5 Q. And in that role, are you familiar with the
6 KCPL amortization mechanism?

7 A. Yes, I am.

8 Q. Are you familiar with the method by which
9 that amortization is calculated?

10 A. Broadly. I don't have the detailed
11 calculations in front of me, but broadly, yes.

12 Q. And you filed testimony in the past on the
13 calculation of that amortization; is that correct?

14 A. Yes.

15 MR. WOODSMALL: Your Honor, I'd like to
16 approach the witness.

17 JUDGE STEARLEY: You may.

18 MR. WOODSMALL: I've just handed the
19 witness a document. May I mark that document, your Honor?

20 JUDGE STEARLEY: You may, and if my records
21 are correct, you are up to No. 306.

22 (EXHIBIT NO. 306 WAS MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 BY MR. WOODSMALL:

25 Q. Do you have Exhibit 306 in front of you,

1 sir?

2 A. Yes, I do.

3 Q. And do you recognize that document?

4 A. Yes, I do.

5 Q. And that document -- can you tell me what
6 that document is?

7 A. These were attachments to the 2005
8 Stipulation & Agreement for KCP&L's Comprehensive Energy
9 Plan related to the determination of additional
10 amortization.

11 Q. Now, I'll represent to you that it's only a
12 portion of the overall Stipulation & Agreement. I wanted
13 to save some trees, so I only copied the four pages, but I
14 will represent to you that it's accurate and out of that
15 agreement.

16 Nevertheless, is it true that the KCP&L
17 amortization mechanism is based upon three key Standard &
18 Poor's credit ratios?

19 A. Could you ask the question again, please?

20 Q. Yes. Can you tell me if the KCP&L
21 amortization mechanism is based upon three S&P's credit
22 ratios?

23 A. I believe the additional amortization
24 mechanism is discussed in the stipulation as relating to
25 two of the three metrics.

1 Q. Okay. And what are those two?

2 A. The two are the metrics that relate to cash
3 flow. So funds flow from operations to total debt, and
4 funds flow from operations to interest.

5 Q. Okay. If you look at page 1 of
6 Exhibit 306, you'll notice there's a ratio definition for
7 total debt to total capitalization?

8 A. Yes.

9 Q. That is not a ratio that goes into the
10 calculation of the amortization?

11 A. I believe the stipulation mentions that
12 that ratio is actually managed through the financing
13 authorization that KCPL seeks through the Commission.
14 It's not part of the additional amortization.

15 Q. I see.

16 A. So we do manage it, but just not as part of
17 this mechanism.

18 Q. So if the -- if the total debt to total
19 capitalization ratio was reduced below the target, would
20 the amortization cause an increase to account for that?

21 A. I don't believe that we actually calculated
22 that as part of the methodology here.

23 Q. Okay. That will take away some of my
24 questions.

25 A. Yeah. Again, we look at that through the

1 financing authorizations that we -- that we seek through
2 the Commission.

3 Q. Can you tell me, then, what the two ratios
4 are that go into the calculation of the amortization?

5 A. It's the two that I mentioned, which would
6 be the funds from operations, interest coverage and the
7 funds from operations as a percent of average total debt.

8 Q. And can you tell me generally what the
9 funds from operations interest coverage calculates?

10 A. Sure. It's a means of looking at the
11 Standard & Poor's cash flow equivalent, which is funds
12 flow from operations, and the multiple that that
13 represents of the company's long-term debt interest
14 obligations as the methodology's laid out today.

15 Q. And when you say the company's, are you
16 referring to KCP&L's financial metrics?

17 A. Yes. For KCP&L we look at it on a utility
18 basis.

19 Q. Okay. Can you tell me what working capital
20 is?

21 A. Working capital is the difference between
22 current assets and current liabilities.

23 Q. Okay.

24 A. And, I'm sorry, funds from operations as a
25 percent of average total debt. This is probably the

1 credit metric that both rating agencies, Standard & Poor's
2 and Moody's, consider as most important in evaluating
3 credit quality today, and it's again a measure of cash
4 flow as defined by Standard & Poor's as a proportion of
5 the company's total -- total debt obligations, long-term
6 and short-term, as well as off balance sheet adjustments.

7 Q. Can you tell me what allowance for funds
8 used during construction is?

9 A. Allowance for funds used during
10 construction is basically the regulated equivalent of
11 capitalized interest. It's recognition that there are
12 financing costs that are incurred during the process of
13 construction, and it's a means of getting a -- I guess a
14 credit for that interest cost during the period of
15 construction, and then it's rolled into the cost of the
16 project and capitalized over time.

17 Q. So for my layperson's understanding, if you
18 have zero construction going on, you would have zero
19 allowance for funds used during construction?

20 A. That's correct. That's correct.

21 Q. And can you tell me what gross interest
22 expense is?

23 A. Gross interest expense would be the total
24 amount of interest incurred by the company on its debt
25 obligations. Just one moment here. Let me check the --

1 yes. As it's defined here, it's interest expense plus
2 AFUDC plus any interest on off balance sheet debt that the
3 company may have.

4 And when you said AFUDC, that's referring
5 back to what we discussed previously as allowance for
6 funds used during construction?

7 A. Yes.

8 Q. Okay. Gross interest expense, you
9 mentioned that includes interest expense, and on page 1 of
10 Exhibit 306, it talks about interest expense net. Can you
11 tell me what the caveat net after that refers to?

12 A. I don't recall what the distinction is on
13 the net basis there.

14 Q. Okay.

15 A. Perhaps that may be if the company did have
16 any short-term borrowings where it was earning interest,
17 perhaps it would be the net of interest earned versus
18 interest paid, but I don't recall specifically.

19 Q. But nevertheless, it is your understanding
20 that gross interest expense would include interest on all
21 KCP&L debt, is that correct, all KCP&L long-term debt?

22 A. Yeah. This is a topic of some question, I
23 think, as far as the company's intent versus what is
24 captured in the methodology, but long-term debt I believe
25 is how it's captured in the methodology here.

1 Q. Okay. And do you know if the company KCP&L
2 has recently issued long-term debt?

3 A. We have.

4 Q. And how much -- when did that occur?

5 A. March 6th.

6 Q. And how much long-term debt did you issue?

7 A. \$350 million.

8 Q. And are you aware that the company filed, I
9 believe it's an S3 registration statement associated with
10 that?

11 A. Yes, I am.

12 Q. Can you tell me -- I'll just show it to
13 you. I'm showing you the S3 registration statement, and
14 ask you if you recognize that? I'm sorry. Can I approach
15 the witness?

16 JUDGE STEARLEY: You may, Mr. Woodsmall.
17 I'm not going to make you back up at this point.

18 MR. WOODSMALL: I didn't mean to be
19 threatening.

20 BY MR. WOODSMALL:

21 Q. Can you tell me what the four uses of
22 proceeds that are listed in that?

23 A. Repayment of debt, repurchase, retirement
24 or refinancing of other securities, funding of
25 construction expenditures and acquisitions.

1 Q. Thank you. You mentioned that one of the
2 proceeds was funding of construction expenditures; is that
3 correct?

4 A. Yes.

5 Q. Can you tell me what construction KCP&L has
6 going now?

7 A. The two primary projects, of course, would
8 be the Iatan 1 and Iatan 2 projects that we've been
9 discussing.

10 Q. Can you tell me in their amortization
11 calculation how KCP&L removes the gross interest expense
12 for debt associated with funding of the Iatan 2
13 construction project?

14 A. I don't believe we separated. It's all
15 fungible from a calculation perspective.

16 Q. Okay. And is the Iatan 2 construction
17 project currently in service?

18 A. No.

19 Q. Can you tell me how KCP&L removes the AFUDC
20 for the Iatan 2 construction project?

21 A. Again, I -- just one moment. Just one
22 moment, please. Yeah, I don't see adjustment for AFUDC in
23 the calculation methodology here.

24 Q. And again, Iatan 2 is not in service; is
25 that correct?

1 A. That's correct.

2 Q. Can you tell me generally, as interest
3 expense increases, will the amortization increase?

4 A. Generally, yes.

5 Q. Okay. And as the amortization increases,
6 rates to customers increase; is that correct?

7 A. In the short term.

8 Q. Moving on to the third -- well, it's listed
9 as the third ratio on Exhibit 306, but I believe you said
10 it was the second ratio that's included in the
11 calculation, that's funds from operations as a percent of
12 average total debt; is that correct?

13 A. Yes.

14 Q. And can you tell me what average total debt
15 is?

16 A. I believe the way we calculate that is
17 looking at the beginning balance of debt at -- at
18 January 1 compared to the ending balance at December 31
19 and average the two. Just one moment. Looks like
20 long-term debt. Just one moment. No. It's -- it's total
21 debt.

22 Q. Okay. And again, you've mentioned
23 previously that KCP&L has recently issued debt; is that
24 correct?

25 A. That's correct.

1 Q. And one of the purposes of that debt was
2 the funding of construction expenditures; is that correct?

3 A. We used the -- the proceeds of that debt to
4 repay short-term debt.

5 Q. In your S3, you mentioned that one of the
6 purposes of the debt was the funding of construction
7 expenditures?

8 A. Yes. That's certainly one of the purposes
9 we could use the proceeds for, yes.

10 Q. And dollars are fungible; is that correct?

11 A. I was just going to say that, dollars are
12 fungible, so it's hard to attribute them to any one
13 particular use.

14 Q. But nevertheless, dollars are dedicated in
15 some fashion to the funding of construction expenditures?

16 A. The cost needs to be paid, clearly.

17 Q. Can you tell me in the funds from
18 operations as a percent of average total debt calculation,
19 where the funds for funding construction expenditures at
20 Iatan 2 are removed?

21 A. I don't believe they are.

22 MR. WOODSMALL: I don't have any further
23 questions for him. Thank you.

24 JUDGE STEARLEY: Thank you, Mr. Woodsmall.

25 Examination by Staff, Mr. Dottheim?

1 MR. DOTTHEIM: No questions.

2 JUDGE STEARLEY: Public Counsel?

3 MR. MILLS: I don't have anything further.

4 Thank you.

5 JUDGE STEARLEY: Black Hills?

6 MR. DeFORD: No questions.

7 JUDGE STEARLEY: Aquila?

8 MS. PARSONS: No questions.

9 JUDGE STEARLEY: Great Plains/KCPL?

10 MR. ZOBRIST: Just a couple of questions,

11 Judge.

12 CROSS-EXAMINATION BY MR. ZOBRIST:

13 Q. What is the position of the joint
14 applicants regarding whether they are requesting that the
15 Commission approve the regulatory additional amortization
16 provision for Aquila in this case?

17 A. We are not asking for approval in this
18 case.

19 Q. And I believe that in response to one of
20 Mr. Woodsmall's questions, you talked about an offset. Do
21 you recall that?

22 A. Yes.

23 Q. Just briefly describe for the Commission
24 what you mean when you say an offset.

25 A. A reduction to. I can't recall quite in

1 what context I used it. It was when we were talking about
2 net interest.

3 Q. Well, it was about the concept of
4 additional amortizations. I think you used the phrase
5 that in response to rates that there is an offset.

6 A. In the -- the -- it raises customer rates
7 in the short run, but it is a long-term reduction to rate
8 base.

9 MR. ZOBRIST: Nothing further, Judge.

10 JUDGE STEARLEY: All right. Thank you,
11 Mr. Zobrist. Questions from the Bench, Commissioner
12 Murray?

13 COMMISSIONER MURRAY: No questions. Thank
14 you.

15 JUDGE STEARLEY: Commissioner Clayton?

16 COMMISSIONER CLAYTON: No questions.

17 JUDGE STEARLEY: Commissioner Jarrett?

18 COMMISSIONER JARRETT: No questions.

19 JUDGE STEARLEY: Additional examination,
20 Mr. Woodsmall?

21 MR. WOODSMALL: No, and I don't believe it
22 would be appropriate after redirect, so -- because it is
23 the company's witness.

24 JUDGE STEARLEY: I'm kind of following our
25 list for what your normal witnesses are going to be.

1 MR. WOODSMALL: And this is not my witness.

2 JUDGE STEARLEY: Right. I understand.

3 We're a little bit different in procedure. Mr. Cline, I
4 believe that completes your examination, and at this time
5 I will finally excuse you.

6 THE WITNESS: Thank you.

7 JUDGE STEARLEY: And you may call your next
8 witness, Mr. Woodsmall.

9 MR. WOODSMALL: Call Mr. Trippensee. And
10 again, this is Public Counsel's witness. I'll be
11 conducting cross-examination.

12 JUDGE STEARLEY: Mr. Trippensee, I believe
13 we swore you in yesterday.

14 THE WITNESS: For a short period of time,
15 yes, sir.

16 JUDGE STEARLEY: I want to remind you
17 you're still under oath.

18 MR. TRIPPENSEE: Thank you.

19 JUDGE STEARLEY: And you may proceed,
20 Mr. Woodsmall.

21 MR. WOODSMALL: Before I begin, I'd like to
22 offer Exhibit 306, and I understand it won't be accepted
23 as part of the record, but I need to offer it as part of
24 the offer of proof.

25 MR. ZOBRIST: Judge, Great Plains and KCPL

1 have no objection. I guess my question would be, would it
2 be denominated in the record as something different than a
3 usual exhibit? I mean, typically these sometimes come in
4 as, quote, Appellant exhibits or something like that.
5 That would be my only request as Mr. Woodsmall said it
6 would be labeled as such being part of the offer of proof.

7 JUDGE STEARLEY: Certainly, we can mark
8 that, we can add the additional notation it's Appellant
9 Exhibit 306. Hearing no objections, it shall be received
10 and admitted.

11 (APPELLANT EXHIBIT NO. 306 WAS RECEIVED
12 INTO EVIDENCE.)

13 MR. WOODSMALL: I guess that assumes I'll
14 be the one doing the appeal? I take that back.

15 MR. ZOBRIST: I just -- that may not be an
16 appropriate -- whatever you want to call it, it just ought
17 to be labeled in a fashion to indicate that it's not an
18 exhibit that was offered in the case in chief.

19 MR. WOODSMALL: I understand. I'm sorry.
20 Thank you, your Honor.

21 RUSSELL TRIPPENSEE testified as follows:

22 CROSS-EXAMINATION BY MR. WOODSMALL:

23 Q. Mr. Trippensee, can you tell me what your
24 position is?

25 A. I'm the Chief Utility Accountant for the

1 Missouri Office of the Public Counsel.

2 Q. And in your role, are you familiar with the
3 KCP&L amortization mechanism?

4 A. Yes, I am.

5 Q. And are you familiar with the method by
6 which that amortization is calculated?

7 A. Yes, I am.

8 Q. And I believe in the past you have filed
9 testimony on that issue; is that correct?

10 A. Yes, I have.

11 Q. And, in fact, in the recent KCP&L case,
12 your position was accepted by the Commission; is that
13 correct?

14 A. I believe so, yes.

15 Q. Okay. Do you have in front of you
16 Exhibit 306? Was that left up there?

17 A. I don't see it. No, sir.

18 Q. You have the entire regulatory plan in
19 front of you?

20 A. Yes, I do.

21 Q. Would you turn to in that document what is
22 marked as Appendix E1 and then F1 through F3?

23 A. I have that.

24 Q. And is it true that this is the document
25 that provides the method by which the KCP&L amortization

1 is calculated?

2 A. Primarily Appendix F3 does.

3 Q. Can you tell me what the credit ratios are
4 that go into the calculation of the KCP&L amortization?

5 A. The -- with the experience so far, the
6 ratio that is driving the amortization is ratio, the funds
7 from operations as a percent of average total debt is what
8 it's labeled on E1.

9 Q. Okay. And is there another ratio that is
10 calculated that may cause a change in the amortization?

11 A. The interest coverage ratio.

12 Q. And can you tell me how that is labeled on
13 Appendix E1?

14 A. Funds from operations interest coverage.

15 Q. Can you tell me what working capital is as
16 applied to the funds from operations interest coverage
17 ratio?

18 A. Are you referring to working capital in the
19 definition on E1 or --

20 Q. Yes, sir.

21 A. Working cap -- okay. As I indicated in an
22 earlier answer, the driving factor behind the calculation
23 of the coverage ratios is on F3. Working capital in that
24 definition is contained on the first line, which is the
25 working capital for regulatory purposes in rate base.

1 These ratios on E1 don't exactly tie to what is shown on
2 F3.

3 Q. Okay. The working capital is used on
4 line 1 of F3. Does that include cash working capital as
5 used here in ratemaking?

6 A. Yes.

7 Q. Okay. Can you tell me what cash working
8 capital is?

9 A. It's basically developed utilizing what's
10 called a lead lag study that measures the company's
11 receipt of revenue and compares to the lag the company
12 experiences in paying for the expenses that they incur to
13 generate that revenue.

14 Q. And would that be all expenses that the
15 company incurs?

16 A. Only operating expenses that are included
17 in the revenue requirements.

18 Q. Would payments for labor on the
19 construction of a power plant be an operating expense?

20 A. No.

21 Q. Can you tell me what gross interest expense
22 is as used in the FFO interest coverage ratio?

23 A. Again, the gross interest expense, that
24 term is found on E1. The interest expense found on F3 is
25 probably a -- is a different calculation. These

1 definitions, and I hesitate to say where they came from,
2 but I believe this is a reproduction, this entire page,
3 out of an S&P credit report. It served as the basis
4 for -- or partial basis for F3, but it is not -- the
5 problem is S&P looks at total company. The F3 schedule
6 looks at Missouri jurisdictional retail operations.

7 Q. Okay. In the calculations for KCP&L that
8 have been done in the last two rate cases, what is your
9 understanding in those calculations of what gross interest
10 expense is?

11 A. It is the synchronized interest expense
12 which is the cost of debt taken times the rate base plus
13 some off balance sheet obligations that are calculated and
14 added to that interest expense along with some relatively
15 insignificant short-term interest that is built to
16 specific counts on KCPL's income statement.

17 Q. And one of the items that you mentioned was
18 the cost of interest. Is that the interest cost on all
19 KCP&L debt?

20 A. It is taking the entire KCPL capital
21 structure and the cost, weighted cost of debt taken times
22 rate base.

23 Q. Okay.

24 A. It is not the -- it's not the entire -- or
25 it's not even the actual KCPL interest expense that they

1 incur on a total company basis.

2 Q. In calculating the company's, KCPL's
3 capital structure, do you include all long-term debt in
4 that calculation?

5 A. The entire capital structure looks at the
6 total equity, the total debt, develops a ratio, say,
7 51/49, then the cost of that equity or debt is taken times
8 those ratios to get the weighted cost. That -- that
9 resulting ratio is then multiplied times rate base. Now,
10 the comparison of that result to their actual interest
11 expense is -- normally there will be less interest expense
12 in this -- in F3 than the company's incurring total.

13 Q. Let me get to the bottom line. Is there
14 any adjustment to account for long-term debt that is used
15 for funding of construction expenditures?

16 A. The adjustment by taking it times rate base
17 synchronizes the interest expense that is attributable to
18 operational plant. It by definition would exclude other
19 interest expense the company's incurring to support other
20 activities.

21 Q. But in the calculation of the percents of
22 equity and the percents of debt in the company's capital
23 structure, is there any elimination for debt used to fund
24 capital construction expenditures?

25 A. There's no tracing of debt to specific

1 investments at all.

2 Q. Okay.

3 A. Either way. There's just simply -- you
4 look at the total and then apply it to what you're trying
5 to support.

6 Q. There's no elimination of any debt in that
7 calculation?

8 A. No elimination of any debt, nor any equity.

9 Q. Can you tell me what allowance for funds
10 used during construction is?

11 A. It's the capitalized cost of debt and/or
12 equity that is given to long-term construction projects to
13 represent the financing cost of those projects.

14 Q. And as I asked Mr. Cline, in theory, if a
15 utility has no construction, it would have no allowance
16 for funds used during construction; is that correct?

17 A. If they have no long-term construction,
18 AFUDC is not taken on construction projects of less than
19 30 days.

20 Q. Iatan 2, are you familiar with the Iatan 2
21 project?

22 A. Getting more familiar with each meeting,
23 yes, sir.

24 Q. Would you consider that a short-term
25 construction or long-term construction?

1 A. Long-term construction project.

2 Q. Okay. So there would be allowance for
3 funds used during construction on an Iatan 2 project; is
4 that correct?

5 A. Yes, there would.

6 Q. And in the calculation of funds from
7 operations interest coverage, are you aware of any offset
8 or reduction for the AFUDC associated with the Iatan 2
9 project?

10 A. On -- it is listed on Appendix E1 as being
11 part of the calculations, but if you look at F3, you will
12 not find allowance for funds in construction. As I
13 indicated earlier, because of the synchronization of rate
14 base with the capital structure, there's no need to do
15 that stuff.

16 Q. Okay.

17 A. F3 and E1 are not consistent, and that's --

18 Q. I'm starting to realize that.

19 A. We can talk about why they're not
20 consistent, but at -- there was a concern with E1 being
21 the basis, but we had -- the other overriding concern was
22 that the amortization addressed Missouri only, not how S&P
23 does it. This is Public Counsel's perspective, not how
24 S&P does it or anybody else, but how this Commission sets
25 rates. I think it refers to average total debt. F3

1 actually uses year end debt, year end rate base, just like
2 the Commission does for regular -- for ratemaking
3 purposes.

4 MR. WOODSMALL: Okay. I think I
5 understand. I don't believe I have any further questions.

6 JUDGE STEARLEY: Thank you, Mr. Woodsmall.
7 Examination by Staff?

8 MR. DOTTHEIM: No questions.

9 JUDGE STEARLEY: Public Counsel?

10 MR. MILLS: Judge, should I -- shouldn't I
11 go after KCPL and GPE if they have questions?

12 JUDGE STEARLEY: If you prefer that order,
13 that -- I mean --

14 MR. MILLS: I would.

15 JUDGE STEARLEY: We will do that.

16 MR. MILLS: I mean, I believe my
17 examination is redirect.

18 JUDGE STEARLEY: Right. I believe that as
19 well. I'm kind of adapting procedures here. Black Hills?

20 MR. DeFORD: No questions.

21 JUDGE STEARLEY: Aquila?

22 MS. PARSONS: No questions.

23 JUDGE STEARLEY: Great Plains/KCPL?

24 MR. ZOBRIST: No questions.

25 JUDGE STEARLEY: Mr. Mills?

1 REDIRECT EXAMINATION BY MR. MILLS:

2 Q. Mr. Trippensee, can you look at F1 to the
3 appendix to regulatory plan that's also a part of
4 Exhibit 306?

5 A. Yes.

6 Q. Are the -- in roughly the middle of the
7 page, are B and C the metrics that generally drive whether
8 or not KCPL and, in fact, Empire are allowed additional
9 amortizations under their respective regulatory plans?

10 A. They are the two metrics that affect the
11 calculation in an amortization amount. The first metric
12 has a significant impact also because it sets the
13 capitalization ratios that are used on F3, which I believe
14 is the fourth page of Mr. Woodsmall's Exhibit 306. The --
15 what are shown as lines 10 through 15, those -- the debt
16 to capital ratios are reflected there.

17 Those are very critical in developing the
18 interest expense that then gets used in calculating the
19 ratios of B and C. It was our -- so the 51 percent debt,
20 49 percent equity was a very important part of this
21 agreement, those standards of where we expected the
22 capitalization of the company to be.

23 Q. Now, with respect to C, the 25 percent FFO
24 to total debt, do you see that line?

25 A. Yes, and it says average total debt, but

1 it's, as I indicated to Mr. Woodsmall, it's actually year-
2 end debt in the calculation.

3 Q. Just in rough numbers, where does Aquila
4 today fall with respect to that 25 percent number?

5 A. I guess I would have to first ask if the
6 company considers that information highly confidential.

7 MS. PARSONS: If you can give me a second,
8 I need to check with my client.

9 JUDGE STEARLEY: Certainly. Do we need to
10 go in-camera?

11 MR. MILLS: I believe the company considers
12 that to be HC, so I think so.

13 MR. WOODSMALL: Your Honor, before we go in
14 HC, I'd ask the company if that number is provided to
15 outside entities or is calculated from public information
16 by outside entities? If it is, then it's not
17 confidential.

18 MS. PARSONS: Aquila doesn't provide the
19 information to third parties public -- or excuse me, to
20 third parties. There are numbers out there that parties,
21 third parties could use to calculate, but we aren't privy
22 to what formulas they would use. So at this time we would
23 like to keep the number confidential.

24 JUDGE STEARLEY: Out of an abundance of
25 caution, I'm going to go in-camera, and Mr. Woodsmall,

1 when the transcripts come out, as we've been doing with
2 Mr. Mills, if you'd like to file a motion to have that
3 declassified, we can give the parties an opportunity to
4 respond, but at this point, out of an abundance of
5 caution, I'm going to go in-camera.

6 MR. MILLS: And before we do go in-camera,
7 Judge, I'm not even sure that this witness is going to be
8 answering that in terms of a specific number. He may
9 answer it in terms of how does it compare generally with
10 the 25 percent.

11 JUDGE STEARLEY: He may, but since the
12 witness himself brought up the caution, I'm certainly
13 going to respect that.

14 MR. WOODSMALL: And just clarification on
15 how this procedure would work, as I understand the
16 Protective Order, the protective rule, it's up to the
17 company to justify the designation and not for me to move
18 to declassify it, so I would expect that the company has
19 the initiating pleading and then I can respond to it.

20 JUDGE STEARLEY: Okay. I think at the
21 point of what's been said here in the hearing room,
22 that's -- counts as counsel's initial, you know, statement
23 of why they want to remain highly confidential and you're
24 free to move forward with the motion.

25 MR. WOODSMALL: I understand. Thank you.

1 JUDGE STEARLEY: Does anyone need to be
2 cleared from the gallery?

3 MR. MILLS: This is Aquila information, so
4 I don't know whether the KCPL employees should stay or
5 not. It's up to Aquila.

6 MS. PARSONS: It's okay if they stay.

7 (REPORTER'S NOTE: At this point, an
8 in-camera proceeding was held, which is contained in
9 Volume 24, pages 2975 through 2977 of the transcript.)

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1 JUDGE STEARLEY: All right. We are back in
2 public forum.

3 BY MR. MILLS:

4 Q. Mr. Trippensee, if -- if Aquila were to get
5 a regulatory amortization provision similar to the one
6 enjoyed by KCPL and Empire and Aquila did not meet the
7 funds from operation as a percentage of total debt, what
8 would that mean in terms of whether or not amortizations
9 would be allowed in rate cases?

10 A. Is there a chance you could repeat that,
11 because I lost where you were.

12 Q. There's a -- the assumption I'm making is
13 that Aquila is authorized to use an amortization provision
14 similar to the one used by KCPL and Empire. If that's the
15 case, and if it's the case that Aquila is below the 25
16 percent FFO to debt ratio, would an amortization be in
17 order in a rate case?

18 A. Well, if they were authorized to use one by
19 this Commission or an agreement among the parties, then
20 the formula is in place and that whatever ratio they had
21 after this Commission set rates on a traditional basis
22 would then be adjusted to reflect the additional cash flow
23 necessary to meet that amortiza -- that ratio target that
24 was set out in the plan, whether it be 25 percent or some
25 other number.

1 Q. Assume that whatever that number is, that
2 Aquila is significantly short of that. Would that mean
3 a -- let me ask that in a general sense. Is the degree by
4 which the company is short of the ratio target the more
5 they miss that target, the greater the amortizations are
6 necessary; is that correct?

7 A. The farther below the target they are, yes,
8 the greater the amortization.

9 Q. And at the time that amortization plans
10 were agreed to for KCPL and Empire, were both of these
11 companies, did they meet these -- these ratios?

12 A. They were either right at them or slightly
13 above, depending on the specific company and which set of
14 scenarios we were looking at in those discussions. They
15 were both investment grade at that point in time.

16 Q. And in the -- without getting into detail
17 about negotiations, were there other topics discussed and
18 embodied in agreements when both Empire and KCPL received
19 agreement from the parties to be able to use
20 amortizations?

21 A. Yes, there were. I believe I set those out
22 in my testimony, rebuttal testimony in this case, which
23 has been marked as Exhibit 201.

24 MR. MILLS: Thank you. That's all the
25 questions I have.

1 JUDGE STEARLEY: Thank you, Mr. Mills.
2 Questions from the Bench, Commissioner Murray?
3 COMMISSIONER MURRAY: No questions.
4 JUDGE STEARLEY: Commissioner Clayton?
5 COMMISSIONER CLAYTON: No questions.
6 JUDGE STEARLEY: Commissioner Jarrett?
7 COMMISSIONER JARRETT: No questions.
8 JUDGE STEARLEY: I believe, then, that
9 would conclude Mr. Trippensee's examination. You may step
10 down, and you are finally excused, Mr. Trippensee.
11 THE WITNESS: Thank you, Judge.
12 JUDGE STEARLEY: You may call your next
13 witness, Mr. Woodsmall.
14 MR. WOODSMALL: Call for cross-examination
15 Staff witness Bob Schallenberg.
16 JUDGE STEARLEY: Good morning,
17 Mr. Schallenberg.
18 THE WITNESS: Good morning.
19 JUDGE STEARLEY: I know you've made several
20 appearances throughout this proceeding, and I remind you
21 that you're still under oath.
22 THE WITNESS: Yes.
23 JUDGE STEARLEY: You may proceed.
24 MR. WOODSMALL: Thank you, your Honor.
25 ROBERT SCHALLENBERG testified as follows:

1 DIRECT EXAMINATION BY MR. WOODSMALL:

2 Q. Mr. Schallenberg, can you tell me what your
3 position is?

4 A. I'm the director of the utility services
5 division.

6 Q. And in that role, are you familiar with the
7 KCPL amortization mechanism?

8 A. Yes.

9 Q. Were you involved in the negotiation and
10 the stipulation that resulted in that amortization?

11 A. Yes.

12 Q. Are you familiar with the Empire
13 amortization mechanism?

14 A. Yes.

15 Q. And would you say that that mechanism is
16 similar to the KCP&L mechanism?

17 A. Yes.

18 Q. I'll hand you a document, and I don't have
19 adequate copies of this, so I'm not going to mark it as an
20 exhibit.

21 JUDGE STEARLEY: All right. Just be sure
22 everyone else gets a chance to look at the document.

23 BY MR. WOODSMALL:

24 Q. Hand you a document and ask you to read the
25 highlighted portion.

1 MR. ZOBRIST: Could you have him identify
2 the document for the record, please?

3 MR. WOODSMALL: Sure.

4 BY MR. WOODSMALL:

5 Q. Can you identify that document?

6 A. The document is a press release by Empire.

7 Q. And is it dated December 22nd, 2006?

8 A. Yes, it is.

9 Q. And will you read the highlighted portion
10 for me, please?

11 A. The second component is an amortization
12 that provides Empire additional cash through rates which
13 allows Empire to begin recovery of costs associated with
14 its current generation expansion. This expansion, which
15 is a part of the company's long-range plan to ensure
16 future reliability, includes the facilities at the
17 Riverton Power Plant and the Iatan 2 Power Plant as well
18 as environmental improvements at the Asbury Power Plant
19 and at Iatan 1.

20 Q. Thank you. Mr. Schallenberg, do you agree
21 with the statement that you just read in the Empire press
22 release?

23 A. Can I see it again?

24 Q. Sure.

25 A. I would agree with parts of it.

1 Q. Can you tell me which parts you disagree
2 with?

3 A. Well, I believe when -- when it says --
4 I -- when it says the -- allows Empire to begin recovery
5 of costs associated with its current generation expansion,
6 I think that's an -- that's an opinion attached to the
7 amortization.

8 Q. And do you agree with that opinion?

9 A. I believe -- I believe that's the facts. I
10 think that's an opinion that's accurate for Empire at the
11 time, but I don't believe the amortization by its design,
12 that that opinion always could be attached to the
13 amortization.

14 Q. Okay.

15 A. And then I would agree -- the last sentence
16 is just defining what's in the current generation
17 expansion plan, and I would agree with that.

18 Q. Can you tell me if the Iatan 2 Power Plant
19 is in service?

20 A. Yes.

21 Q. Is it in service?

22 A. No.

23 Q. Can you tell me -- will you tell me if the
24 environmental improvements on the Asbury Power Plant are
25 in service?

1 A. I'm not sure.

2 Q. Will you tell me if the environmental
3 improvements at the Iatan 1 Power Plant are in service?

4 A. Yes.

5 Q. Are they in service?

6 A. No.

7 Q. Are you familiar -- I asked you previously
8 if you were familiar with the KCP&L amortization
9 mechanism, and you said that you were; is that correct?

10 A. Yes.

11 Q. Will the -- are you familiar with KC -- the
12 joint applicants' original proposal in this case to seek
13 recovery of actual debt cost?

14 A. Yes.

15 Q. And they did seek that recovery; is that
16 true?

17 A. Yes.

18 Q. And since then, they have backed off of
19 that request; is that true?

20 A. Yes. I need to make sure it's clear. When
21 you say actual debt cost, it was Aquila's actual debt
22 cost.

23 Q. Can you tell me, despite that commitment,
24 can you tell me, will Aquila's actual debt cost have an
25 effect on the calculation of the KCP&L regulatory

1 amortization?

2 A. Well, the answer would be yes, it will,
3 unless modifications are made.

4 Q. Okay. In its current form, the calculation
5 of the KCP&L amortization will lead to higher rates
6 associated with Aquila's actual debt cost; is that
7 correct?

8 A. It's not a definite -- you have to make
9 assumptions as to what will happen when that calculation
10 is brought forward and the parties would accept just a
11 pure flow through, which I wouldn't anticipate to be true.

12 Q. Absent some future adjustment, the way the
13 calculation is made pursuant to the stipulation, KCP&L's
14 amortization will lead to higher rates associated with
15 Aquila's actual debt; is that true?

16 A. I would agree without an adjustment that
17 would happen, but the regulatory plan provides for rights
18 for people to challenge such a methodology if it was
19 actually composed by a party in a case.

20 Q. And those adjustments to account for
21 Aquila's actual debt have not been made in this case; is
22 that correct?

23 A. Yes, that's correct.

24 MR. WOODSMALL: I have no further
25 questions. Thank you.

1 JUDGE STEARLEY: Thank you, Mr. Woodsmall.

2 Examination by Public Counsel?

3 MR. MILLS: I have no questions. Thank
4 you.

5 JUDGE STEARLEY: Black Hills?

6 MR. DeFORD: No questions, thank you.

7 JUDGE STEARLEY: Aquila?

8 MS. PARSONS: No questions.

9 JUDGE STEARLEY: Great Plains/KCPL?

10 MR. ZOBRIST: None, your Honor.

11 JUDGE STEARLEY: Staff?

12 MR. DOTTHEIM: No questions.

13 JUDGE STEARLEY: Questions from the Bench,
14 Commissioner Murray?

15 COMMISSIONER MURRAY: No questions,

16 JUDGE STEARLEY: Commissioner Clayton?

17 QUESTIONS BY COMMISSIONER CLAYTON:

18 Q. Mr. Schallenberg, welcome back. I have
19 some questions about these -- these suggested
20 amortizations, and I need you to work me through a number
21 of these pieces. First of all, you are knowledgeable
22 about the CEP, the Comprehensive Energy Plan of Great
23 Plains; is that correct?

24 A. Yes.

25 Q. And you're also knowledgeable about the CEP

1 or some sort of comparable plan with Empire?

2 A. Yes.

3 Q. And are you familiar with the CEP
4 associated with Aquila?

5 A. No.

6 Q. Okay. So there is no CEP with Aquila?

7 A. No.

8 Q. And Aquila, however, is still one of the
9 partners in the construction of the Iatan 2 facility;
10 would you agree with that?

11 A. Yes.

12 Q. So Aquila right now is the primary entity
13 that is not benefiting from different regulatory treatment
14 as compared to the other two utilities?

15 A. That's correct.

16 Q. Okay. Would Aquila or -- either acting as
17 a division of another utility or on its own, what would
18 have to happen for Aquila to ever be able to have access
19 to a comparable CEP? Is there anything that could occur?
20 I mean, is the answer never? They'd never be able to do
21 it? What has to happen?

22 A. Well, the -- the -- one of -- they would
23 probably have to initiate the request again. They did
24 once, and upon further review, Aquila decided, given their
25 situation, it wasn't beneficial for them. So to get it --

1 to get it active again, they'd have to initiate a request
2 to start the request for a regulatory plan.

3 Q. Why -- can you tell me why it wouldn't be
4 beneficial to them?

5 A. Well, one of the things in -- I think
6 Mr. Cline referred to it. The amortization is in essence
7 a short term boost in cash flow, but the amortization
8 after the plant is in service reduces your earnings base.
9 So at the time, as Aquila looked at that, they didn't see
10 the reason to have to take the long-term hit on earnings
11 of wanting to avail itself, and because it wasn't
12 investment grade, it had designed, I believe, a -- I think
13 they called it project financing at the time. They had
14 designed a financing that would secure their debt to
15 finance Iatan -- the Iatan project with just project
16 financing, so they didn't see the need to go any further
17 to try to get additional amortization.

18 Q. Well, when you say the earnings would be
19 affected, are you talking about short-term earnings while
20 the CEP would be in place or are you talking about longer
21 term earnings outside of when a CEP takes place?

22 A. I'm talking about the -- the -- well, it
23 would be long-term earnings based on when the plant was in
24 service.

25 Q. All right. Let's take pieces of this.

1 While the plant is under construction, what happens with a
2 utility's earnings with -- with the assistance of
3 regulatory amortization? So does KCP&L have higher or
4 lower earnings or are they any different with their CEP in
5 place, right now while the plant is under construction?

6 A. The CEP or regulatory plan for the
7 additional amortization really doesn't change their
8 earnings.

9 Q. Okay.

10 A. It changes their cash flow, because they
11 get to calculate allowance for funds during construction,
12 which is a credit or increases their earnings. The
13 problem with that is that while they have the same
14 earnings, they don't have the same amount of cash at the
15 same time, so that hurts their cash metrics.

16 Q. So -- so the regulatory amortizations
17 increase cash flow, they get cash into the hands of the
18 utility to use as it sees fit, but really it helps finance
19 the construction of a facility while it's under
20 construction; is that a fair statement?

21 A. It's a component, yes. It's a component.
22 Once they have the cash, it helps address their cash
23 needs, which are enhanced by the construction activities.

24 Q. Okay. Now, the effect on earnings after a
25 facility is used and useful, once it is in service, then

1 the earning -- what happens to the earnings at that point?

2 A. With an additional amortization?

3 Q. Well, you've got the time period that
4 follows the additional regulatory amortizations. The
5 plant goes into service, it is used and useful. Then I
6 think you have to assume that the next rate case comes
7 through and you have a new reevaluation of rate base. At
8 that point, and just to simplify this, assume that we
9 don't have several other pieces that are out floating
10 around, but at that point, the additional amortizations
11 stop because the amounts have been added to rate base at
12 that point; is that correct?

13 A. That's -- that's a possibility. When we
14 get to that last rate case, you know, parties will be able
15 to propose whatever they want, but the plan doesn't
16 provide the amortization continues after that rate case
17 that you're discussing.

18 Q. Well, if the amount invested in the new
19 facility, assume you have an agreement as to prudence and
20 the actual dollar amount, but once you have the plant
21 going into service, you would have no need for additional
22 amortizations at that point because the plant -- the
23 plant's cost is then put in the -- in the cost of service
24 and therefore going into rates. Do I have that correct or
25 am I incorrect?

1 A. You would be correct if there was no
2 additional construction that still required cash flow help
3 after the power plant comes in.

4 Q. So -- and with this CEP, you have several
5 other pieces that stretch out beyond the completion date
6 or the date that Iatan 2 goes into service. There are
7 other projects that could potentially require additional
8 amortizations; is that correct?

9 A. That's correct.

10 Q. All right. Now, at the conclusion of that
11 rate case following -- following -- following the -- the
12 Iatan 2 placed in service, is it safe to assume that the
13 amount of additional amortization is going to be reduced
14 by some amount because you have pieces that are going into
15 rate base?

16 A. Yes. The -- in the regulatory plan it's
17 called the Rate Case 4, but in that case, because there
18 will be a rate increase pressure, cost pressure because of
19 Iatan 2, that will negate the need for the amortization
20 because you'll get depreciation on Iatan 2 and then a
21 return on it, that reduces the need for the amortization,
22 possibly could eliminate it.

23 Q. Okay. The additional amortizations will
24 offset that future addition to rate base? Aren't they
25 designed to do that?

1 A. Yes.

2 Q. So at the end of Rate Case 4, you'll have a
3 conversion of some of those amortizations will go down
4 while the value of rate base will go up. So rates won't
5 necessarily go down, but that you'll have some offset that
6 will occur there?

7 A. Well, whatever rate --

8 Q. If I'm misstating, correct me.

9 A. Whatever the rate base goes up in Rate
10 Case 4, it will -- it will go up less because of the
11 accumulation of additional amortizations than it would
12 have if you didn't have them. That's where the -- that's
13 where the benefit, the long-term benefit comes in, because
14 Rate Case 4 will be less -- Rate Case 4 will have two
15 factors because additional amortizations, it will be less
16 than it would have been without it, and the rate shock
17 will be less than it would have been without it. So that
18 was when the additional amortization was brought into the
19 CEP or regulatory plan, that was what made it attractive
20 to use it as a -- as a tool.

21 Q. Is this statement correct or accurate, that
22 the additional amortizations that are in place today where
23 the customers pay additional costs up front, those
24 customers will receive some credit for those payments in
25 the future through reduced plan service?

1 A. Yes.

2 Q. So there is a certain degree of equity for
3 the ratepayers associated with additional amortizations?

4 A. Yes.

5 Q. Okay. Now, regulatory amortizations that
6 have been discussed as part of the original proposal by
7 Great Plains, Aquila and KCP&L, those entities, wouldn't
8 those -- those additional amortizations that they
9 requested as part of their application be treated the same
10 way or be -- to the perspective of the ratepayer be the
11 same, that if the customer pays today, that they're going
12 to receive credit at some point in the future? Does the
13 same analysis apply for the additional amortizations that
14 would be a part of this merger?

15 A. I have to say I guess yes and no.

16 Q. Okay.

17 A. The yes part is, any time you can pay rate
18 base down now, it will be cheaper over the long run even
19 though it costs you more now. And that's the principle of
20 additional amortizations and depreciation that is common
21 no matter how -- the additional amortization had been used
22 prior to the regulatory plan in other agreements, so that
23 factor would be true.

24 The -- the -- the other problem you come
25 into is the additional amortization was justified -- the

1 use of that in the short run to raise rates was justified
2 because there was an agreement that the construction
3 program being done was prudent and reasonable and needed.

4 Now, when you bring that into the way it
5 was initially proposed here, Aquila has issues,
6 outstanding issues regarding its capital investments and
7 what it's made into generation and what it should have
8 done versus what it actually has. So actual construction
9 at Aquila will not have the baseline of acceptance and
10 prudence that existed when we did the Empire and the KCPL.

11 Q. Even for their share of the Iatan facility?

12 A. It will have for the Iatan facility, but
13 there's other things as -- in the press release I read,
14 there was other things that are in there, and as you
15 mentioned earlier, there's other things in KCP&L that have
16 occurred and were planned to go on beyond Iatan 2. And
17 the amortization is not specific. It doesn't identify
18 Iatan 2. It's done in a broad -- because we use total
19 debt and total numbers and allocated it to Missouri, it
20 isn't designed to specify and cut out different power
21 plants or --

22 Q. But it identifies a certain amount of money
23 that -- that -- that that money is -- is identified to
24 some extent at least in a general way for certain
25 construction needs? I mean, you can't -- you can't ignore

1 the existence of Iatan 2 and just say -- or different
2 components of the construction plan. I mean, they still
3 all come back to a necessary dollar amount of cash flow to
4 assist the company in construction, correct?

5 A. Yes and no. It -- it -- the formula -- we
6 use a formula approach now for Empire and KCP&L to meet
7 credit metrics, and so -- so we don't know the number.

8 Q. Okay.

9 A. But we have an agreement as to a formula.
10 I say agreement. We tweak -- we've been tweaking with
11 exactly how you adjust the formula, but we have a basic
12 formula. So we all know the number, but we do have an
13 agreement on how the number will be derived once other
14 things become known to us.

15 Q. So the focus is less on the actual dollar
16 amount that's going to go into construction but more on
17 the credit metrics that are included within the
18 amortization plan or the regulatory plan?

19 A. Right. And also the decision the
20 Commission makes and -- and -- and other items that either
21 would necess -- necessitate more amort -- more cash flow
22 or less.

23 Q. But in -- in establishing those metrics,
24 aren't you assuming that there're going to be certain cash
25 outlays for construction that would potentially reduce the

1 company in the analysis of their credit metrics, that
2 would threaten the company? I mean, aren't you assuming
3 that there's a certain amount of money and certain amount
4 of cash that's going to be necessary that would hurt the
5 company in their credit metrics?

6 A. No. These amortizations are not based on
7 future projections of cash expenditures. They're based on
8 actual debt. I mean, there's no forecast for what the
9 debt will be in 2010 or anything like that. In fact, if
10 you were really trying to isolate a part of an entity's
11 construction activities, you probably wouldn't want to use
12 the formula approach.

13 What you'd want to do is design a fixed
14 number, and then you would do what you're talking about,
15 is you'd say over this period of time the company is
16 expected to spend this much money, this is about how much,
17 you know, they're going to have a cash shortfall or a
18 cash -- you know, a cash enhancement or support would be
19 justified.

20 And then you would probably just pick a
21 fixed number and say, you -- you -- for -- for this period
22 to this ending period we would put into rates an extra
23 amortization, a regulatory amortization of X, and then you
24 would -- and then you could adjust it as things went on
25 and you saw those numbers came different -- you know, came

1 different and you could just say, instead of being
2 5 million you need to make it 5.5 or 4.5. That's probably
3 the best way to do it if you're not going to have an
4 agreement that you agree with the overall construction
5 program.

6 Q. Okay. So is it a fair statement that the
7 amount of cash, additional cash that's generated through
8 it -- through the CEP or the additional amortization, that
9 amount of additional cash is going to be significantly
10 different than the amount of cash that would come to the
11 company if Missouri was authorized to have construction
12 work in progress? The numbers would be computed
13 completely different, and the actual cash coming in to the
14 company would be completely different; is that a fair
15 statement?

16 A. Well, I can tell you this: I know the
17 calculations are completely different. Now, it's -- it's
18 probably -- it's probable that the CWIP in rate base
19 number would be different than what would come from an
20 amortization.

21 Q. Significantly or -- I mean, it would be
22 completely different?

23 A. Well, it'll vary depending on where they
24 are in terms of their financing, and also since the
25 formula doesn't pick up short-term debt now, most

1 construction is financed with short-term debt because the
2 permanent financing, you can't do those daily or monthly,
3 so what you will do is lean on your short-term debt to pay
4 your construction activities, and then you'll do a
5 permanent financing in order to draw the short-term debt
6 balance down. Right now the calculation -- the
7 calculation doesn't pick up short-term debt.

8 So right -- so the -- the answer is
9 depending -- the formula is not designed to come up with
10 the same answer. Because the factors at different times,
11 they will vary, the amount of that variance will depend on
12 what's happening at that given time.

13 Q. So to come back to my question about
14 Aquila's piece of Iatan, since-- since the formula is not
15 constructed to actually recover a certain amount of cash
16 that would be Aquila's contribution during construction,
17 what makes it less beneficial or unworkable for them is
18 that it -- because you're basing it on credit metrics,
19 they're not above investment grade right now, so there's
20 no way to compute it at this point, is that what you're
21 telling me?

22 A. Well, I think -- yes. The reason we have
23 the amortization the way it is in KCP&L is because we were
24 attempting to provide what they -- what they said they
25 needed was that the rating agencies understood that they

1 would have support during the construction period, so that
2 while the rating agencies would see the strain on their
3 credit metrics because of construction, they would have
4 the comfort of the regulatory plan and amortization so
5 that they wouldn't downgrade them.

6 In Aquila's case, since Aquila 1 wasn't
7 investment grade, there was no reason to have to try to
8 tie in any kind of a methodology to the rating agencies
9 because they weren't investment grade, so they weren't
10 going to lose it. So that was one of the starting points.

11 So then you start looking at if you do the
12 amortization, do you want to take the long-term hit on
13 earnings or would you rather carry it, you know, in the
14 short run and then get a higher rate base, and those were
15 factors that -- that caused us to have a different result
16 today for Aquila than we do for KCP&L.

17 Q. So to some extent they -- they -- Aquila
18 has chosen to take this route, and also, considering their
19 circumstances, it just didn't work out. I mean, is it
20 possible if -- if -- if Aquila chose to take the long-term
21 hit in favor of the short-term cash of regulatory
22 amortizations, would it be even possible for Aquila to
23 have -- would it -- is it even conceivable that a
24 settlement or an agreement could be reached on their own
25 comprehensive energy plan while they're below investment

1 grade?

2 A. Well, it's possible, but I think the bigger
3 issue with Aquila will be resolution of all the past
4 capital investments, because one of the things you're
5 going to have in Aquila is that to the extent that people
6 argue that you should have invested four, five, six, seven
7 years ago and have in essence made their rate
8 recommendations based on investments that should have been
9 made then, they're not going to necessarily feel they want
10 to pay an additional amortization to pay for the capital
11 they want to invest in the future when they believe the
12 capital, you know, should have been built in the past and
13 they've made great recommendations based on that capital
14 already being in rate base. So you're going to have to
15 get past that resolution before anybody's going to
16 agree --

17 Q. I need you to reexplain that. When you
18 were talking about they, were you referring to parties in
19 a rate case or are you talking about Aquila?

20 A. The -- the they mean like, for example,
21 Staff is a party that has taken the position, now, they've
22 been settling rate cases so that the positions -- is that
23 the amount of generation that they have committed to
24 serving their load should be greater than what they
25 presently have, that they have avoided for what the Staff

1 would argue were reasonable and prudent reasons not to put
2 that investment in the ground, steel in the ground, as
3 Dr. Proctor refers to it as. We have in our cases put
4 estimates of what those plants would be, when we do our
5 revenue requirements.

6 Now, in the future, Aquila still in reality
7 does not have that generation, so these future generation
8 plans will have someday -- will either have the need --
9 well, will have the need eventually to build or they'll
10 have to continue to rely on buying market-based power, and
11 those would be differentials. And if you're trying to
12 create an amortization, because the amortization is
13 designed for real cash and real cash flow, and there is
14 going to be -- the farther we go out from the date of when
15 people argue, including the Staff, that they should have
16 built versus when they actually built, the farther we move
17 from that date, that differential starting point gets
18 wider and wider.

19 Q. Let me stop you right there. I mean, I
20 just want to make sure that I have a handle on this going
21 forward, but if you -- if you look at Aquila standalone
22 with its current generation portfolio and its generation
23 needs, explain to me what the dispute is today for
24 decisions that were improperly -- or allegedly improperly
25 made, you know, four, five, six years ago. So what is the

1 dispute? If they should have invested five or six years
2 ago in new generation, how is that a dispute today?

3 A. Well, it would be a dispute in their next
4 rate case because what happens in all the rate cases since
5 that dispute has evolved, actually it's evolved since the
6 Aries plant, but the way that comes up is in the rate
7 case, the company has proposed purchased power contracts
8 to buy off the market on relatively short --

9 Q. So you're going to offset amount of the
10 purchased power agreements by an amount that would be if
11 they owned it as their own generation?

12 A. And so what the Staff does, it does not
13 buy that -- it doesn't -- it doesn't take the purchase
14 power contract. It in essence takes and puts into, I
15 think the last case had two additional generators
16 combustion turbines.

17 Q. The old phantom generators, right?

18 A. Well, actually, I refer to them as John
19 Empson 1 and Red Green 1, but other people call them
20 phantom, so -- but, I mean, I use those terms, but they
21 don't exist. But the site that the Staff uses was the
22 fact that if you're going to open up a CT site, the site
23 was going to be a six CT site, and by the time of the last
24 rate case, five CTs should have been at that site, and
25 that's how the Staff calculates what it --

1 Q. And in essence what that does is it reduces
2 the amount of their purchased power agreements by a
3 certain amount, however much that would be? I don't know
4 what 20 percent or 15 percent, what?

5 A. Basically it eliminates their purchased
6 power because they buy capacity. They have to buy
7 capacity to supplement the capacity they don't own. So
8 they'll buy capacity and then there will be an energy
9 charge if they use it. The Staff will remove from its
10 cost of service those purchased power contracts of
11 capacity and energy and will put in those additional
12 units, and then it calculates fuel based on those units.

13 In fact, it's probably -- it's an
14 outstanding issue even on Aquila's fuel clause because you
15 have to look at what fuel would be if those units were on
16 and whether that was prudent. So that's an issue actually
17 that the Staff's looking at today.

18 Q. So there are difficulties for Aquila beyond
19 just being below investment grade. You've got other
20 outstanding issues that make it problematic for some sort
21 of additional comprehensive energy plan?

22 A. Yes.

23 Q. Okay. Now, did KCPL as part of their
24 filings, I mean, did they make a specific request? If
25 Aquila is approved to be folded into the Great Plains

1 entity, do they actually make a specific request for, if I
2 can identify it as Aquila's share of Iatan? I mean, is
3 there a specific request like that, or is the request
4 basically let's go back to the old credit metrics and we
5 want to maintain investment grade in light of the new
6 financial circumstances, that we'll be taking on new debt,
7 financing this new arrangement? Are there several pieces
8 of the regulatory amortization plan or is it just
9 basically one, if that makes any sense?

10 A. In terms of their request, they didn't
11 request a regulatory plan. They requested an amortization
12 similar to KCP&L's to be applied to Aquila upon the
13 closing of GPE's acquisition of Aquila.

14 Q. So would there be -- would there be credit
15 metrics associated with -- with the old Aquila and its
16 debt or would it just be completely done away with and
17 you'd have credit metrics based on Great Plains under the
18 new ownership arrangement?

19 A. That's a question about a level of detail
20 that -- that they -- they're requested and get to.
21 Basically, their request is at a general high level that
22 they wanted the Commission to authorize them to have an
23 amortization similar to KCP&L. Similar doesn't define
24 will it be the same metrics, you know, all the other -- we
25 never -- it's not in their application how -- what kind of

1 detail the formula would take and what the metrics would
2 be. That was never specified.

3 Q. Well, without that detail, if you make the
4 assumption -- well, let's assume that -- let's say the
5 merger goes through and you move to the next rate case and
6 you have a request, an issue that's on the table
7 associated with regulatory amortizations. You have the
8 component of all the old stuff and then you have this new
9 stuff. Is there any possibility that -- that -- let me
10 try to rephrase this question.

11 You stated earlier that you have to have
12 benefits to the ratepayers by paying up front for a number
13 of these expenses. It has to be a prudent expenditure.
14 It has to be a good plan, and then later on the
15 ratepayer's going to get credit for that after the item
16 goes into service. Is there any scenario where additional
17 amortizations would be a prudent and equitable situation
18 for the ratepayers under the request that was made by
19 Great Plains associated with these additional
20 amortizations?

21 A. Well, I'd say, I mean, sure, depending on
22 the other things that you had on. For example, when you
23 talk about the KCP&L power plant, there's a reduction in
24 what they get to calculate as AFDC as well. So not only
25 are you going to get the value of the amortization, you're

1 also going to get value from the fact that their AFDC that
2 they can add to the plant has been reduced. So there were
3 other features added.

4 Now, could you add other features to the
5 Aquila proposal? Sure. Now, whether that gets enough
6 that people feel comfortable with that, you'll have to
7 look at the total picture.

8 Q. I mean, your answer, your basic answer is
9 going to be no, that there -- that this is not a prudent
10 transfer. It's not a prudent step for these entities, and
11 that -- I think what you're saying, your report suggests
12 that any regulatory amortizations would not be giving
13 equitable treatment to ratepayers. There's just --
14 there's not enough benefit for them to advance additional
15 funds now, even though they would be, you know, recouping
16 those funds in rate base at a later date. That's your
17 basic opinion, isn't it?

18 A. That's part of it. Part of my basic
19 opinion would also include that when we did the
20 amortization in the first place, it was in that
21 settlement, and one of the biggest things that comes up
22 and makes them difficult is, everybody is always reluctant
23 to do anything new because they're afraid it's going to be
24 used against them in a future proceeding. So my first
25 basic thing when I saw that is that, because that's just

1 going to make any other agreements much tougher.

2 The other part to it with Aquila was that
3 we had -- we had an understanding that we've been
4 enforcing that the customers are not going to pay more
5 because I've lost investment grade status. I have not at
6 this stage seen that they're going to be investment grade
7 without at least the commitment or at least the belief
8 that there's an amortization or some substitute, some type
9 of regulatory support coming fairly shortly.

10 So I -- I -- my other one was, is that
11 customers were not to have to pay more because of Aquila
12 losing its investment grade status. So if I had to do an
13 amortization to get them back up there, the element of
14 that would be contrary to the philosophy that we've tried
15 to enforce during Aquila's fall from grace, so to speak.

16 Q. Well, aside from a merger of this sort, are
17 there any other ways that Aquila could reach investment
18 grade?

19 MR. ZOBRIST: You know, Commissioner, I
20 really hate to object, and maybe I don't even know how I
21 do this in an offer of proof, but I think we're going
22 beyond the offer of proof. We were just here to talk
23 about additional amortizations. If this relates to
24 additional amortizations, then I withdraw my comment.

25 COMMISSIONER CLAYTON: Well, investment

1 grade, I thought it was a significant part of the
2 amortization plan.

3 MR. ZOBRIST: Well --

4 COMMISSIONER CLAYTON: Maybe I'm wrong.

5 MR. ZOBRIST: Of course, we've withdrawn
6 the amortization plan. But if it's related to
7 amortizations, I apologize, and have no objection or
8 comment.

9 THE WITNESS: The answer would be, is sure,
10 I mean, the fact that the one that KCPL got came when the
11 Commission directed the Staff and actually specifically me
12 to facilitate an effort to try to get one done, and, you
13 know, that was outside the merger or anything else. And
14 if the Commission expressed that, the effort would start
15 again, or if Aquila decides that it can put together a
16 case, I think Aquila's always going to have the trouble
17 with the perception that we're going up to investment
18 grade just because they lost it for their nonregulated,
19 but I mean, if the Commission did what it did when KCP&L
20 got theirs, that effort would start again.

21 BY COMMISSIONER CLAYTON:

22 Q. Perhaps I'm not following your answer.
23 If the Commission wanted to do something, if the
24 Commission wanted something to happen or direct Staff,
25 what do you mean by that? I mean, will we open a case or

1 would we --

2 A. Well, and that's how I'm -- they indicated
3 that they wanted to exp -- I think there was legislation,
4 preapproval, I think was the buzz. You know, legislation
5 has different terms in different drafts, but there was a
6 question outstanding about whether preapproval was needed
7 in Missouri in order to support construction. And at the
8 time there was discussions about this Iatan project and
9 could something be worked out, and so we started with
10 roundtables, and actually, I think the Commission was even
11 in the initial phase of what became the regulatory plans,
12 and then withdrew when parties felt uncomfortable with
13 having negotiations and discussions with the Commission
14 there and we went forward, and then we came up with what
15 we call the CEP. So that's how that process started.

16 Q. So could that process have ever started
17 just through company and Staff and Public Counsel and
18 other intervenors, is it possible that some plan have been
19 or agreement could have been reached absent some direction
20 or suggestion or whatever it was from the Commission? I
21 mean, we didn't take any official action that I recall.

22 A. No. I mean, well, other than, you know,
23 you participated in the roundtables and stuff. The answer
24 would be yes, but the probability you'll get an agreement
25 is probably less, and because -- we had roundtables on --

1 or we had generic cases to move our generation to
2 nonregulated generators. There were -- there were those
3 types of cases where roundtables or working groups, that's
4 the term I think they used, that was done. But there was
5 not -- there wasn't an overriding consensus that that was
6 a good thing to do, and so those all died.

7 Q. If you look beyond this case, look to say a
8 first rate case that would come up, there's not an
9 official request for regulatory amortizations in this --
10 to be part of this case. Is that your understanding of
11 the present status?

12 A. Today, that's true, yes.

13 Q. Okay. So what would have to happen for
14 this issue to come up again is that we'd have to approve
15 some sort of merger plan, and then in the next rate case
16 that would be a potential request by the company as part
17 of its next rate case, which would that be Rate Case 3 or
18 would the next one be 4?

19 A. Well, it's -- the next case for KCP&L is
20 Rate Case 3. Aquila doesn't have a plan so it doesn't
21 have numbered cases.

22 Q. Well, following -- following this case,
23 would there even be an Aquila rate case, the way it's
24 structured right now? The next rate case would be --
25 well, I don't know what it would be? Would it be a Great

1 Plains case? Would it be --

2 A. Well, my understanding is they still intend
3 to keep the present rate structures in place. They have
4 not asked to eliminate any of the tariffs, at least yet.
5 So as long as the tariffs stay in place, that you have, in
6 essence, tariffs to serve the St. Joe district, you have
7 tariffs to serve the, I think they call it MPS, I still
8 call it MoPub, Aquila territory --

9 Q. Those are different, because they're not
10 separate divisions. Aquila files the rate case. There's
11 only one Aquila Network because it files its gas or its
12 electric cases and then you have cost of service broken
13 out into two divisions, but they're not two different
14 cases, are they?

15 A. No. They haven't -- they haven't filed --
16 they haven't filed that way since Aquila acquired St. Joe.
17 But you're still going to have to have -- but you can look
18 at -- you'd have three sets of Missouri rates, and so
19 you'd have to look at do you need to raise all three sets
20 at one time, then you would file all in one case.

21 Q. So what -- what would be the caption on the
22 case if you had -- you'd have KCP&L entity, and then you
23 have MoPub and then you'd have St. Joe, but would they all
24 be -- would it be a Great Plains rate case? Would it be a
25 KCP&L rate case? What would it even be titled?

1 A. Well, right now if you -- I mean, they have
2 a proposal to change the name to something that they'll
3 determine at a later date, but right now I think the name
4 still would be Aquila St. Joe, Aquila MPS, and then KCP&L,
5 because those are the -- those are the tariff sets that
6 are regulated by the Commission.

7 Q. All right. So you have three different --
8 presumably three different case numbers? You don't know?

9 A. Probably, because you'd have -- intervenors
10 are different. Now, whether you consolidate the St. Joe
11 Aquila case into one case and then allow the different
12 sets, we've done that at times. I'm trying to remember.
13 I think in the last Aquila case the Commission didn't want
14 to consolidate and kept the cases separate. So it's
15 really a -- it's a decision you could go either way on how
16 you treat the St. Joe and MoPub.

17 Q. On the regulatory amortization, would the
18 additional amortization be additional cash? Would it come
19 in the filing of Aquila? Would it come in the filing of
20 KCP&L? Where would the additional cash show up?

21 A. Well, the -- the one that would need an
22 additional amortization would have to be in one or two of
23 the Aquila districts. KCP&L already has an amortization.

24 Q. So it wouldn't be an additional
25 amortization over on top of what they would request?

1 A. Yeah. They would have to be proposing to
2 modify the agreement before it expired, and I would assume
3 there would be a lot of problems if they did that. So I'm
4 not assuming that the KCP&L amortization is in any way
5 modified by the transaction before us in this case. In
6 the -- you mentioned the Iatan -- and MoPub is not a
7 partner to Iatan 1, and so St. Joe was the original
8 partner.

9 And in our assignment between the two
10 districts, that's been an outstanding question about what
11 do you do with Iatan 2? Who has the rights? And St. Joe
12 is the one that was there. Do you look at giving that to
13 just St. Joe and not giving it to MoPub? So if it was
14 assigned 100 percent to the St. Joe district, then you
15 would only need an amortization for St. Joe. I'm not sure
16 there's an agreement as to what's going to happen
17 between -- whether Iatan's going to end up in those two
18 districts, so if you're going to put it in both districts,
19 both districts would have to file. If you're going to
20 transfer it all to MoPub, then MoPub would be the one that
21 would file.

22 Q. But it's -- there's nothing specific like
23 that right now in how such a request would look in a
24 future case?

25 A. No.

1 Q. And even if -- even in the original case
2 that was filed, the amortizations were not set out with
3 any detail of how they would be structured?

4 A. No.

5 Q. Okay. Now, if -- in the original proposal,
6 is it conceivable that some sort of agreement could have
7 been reached? I'm not talking about specifics, but I
8 mean, is it conceivable that -- that some sort of
9 agreement could have been reached prior to the filing of
10 this merger plan on regulatory amortizations or something
11 that would make sense?

12 We talked the other day about Staff's
13 positions on mergers. You've had stips in the past.
14 You've had cases where there's not been stips. Is it --
15 is this a case that -- where there -- potentially there
16 could have been a possible stip associated with a concept
17 of regulatory amortizations, or is this -- or is it
18 basically there is no way this ever would have worked? I
19 mean --

20 A. No, I -- it's -- it's -- it's possible, but
21 not probable, because you would have been dealing with
22 just trying to get your hands around the transaction
23 and -- and get your position on that, which I mean, there
24 was input to that very early. The additional
25 amortizations was a complicating factor to get the

1 transaction approved.

2 So I know the Staff's initial one is, if
3 you're going to do that, don't do it in this case, you
4 know, do that afterwards. And now when you do it
5 afterwards, Aquila could do that at any time now, and they
6 could come forward. So that makes it more probable, but
7 as I said, unless the parties see an overall benefit to
8 come from it, which right now the benefit, getting Iatan
9 started was the cornerstone that pulled everybody
10 together.

11 Nobody, I think, except for, I guess, a few
12 environmental groups, everybody could see the need of
13 opening up the Iatan site and getting that second unit,
14 and that's the thing that pulled everybody together and
15 got them. I don't see that item occurring at what would
16 be -- and pulling everybody together for Aquila.

17 And as I said, you've got the other
18 handicap is, your first reaction is, we're just doing this
19 because they're not investment grade in the first place,
20 so if you're going to do any additional amortization, it's
21 going to have to have some safety net to it or some
22 special adjustment to it to make sure that when you're
23 done with it, you can represent that you're not paying for
24 Aquila's past financial missteps. That's just another
25 handicap. So nothing is -- nothing is impossible, but

1 those scenarios are not -- are not very probable.

2 Q. Okay. Let me ask the question this way.
3 Since we've identified that any potential regulatory
4 amortizations would have to come in in a case associated
5 with the Aquila tariffs, not with a KCP&L case, because
6 you said that that would be some sort of violation of
7 their regulatory plan or it wouldn't -- it wouldn't work,
8 so it -- that would -- these regulatory amortizations
9 conceivably would come from a case associated with Aquila
10 and its St. Joe Light & Power area, service area.

11 Assume that the Aquila entity does not have
12 a rate case until Iatan 2 is in service. Let's say --
13 let's say we made -- as a part of this case we approved
14 the merger, and I don't even know if it's possible, but
15 with the understanding that Aquila's not going to file a
16 rate case until Iatan 2 goes into service.

17 And if that happened, if a circumstance
18 like that happened where you avoided regulatory
19 amortizations and the Aquila component would go into the
20 cost of service, does that change your opinion on this
21 issue about being a potential detriment to the merger?
22 And the question may not even make sense, but try to work
23 through it.

24 A. Okay. I'm taking the assumption to mean --
25 because there were two assumptions. Could you condition

1 this merger with the condition that Aquila cannot file a
2 rate case until it's ready to put Iatan 2 into service?

3 You could. I don't -- I don't think that will be
4 attractive. I don't think -- but I think it would --

5 Q. And I understand. I'm not saying that's a
6 good idea. I just --

7 A. The other one you could put is -- the other
8 assumption I took from what you said is could you
9 condition it with that, to address this issue, Aquila will
10 not -- will not be able to ask for an amortization until
11 Iatan 2 is put into service, which is different. You can
12 ask for rate case, get your rate -- rate needs, but you
13 just can't ask for an amortization.

14 Sure. I mean, the thing there is we
15 will -- if you approve the transaction, you will have a
16 couple of years of actual experience under the transaction
17 and all the dust will settle and all the fights and stuff.
18 So you'll have some actual experience, and you'll have a
19 base to see where Aquila actually sits after you do the
20 Iatan 2 case, and then see if the additional amortization
21 makes sense and what's in the future for Aquila, and yeah,
22 you could do that.

23 Q. So would that remove -- and I think your
24 report was that these regulatory amortizations would be
25 just one of several detriments that I think you've

1 identified, but would that type of structure of the deal
2 eliminate a potential detriment in your mind, or do you
3 think that the -- still that the, you know, the cost to
4 the parent would still cause problems for the other
5 utility?

6 A. Well, okay. I believe that in terms of
7 addressing the amortization issue, I think that goes a
8 long way to address it if the condition is that they
9 cannot -- Aquila can't have an amortization or request an
10 amortization until after Iatan 2 is placed in rate base.

11 Now, in terms of the amortization, as you
12 mentioned earlier, the amortization is part of an overall
13 agreement that has other benefits that made the
14 amortization acceptable and the AFDC reduction monitoring
15 and all those other things. I don't want to leave you
16 with the impression that parties -- all parties are
17 willing to do an amortization without having the rest of
18 those other features wrapped around it.

19 If you do that, that's the kind of
20 amortization you're talking about, yes, it would go a long
21 ways that the parties could get together after Iatan 2's
22 in rates and negotiate a framework that would include
23 amortizations, yes.

24 Q. If we were to do something like that, would
25 that cause a problem with KCPL and its credit quality?

1 A. If the rating agencies -- well, I'd say at
2 this stage, in my opinion, yes, is because Aquila has
3 significant construction expenditures, and significant
4 interest existing right now, and rating agencies rate real
5 debt and real cash, not the things that are disallowed.
6 And if they did not see some type of mechanism to address
7 the Aquila part, that will pull down, that will be a drain
8 on KCP&L and Great Plains.

9 Q. Potentially lower them from investment
10 grade as a consequence?

11 A. It will be a significant drain, and they're
12 not ring fenced, so yes, I think the -- I think the
13 possibility would be -- there's already a report that
14 talks about could result in downgrades. You don't have
15 many downgrades before you go out of the investment grade
16 rating right now, for KCP&L.

17 COMMISSIONER CLAYTON: Judge, I think
18 I'm -- since we are in this offer of proof type of
19 scenario, I don't think I have any more questions
20 specifically to regulatory amortizations. I would like to
21 recall Mr. Schallenberg at the appropriate time to ask him
22 some additional questions that are stemming from this, but
23 I don't know if it's on the actual offer of proof, which
24 Mr. Zobrist pointed out. So -- but I think Mr.
25 Schallenberg is the last witness, so I'm not sure if we

1 have any other things to do, but I'll leave that to you.

2 JUDGE STEARLEY: Okay. We can complete the
3 examination with regard to the offer of proof and at that
4 point we can then recall him for your additional
5 questions. Commissioner Jarrett, did you have any
6 questions?

7 COMMISSIONER JARRETT: No questions.

8 JUDGE STEARLEY: All right. Additional
9 examination based upon Commissioner Clayton's questions,
10 Ag Processing?

11 MR. WOODSMALL: Very briefly, your Honor.

12 RE-CROSS-EXAMINATION BY MR. WOODSMALL:

13 Q. In response to some questions from
14 Commissioner Clayton, you talked about these, for lack of
15 a better term, phantom CTs. Do you recall those?

16 A. I remember -- I remember the discussion. I
17 have names for them.

18 Q. Okay. And in response to those questions,
19 you indicated that these phantom CTs would provide an
20 offset to the purchased power agreements that were
21 requested by Aquila; is that correct?

22 A. I'll answer this way. I'll explain what we
23 do. We place those CTs in rate base in lieu of placing in
24 the cost of service the capacity and energy purchased
25 power agreements.

1 Q. Okay. And since they are included in rate
2 base, Aquila would earn a return on those phantom plants;
3 is that true?

4 A. In Staff's cost of service, that would be
5 true. Those cases have all been settled by agreement, and
6 there are no overall agreements as to what is in cost of
7 service.

8 Q. And in Staff's cost of service, since those
9 are in rate base, the company earns depreciation or
10 receives depreciation expense associated with those
11 phantom plants; is that true?

12 A. There is -- yes.

13 Q. You made -- you were talking about the
14 capital expenditures associated with the regulatory plan
15 and the amortization adjustment, and you used the phrase
16 during the negotiations that they were deemed prudent,
17 reasonable and needed, unquote.

18 Can you tell me if that term, prudent
19 reasonable and needed as applies to the capital
20 expenditures applies given the reforecast?

21 MR. ZOBRIST: Judge, I think we're going
22 way beyond the offer of proof at this point.

23 MR. WOODSMALL: Well, I'd ask to make an
24 offer of proof on my offer of proof, then.

25 MR. ZOBRIST: Well, then we need to go

1 in -- I mean, when is this going to end? I mean, this
2 was --

3 MR. WOODSMALL: I have two questions.

4 MR. ZOBRIST: We're getting into -- I will
5 stipulate that the three words that Mr. Woodsmall quoted,
6 reasonable, prudent, whatever the other one was, that
7 that's to be determined in a future rate case, but that
8 doesn't have anything to do with either the merger or the
9 offer of proof that's being heard by the Commission at
10 this time.

11 JUDGE STEARLEY: Mr. Woodsmall?

12 MR. WOODSMALL: We're in an offer of proof.

13 JUDGE STEARLEY: I'm going to overrule and
14 allow questions.

15 MR. ZOBRIST: Do we need to go to HC,
16 Mr. Woodsmall?

17 MR. WOODSMALL: No.

18 BY MR. WOODSMALL:

19 Q. You used the terms prudent, reasonable and
20 needed. Can you tell me if that determination of prudent,
21 reasonable and needed was based upon the original forecast
22 of cost or on the reforecast?

23 A. I'm not sure. Let me explain this way.
24 The regulatory plan has a premise in it that at the time
25 the decision to build those projects was reasonable and

1 prudent. I don't remember needed, but I may have said
2 that. The amount that is attached to those projects, how
3 much dollar amount they cost is subject to a prudence
4 evaluation at the time the company seeks recovery of those
5 items in rate base.

6 Q. Final question. You were asking --
7 answering some questions about the joint applicants'
8 request for an amortization, and there were questions
9 about whether it's still part of their case. Are you
10 aware of any communications that the joint applicants have
11 made with rating agencies in which the question of the
12 need for an amortization may still be needed?

13 A. Yes.

14 Q. Can you tell me what the substance of that
15 communication was?

16 A. That they would be requesting an
17 amortization after this case was decided.

18 MR. WOODSMALL: I have no further
19 questions. Thank you.

20 JUDGE STEARLEY: Thank you, Mr. Woodsmall.
21 Public Counsel, Mr. Mills?

22 MR. MILLS: Yes, I have a few questions.

23 RECROSS-EXAMINATION BY MR. MILLS:

24 Q. Mr. Schallenberg, you had some discussion
25 with Commissioner Clayton about future rate cases with

1 Aquila and KCPL. Do you recall that?

2 A. Yes.

3 Q. Have you -- do you know whether there is --
4 there has been any indication that Aquila cases and KCPL
5 cases will be filed together in the future?

6 A. Earlier in the processing of this case, I
7 was given the impression that they planned -- that the
8 joint applicants planned to have one rate case filing, but
9 that doesn't necessarily mean that they would all be one
10 rate case versus three rate cases filed at the same time.

11 Q. It's your understanding that they will be
12 filed at the same time?

13 A. That was my understanding at that time
14 generically. Currently I -- well, they're not merged yet.
15 I do not have the understanding that the plan is that the
16 upcoming cases will be filed at the same time.

17 Q. Now, is it your understanding that if this
18 transaction closes, there will no longer be any Aquila
19 employees?

20 MR. ZOBRIST: Judge, if Commissioner
21 Clayton wants to examine this witness and the other
22 witnesses and the other parties want to ask
23 Mr. Schallenberg those kinds of questions, that's fine,
24 but this was an offer of proof on additional
25 amortizations, and now we're getting into Aquila employee

1 questions.

2 JUDGE STEARLEY: And I'm not sure,
3 Mr. Mills, where you're headed with this. Perhaps you
4 could enlighten me.

5 MR. MILLS: I can tell you this will tie up
6 in a question or two to the question of future Aquila rate
7 cases and their timing with respect to KCPL rate cases
8 which Commissioner Clayton inquired about.

9 JUDGE STEARLEY: I will overrule. You may
10 proceed.

11 THE WITNESS: It is my understanding that
12 the Aquila employees will become KCPL employees. I don't
13 know that that's a specified feature in the transaction,
14 but that's my understanding of what is intended to happen
15 if they move forward.

16 BY MR. MILLS:

17 Q. And if that does, in fact, happen, who will
18 make decisions about when Aquila will file rate cases?

19 A. They -- they still -- the answer is
20 Aquila's officers and technically its board, if that
21 requires board approval, will make that decision.

22 Q. And will Aquila's board be the same board
23 or a different board than KCPL's board?

24 A. I don't think they've specified whether --
25 I know it will have common members, but I don't know that

1 the boards will be exactly the same. They may be. I
2 don't know that for sure.

3 MR. MILLS: That's all the questions I
4 have.

5 JUDGE STEARLEY: Thank you, Mr. Mills.
6 Examination, Black Hills?

7 MR. DeFORD: No questions.

8 JUDGE STEARLEY: Aquila?

9 MS. PARSONS: No questions.

10 JUDGE STEARLEY: Great Plains/KCPL?

11 MR. ZOBRIST: No questions.

12 JUDGE STEARLEY: Any additional questions
13 by Staff?

14 MR. DOTTHEIM: No questions.

15 JUDGE STEARLEY: Very well. We've been
16 going about two hours now. Mr. Schallenberg, you may step
17 down for this portion of your examination of the offer of
18 proof.

19 I think we'll take about a ten-minute break
20 and come back and, Mr. Woodsmall, we can hear any
21 additional arguments you'd like to make regarding the
22 offer.

23 MR. WOODSMALL: Just for clarification, I'm
24 done with my offer of proof.

25 JUDGE STEARLEY: Are you requesting that

1 the Commission revise its earlier ruling?

2 MR. WOODSMALL: I may at some point in the
3 future after I see the transcript.

4 JUDGE STEARLEY: All right. Well, if the
5 offer of proof is completed, we'll go ahead and take like
6 a 10, 15-minute break, and we'll come back and
7 Mr. Schallenberg will be called back to the stand for
8 additional questions from Commissioner Clayton.

9 COMMISSIONER CLAYTON: Judge, can I, just
10 for clarification, just make sure everybody's on notice,
11 aside from some questions that I have for
12 Mr. Schallenberg, I did want to ask you on scheduling on a
13 number of legal matters that have been discussed during
14 the week and a half that we've been at hearing on this.

15 First of all, at some point I still want to
16 get around to being able to ask the lawyers some questions
17 about that pending motion for summary determination, I'm
18 not sure if anything was ever filed to clarify what the
19 status of -- of that motion is at this point since we have
20 a revised schedule. It may be nothing, but I think we
21 talked about that at one time.

22 Second thing, I had had a conversation on
23 the record with Mr. Conrad at one point talking about the
24 synergy savings and the allegations of limiting the scope
25 of the hearing on the synergies that the Commission made a

1 ruling on, but I was hoping to be able to ask some of the
2 lawyers some questions on those legal arguments.

3 And then the third is associated with some
4 of these evidentiary rulings on the offer of proof that
5 was made. So I'm hoping just to ask the lawyers some of
6 those questions when I'm finished with Mr. Schallenberg.
7 Is that possible?

8 JUDGE STEARLEY: Certainly. At that point
9 in time, when Mr. Schallenberg is through testifying, you
10 can inquire of the counsel, and at that point we will pick
11 up with housekeeping matters.

12 COMMISSIONER CLAYTON: This is the last day
13 presumably. We're not going to have another chance,
14 right?

15 JUDGE STEARLEY: This is the last day.

16 MR. MILLS: May I inquire of the
17 Commissioner just briefly?

18 JUDGE STEARLEY: Certainly.

19 MR. MILLS: I didn't understand the
20 questions you were going to be talking about about
21 synergies, that you referred to a conversation with
22 Mr. Conrad?

23 COMMISSIONER CLAYTON: Well, we had, it
24 was -- I think it was last week when we started the
25 hearing and there were motions filed, I believe, to

1 restrict the amount of testimony that would be associated
2 with synergy savings because of the structure of how this
3 proposal was made, you know, basically that it's a merger
4 between Great Plains and Aquila.

5 So we made an evidentiary ruling on that
6 during agenda, and what I want to do is I want to be clear
7 in my mind before I lose all the lawyers in one room of
8 those positions and -- because at this point we're
9 probably not going to -- all the lawyers aren't going to
10 be together. And Mr. Conrad I think --

11 MR. DOTTHEIM: Commissioner Clayton, I
12 think you're going to see that addressed again in the --
13 in the post hearing briefs, too.

14 COMMISSIONER CLAYTON: I know, but I'm not
15 going to be able to ask questions during post hearing
16 briefs, and I'm not sure after yesterday whether -- you
17 know, when and if this case is ever going to be brought up
18 for agenda, or whether I'll be able to discuss it at
19 agenda, or whether I'll be able to ask questions of the
20 parties at agenda. So after yesterday, I mean, it's not
21 clear when I'm going to have a chance to ask any
22 questions. So while I've got everybody in the room, I'm
23 going to do it here today. That's why I'm doing this, and
24 I want to have everyone here.

25 And now, this summary determination thing

1 may be done. That may not be relevant. I just want to be
2 clear on that. I want to be clear before we leave on the
3 synergy stuff and also on -- particularly Staff's position
4 associated with recent evidentiary rulings since Staff
5 supposedly can't ask for rehearing or reconsideration. I
6 want to know where we stand on that before we shut
7 everything down. That's it, Judge. Thank you.

8 JUDGE STEARLEY: All right. We will resume
9 in, like I said, approximately 10, 15 minutes.

10 (A BREAK WAS TAKEN.)

11 JUDGE STEARLEY: We are back on the record.
12 Mr. Schallenberg, you've retaken the stand, and once again
13 I remind you that you're still under oath.

14 THE WITNESS: Yes, sir.

15 JUDGE STEARLEY: And before the additional
16 questioning begins, just for clarification,
17 Mr. Schallenberg has testified to a number of issues in
18 this matter. The offer of proof has concluded on the
19 additional amortization issues. There will be no further
20 questioning with regard to that issue from this point
21 forward. So Commissioner Clayton, you may ask your other
22 questions for Mr. Schallenberg.

23 COMMISSIONER CLAYTON: Thank you, Judge.

24 ROBERT SCHALLENBERG testified as follows:

25 BY COMMISSIONER CLAYTON:

1 Q. Mr. Schallenberg, I kind of want to ask you
2 some -- a few big picture issues and then get down into a
3 few smaller issues, and I'll try to get through this as
4 quickly as possible.

5 If the Commission were to deny this merger
6 request, do you anticipate that Aquila would be the
7 subject of possible future mergers with its makeup in
8 terms of its condition as it is right now, or do you think
9 Aquila would continue on as a standalone entity, or do you
10 know? You may not have any idea, or do you?

11 A. The answer is in the short run it will
12 operate as a -- as an independent entity. I hold the
13 opinion and have seen through my career that the Kansas
14 City market is -- there's a dynamic there by it being
15 served by five electric utilities. I think there's two
16 municipals and three investor owned.

17 And with the expansion of Aquila up to the
18 north with the St. Joe acquisition, getting close to the
19 Nebraska and Iowa utilities, there is a dynamic that's
20 always been present for the last couple decades, in fact,
21 probably ever since KCP&L made the hostile takeover
22 attempt on Kansas Gas and Electric in the -- that was in
23 the '90s. There's always merger acquisition activity
24 going on. So in the long run, there will be more
25 discussions of those entities on the western side of the

1 state.

2 Q. Well, and giving me that answer, you
3 mentioned some non-investor-owned utilities, municipals
4 and some coops, you wouldn't anticipate that there would
5 be any type of merger activity between a municipal utility
6 and Aquila, would you?

7 A. Not between -- well, not with Aquila as it
8 is today. Now, if Aquila regains its investment grade
9 status and gets into a period where Iatan 2 is in rates
10 and it's got most of its construction program being
11 financed internally, yes. I'm seeing the movement even
12 now where a lot of municipals are considering whether they
13 want to stay in the utility business because the dynamics
14 have changed a great deal. It's much more difficult to
15 run. It's much more difficult to acquire power, and there
16 is --

17 Q. It's usually the opposite direction. You
18 see Aquila trying to take over, not take over, but merge
19 with other entities as the parent, not to be the subject?

20 A. Right. What I'm saying is, and as you can
21 see in this case, we brought -- Black Hills was brought
22 in, which is out of our region, to deal, to make the deal.
23 Once the dynamics start, then you start seeing what does
24 it take to get the deal done, and that may include the
25 interjection of a third party. So I do believe that some

1 day the Kansas City area will be served by one utility,
2 and there's always been an undercurrent of merger and
3 acquisition activity probably for the last 15 years.

4 Q. Would you see as a potential -- I know it's
5 an option. Is it a likely option that we'd see a
6 non-Kansas City-based utility step in as a potential
7 bidder?

8 A. I think there's been -- the most discussion
9 I've heard -- you said Kansas City based?

10 Q. Non-Kansas City based.

11 A. Yes. I think there's a possibility that if
12 the combination gets big enough, that Mid America may be
13 interested to move down to the Kansas City area.

14 Q. Where's Mid America located?

15 A. It's up in Iowa now. It's Mr. Buffet's.
16 It's part of Mr. Buffet's utility holdings. I think there
17 could be interest. My understanding is right now the mass
18 is not big enough to be a transaction, depending on how
19 big of acquisition it was.

20 Q. What do you mean the mass isn't big enough?

21 A. The combination of -- individual utilities
22 right now are not big enough transactions to make it on
23 their radar screen. It has to be a bigger utility
24 acquisition for them to spend the time and effort to do
25 that. There's been discussion of -- of Ameren expanding,

1 since it's already in Missouri, expanding to the west.
2 There's been discussion of -- I think they're now still
3 called West Star. I know them as KP&L, coming in -- into
4 Missouri, so those things come up a couple of times a
5 year, you hear of that discussion.

6 Q. Is Staff able to quantify a -- an amount of
7 money that would describe a difference between an adjacent
8 utility acquiring Aquila versus a nonadjacent? Is Staff
9 able to come up with a dollar amount of benefits that are
10 derived from a utility being so close in the same
11 regulatory environment that that would not be present with
12 Mid America or with Ameren?

13 Ameren, you'd have the same regulatory
14 agency, but you wouldn't have same headquarters and, you
15 know, the geographic proximity to each other. Have
16 you-all been able to come up with a dollar amount that
17 Kansas City Power & Light is the only entity that could
18 bring to the table in a transaction of this type?

19 A. The answer is we have not done that. You
20 could do a study, but the study still would be subject to
21 assumptions as to what consolidations you would do and
22 what consolidations you wouldn't do. Aquila would still
23 have a rural service territory as KCP&L will have an urban
24 service territory, and there are distinctions in serving
25 those two types of service territory that any combination

1 would have to be cognizant of when you're doing that
2 study, but -- and one of the things you're going to have
3 is when you do the study is you can assume certain
4 consolidations, but you'd also run the risk of, at least
5 in the short run, a high probability of service complaints
6 that, you know, maybe people -- for example, when we
7 started closing offices in the rural communities and --
8 and bringing most of the service reps and payment
9 collections either through mail or up in the big cities,
10 the small communities complained about the access they had
11 to the utility because the utility was a bigger part of
12 their day-to-day life than it is in the urban center.

13 So any such study, you can make assumptions
14 as to what you can do, but you always have to temper it as
15 to what would be the perception and the service issues
16 that would come by doing that, and that would influence
17 what your number would be.

18 That's -- generally speaking, when we
19 talked about it before, is most of these transactions
20 start with the idea that that's a possibility and we will
21 capture it when we -- when the time and the conditions are
22 right, and then they start working with the communities
23 and do that. So it doesn't have quite the shock effect,
24 which makes the numbers much easier to calculate 'cause
25 the -- your assumptions are tighter.

1 Q. Well, if -- on the surface, the basic, the
2 first level of consideration of a merger of two entities
3 that are in such close proximity, it seems the
4 conventional wisdom would be that, because they are close,
5 because you have headquarters in the same place, because
6 you have the same regulatory environment, the conventional
7 wisdom would -- would off the top seem like such a merger
8 would make a lot of sense.

9 And what I'm trying to get a sense from
10 you, and aside from the dollar amount paid for the company
11 and the regulatory amortization issue, aside from those,
12 is it the amount of -- is it possible to identify an
13 amount of money that -- that would describe those benefits
14 that come from that merger of close proximity utilities?

15 A. Yes, you -- you -- in fact, you could do
16 it, but as you know, you're doing an -- it's estimation.
17 It's probably better, I would say is -- the study would
18 probably be better done if it was a range instead of
19 trying to come up with a fixed point, because you're
20 dealing with estimates and assumptions. You would
21 probably want to look at it from the perspective of a low
22 estimate or an immediate estimate, what could be done
23 fairly quickly, because there's certain parts of their
24 service territory that are removed from each other. So
25 you'd have to isolate that and get down to the specifics

1 and then say what could we do, what could we reasonably
2 expect to do in a short period of time that wouldn't be
3 controversial.

4 You've also got -- you've got different
5 employees. Some are represented by union. Some are not.
6 The employee issues are going to be significant in terms
7 of whether this actually works or it doesn't work. So
8 you'd have to -- and, in fact, I'd say if you're going to
9 do a study, I think you'd need their involvement to see
10 what their view would be about their support or lack of
11 support. But I think you'd come up with a range.

12 Q. Has Staff ever been involved in such a
13 study where you have a proposal like that? How would
14 something like that work where you have a -- a proposed
15 merger or proposed identification of integration with
16 Staff's involvement in doing a study? How would that work
17 in the context of a case in requesting regulatory
18 approval? That seems quite difficult.

19 A. Well, normally what would happen is that
20 they would come up with a plan and actually request
21 Commission approval or Commission approval of the
22 consolidation or the -- the -- to do those activities.
23 And in that process what happens is you look at the plan.
24 A lot of that is service, did you do studies, who did you
25 canvass, who was involved, who did you get input from, who

1 did you not get input from, where did you get your
2 numbers, what's the basis for that, and then from that
3 then there's usually a recommendation. We get it like
4 from service centers, or when they want to sell big pieces
5 of property and take it out of service, we have that -- we
6 go through that dialogue on a micro level.

7 Q. So in this instance, the applicants did
8 file some sort of plan, did they not? I mean, they've
9 identified alleged synergies, and I know there's this
10 legal wrangling over -- over how the transaction has been
11 supplied. But there are projections, there are
12 assumptions, there is some data that's been placed in the
13 record by the applicants that would suggest some -- some
14 formation of a plan, yes or no?

15 A. Well, is there a plan -- depends on your
16 definition of a plan.

17 Q. Okay.

18 A. I mean, have they gone together and brought
19 groups together and have they produced suggestions or
20 options of how they can consolidate and jointly serve?
21 The answer is yes. Have they come up with dollar amounts
22 that they could -- they believe would be benefits from
23 such implementation of those plans? Yes, they have. Have
24 they, you know, combined that with doing that service
25 part, checking on the service part? I haven't seen that,

1 but they have a more macro and I -- I think they keep the
2 control over it because, after the transaction is done, if
3 you do approve it, I think they still have to pull the
4 trigger, and there's always a lot of things that are said
5 in cases that don't always get done the way people say
6 they're going to be done.

7 Q. Is that a question of execution or is that
8 a question of changing policy or changing, modifying the
9 plan?

10 A. I guess it's all that, plus it may be that
11 once you get close to actually having to do it, you take a
12 closer look and see that it's not as attractive as it was
13 when we first thought of it.

14 And then you also run into capital
15 constraints, because there's a lot of things when you put
16 a lot of things on the table, you haven't pulled all those
17 things together and combined it with the other things
18 going on, saying do we have enough money to do all these
19 things? A lot of times utilities -- you know, a lot of
20 businesses will just say, you know, we've got something
21 we've got to spend more money on now. We need to cut some
22 costs, some investments, capital otherwise, so things get
23 deferred.

24 Q. So from Staff's perspective, looking at the
25 plan, before you get to the question of execution or plan

1 modification, Staff is not satisfied with the plan that --
2 the plans have been proposed thus far; is that a fair
3 statement?

4 A. When you say plan, you're talking about the
5 plan to integrate, centralize Aquila and KCP&L?

6 Q. I'm talking about what the applicants have
7 included in their application. If you don't call it a
8 plan, what do you call it?

9 A. I call those individual plans or proposals
10 to jointly operate or consolidate portions of the
11 operations of KCP&L and Aquila as they currently exist.

12 Q. And then tell me why that's insufficient
13 from staff's perspective.

14 A. Well, I would say in terms of doing the
15 study that you were talking about, if we were charged to
16 do that, those things would be looked at in terms of
17 timing, and in terms of that it would be timing of
18 execution.

19 One of the things that we would take a --
20 we would look at a prioritization and say, okay -- for
21 example, when the Commission went to EFIS, I mean, that
22 was a major change. There was prioritizations of how much
23 were we going to attempt to do at first, what was fairly
24 easy to be done, because one of the things that always
25 happens whenever you make a change, like when the agency

1 moved from Truman to here, you know, there's going to be
2 things that just aren't -- are going to be unexpected and
3 everything else, so you need to be prepared so that you
4 don't bite off too much, that you can handle that, and
5 then you wait until you've got that -- that scope of work
6 done before you start engaging in other things, because
7 there is a big transition that takes place between what
8 you think will work and then actually making it work and
9 then making it work to the extent that it's mature and
10 it's working properly and you've accepted it. Those are
11 three different phases.

12 We said what -- what do we have proposed to
13 us? We have in essence these micro plans to do --
14 consolidate different segments of KCP&L and Aquila. We
15 don't have that pulled together. In fact, from the things
16 I see is there's this day one that they plan to start all
17 the stuff or almost all the stuff on the day after they
18 close on the transaction, and that's to me and the Staff,
19 that's -- that's not acceptable. I mean, the idea that
20 you can do all that and not have a bunch of implementation
21 issues is just --

22 Q. So the assumption is bad, the assumption
23 that they can start on day one after the transaction is
24 bad? You don't agree with that? You don't think it's
25 possible?

1 A. The scope of work that they want to do, but
2 you're moving people, you're going to have work groups be
3 consolidated, and they're going to have to be providing
4 service because the customers aren't going to expect a
5 different -- a different service on the day before the
6 merger, or whatever you call this thing, and the day
7 after, and you're going to have that kind of a shift.

8 Plus people are learning. You know, when
9 you're moving people, just your normal sources of
10 information and stuff, they're disrupted, you know, and
11 you're going to have a -- supposedly you have a
12 significant reduction in the work force, so people that I
13 normally could go to and talk to one day are now gone.
14 I'll now be working with another group of people that, you
15 know, I may know them but I don't know them very well. I
16 certainly don't know them in a work setting yet, that I'm
17 going to have that all happen.

18 Those are the types of things that, using a
19 term that seems in vogue now, be vetted, that that's --
20 that that is the level of what I would say if you're
21 really going to move into execution and implementation,
22 you've got to get down to that level of people involvement
23 and stuff, and then looking at -- knowing that things are
24 not going to work the way you want. I mean, you're going
25 to run into people problems. You're going to run into

1 vendor problems.

2 Q. So how do you solve those problems at the
3 plan proposal stage, when you say they need to be more
4 vetted, or do you just need to build in cushions? Do you
5 need to build in dollar amounts to -- to cushion the
6 potential growing pains? How do you deal with that in the
7 plan proposal stage? Because you're always going to have
8 issues that come up in any plan. It could be a perfect
9 plan, you're still going to have implementation issues, as
10 you say.

11 So how do you deal with that? Do you
12 create cushions or make assumptions that exaggerate cost?
13 How do you -- what does Staff believe should be done to
14 deal with that? Because that could happen anywhere, not
15 just with this plan.

16 A. Yeah. I mean, I agree. I think what makes
17 this, what you call this plan difficult is because there
18 are so many of those going on in such a short time frame,
19 that what I'm talking about is you would pick a much lower
20 scope of what you would do right off the -- let me -- when
21 we talked about the organizational structure that -- that
22 we commonly saw, in fact, we saw when this transaction was
23 first proposed in the mid '90s, is you start with the
24 status quo with the idea that you're going to do this over
25 time, but you wait until some of the undercurrent, some of

1 the issues can be done where people get used to working
2 with new people, that you can see how the Aquila people
3 are -- you know, because you're going to substitute the
4 Great Plains/KCPL management over, I think the number I
5 saw is 900 new people, which is significant given the work
6 force numbers.

7 You can -- and you're going to interject
8 new managers, new officers, and I just -- that -- there
9 are problems that come from that within the work force.
10 You let that -- you find out who's going to perform the
11 way you really think they're going to perform, because
12 there's going to be some people that you're going to have
13 the initial expectation's going to be high and they're not
14 going to perform as well in this new environment.

15 There's going to be people that you
16 probably had low expectations for that you're going to see
17 they step up in this. And then when you get that settled
18 base, then you start looking at gradually picking up the
19 projects that make sense for how we can consolidate,
20 because now my work force is used to working with each
21 other.

22 And that's the approach that the Staff in
23 essence uses as the baseline. That's not the approach
24 that's being proposed here, and with ---

25 Q. How is it different?

1 A. Well, right now what you have is you have
2 a, what I would call is a -- probably -- you start with a
3 premise that the Aquila systems as they exist today will
4 not be functional beginning on day one, that they will now
5 be done by KCPL, that Aquila will be a legal entity that
6 you'll treat on your books, but it will not be a
7 functioning entity as it is the day before they start
8 this.

9 And that's -- but that is still a movement,
10 as I said, of 900 people that is roughly, from the numbers
11 I've seen, I think they plan on 300 people taking out the
12 equivalent work force that serves Missouri. So you're
13 losing about 25 percent of the people who serve Missouri
14 in some capacity. Well, actually, that's whole numbers.
15 You're losing 25 percent of the people on day one that
16 serve Missouri.

17 And then you're also giving them -- there's
18 another part to this, because we have a third party, they
19 also have the requirement to provide transition services
20 to Black Hills. So I'm taking 25 percent out of the work
21 force of the Aquila people who are serving us today.

22 I'm going to have to also tell them that
23 while you're serving Missouri, you're going to have to
24 support Black Hills in the next year, somewhat, a little
25 more, a little less, because they're getting the gas

1 properties and other properties that are being sold to
2 them, and the only people who make that up is the present
3 KCPL employees, which, you know, depending on their
4 willingness and acceptance of this, sometimes people will
5 look at you telling me to do a lot more work, they don't
6 take that very well and they don't do it.

7 Q. So is the more prudent approach from
8 Staff's position that they should make the assumption that
9 they're not going to reduce the work force by 25 percent
10 or that they're going to increase the KCP&L staff by 25
11 percent? How do you fix that in the planning stage? Or
12 do you just need further explanation that sets out what
13 supports your reasoning?

14 A. I think you have to -- if you're going to
15 do that, you have to accept the additional risk you take
16 by taking that proposal to try and -- what you're doing is
17 you're trying to reduce the costs of service that's there
18 right now. You're trying to get drastic reductions in
19 that cost of service very quickly. I mean, I understand
20 the proposal. But -- but in that -- in that -- in that
21 thrust of driving that cost of service down, we remove
22 that many people out of the work force, you're going to
23 have a dramatic impact on the ability to provide the
24 functions that go on that were going on today. You're
25 going to have a dramatic impact on being able to provide

1 that. I don't think you can. You can't do that right
2 away.

3 And so what the Staff is saying is to
4 really have a viable plan and -- and just so I'm clear,
5 just because they said that's how they calculate their
6 synergies doesn't mean that's how they're really going to
7 do it. They may just not -- they may not just pull the
8 trigger on all those things. Things won't get done on day
9 one. It may be a couple months later and stuff.

10 But the difficulty I see in that is once
11 you start this, you're going to start accumulating certain
12 problems, and if you don't get those fixed on -- on -- on
13 your first couple projects, those will still continue to
14 linger and draw resources away before you can get to the
15 third, fourth and fifth project. And so even just the
16 whole implementation and execution of the way this study
17 that you're asking me about, I -- I believe it's -- it's
18 flawed in the fact that I don't believe it's really a
19 viable execution and implementation.

20 Q. Okay. Did your report identify, and I --
21 it's -- I've been through your report. Does it identify
22 the plan insufficiencies? Do you go into detail on the
23 plan inefficiencies?

24 A. As I said, I don't know that there was a
25 plan that you could look at and tell that there were a

1 bunch of proposals from different segments, and those --
2 those proposals shifted as we went forward in time.

3 Q. Let me stop you there. My question has the
4 premise that there is a plan. What you're suggesting is
5 that it is not a plan, correct?

6 A. It's not -- plan in terms of --

7 Q. It is not a comprehensive merger plan?

8 A. That's right.

9 Q. Okay. So is it your testimony that what
10 they have offered are maybe just suggestions or
11 identification of what they hope to do, or how would you
12 characterize it if it's not a plan?

13 A. I would characterize what they have is a
14 series of proposed consolidation or integration
15 possibilities of how to operate Aquila and KCP&L in a
16 joint function over and above what they did today. That's
17 how I would characterize.

18 And then the next stage would be its as
19 projects. Senior management would look at those and then
20 say, which ones of those are we going to tackle and get
21 down to the level of details, which ones are we going to
22 kind of put on hold, which have our biggest payback right
23 off the bat, and then start looking at -- at doing it from
24 that proposal.

25 But that proposal that I'm suggesting is

1 one looking at the consolidation function itself. It's
2 not predetermined that I have to get rid of a bunch of
3 people or that I have to cut costs. It's predetermined on
4 the basis -- its major objective is to run the
5 organization more effectively and efficiently than it is
6 today.

7 Q. So a focus -- a plan that you're suggesting
8 focuses on improved performance rather than just
9 identifying cost cutting?

10 A. Right, or trying to meet targets that, in
11 essence, I've made a bid that had a certain amount of
12 money that I was supposed to save and now I've got to come
13 up with ways to cut it because usually when -- when I've
14 seen utilities do that, there have been service problems
15 and they've had to retreat back to some -- some part of
16 where they were before, and they never truly get back
17 there.

18 Q. Did Staff raise these concerns with the
19 applicants prior -- certainly prior to this case coming to
20 hearing? I mean, did Staff raise these integration issues
21 with the company -- companies?

22 A. Well, I know we raised the -- you're
23 talking about the plan, KCP&L Aquila. I know we raised
24 the fact that that didn't exist, that wasn't proposed,
25 that wasn't part of the transaction in September. I don't

1 remember the exact date. I know we raised the issue that
2 the only thing before in the transaction was for Great
3 Plains to become the owner of Aquila. All these synergies
4 and stuff were coming from a KCP&L/Aquila consolidation,
5 combination. We raised that to the company in September.

6 Q. But that's the structure of how the case
7 would be filed, right?

8 A. Well, yes, and that would also be the
9 formalization of who's going to do what and how's it going
10 to be done, what -- you're asking me about the plan. That
11 would be the idea that that would be where the plan of how
12 KCP&L and Aquila would function on a detailed level and be
13 able to implement.

14 Q. I think it's your testimony that even if
15 the case had been filed in a manner that would request
16 approval of a more appropriate merger, it's your testimony
17 that the proposals for integration were --- would -- if
18 they are the same as they were today --

19 A. Yes.

20 Q. -- they would still be deficient, in
21 Staff's opinion?

22 A. Yes. They're high level. They're not --
23 they're not the ones that you would feel that you have a
24 reasonable execution and implementation risk that you're
25 actually going to get to doing these things.

1 Q. Well, regardless of how the case is
2 structured, how it is -- how it was filed by the
3 applicants, if -- if -- let's say the stars aligned and
4 everything went according to plan as suggested by the
5 applicants and that you do recognize synergies from the
6 integration of the companies. Regardless of how it's
7 structured, there would still be savings that could be
8 recognized in a consolidated company?

9 A. Yes, but when you say savings, I can cut
10 costs. Aquila's done that. But you have cons -- there
11 are consequences if you cut costs and don't keep in
12 balance service. We saw that when Southern Union acquired
13 the Gas Service Company. That's when we had the billing
14 issues and stuff, but Southern Union came in with the idea
15 that it could and would cut a lot of costs right off the
16 bat, that it could run the gas properties in Missouri more
17 efficiently than they were being presently run. And we
18 found that when they did that, they ran into all kinds of
19 service problems, and that was a major event not only for
20 the customers but really for this agency to try to handle.

21 So yeah, you could cut costs, sure. I
22 mean, Aquila even tried to do it on a standalone basis in
23 its call centers and found out that, yeah, they could cut
24 the cost of what they were spending, but then you started
25 seeing that you had abandoned calls and speed of answer

1 deteriorated and everything else, and then we had to
2 retreat and go back, and in that process will you probably
3 in the long run spend more money? Yeah, you will, but in
4 the short run you could save costs.

5 Q. So is the baseline -- I mean, is your
6 starting presumption that -- that -- that a merger does
7 not -- between any entities, a merger is not going to lead
8 to savings or that it will actually lead to increased
9 costs? Is that your baseline, and then you have to design
10 a more detailed integration plan with all things occurring
11 that would improve that? Is that how you would start with
12 an assumption?

13 A. I think you'd start first with the
14 assumption of what is the things that you can identify
15 that are high probability. For example, you know you're
16 not going to have Mr. Green. You know, you're going to --
17 they're going to use, I think -- his name escapes me
18 for -- you're going to have Mr. Chesser. You're going to
19 have Mr. Downey. Excuse me. You're going to have
20 Mr. Downey, who's going to be the -- so obvious -- so
21 whatever I'm paying for Mr. Green, that's going to be
22 removed. I want some severance cost. That's in there.
23 And then I'm going to have whatever I'm going to end up
24 paying Mr. Downey.

25 So I can do that kind of math and say

1 what's going to be there right off the bat. And then --
2 and then on the other hand, but there's cost. I mean,
3 there's the transaction, how much the transaction's going
4 to cost me, what other transition costs, and I do that
5 math and I come up with --

6 Q. So you have high probability issues of
7 savings, high probability issues of cost, and then you
8 would also identify the ramifications of eliminating those
9 costs. So you'd look at any quality of service
10 implementation or quality of service implications from
11 reducing that staff? I mean, hard to identify eliminating
12 the CEO, what detriment would that bring to the quality of
13 service in theory, correct?

14 A. That's correct, because you have to look at
15 the decision-making that -- because Mr. Green is familiar
16 with the current operations and people are familiar with
17 interacting with Mr. Green to make decisions right now.
18 Now, if I take him out of the equation, which is simple to
19 do in the math, what will happen in the interim while
20 Mr. Downey now has to deal with Aquila questions and the
21 people who were making -- were taking -- the people at
22 Aquila that survived, they get to talk to Mr. Downey. How
23 familiar are they going to be -- you know, how familiar
24 are they going to be with Mr. Downey? How familiar is
25 Mr. Downey going to be to make the decisions that are

1 being made today? There is some disruption that takes
2 place.

3 Q. But there's no way you could put together a
4 proposal that could identify beyond just a range of
5 possible costs or savings, could you? I mean, is that how
6 a plan ought to be?

7 A. Well, I really don't know, but I think the
8 costs are usually fairly definite, you know, the
9 transaction costs. Those are -- those are pretty --
10 there's going to be some variability. Those are pretty
11 definite. Most transition costs you have -- you have
12 control over, because you either decide whether you're
13 going to consolidate or you're not, and if you decide to
14 consolidate you would, in essence, look at it and say,
15 okay, in this consolidation how much am I going to have to
16 spend to move or whatever, and then what's my payback
17 going to be?

18 So that's why I said, as I look at what the
19 company has as suggestions that you kind of put on the
20 table and then you break down in individual projects to
21 say, well, we do these things, what's the cost and the
22 benefit of each of these things? And in that you get a
23 prioritization, and then you say, which ones have the
24 biggest return and which ones have the minimal risk to
25 disrupting service in any of the work force?

1 conservative assumption regarding my benefits, then in
2 essence my threshold, what I'll be willing to pay is
3 lowered, but my possibility of it being detrimental or
4 turning out bad is reduced. That's how the buyer does it.

5 Now, when it's done -- so the seller, the
6 seller will look at that price and say, you know, is that
7 reasonable? Will I take it or not? And maybe yes; maybe
8 not. If both parties say yes, after the buyer's already
9 reflected that in his price, then you have a deal. If
10 they say no, then you don't have a deal and they go on.

11 So what I'm saying is, this estimation that
12 you do is, that's built into the price of what you offer,
13 the consideration of what you're giving up. And that way
14 you don't put yourself in a position where you're --
15 you've offered a lot based on a high level of cost
16 reductions that, in essence, you have to implement or
17 achieve in order to justify the price you pay.

18 Q. All right. And it's your testimony that
19 that level of detail, that level of planning is not
20 present in this case?

21 A. For actual implementation on a reasonable
22 belief that that's what they're going to choose, that's
23 true, yes.

24 Q. Now, I'm going to ask some questions of the
25 attorneys later on about the legal ramifications of how

1 this case has been filed versus how some parties believe
2 it should have been filed, and I think your report reaches
3 some conclusions based on how the case was filed versus
4 rather how you think it should have been filed. Is that
5 accurate or am I talking in circles?

6 A. No. I think what I would say is we look at
7 the transaction that was proposed to the Commission and
8 what that really entailed, and in that process, and of
9 course part of that was the synergies and the savings,
10 discovered that when people were using the term merger,
11 that's not what's actually -- a merger of KCP&L and Aquila
12 in any part is not part of the transaction here, which is
13 where all these savings synergies are coming from.

14 The transaction that's actually being
15 proposed to the Commission was a -- a merger only of a
16 subsidiary that Great Plains was going to make -- make so
17 that Aquila will ultimately become wholly owned by Great
18 Plains. So that's all that's in that transaction before
19 us. So the report just addresses the transaction.

20 Q. Okay.

21 A. We did not go through and try to say, what
22 was -- what was the model or anything else, we just
23 addressed what was -- what was contained in the
24 transaction, that was in the application.

25 Q. What is your understanding of -- what is

1 the name going to be on the truck that comes out to
2 service someone in the present Aquila service territory
3 following this merger? Will the name of the -- of the
4 truck that goes out and services then be a KCP&L truck,
5 will it be a Great Plains truck, or will it be a new
6 entity to be named later?

7 A. Well, if you -- if you take the Staff's
8 recommendation -- or I'll start with -- what the joint
9 applicants proposed is you just allow them to name it
10 whatever they choose to name it, sometime in the future
11 that you just delegate that to them.

12 The Staff's recommendation is the answer to
13 that question will be determined when they come back in to
14 you and say, we want to change the name of our trucks from
15 Aquila-MPS to whatever they want to change it to or
16 Aquila-St. Joe, whatever they want to change -- you'll
17 know that before they actually get to do it, because
18 they'll come in and ask for a name change.

19 Q. So let's say -- let's say they wanted to
20 change the -- they asked for permission to change the name
21 of the company to just a new -- a new name, maybe return
22 to UtiliCorp or something like that. If they do that,
23 then the way they have filed their application is
24 accurate, isn't it? I mean, they will not be
25 consolidating with KCP&L. They won't be KCP&L trucks that

1 are out there, they'll be UtiliCorp that is owned by Great
2 Plains. So if that is the case, didn't they file their
3 application the right way?

4 A. They filed -- the way they filed their
5 application would allow them to come in for a name change
6 just as they'd come in for a name change. Aquila can come
7 in and change -- in fact, as you know, they've changed
8 their name a few times. They just come in for a name
9 change whenever they wanted to change it.

10 Q. Would a -- would a detailed integration
11 plan that you described earlier today, would it -- would
12 that plan look different if they filed it as how they
13 proposed here versus having a -- an application that would
14 merge with KCP&L? Would the integration plan look any
15 different or would it -- could it be the same plan
16 regardless of how they structured it?

17 A. I would say is, what they have now would
18 serve as a basis for formalizing the agreement between
19 KCP&L and aquila as to ownership and operation, and
20 the -- that new environment that they're proposing, so I
21 think the material they have now would be the equivalent
22 of, like, doing your own due diligence of what a
23 consolidation/combination would look like. You would
24 formalize that into an ownership agreement, because as
25 long as you can still have assets in Aquila, these trucks,

1 and you're going to have assets in KCP&L but you're
2 planning on jointly using those, and those trucks are
3 going to come and some are going to go and some are going
4 to need to be added, you're going to need to have an
5 understanding of what's going to be the responsibilities
6 in those matters in the future? What's going to be
7 Aquila's responsibility as a legal entity and what's going
8 to be KCP&L's?

9 So you've got to be able to handle the
10 ownership, and you're going to have to be able to address
11 the operating, which I think somebody asked the question.
12 At least it seems right now there's going to be -- Aquila
13 will not be able to operate as a separate entity without
14 operating support from KCP&L with the way they're
15 proposing because they're taking all the employees away.
16 So you would formalize an operating agreement specifying
17 what KCPL's going to be obligated to do for Aquila.

18 Q. Who will -- the name that is actually on
19 the paycheck that gets issued to present day linemen
20 working for Aquila, will their paycheck come from KCP&L or
21 will it come from Great Plains or will it come from this
22 player to be named later?

23 A. My understanding is that the linemen today
24 will become -- the day after the transaction closes, will
25 become KCP&L employees, and they will be paid by KCP&L,

1 and then the cost of the linemen working in Warrensburg or
2 something will be charged to Aquila, be on Aquila's books.

3 Q. So aside from Mr. Chesser, who's CEO of the
4 company, does anyone else receive a Great Plains paycheck
5 today? Are there any other Great Plains employees, other
6 than the unregulated what's going to be spinning off?

7 A. No. There's Mr. Downey is a Great Plains
8 employee.

9 Q. I thought he was CEO of KCP&L.

10 A. He is.

11 Q. But he still -- he draws --

12 A. You asked me who's an employee. Now, I
13 believe -- I believe they all receive one check, and I
14 believe the checks are paid for by KCP&L. It's just that
15 the cost and -- and -- and the accounting is done -- is
16 charged to the entity called Great Plains, but they get
17 one check. The --

18 Q. So even Mr. Chesser's check comes from
19 KCP&L and then it gets charged back to Great Plains?

20 A. Yes.

21 Q. So Great Plains doesn't have any employees,
22 then?

23 A. Well, Great Plains has -- they have a whole
24 organization -- well, how many of those are not KCP&L or
25 joint KCP&L employees? Well, Mr. Chesser's not one.

1 There's a few, but most of them are joint KCP&L and Great
2 Plains employees.

3 Q. Is that even a relevant question?

4 A. I guess -- yes, because you wouldn't have
5 asked it if it wasn't.

6 Q. Well done, Mr. Schallenberg. Well done.
7 If the -- if the applicants would have filed the case as a
8 merger between Aquila and KCP&L rather than a merger of
9 the new subsidiary with Great Plains, if it had been filed
10 that way would Staff be recom -- would it change its
11 recommendation in the case just by that change in how the
12 case was filed?

13 A. Well, I would -- I would say -- that
14 proposal, if I understood, the transaction of Great Plains
15 acquiring Aquila is still necessary for the way they plan
16 to operate because they want to keep Aquila as a separate
17 legal entity so that you still need the transaction that's
18 proposed. The other part that they need -- that they
19 would have needed to add would have been the joint
20 operating and ownership agreements between KCP&L and
21 Aquila, and depending on what those documents showed
22 and -- and the nature of that transaction and that
23 commitment --

24 Q. All things being equal, before we get to
25 getting into details about an operating agreement, but

1 even if they would modify the application and say they're
2 requesting merger with Great Plains and a consolidation
3 with KCP&L, just by changing the legal pleadings, all
4 things -- everything else being equal, Staff wouldn't
5 change its recommendation, would it?

6 A. No.

7 Q. I mean, just by changing the legal
8 documents doesn't change the likelihood or -- or
9 unlikelihood of a certain amount of savings being
10 generated from a potential merger?

11 A. That's correct. Nor the level of detail
12 that -- that one scenario would require.

13 Q. So from Staff's perspective, you would have
14 to have a change in how the case was filed, and then you
15 would have to have the filing of specific operating
16 agreements or operating implementation plans; is that
17 correct?

18 A. Right. There's a minimal filing -- there's
19 minimal filing requirements that specifies what the
20 minimum is you would have to do in order to get Commission
21 approval of that transaction.

22 Q. Okay. So work with me on this. So let's
23 say you have -- the case is amended to be filed in the way
24 you think it should be filed, No. 1. No. 2, that there is
25 a -- that there's some sort of operating agreement that

1 sets out how the companies are going to function; 3, that
2 there's going to be a specific fully vetted implementation
3 plan that Staff feels is adequate and accurately reflects
4 what's going to happen. Make those three assumptions. At
5 that point, does Staff change its recommendation in this
6 case?

7 A. What I would add, you need a joint
8 ownership arrangement.

9 Q. Okay.

10 A. Then based on what the details are, because
11 that's a more detailed -- that's a lower level of detail
12 that's presently existed. Based on what those details
13 tell us, we will determine whether that would be
14 detrimental.

15 Q. Okay. At that point, so you -- there is a
16 possibility depending on several other factors, but you're
17 getting past several humps that you've identified in the
18 current proposal, correct?

19 A. Right.

20 Q. So let's say you have all these agreements
21 and a plan that realistically identifies issues associated
22 with an integration. At that point would Staff do an
23 analysis of the actual dollar amount of savings?

24 A. Clearly.

25 Q. And -- and does -- then would staff

1 identify the likelihood of -- of a certain number being
2 reached to make the transaction not detrimental to the
3 public interest? Would you set a baseline for what you
4 think is going to happen and needs to happen?

5 A. Well, yes, but on the other hand, in that
6 case, the price has already been set, but we -- what
7 you're asking, we would do that and then compare it to
8 given what's being paid, will that make sense given what
9 the reasonable expectation is and what they can achieve
10 and will the price differential cause a detrimental aspect
11 to the joint operation of the two entities being
12 discussed.

13 Q. Okay. So at a minimum you'd need -- would
14 Staff consider a minimum savings to be identified as being
15 at a minimum the transaction costs and transition costs as
16 part of the merger?

17 A. Either that or -- see, one of the things
18 that could happen in this -- in a transaction is there
19 could be benefits at a corporate level, a Great Plains
20 level. It could pay for the transaction costs, but we
21 would look at that and see what's going to happen, because
22 if you -- if you -- if you say you're going to have these
23 transaction costs and they're going to pull Great Plains
24 down and we're not ring fenced, is that going to have a
25 corresponding blowback on the utilities? So we would look

1 at that.

2 You get to the transition deal, you would
3 look at, on the projects that they're doing, are they
4 accurately looking at -- because most projects have some
5 costs in order to get the benefit. Have they, in essence,
6 understated those costs? Because if they're understated
7 we'll start -- have cost overruns and that. You look at
8 that and then you do the math.

9 Again, a lot of times what you do is, you
10 also look at the prioritization is, you know, what are you
11 really committed to really doing and what are those things
12 that are kind of on the drawing board but depend on
13 further review whether you're really going to do them or
14 not. That's the things you'd look at to come up with what
15 that number would be. And if the numbers all make sense,
16 then you say there's no detriment.

17 Q. What would the numbers have to say, you
18 know? I talked with one of the witnesses earlier, maybe
19 it was Mr. Dittmer who had a chart that set out, you know,
20 a certain amount of savings or costs and you just did
21 basic addition and subtraction and it came out with, you
22 know, a positive number.

23 I mean, do you need to have a net dollar
24 benefit in savings to justi -- if everything else is in
25 order to make this worthwhile, could you have negative

1 savings or actually additional costs that could be
2 overcome by other intangibles that would make it
3 worthwhile for the entities to merge?

4 A. Actually, show no detriment. You'd have to
5 be -- you don't have to show a benefit. You just have to
6 show the probability of the detriment is not significant,
7 so that you can say this is not detrimental to the public
8 interest.

9 Q. I mean, are there -- are there intangibles
10 that cannot be quantified that could offset a net
11 detriment in terms of dollars? I mean, let's say you ran
12 through, you had all these joint operating agreements,
13 implementation plans, and let's say you ran the numbers.
14 You think the likelihood, you think savings is, is -- you
15 know, it's going to be close, but potentially it's going
16 to be a negative 10 million. It's going to have increased
17 cost, but are there intangibles that could offset that to
18 still make the overall transaction not detrimental to the
19 public interest?

20 A. Sure, because when you're -- when you're
21 dealing with this, you're not dealing with finite
22 measurable things. And if you were looking at something
23 that, when you were looking at the probabilities, there's
24 still -- the numbers are still coming out, because almost
25 every time you say it's about even, you've got a plus or

1 minus around that.

2 Q. Can you give me examples of intangibles
3 that could play a role in evaluating whether something is
4 not detrimental to the public interest?

5 A. I think you would look at what the separate
6 entities were trying to achieve before and then see is,
7 under the combined operation, that achieving those is just
8 more likely to happen on favorable results than it is to
9 keep them separate. I think that's an intangible that you
10 would look at. You look at financial, are they stronger?
11 Will they be stronger? You would look at, you know,
12 customer acceptance, employee acceptance.

13 I mean, you know, sometimes employees will
14 respond better to a different form of management, and that
15 -- that -- that may be one of the intangibles that -- that
16 you would look at. So there's a whole host of
17 intangibles.

18 Q. Did Staff look at any of those intangibles
19 in this case?

20 A. Yes.

21 Q. And are there any intangibles that by
22 themselves would suggest that a merger would be
23 appropriate? And I don't mean, you know, so that it all
24 nets out to where it's not detrimental to the public
25 interest in your opinion, but are there any intangibles

1 that are unique to this case that potentially could be
2 unique to Aquila, with some of the issues that it's had in
3 recent years, that can be clearly identified that -- that
4 would justify a merger at this time? Or the answer may be
5 that there are none, I mean, that that conventional wisdom
6 or that initial reaction is incorrect.

7 A. I would say the other one I'd add is
8 timing, is that at a different time, this combination made
9 a lot more sense than -- than -- than now, but in terms of
10 what would be beneficial, well, you don't have to have a
11 merger to do it. All you have to do is go through due
12 diligence. Just the -- whenever you have these
13 transactions, there is a cross pollination of ideas, and
14 those are there regardless of whether they do the deal or
15 not.

16 So the Aquila people now have more -- it
17 broadened their horizons as to options of how they can
18 approach running Aquila than they did before this
19 transaction started. KCP&L has the same thing. There's
20 been -- they've been exposed to different cultures. Now,
21 that's an intangible benefit.

22 Now, from the merger, you can get to the
23 deal would be is do you believe that the leadership, you
24 know, will make it more -- more probable that Aquila will
25 end up in a better position than it is now or not.

1 Q. And what does Staff believe?

2 A. I'd say --

3 Q. Is there -- is there a value to change in
4 leadership from Staff's perspective, or is that not
5 relevant?

6 A. I would say right now it would be our
7 opinion that it's probably neutral right now, is that with
8 KCP&L's CEP implementation issues, that adding all these
9 other whole host of consolidations and stuff to KCPL's
10 leadership is probably a negative right now, that KCP&L
11 needs -- needs to be able to have its -- its resources
12 focused on getting the Iatan situation done and its costs
13 minimized and scheduled.

14 And at this point the additional
15 distractions that will come from implementation of trying
16 to consolidate these whole host of things that you asked
17 me about earlier is probably perceived as an intangible.

18 Q. Okay. Let's -- let's -- so leadership, the
19 change in leadership I think you characterized as either
20 being neutral or possibly slightly negative, just because
21 of the timing?

22 A. Yes.

23 Q. Okay. How about the issue of financial
24 issues, meaning the status of each company in the market,
25 how they're operating?

1 A. That would probably be a negative right
2 now.

3 Q. A negative to the merger?

4 A. Yes.

5 Q. So that they would be better off being
6 separate?

7 A. Right, because you still have capital that
8 has to be raised, and by the merger all the value that's
9 in the non-Missouri properties in Aquila is being given to
10 the shareholders in the transaction.

11 So Great Plains is going to have to be the
12 one that's going to have to finance not only the KCP&L
13 shares, but it's also going to have to do the Aquila
14 shares. So that puts a greater burden on them. Plus
15 Great Plains has to assume the debt responsibility for
16 Aquila, which puts more pressure on Great Plains, at the
17 time when you're trying to arrange capital to do these
18 environmental or build Iatan 2.

19 Q. How about the issue that you started off
20 with about doing projects separately versus doing them
21 together? Does a merger bring about new opportunities
22 together than they would be separate on that issue, would
23 you say it's neutral, negative or positive?

24 A. I would say from what I've seen so far,
25 it's neutral. I think there's a positive that the two

1 cultures bring in more ideas, broaden scope of ideas and
2 range of options. I think currently that the -- the
3 tension between the two also causes the two entities to be
4 more critical of being overly optimistic that they, in
5 essence, audit each other and disagree with each other.
6 Now, that disagreement under the combined entity will go
7 away so that that critical opinion, that critical
8 objective would be gone if they were -- if they were
9 merged as they've suggested.

10 Q. All right. How about customer or employee
11 acceptance?

12 A. The employee part, I would say at this
13 stage with the proposal, what they intend to do, it's
14 probably negative.

15 Q. On the employee side?

16 A. Yes.

17 Q. Why is that?

18 A. Well, first you have people who are losing
19 their jobs. I mean, they're certainly not going to be
20 very supportive of helping out the transition. I think
21 they're doing what they need to do, but they're not going
22 to do any more. And then you're going to have in the
23 KCP&L work group, you're going to have the need for them
24 to have to now learn to operate the Aquila functions as
25 well as what they did today. I think there's a resistance

1 to that.

2 The other thing that I think that I've
3 noticed is that as you start inserting Aquila people in
4 the organizational train of KCP&L and now that Aquila
5 people stepped in line in terms of where I am in the
6 organizational chart between me and the top, I think
7 there's -- there's resentment. That's not viewed
8 favorably, that, you know, now I've got another person,
9 you know, that's between me and this ultimate job I want
10 to be. I think -- and then there's going to be the --
11 just the -- the -- the combination of the cultures, I
12 mean, both of them think and do things differently.

13 Q. Are you knowledgeable about how the two
14 cultures are, or you just know that any two entities are
15 going to have different cultures and they're going to have
16 friction in being integrated?

17 A. I do know that you have a culture issue
18 whenever you do that. I do know there are differences in
19 the two -- the two cultures of KCP&L and Aquila.

20 Q. Is it possible to describe those cultures?

21 A. Well, right now, yes, it is possible.

22 Q. How would you describe KCP&L and Aquila
23 cultures?

24 A. Well, KCP&L is, in essence, in a transition
25 stage right now where it has enjoyed the benefit of

1 probably about 20 years of -- of fairly good financial
2 results, not needing regulatory support, asking for what
3 will be unpopular regulatory actions.

4 Aquila has gone through the stage of
5 already -- have been in the difficult regulatory period
6 and difficult financial period, and so I think they've
7 matured and they've now become very functional, in that I
8 think KCPL's going towards that transition.

9 Q. So you think they're going in opposite --
10 opposite directions?

11 A. Well, they're on a different cycle. As
12 Aquila has already worked through the things that KCP&L --
13 because they've experienced it. You know, some people
14 call it arrogance. I think that's too strong, a
15 pejorative term. When things go good, you just tend to
16 think -- you don't think about all the things you should
17 be doing to fix it.

18 When you're forced to fix stuff, you have
19 to sit down, look at it, and then figure out what works
20 and doesn't work, and then you get real experienced and we
21 can't keep doing this. We have to do something different.
22 Aquila is farther along on that curve than KCP&L is.

23 Q. Okay. Any other intangible areas that
24 could be identified?

25 A. I'm sure there are. Just none that come to

1 mind right now.

2 Q. Are there any other intangible benefits
3 that come from the merger of these two closely, you know,
4 adjacent companies that can be identified that would not
5 be present from a merger with Mid America?

6 A. Well, I mean, I will say this. The one
7 I've heard mentioned is this combination now, even if it
8 fails, will bring us closer to the ultimate combination of
9 the entities some time in the future because the failure
10 will put them in a situation where you'll be looking for
11 another entity to come in and whatever this combined
12 entity is called, to buy them and then fix it.

13 It's kind of like the Aquila-St. Joe
14 acquisition. That's not necessarily perceived as being an
15 overwhelmingly successful acquisition, but you would not
16 have St. Joe in this transaction today if that combination
17 hadn't taken place.

18 Q. Do you see that as positive?

19 A. I do. I do believe that if you're going to
20 provide electricity, we have the model on the eastern side
21 of the state. When you have to build power plants, it is
22 much easier, as you can see with UE, when you need a power
23 plant, you're big enough, you build the power plant. I
24 don't have to have joint owners. I don't have to work
25 with all these different entities. I can make the

1 decision, I mean, when I sell some capacity, but I don't
2 have to have all these people before I can execute.

3 Q. So larger scale brings benefits?

4 A. Yes. Yes. And so I think the one
5 intangible that you would get is you are at least
6 increasing the scale of whoever gets Great Plains in the
7 future.

8 Q. But that wouldn't be unique to just a KCP&L
9 and Aquila merger, that could be present at any merger of
10 Aquila and somebody else?

11 A. That's true.

12 Q. Okay. Now, were you saying -- were you
13 suggesting about leading to an ultimate combination of
14 somebody acquiring -- somebody else acquiring both of
15 these utilities?

16 A. Well, if you acquire -- yes. If you
17 acquire Great Plains, you will -- under the proposed
18 transaction, you will acquire both of these utilities.

19 Q. And you think those are intangible
20 benefits?

21 A. Well, you're in a position that that can
22 happen.

23 Q. Any other intangible benefits or detriments
24 that are unique to this transaction?

25 A. Well, the intangible detriments is the fear

1 that we're going to be a lot worse off than we are right
2 now. I mean, that's the biggest intangible.

3 Q. And is that -- do you think that's a
4 detriment? Do you think they are worse off apart?

5 A. I was saying worse off combined.

6 Q. Oh, worse off combined?

7 A. Yes, than they are standalone.

8 Q. So you think the companies are stronger
9 standing alone than being merged in this fashion?

10 A. Yes.

11 Q. Okay. I guess I want to summarize.
12 Generally those intangibles did not tend to be positive,
13 most of those were either neutral or negative, would you
14 agree with that just general assessment?

15 A. Yes.

16 Q. Staff is unhappy with the level of detail
17 associated with the plan of integration. You think it's
18 insufficient to identify what's likely to occur; is that
19 correct?

20 A. Yes.

21 Q. Staff believes that the application was
22 filed incorrectly or at least it didn't ask for the relief
23 that it felt was appropriate?

24 A. I don't -- I mean, I don't believe that
25 what they used to support what they filed doesn't match.

1 I don't -- we don't -- you know, they form the
2 transaction, we evaluate it. You know, it's not that
3 we're not happy about it. What we're saying is, the
4 transaction that is proposed before the Commission and
5 what is being suggested that supports it, there's a
6 disconnect between -- between the proposal and what the
7 support is based upon.

8 Q. Okay. You think there's insufficient
9 evidence to support the synergies that have been proposed,
10 or you just think they're flat out wrong?

11 A. Okay. Now, when you ask insufficient
12 evidence, you're not asking like that legal thing, you're
13 just asking from an auditor, a regulatory?

14 Q. Yes.

15 A. There is insufficient detail to be able to
16 support that level of the number that they have. When you
17 say flat -- flat out wrong, they are flat out wrong to the
18 extent that they don't consider the productivity that
19 would take place during that time if they were left
20 standalone.

21 For example, KCP&L and Aquila do -- do
22 things now that are trained to make their operations
23 productive and efficient, you know. In fact, under the
24 regulatory plan, KCP&L's obligated to do it. The synergy
25 estimates are -- you used the term flat out wrong in the

1 sense that they don't consider the base line of what those
2 two entities could do without the merger, so that
3 overstates them. So I will say that that makes them flat
4 out wrong.

5 Q. Staff believes the price is too high; is
6 that true?

7 A. For the public interest.

8 Q. Staff believes that there is an increased
9 risk to the credit quality of KCP&L if this transaction
10 goes through?

11 A. Yes.

12 Q. The Staff did not like the original
13 proposal associated with the amortizations nor the
14 possibility of future amortizations; is that accurate?

15 A. I'd say the Staff didn't agree with the
16 proposal having enough detail. As I told you, there's
17 also the principal issue that it was a violation of our
18 agreement. As I point out, right now for an amortization,
19 an amortization is a part of a regulatory plan. The
20 amortization in and of itself is not a proposal that the
21 staff believes should -- can be -- should be proposed as a
22 separate component of not having all the other pieces that
23 are in the Stipulation & Agreement.

24 Q. I mean, I guess just going through these
25 items, I mean, Staff is not satisfied on a number of

1 different levels. Is there anything that Staff likes
2 about this merger proposal?

3 A. I'd have to say no. If the Staff believes
4 it's detrimental to the public interest, I don't think the
5 Staff's going to be like -- you know, when you say that,
6 could you have under certain pieces that you could do
7 different things about? Yes.

8 Q. Are there any pieces that Staff likes,
9 other than the economies of scale that could potentially
10 come from it?

11 A. I can't -- nothing comes to mind that is an
12 element that they're proposing in this transaction that
13 would be perceived as a benefit from the status quo.

14 Q. Without getting into specifics, any
15 discussions that went on, does a case such as this, if we
16 were to go back to prior to it being filed, does a case
17 such as this lend itself to possible settlement or
18 agreement among the diverse parties that are, in your
19 experience, in working on merger cases?

20 A. Are you asking generically?

21 Q. Generally speaking, a case such as this, I
22 mean, are there ways that it could have been addressed
23 that could have led to at least Staff's agreement?

24 A. Well, I mean, yeah, I mean, cases -- merger
25 cases generally do settle. So the predominance of cases

1 are approved by the Commission by stipulation and
2 agreement. Do I believe that this case could have been
3 addressed differently at different times and then the
4 possibility of settlement would have been greater? Yes, I
5 do.

6 COMMISSIONER CLAYTON: Judge, I think that
7 concludes my questions. Thank you, Mr. Schallenberg.

8 JUDGE STEARLEY: Commissioner Murray, would
9 you have any additional questions?

10 COMMISSIONER MURRAY: No questions. Thank
11 you.

12 JUDGE STEARLEY: Commissioner Jarrett?

13 COMMISSIONER JARRETT: No questions.

14 Thanks.

15 JUDGE STEARLEY: Ag Processing

16 MR. WOODSMALL: No questions, your Honor.

17 JUDGE STEARLEY: Public Counsel?

18 MR. MILLS: No, thank you.

19 JUDGE STEARLEY: Black Hills?

20 MR. DeFORD: No, thanks.

21 JUDGE STEARLEY: Aquila?

22 MS. PARSONS: No questions.

23 JUDGE STEARLEY: Great Plains/KCPL?

24 MR. ZOBRIST: No questions, Judge.

25 JUDGE STEARLEY: Staff?

1 MR. DOTTHEIM: No questions.

2 JUDGE STEARLEY: Very well. I believe that
3 concludes your examination, Mr. Schallenberg.

4 THE WITNESS: Thank you.

5 JUDGE STEARLEY: You may step down, and you
6 are finally excused.

7 And at this portion of the hearing I
8 believe we've taken all the testimony of the witnesses on
9 the issues before us.

10 MR. MILLS: Judge, if I may, just to
11 clarify the record, it's my understanding that but for
12 your ruling last week, at this point the Staff would be
13 calling 12 to 15 additional witnesses and the joint
14 applicants would be making them available on the issues of
15 would the adoption of KCPL's gift and gratuity practices
16 for Aquila be detrimental to the public interest and does
17 KCPL have adequate control of the Iatan projects to be
18 able to operate the nondispatch functions of Aquila in
19 addition to those of KCPL in a manner not detrimental to
20 the public interest, and does the Commission have adequate
21 information to determine whether the public allegations
22 slash comments it has received regarding GPE/KCPL are
23 accurate and such conduct in the operation of nondispatch
24 functions of Aquila would be detrimental to the public
25 interest?

1 JUDGE STEARLEY: I'm not sure, Mr. Mills,
2 that's quite correct, the way you've rephrased it. There
3 was a restriction on the anonymous letters. There was a
4 restriction on gifts and gratuities. There was a limiting
5 in scope on Iatan, and the Commission allowed you
6 extensive questioning on the Iatan projects.

7 MR. MILLS: Judge, it was my understanding
8 that on those three issues, that you not only did not
9 allow -- you ruled that those issues were irrelevant and,
10 in fact, so wholly irrelevant that you were not going to
11 allow offers of proof on those three issues.

12 JUDGE STEARLEY: The wholly irrelevant
13 ruling went to the anonymous letters and to the gifts and
14 gratuities. The anonymous -- or the additional
15 amortizations were ruled to be irrelevant but we accepted
16 an offer of proof, and the scope was limited with regard
17 to questions on the CEP in the Iatan projects.

18 MR. MILLS: And it was my understanding
19 that the -- the three issues that are listed under Roman
20 Numeral 11 you would not allow an offer of proof on. If I
21 misunderstood that, then we may have some additional
22 witnesses that we need here.

23 JUDGE STEARLEY: Correct me if I'm wrong,
24 Mr. Mills, but it seems to me we've taken a couple days of
25 testimony on KCP&L's adequate control of the Iatan

1 projects.

2 MR. MILLS: And it was my understanding
3 that what we were dealing with was the issue that's at the
4 bottom of page 9.

5 JUDGE STEARLEY: On my copy I've got page
6 10 on Issue 11, which was a nonbinding list of issues that
7 were adopted by the Commission. Nevertheless, with regard
8 to the item you read, which I believe was Item B, I
9 believe we just completed essentially two days worth of
10 testimony on that, and there was no release of witnesses
11 with regard to those issues as well.

12 MR. MILLS: Then apparently I did
13 misunderstand your ruling from last week. But at least
14 with respect to the other two issues that I read off this
15 morning, is it correct that but for your ruling, those --
16 those issues and those witnesses would be coming up next?

17 JUDGE STEARLEY: With the gift and gratuity
18 practice and with regard to the anonymous letters, that is
19 correct.

20 MR. MILLS: And when you say with the gift
21 and gratuity practice and the anonymous letters, are you
22 referring to the Issues A and C under Roman Numeral 11 on
23 page 10?

24 JUDGE STEARLEY: To the extent that those
25 are accurately phrased, I think my ruling was specific

1 that any evidence regarding the -- or purported evidence
2 regarding the anonymous letters was ruled to be wholly
3 irrelevant, and any purported evidence regarding the gifts
4 and gratuity policies was ruled to be wholly irrelevant.

5 MR. MILLS: Thank you for that
6 clarification.

7 COMMISSIONER CLAYTON: Judge, can we ask --
8 can I ask a question of Staff on this issue? This was one
9 of the things I wanted to bring up. I wanted to be clear
10 --

11 JUDGE STEARLEY: Let me -- let me be clear
12 first that no one else has any additional comments as I
13 was concluding here that we had taken testimony, and
14 Mr. Mills was clarifying with regard to our procedural
15 schedule. Was there anything else, Mr. Mills, or from any
16 other party before we move on to that?

17 MR. ZOBRIST: Judge, I would just say on
18 behalf of Great Plains and KCP&L, we agree with what
19 you've stated because Mr. Easley, who is the vice
20 president -- senior vice president of supply for KCPL and
21 who recently in an interim position has been reviewing and
22 overseeing the reforecast process at the Iatan project,
23 did testify yesterday. Also, Mr. Brent Davis, who is
24 currently the Unit 1 project director for Iatan and had
25 worked on aspects of Iatan 2, did give testimony. And

1 Mr. Terry Foster, who is the director of project controls
2 at the Iatan project, also gave testimony.

3 So we agree with your ruling that on that
4 issue, that evidence has been taken and probably from some
5 other witnesses as well.

6 JUDGE STEARLEY: All right. For that
7 clarification, Commissioner Clayton, you may -- if we are
8 done with that in terms of housekeeping, Commissioner
9 Clayton had a number of questions he wanted to address to
10 the attorneys, and at this point in time, you may
11 certainly go ahead with that.

12 COMMISSIONER CLAYTON: Well, on that
13 evidentiary matter, Judge, I just wanted to ask for -- I
14 think Staff was the proponent of a number of these
15 witnesses and a number of these issues, and I guess I
16 wanted to be clear. In terms of the rulings that the
17 Judge has made, the misunderstanding amongst at least
18 Mr. Mills, of what the extent of the ruling was, I want to
19 know from Staff what items just on the issue and witnesses
20 that it is not able to provide to the Commission because
21 of that ruling.

22 So I guess I want to know from Staff's
23 perspective what stuff -- and I don't want you to get into
24 specifics. Don't give me, you know, any evidence, but
25 just tell me what you are -- what Staff has been limited

1 or restricted from providing to the Commission because of
2 that ruling.

3 MR. DOTTHEIM: There were a number of
4 anonymous letters that were sent to the Commissioners or
5 to the Commission that have been submitted in EFIS in Case
6 No. EM-2007-0374 that the Staff conducted depositions in
7 part respecting, that the letters addressed a number of
8 items. The letters address the merger case. The letters
9 address the Iatan 1 and Iatan 2 projects. The Staff views
10 that the letters address the Iatan 1 and the Iatan 2
11 projects as they relate to the merger case. The letters
12 address merger synergy savings. The letters address gifts
13 and gratuities. The Staff views that the policy of
14 GPE/KCPL on gifts and gratuities goes to procurement, goes
15 to an issue in the case. Supply chain savings is part of
16 the merger synergy savings.

17 The Staff believes it's part of the merger
18 that there's -- that there is a difference in those
19 practices and policies at GPE/KCPL versus Aquila, Inc.,
20 and as a consequence, if the Commission were to approve
21 GPE's acquisition of Aquila, that then one would assume
22 that the GPE/KCPL policy becomes the policy for the
23 acquired company.

24 So the Staff viewed that as a -- as a
25 merger issue, so that -- that issue is as a consequence,

1 if that item is out of bounds, it is not gone into, and as
2 is evident from the testimony that is in the merger case,
3 supply chain savings procurement, those dollars are very
4 consequential. So without -- I'm sorry, Commissioner.
5 You said without going into the evidence. I mean, I don't
6 know how to address --

7 COMMISSIONER CLAYTON: Okay. So Staff,
8 because of the ruling, is not able to provide some
9 testimony and witnesses?

10 MR. DOTTHEIM: Yes.

11 COMMISSIONER CLAYTON: How many witnesses
12 on the list does that involve? Just give me a number.

13 MR. DOTTHEIM: Well, it -- it's -- we
14 excused certain witnesses in particular who we would have
15 gone into that matter with, in fact, a couple of Aquila
16 witnesses, and in particular one KCPL witness, but
17 frankly, in our -- our depositions we -- we asked each and
18 every of the GPE/KCPL witnesses as to their own practices
19 regarding gifts and gratuities.

20 COMMISSIONER CLAYTON: Does Staff argue
21 that the anonymous allegations by themselves are
22 admissible as truth of the matter stated in the content of
23 those letters?

24 MR. DOTTHEIM: Absolutely not. Absolutely
25 not.

1 COMMISSIONER CLAYTON: I mean is Staff just
2 seeking to admit anonymous letters as proof in the case?

3 MR. DOTTHEIM: No, I mean, but the only --

4 COMMISSIONER CLAYTON: What evidence would
5 we see?

6 MR. DOTTHEIM: The evidence you would see
7 would be the testimony of the witnesses we called and --
8 and the documents that we -- that the Staff placed into
9 evidence. Not -- not the unsworn to hearsay allegations
10 of the -- of the -- of the anonymous letters.

11 COMMISSIONER CLAYTON: And Staff still
12 believes that that information will be relevant to the
13 application that's before this Commission?

14 MR. DOTTHEIM: Yes.

15 MR. WOODSMALL: Mr. Commissioner, if I may
16 address that.

17 COMMISSIONER CLAYTON: Hold on a second,
18 Judge. I just want to give everyone a chance, then I'll
19 be done with this issue.

20 MR. WOODSMALL: Not to repeat everything
21 that Mr. Dottheim said, but I don't want to leave you with
22 the impression that Staff was the only one aggrieved by
23 this ruling. But for the ruling, we would have been
24 involved in calling those same witnesses and answering
25 those questions. We participated in all the depositions.

1 So Staff, a party that cannot appeal, was not the only
2 party aggrieved. We were similarly aggrieved by that
3 ruling.

4 MR. MILLS: As were all the parties to the
5 case. And Commissioner, I'm not sure if you got a direct
6 answer. On the document that Staff filed on April 16,
7 there were 15 witnesses listed under these issues. I
8 think Mr. Dottheim correctly stated there are
9 approximately two or three probably would not have been
10 called, so that's why I said roughly 12 to 13 witnesses.

11 COMMISSIONER CLAYTON: And then did the
12 applicant, KCP&L, do you-all have any comments?

13 MR. ZOBRIST: Well, we -- we think the
14 ruling was correct, Commissioner, but if you want -- some
15 of the factual matters that may have been mentioned in the
16 anonymous letters were certainly talked about. We had the
17 project controls director from Iatan here. We had
18 Mr. Easley here. We had Mr. Davis here. So the
19 legitimate issues without placing in the context of the
20 anonymous letters were certainly fully covered by a number
21 of witnesses.

22 We understood the Judge's ruling to say
23 that, you know, corporate codes of conduct in the gift and
24 gratuity practice was, you know, beyond the scope, and I
25 think that was a proper ruling.

1 But in determining whether the public
2 allegations and comments were accurate, that was the point
3 that we saw that the Judge said we can deal with some of
4 these substantive issues because they relate to merger
5 synergy savings and procurement issues, and we had those
6 people. In fact, we had the procurement director from
7 Iatan here Monday and Tuesday, and he was released by
8 Staff, and Ms. Cheatum did testify last week. She has
9 procurement under her.

10 MR. DOTTHEIM: And the Staff released the
11 procurement director from -- from Iatan on the basis that
12 once we reviewed what we had to ask -- it's Mr. Steven
13 Jones, what we had to ask Mr. Jones based upon non-gift
14 and gratuities, business ethic, code of conduct related
15 matters going to procurement that is strictly Iatan 2,
16 Iatan 1 construction project matters, we decided that we
17 would release him. If we were going into matters relating
18 to that which the ruling excluded from the case, we would
19 have not released him.

20 So we weren't -- we tried and we have tried
21 to be as economic and efficient as possible, and that's
22 why we released Mr. Jones and others when we did. Despite
23 however the company or joint applicants, but in particular
24 really just GPE and KCPL have characterized us, we have
25 tried to move this case along as expeditiously as possible

1 given the resources we have.

2 The reason we're sitting here now, we did
3 not ask for a suspension of this case in December. It was
4 the joint applicants that asked for a recess of this case.

5 MR. WOODSMALL: Your Honor, and I don't
6 want to leave the implication that just because Mr. Easley
7 and Mr. Jones and Mr. Davis were available on the stand
8 that we were provided all rights to cross-examination. We
9 forego -- we were precluded from some cross-examination on
10 the basis of your ruling that it was wholly irrelevant as
11 to gifts, as to gratuities, as to code of conduct.

12 So any implication that just because they
13 took the stand we were provided the right to
14 cross-examination is not true. We would have gone further
15 but for your ruling.

16 JUDGE STEARLEY: I was just going to say,
17 with regard to the anonymous letters and the subject
18 matter contained therein, we've had approximately two
19 weeks of hearing. I don't have an accurate witness count
20 before me, but the subject matter of those letters
21 included the creditworthiness, the Iatan projects, the
22 procurement issues. All of those issues were validly
23 presented to this Commission with list of witnesses to
24 provide testimony, which was tested by cross-examination
25 and by the Commissioners.

1 Not only would I say that was wholly
2 irrelevant in terms of the probative value contained in
3 the anonymous letters, but it would have been repetitive
4 to have additional testimony on a subject matter on which
5 we had a whole host of witnesses, prefiled testimony, live
6 testimony and cross-examination.

7 To the extent that scope was limited in
8 terms of gratuity and corporate conduct policies, the
9 argument I believe was appropriately raised that those
10 were outside the jurisdiction of the Commission based on
11 the business judgment rule and other arguments.

12 So I don't see how anyone was deprived an
13 opportunity to bring in what would have essentially been
14 irrelevant information and outside of the jurisdiction of
15 this Commission by either of those rulings. And all of
16 the parties -- this case was filed over a year ago -- have
17 had more than ample opportunity to develop their cases in
18 chief, provide the witnesses that they wished, provide
19 extensive prefiled and oral testimony before this
20 Commission. I believe the ruling was correct.

21 COMMISSIONER CLAYTON: Judge, I understand.
22 I just -- I want to be clear from my perspective. This
23 case has been unique in character, and I don't want to
24 take away from the Judge's authority that he has from this
25 Commission. I may disagree with -- with decisions here

1 and there, and I -- I regret even to bring this up on the
2 record.

3 My -- it was my hope that discussion could
4 take place with regard to some of these evidentiary issues
5 during an agenda session where the final authority
6 actually occurs at the level of the Commission. So I
7 don't dispute that the Judge doesn't have the full
8 authority to issue his rulings. So I understand that, and
9 I apologize to him that it has to come up this way.
10 Commissioners have raised objections or jumped on judges
11 in the past when they disagree with evidentiary rulings,
12 and I think that's inappropriate.

13 The problem is that I have no other
14 alternative because the opportunity to raise this
15 discussion during one of the Commission's agenda sessions,
16 an open meeting where there is a discussion on the merits
17 of evidentiary rulings and probably the last agenda that
18 takes place prior to the conclusion of this evidentiary
19 hearing, I was precluded from having that conversation,
20 because I do disagree with some aspects of the ruling that
21 the Judge made. Not that he doesn't have the full
22 authority to do that. So I want to be clear to the Judge
23 that, other than disagreeing, that's all that this means.

24 JUDGE STEARLEY: And there's no disrespect
25 taken in any manner, Commissioner Clayton.

1 COMMISSIONER CLAYTON: So I just want to be
2 clear as we work towards a conclusion of these proceedings
3 that the -- the evidence should be relevant. I think the
4 Staff has made a compelling argument that this information
5 is relevant. We should be looking at all aspects of this
6 transaction, and I voted to keep open the discussion about
7 potential synergy savings when the Staff sought to close
8 that possibility.

9 In a case such as this, I think we need to
10 be looking at big picture and all -- at all level of
11 detail in determining whether this merger meets with the
12 statutory definition of not detrimental to the public
13 interest. So it would be my inclination that we err on
14 the side of including this information, considering it
15 when we render our decision. So I just wanted to be clear
16 and make a record for my own state of mind, I suppose.
17 That's all I have on this issue.

18 JUDGE STEARLEY: Commissioner Clayton, I
19 believe you also had some inquiries regarding some of the
20 other legal matters or --

21 COMMISSIONER CLAYTON: I did have some
22 other -- just those other issues. If other Commissioners
23 wanted to jump in on these, I didn't want to step in their
24 way. I did want to ask, if -- if there is anything for us
25 to do on the motion for summary determination. At the

1 beginning of these proceedings we talked about whether
2 there was anything left. The answer may be that there's
3 nothing left, that the issue is moot on that motion. Can
4 I just get clarification from the parties on that issue?

5 JUDGE STEARLEY: And before they jump in,
6 Commissioner Clayton, just to be clear on it, we have
7 discussed that, I believe it was last week, my
8 instructions to the parties were that Ag Processing could
9 renew their motion if they felt it was live and GPE/KCPL
10 would have an opportunity to respond to that. So unless
11 there's been any deviation from that, the parties can
12 certainly fill us in.

13 MR. WOODSMALL: Well, I can tell you that
14 by my statement here, I am renewing the motion. There was
15 a ruling earlier that the additional amortization proposal
16 was irrelevant, not wholly irrelevant, but irrelevant to
17 the point that I could do an offer of proof. So I
18 question the need to renew that motion when there's been a
19 ruling that it's been irrelevant.

20 However, to the extent that I need to renew
21 it, I do so here. The basis of the motion is that Ag
22 Processing requires the Commission to determine, based
23 upon all the evidence, based upon all the issues, whether
24 a merger is not detrimental to the public interest. Ag
25 Processing specifically said that the Commission can't

1 shirk that responsibility by pushing an issue into the
2 next case.

3 You will see the evidence, not just the
4 evidence in the offer of proof, but the evidence in the
5 case, indicates that KCP&L is letting the Commission off
6 the hook by pushing it into the next case. They're doing
7 exactly what the Commission attempted to do in Ag
8 Processing. They're pushing the issue of the
9 determination of an additional amortization into the next
10 case.

11 We feel like it's part and parcel of the
12 merger, should be considered by the Commission in its
13 determination of not detrimental to the public interest.
14 Therefore, to the extent that the Commission's willing to
15 overrule on the issue of whether it's relevant, I would
16 renew my motion.

17 MR. ZOBRIST: Judge, on --

18 JUDGE STEARLEY: I'm going to let you go,
19 Mr. Zobrist, just -- Mr. Woodsmall, regarding the timing
20 of this, at the point in which I asked you to renew, there
21 could still be outstanding motions for reconsideration of
22 that evidentiary ruling filed. So there was not at that
23 time any cross currents that would have prevented you from
24 renewing that motion at any point in time, and in context
25 you've delivered it quite correctly in terms of the

1 current ruling which still stands, that that is
2 irrelevant. Mr. Zobrist, you may --

3 MR. WOODSMALL: Before -- just so he can
4 address everything at one time, the issue in the motions
5 for reconsideration cause a little bit of conflict for us
6 in the way that those are, in essence, reconsideration of
7 interim orders. The statutes dictate that we file any
8 points of error in the context of an application for
9 rehearing when the Commission issues its Order.

10 So our reconsideration, our points of
11 error, I do not believe now will be in any type of interim
12 pleading, but will be contained in our ultimate
13 application for rehearing if need be.

14 JUDGE STEARLEY: Thank you, Mr. Woodsmall.
15 Sorry to interrupt, Mr. Zobrist. Please go ahead.

16 MR. ZOBRIST: No interruption. Hadn't
17 started yet. Just before I forget, on Mr. Woodsmall's
18 last point, he certainly -- his client is certainly free
19 to raise these issues in an application for rehearing.
20 I'm not aware of any rule that prevents any party from
21 filing a motion for reconsideration at any point in a
22 proceeding to ask the Judge and the Commission to
23 reconsider an issue.

24 Commissioner Clayton, the Motion for
25 Summary Determination was fully briefed about three or

1 four months ago, and Judge Dippell did, you know, issue an
2 Order. So there are pleadings and legal arguments on that
3 that you'll find in the file.

4 To go further, we do not interpret Ag
5 Processing to be relevant to this case. In that case,
6 Aquila, back then UtiliCorp, was acquiring St. Joseph
7 Light & Power Company, and they requested the recovery of
8 an acquisition premium. We're not requesting recovery of
9 an acquisition premium, and we have abandoned the initial
10 request for additional amortizations, and the parties
11 continue to mischaracterize what GPE, you know, states
12 that it may or may not do in a future Aquila rate case.
13 That's something to be determined for the future.

14 If the parties have had witness -- pardon
15 me. GPE and KCPL have had witnesses testify that, you
16 know, they think having additional amortizations in the
17 toolbox is a helpful tool, and that if the merger is
18 approved, they, you know, intend to raise that with the
19 parties, perhaps in the context of a future Aquila
20 regulatory plan. If the parties don't agree, it may be
21 abandoned, but it very well may be presented in another
22 case in the future.

23 But as Mr. Schallenberg said, there's
24 really nothing in the record here that allows you to make
25 any kind of analysis of a dollar figure like an

1 acquisition premium would represent. He talked about the
2 formulas that are being used in the KCPL regulatory plan.
3 He talked about the formulas that I don't know about that
4 apparently Empire District has in its regulatory plan.

5 We don't have any of those specifics here.
6 The formula was -- there was no formula proposed to the
7 Commission in the previous ask, and of course then the
8 regulatory ask to be submitted to the Commission back in
9 2007 has been modified and regulatory or additional
10 amortizations have been removed from the case at this
11 point.

12 So, you know, we think actually the
13 position of GPE and KCPL, and I presume Aquila, are
14 stronger today to say why you don't need to consider this
15 much stronger today than it was from the original filing.

16 JUDGE STEARLEY: Mr. Dottheim, did you have
17 anything?

18 MR. DOTTHEIM: No, other than GPE and KCP&L
19 are not asking for an additional amortization in this
20 case. But there is in evidence, and it is unequivocal,
21 there is a March 25 presentation in New York City, there
22 is an April 10 presentation in Chicago, and there's a
23 notice of ex parte contact of a letter from Mr. Downey and
24 Mr. Chesser which the Chairman filed that he had received,
25 it was filed in the case, which shows that the company has

1 indicated that it will definitely ask, that is Aquila will
2 definitely ask for an additional amortization in its next
3 case whether or not it gets the parties to go along with
4 the regulatory plan.

5 Those three documents will show that, do
6 show that unequivocally regardless of how many times
7 counsel and witnesses for the company attempt to give the
8 impression to the Bench that that decision has not been
9 made at this time.

10 MR. MILLS: Thank you. And just briefly, I
11 think this issue did come up last week, and I think it was
12 the Judge's ruling that if the -- if the motion was still
13 live, that the Commission would take it with the case,
14 which, you know, defeats a significant part of the point
15 of filing a Motion for Summary Determination if it ends up
16 taken with the case anyway.

17 But I do agree that it's still live, and I
18 think for the reasons that Mr. Dottheim just raised and
19 really that Mr. Zobrist raised, it would behoove the
20 Commission to rule on it if it can because it is going to
21 come up, it does influence the detriment and the -- and
22 the benefits of the combination in the future, if -- you
23 know, one of -- one of the things that's a big issue in
24 this case is the credit rating of the combined entity.
25 The rating agencies were given information that GPE will

1 seek additional amortizations in the future.

2 If the Commission can rule now that on the
3 basis of the Motion for Summary Determination that that is
4 not something that a company can unilaterally demand and
5 get from the Commission, I think that will shape what the
6 credit agencies will see as a result of this case.

7 So I think it is still a live issue in this
8 case and I think it makes a difference to how this case
9 proceeds.

10 COMMISSIONER JARRETT: I just have a
11 question, Mr. Mills. Can we give advisory opinions?

12 MR. MILLS: It would not be an advisory
13 opinion. There's evidence in this case that that is part
14 of the transaction, that GPE will seek that in a future
15 rate case. I mean --

16 COMMISSIONER JARRETT: That's a disputed
17 fact, isn't it? I mean, Mr. Zobrist just disputed that,
18 so how can we give a --

19 MR. MILLS: Well, there are a lot of --
20 there are a lot of facts in this case that are disputed,
21 and you-all will have to decide which is correct or which
22 is not.

23 COMMISSIONER JARRETT: Right. And
24 that's -- and that's a part of the case. But for summary
25 judgment purposes, all the facts have to be undisputed;

1 isn't that correct? You can't give summary judgment --
2 have to rely on a fact that's in dispute, and isn't there
3 evidence both ways on that?

4 MR. MILLS: There probably is evidence on
5 both ways.

6 MR. WOODSMALL: To that point, though,
7 summary judgment is only applicable prior to the hearing.
8 Now that the hearing's done, it wouldn't be a summary
9 judgment motion. It would be just asking you to make a
10 ruling on the request or nonrequest to the amortization
11 based on the evidence as it's received, and it's no longer
12 summary judgment.

13 COMMISSIONER JARRETT: So it's moot now.

14 MR. WOODSMALL: The motion as a motion for
15 summary judgment is moot.

16 COMMISSIONER JARRETT: Right.

17 MR. WOODSMALL: The issue is still live.

18 COMMISSIONER JARRETT: Right. Got you.

19 MR. WOODSMALL: And to the extent that I
20 need to modify my motion to turn it, yes, I agree.

21 COMMISSIONER CLAYTON: That answers -- I
22 think that answers the question. I mean, the motion, I
23 mean, now that -- well, what's the point of having a
24 motion for summary determination once the hearing's over?
25 It doesn't make any sense. So really it does moot the

1 motion. So we don't have to deal with that separately.
2 We'll just address the whole issue of regulatory
3 amortizations somehow in the full case. Do you agree with
4 that?

5 MR. WOODSMALL: Well, normally once the
6 hearing occurs, any motions for summary determination are
7 mooted. In this case, not only is the motion mooted, but
8 the issue is mooted by the Judge's ruling that it's
9 irrelevant. So no, you won't take it with the case
10 anymore.

11 COMMISSIONER CLAYTON: Anything else from
12 anybody? I had one other issue.

13 COMMISSIONER JARRETT: Yeah. I had one
14 question of Mr. Dottheim. You mentioned when you were
15 talking there were like three pieces of -- three different
16 things, a couple of things that I believe were introduced
17 into evidence and were received as part of the record,
18 then you mentioned something that was filed by the
19 Chairman, who is not participating in this case.

20 MR. DOTTHEIM: Yes.

21 COMMISSIONER JARRETT: Is that thing that
22 you mentioned related to the Chairman, has it been
23 received into evidence and is it a part of the record of
24 this case?

25 MR. DOTTHEIM: Yes, it is. I believe it is

1 Exhibit 122.

2 COMMISSIONER JARRETT: I just wanted to
3 make sure that you weren't asking us to consider something
4 outside the record.

5 MR. DOTTHEIM: No.

6 COMMISSIONER JARRETT: Okay. Thank you.

7 MR. DOTTHEIM: No. And Commissioner, I
8 don't know if this will come up, but in your -- in your
9 questioning of Mr. Schallenberg, when you were asking him
10 questions about intangibles that the Commission might
11 consider regarding net benefits tests, I had raised in the
12 pleading the Love 1979 Partners case, and I think that
13 case might lend itself to the argument that the
14 Commissioner -- that the Commission can consider
15 intangibles other than not a necessarily absolute strict
16 application of the net benefits test, things such as
17 creditworthiness or investment downgrade.

18 I think in that case the -- and it's en
19 banc decision in the Missouri Supreme Court, an item such
20 as considering how the City of St. Louis might dispose of
21 its refuse could be considered by the Commission when the
22 steam customers were complaining that -- that the transfer
23 of the downtown steam system should be rejected by the
24 Commission because it would lead to unreasonable increases
25 in their rates.

1 So in addition to the Love 1979 Partners
2 case, I've cited the State ex -- excuse me, the State ex
3 rel Ag Processing case, as have parties, but it belatedly
4 occurred to me that the Love 1979 Partners case is -- is
5 another case that if people were not citing to the
6 Commissioners that -- and the Commissioners were not
7 thinking of that case, that that's another significant
8 decision.

9 COMMISSIONER CLAYTON: Thank you,
10 Mr. Dottheim. I do recall seeing the Love Partners case
11 in one of the pleadings. How do you forget the name of
12 the case that says Love Partners? I guess there's a
13 number in that.

14 Okay. That leads to my last issue, and
15 that relates to the legal arguments that were promoted by
16 some of the parties associated with the allegations of
17 evidence supporting synergy savings, which I know the
18 Commission has already dealt with in an Order and has
19 allowed for that evidence to come in.

20 What I wanted to do was give the attorneys
21 an opportunity -- I'm struggling with this issue, and --
22 and I want to say, I understand what all of you -- I know
23 what you-all have filed. I want to say, so what? And
24 explain to me why there is a distinction in the way the
25 case was filed that would -- that would lead to completely

1 ignoring the potential for synergies associated with this
2 merger.

3 So I guess the questions are going to be
4 directed more at the movants in that case. And I know
5 we've already ruled, but I need -- as we work towards a
6 conclusion as a matter of law, I think you filed the
7 motions as a matter of law, that we cannot take up these
8 synergy savings, I need you to convince me or explain to
9 me why -- why this is a legal -- why the legal argument
10 that these synergy savings should be completely excluded
11 because the way the case was filed?

12 MR. WOODSMALL: I will try. I will note
13 that this is Mr. Conrad's motion and he has big shoes to
14 fill. So be that as it may, Section 393.190 talks about
15 the Commission's authority to grant utilities the ability,
16 and I will -- I will ask you to read that and read how
17 broad that statute is. It requires utilities to ask for
18 authority any time they merge, combine, consolidate, in
19 whole or in part, directly or indirectly. What could be
20 more broad? So that statute requires utilities whenever
21 they merge, combine or consolidate, in whole or in part,
22 directly or indirectly to get Commission authority.

23 What KCPL and Aquila are talking about here
24 are merging, consolidating and combining parts, maybe not
25 in whole, but parts of their operations. In fact, so many

1 parts it's everything but the generation. Everything you
2 can imagine, finance, HR, legal, all overheads,
3 transmission, distribution, planning, engineering,
4 everything you can think of they are looking by
5 implication to merge, combine or consolidate. They need
6 Commission authority to do that.

7 COMMISSIONER CLAYTON: What have they
8 actually asked for permission to do, then?

9 MR. WOODSMALL: They have asked solely --
10 and I will ask you to go back and look at the Commission's
11 notice in this case that came out immediately after the
12 application. The Commission's notice even recognizes
13 this. They have asked solely for the authority for GPE
14 through a newly formed subsidiary, Gregory sub, to buy
15 Aquila and to merge that sub into Aquila.

16 Their application does not seek
17 authority -- go to the Wherefore clause to go to the
18 prayer -- does not seek authority to merge, combine,
19 consolidate, in whole or in part, directly or indirectly
20 any parts of this company. That is the legal --

21 COMMISSIONER CLAYTON: Do you think
22 there -- do you think there needs be a specific order
23 relating to merging HR departments, a specific order
24 relating to merging finance departments, merging
25 accounting departments, merging linemen departments? Do

1 you think there needs to be a specific order related to
2 every conceivable integration of these two entities?

3 MR. WOODSMALL: I think -- I think they
4 could have put in their application, we ask pursuant to
5 Section 393.190 the -- for the authority to combine every
6 operation except for generation, and I think the
7 Commission then could have approved that request.

8 COMMISSIONER CLAYTON: So if they would
9 have included five words, it would have changed the whole
10 deal? Tell me why that -- why that -- why five words
11 makes such a big difference.

12 MR. WOODSMALL: It's a matter of notice.
13 Look at chapter -- I can't -- I don't have the statutes in
14 front of me, but in Chapter 536, there is a provision that
15 talks about what must be in an application, and based upon
16 that, what must go into the notice, because their
17 application is deficient here, their notice -- the notice
18 would be deficient. They are asking the Commission to
19 grant them authority that's not in their application and
20 thus far not in any notice.

21 COMMISSIONER CLAYTON: Does their
22 application make reference to potential synergy savings
23 that would come from integration of various aspects of the
24 entity?

25 MR. WOODSMALL: I may stand corrected on

1 this. I do not believe that their application does.

2 COMMISSIONER CLAYTON: Okay. Do any
3 pleadings do that in the case?

4 MR. WOODSMALL: Not pleadings that
5 initiated the case and thus drove what the notice was.
6 Certainly pleadings since and testimony since has talked
7 about that, but it's more than just legal semantics.

8 COMMISSIONER CLAYTON: Well, but you just
9 said if they would have added five words, that your client
10 would be placed on notice of something completely
11 different than what -- what -- what would occur in this
12 transaction. And I guess I'm struggle with understanding
13 the inclusion of five words that we'd be not arguing this
14 issue -- issue here today.

15 MR. WOODSMALL: And I'm not going to admit
16 that it would just be five words. It is -- it would be
17 another clause in the prayer. And it's not --

18 COMMISSIONER CLAYTON: Just one clause?

19 MR. WOODSMALL: Who knows? But it's not
20 just my client. Everybody out there that was provided
21 notice --

22 COMMISSIONER CLAYTON: I understand. I
23 understand.

24 MR. WOODSMALL: So there are people that
25 should have been provided notice that these companies want

1 to merge, combine and consolidate that weren't provided
2 that notice. And now the company asks you to provide them
3 that authority.

4 COMMISSIONER CLAYTON: Who wants to go?
5 Why don't we let all the movants go?

6 MR. MILLS: I'll go briefly. I'll try to
7 address the "so what" part of your question.

8 COMMISSIONER CLAYTON: That's going to look
9 really good in the record, you realize that, when this is
10 reviewed.

11 MR. MILLS: The reason that matters is
12 because what you're being asked to approve is a de facto
13 merger, really that there are going to be no Aquila
14 employees left. There's going to be no -- nobody guiding
15 Aquila except for KCPL. So it really is a merger. But
16 you don't have any of the attendant operating agreements.
17 You don't have any of the plan of merger that you would
18 normally get in a merger, and that's why it matters,
19 because you're being asked on the surface to be -- to
20 approve the narrow merger of Aquila into Gregory. What
21 you're being asked in actuality to approve is all of the
22 integration of the operation of Aquila with KCPL without
23 the details on how that's going to happen.

24 COMMISSIONER CLAYTON: Okay. But what
25 you've just said is that it's not because the way they

1 filed the application, it's because -- because they didn't
2 file sufficient documents and evidence supporting the
3 transaction, not just the -- the legal beginning of the
4 case in an application? You're saying that basically
5 there's not evidence to support their case?

6 MR. DOTTHEIM: It's everything. It's
7 everything.

8 MR. MILLS: And -- and those are two
9 separate arguments. I think they're both valid, and I
10 think every one is important, but they're separate
11 arguments. You're right.

12 COMMISSIONER CLAYTON: Okay. Mr. Dottheim.
13 Quickly. Go ahead.

14 MR. DOTTHEIM: It's everything. It's a
15 violation of the Commission's own Statute 393.190.1, the
16 transaction is void. That's how the statute reads. It's
17 not voidable. It's void.

18 COMMISSIONER CLAYTON: Okay. Help me with
19 that. Why is it void? They're seeking to merge the
20 subject company into a subsidiary.

21 MR. DOTTHEIM: If anyone seeks to challenge
22 it, it's in violation of that -- of that statute, and
23 they've told us, they told the Commission on the first day
24 why they chose to proceed in this manner. They chose --
25 they told the Commission in the -- in their opening

1 statement, they chose to proceed in this manner to avoid
2 the liability of Aquila. That's why they chose not --
3 amongst other reasons why not to merge the two companies.
4 They chose -- they chose to proceed in this manner also,
5 too, because although they say they didn't really think
6 they have it, they didn't also want the downside risk that
7 otherwise they might have before the FERC of -- of a
8 market power issue if they actually sought to consolidate.

9 COMMISSIONER CLAYTON: Okay. So they've
10 got reasons that they believe would warrant merging with
11 the Gregory Corp with --

12 MR. DOTTHEIM: Or literally Aquila and
13 Kansas City Power & Light.

14 COMMISSIONER CLAYTON: So why shouldn't
15 they be able to file it that way? They've got reasons
16 that support that. Do you think the way they filed it is
17 detrimental in and of itself to the public interest?

18 MR. DOTTHEIM: Yes. It's a -- I mean, I --
19 I -- I think at least that's why certain of us, whether it
20 be the Staff of the Commission or the Office of the Public
21 Counsel, exist is to point these matters out and why the
22 statutes are written as they are -- as they are written.
23 And besides those points, we have other reasons, even if
24 they fix those items, the transaction as proposed is still
25 detrimental.

1 COMMISSIONER CLAYTON: I understand that.
2 I understand that. I'm trying to get over this initial
3 legal argument.

4 MR. DOTTHEIM: Yes. I mean, on top -- on
5 top of everything else, they did this, too.

6 COMMISSIONER CLAYTON: On top of everything
7 else. I need you to block all the rest of that off. But,
8 I mean, the applicants are within their rights of filing
9 it this way?

10 MR. DOTTHEIM: Yes.

11 COMMISSIONER CLAYTON: And they have their
12 reasons to do this?

13 MR. DOTTHEIM: Yes, and chose not to tell
14 anyone until -- until the opening statement in the case,
15 until they were pressed to do that when challenged by the
16 testimony filed by Mr. Schallenberg on April -- on October
17 10, and then --

18 COMMISSIONER CLAYTON: Well, his report
19 makes reference to this, that they didn't renew the
20 synergies because they don't think any synergies exist,
21 because as a matter -- well, not as a matter of law, but
22 they haven't proposed a transaction that would enable any
23 synergies?

24 MR. DOTTHEIM: That's right, and then there
25 was the Motion in Limine that further challenged.

1 COMMISSIONER CLAYTON: Right. So when are
2 you saying that you got -- that Staff got notice of
3 integration of Aquila into KCPL?

4 MR. DOTTHEIM: Well, I mean, when we --
5 it -- it finally occurred to us that they actually
6 hadn't -- hadn't applied for what we thought was proper
7 form of a transaction, an actual merger.

8 COMMISSIONER CLAYTON: Okay. Well, but you
9 said that they're within their right to file it the way
10 they filed it, so --

11 MR. DOTTHEIM: Well, when I -- when I say
12 within -- within their right, I mean, they can file
13 whatever they want to file. When I say right, that -- you
14 know, I mean, they can file -- they're wrong by filing in
15 the manner they did. I mean, I don't want to play
16 semantics.

17 COMMISSIONER CLAYTON: I understand. I
18 understand. But if they choose to file that way, then
19 Staff argues that, well, if they're going to do that, then
20 you can't take the benefit of potential synergies that
21 would come from a different transaction --

22 MR. DOTTHEIM: Yes.

23 COMMISSIONER CLAYTON: -- that would be a
24 merger between Aquila and KCPL, that's what Staff is
25 saying, correct?

1 MR. DOTTHEIM: And we're saying that we
2 don't concur with the quantification regardless.

3 COMMISSIONER CLAYTON: Right. Right. You
4 don't buy it anyway. So what -- is there anything that
5 would restrict the applicants from filing the case the way
6 they have filed it, ignore synergies completely, so you
7 don't have any -- you have no benefits that would be
8 derived from that, and assume that -- you've got to make
9 some assumptions here to get through. You don't have all
10 the regulatory amortization stuff that's unique to this
11 case. But if they agreed to eat, if their shareholders
12 agreed to eat a number of costs to enable the transaction
13 in that way, that would still be possible, wouldn't it? I
14 mean, it's their right to file it the way they want?

15 MR. DOTTHEIM: Well --

16 COMMISSIONER CLAYTON: Maybe I'm wrong.

17 MR. DOTTHEIM: I think it was Mr. Chesser
18 on the -- on the -- it was Mr. Downey, and I think it was
19 also Mr. Chesser, who -- who said they would not agree to
20 take the risk or the cost of a downgrade if GPE/KCPL were
21 ultimately downgraded if --

22 COMMISSIONER CLAYTON: I mean, does Staff
23 think that that is a valid concern?

24 MR. DOTTHEIM: Yes.

25 COMMISSIONER CLAYTON: And that -- that by

1 downgrading KCP&L, that would be a detriment to the public
2 interest?

3 MR. DOTTHEIM: Of course.

4 COMMISSIONER CLAYTON: Okay. So KCP&L's
5 trying to avoid that?

6 MR. DOTTHEIM: KCPL is trying to avoid
7 that. They're also trying -- they're trying to -- well,
8 if -- and if that does occur, they want to pass that on to
9 the ratepayers.

10 COMMISSIONER CLAYTON: Okay. I follow you.
11 But that -- why should that, that information -- I
12 understand that we will need to take that in the totality
13 of the evidence as we get to work writing some Report and
14 Order at the conclusion of this case, but why should they
15 be precluded from offering evidence on potential synergies
16 when -- just because the way they've structured it?

17 I mean, you're going to have synergies that
18 are there inherently. Why should they be precluded from
19 offering that evidence, is what I'm trying to ask?

20 MR. DOTTHEIM: The synergies don't match
21 the application requested. The application encompasses
22 the authority at -- of what they -- they want. The
23 application is what they want, and if the Commission
24 grants their application as it's written, no synergies
25 will occur because they haven't asked to combine, and

1 without combination --

2 COMMISSIONER CLAYTON: If we allow the
3 merger to proceed in the way that it's set up?

4 MR. WOODSMALL: Set up in the application.

5 COMMISSIONER CLAYTON: The way it's set up
6 right now, at some later point would -- would Great Plains
7 or the individual operating units then have to come in and
8 ask for permission under 393.190 to merge KCP&L or would
9 they be within their right to go ahead and merge them
10 together because they're under one holding company?

11 MR. WOODSMALL: They would need to come in
12 and ask to merge whichever wholes or parts directly or
13 indirectly they seek to merge, combine or consolidate.

14 COMMISSIONER CLAYTON: Would -- I mean,
15 would Aquila's two operating divisions need to do that?

16 MR. WOODSMALL: Yes.

17 COMMISSIONER CLAYTON: If you wanted -- if
18 Aquila wanted to merge its two service territories, could
19 they do that --

20 MR. WOODSMALL: The difference is --

21 COMMISSIONER CLAYTON: -- on its own and
22 work it all out in a rate case?

23 MR. WOODSMALL: The difference is the
24 Aquila subsidiaries, if you will, is not the correct word.
25 Aquila operates these as divisions, so you wouldn't -- MPS

1 and L&P aren't separate companies. So you wouldn't be
2 merging, combining or consolidating.

3 COMMISSIONER CLAYTON: And they have their
4 own tariffs, they are their own operating entity, right?

5 MR. DOTTHEIM: You already approved that.
6 You approved that in -- I think it's EM-2000- -- it's --

7 COMMISSIONER CLAYTON: I didn't approve
8 anything. I wasn't here.

9 MR. DOTTHEIM: Excuse me. Well, that --
10 that -- that was approved and I think it was year 2000
11 approximately. There was actually a merger of UtiliCorp
12 and St. Joseph Light & Power, which the -- which the
13 Commission approved.

14 COMMISSIONER CLAYTON: Okay. I want to
15 give -- you guys may not -- you may choose to say nothing,
16 and that's fine, but I want to give you a chance, the
17 applicants.

18 MR. ZOBRIST: Judge, just a couple of
19 points, and Mr. Fischer's got one or two.

20 Just look at paragraph 34 of our
21 application. What it states is that total pretax
22 synergies for KCPL and Aquila are estimated to reach
23 approximately 15 -- \$500 million over five years. So we
24 gave full part -- we gave the parties full notice of where
25 we intended to derive the synergies from, and it was the

1 coordination of Aquila and KCPL. And it goes on for two
2 pages on pages 14 and 15 of the application. We also
3 stated that it was going to consist of Aquila being
4 acquired by this Gregory Acquisition Company, I think,
5 which is just there for the purposes of the acquisition
6 and that Aquila would continue to survive.

7 So I think we've given the parties full
8 notice, we've given them full disclosure of the nature of
9 the transaction. And we also asked in the Wherefore
10 clause, citing Section 393.190 as well as a host of other
11 Missouri statutes and sections from the Code of State
12 Regulations, to approve the merger as well as subpart K
13 granting such other relief as may be necessary and
14 appropriate to accomplish the purposes of the merger and
15 this joint application and to consummate the merger and
16 the related transactions in accordance with what we
17 presented.

18 COMMISSIONER CLAYTON: Who were the joint
19 applicants in this case?

20 MR. ZOBRIST: Kansas City Power & Light,
21 Great Plains Energy, Incorporated and Aquila, Inc.

22 COMMISSIONER CLAYTON: Okay. I'm sorry.
23 Mr. Fischer?

24 MR. FISCHER: Judge, I would also just
25 point out that the application itself mentions the

1 prefiled testimony, incorporates all the testimony that we
2 filed in this case on all those synergies, and there is no
3 notice problem here. Everybody knew from the beginning
4 that we were talking about nearly \$600 million or plus in
5 synergies that we were going to be trying to accomplish,
6 and that makes -- that is the whole reason for the
7 transaction. We can't -- without those synergies, it
8 makes no sense. It just makes no sense at all. And
9 that -- that's the whole reason that this transaction is
10 in the public interest.

11 I'd also mention to you, if you go to Chris
12 Giles' testimony, the supplemental, he says that if the
13 Commission determines that a joint operating agreement of
14 some kind is needed, we're certainly willing to provide
15 that. If that's the whole problem of the other folks,
16 that they don't have enough documentation after all these
17 witnesses to know what we're going to do, we've offered to
18 provide a joint operating agreement so they can look at it
19 in writing.

20 Now, a lot of other companies operate
21 together, they -- they -- well, for example, jointly
22 operate Iatan 1 together without having an approved joint
23 operating agreement of all sorts to -- to get synergies,
24 and we just feel like this is really a red herring.

25 MR. WOODSMALL: Your Honor, two points.

1 The Iatan issue is not the same. There was never a
2 merger, combination or consolidation at Iatan. It was
3 built that way. In order to have a merger, you have to
4 have two coming into one. It was always a one.

5 As to the notice, I ask you again, go back
6 and look at the notice that the Commission sent out. The
7 Commission didn't understand from the application that
8 there was a merger of KCPL and Aquila. There was no
9 mention in the Commission's notice of such action. It
10 only states the acquisition by GPE of Aquila. So if there
11 is -- if there is no notice problem, then the Commission
12 was fooled by it as well.

13 MR. DOTTHEIM: The -- maybe Mr. Woodsmall
14 can clarify. I'm not recalling the notice argument prior
15 than today. The Staff has not made, I don't believe,
16 earlier a notice argument. The joint operating
17 agreement, the reference to Iatan, well, there is a joint
18 operating agreement for Iatan. It certainly is most
19 definitely different, but there is a joint operating
20 agreement and there has always -- always been.

21 But even -- even with joint operating
22 agreements, that still doesn't get, I believe, the
23 Commission past the point of 393.190.1. The joint
24 applicants still have not properly filed for Commission
25 authorization.

1 And finally, when Mr. Giles took the stand,
2 I believe on Monday, I believe we heard for the first
3 time, Mr. Mills asked him whether the joint applicants
4 were asking for in the Commission Report and Order, the
5 adoption of the allocation factors and the allocation
6 methodology that were in his supplemental testimony that
7 was filed on February 25, 2008, and he said yes, and that
8 was the first indication that we received of that.

9 And if you take a look at the companies'
10 joint application, there is no request anywhere. There is
11 no request in the Wherefore clauses for the adoption by
12 the Commission of allocation factors or allocation
13 methodology, so --

14 COMMISSIONER CLAYTON: Doesn't that go to
15 the assertion on behalf of everyone? Not the -- the
16 moving parties in this instance? That goes to, you know,
17 the sufficiency of the merger plan or the method of
18 integration. It doesn't -- that's not a legal argument
19 that means as a matter of law they can't discuss certain
20 factors, and that's what I'm trying to get at. I don't --
21 the issue that I'm struggling with is a matter of law, the
22 way the case is filed, it precludes them from showing
23 certain types of evidence. That's what I'm --

24 MR. DOTTHEIM: Understood. And generally,
25 the Staff does not seek to preclude a party from making

1 its arguments to the Commission.

2 COMMISSIONER CLAYTON: But you-all joined
3 in that motion to preclude the evidence, didn't you?

4 MR. DOTTHEIM: Ultimately -- ultimately
5 yes, because of the significance --

6 COMMISSIONER CLAYTON: Okay.

7 MR. DOTTHEIM: -- because of the
8 significance of the issue. We did not -- we did not
9 independently file a Motion in Limine ourselves.

10 COMMISSIONER CLAYTON: But you're on that
11 motion. It's your motion. You're a joint movant in that.

12 MR. DOTTHEIM: No, we're not.

13 COMMISSIONER CLAYTON: You're not?

14 MR. DOTTHEIM: No, we're not.

15 COMMISSIONER CLAYTON: I thought it was a
16 joint motion on --

17 MR. MILLS: I think Staff filed something
18 later saying they agreed with it.

19 MR. DOTTHEIM: No. Mr. Thompson --
20 Mr. Thompson joined -- joined in that -- that motion on
21 the very first day of hearings on December 3. We're
22 not -- we're not literally on that document.

23 COMMISSIONER CLAYTON: Okay. Anyone else?
24 I think I'm finished with my inquiry. Did you have
25 anything else, Mr. Mills?

1 MR. MILLS: No. I'd be happy to answer
2 more questions, but I think I've given you everything --

3 COMMISSIONER CLAYTON: I think I'm
4 finished. I want to thank everyone for giving me an
5 opportunity to ask these questions. This has been helpful
6 on all of these issues, and I'll put it to rest right
7 there.

8 COMMISSIONER MURRAY: Judge?

9 JUDGE STEARLEY: Thanks, commissioner
10 Clayton. Commissioner Murray?

11 COMMISSIONER MURRAY: Thank you. I just
12 want to make sure, just so the record is clear, to the
13 extent that this exchange was factual rather than purely
14 legal, and much of it was factual, that those -- none of
15 those arguments by the attorneys will be considered as
16 evidence in this case.

17 And also to make it very clear that this
18 Commission is not challenging the authority of the
19 presiding officer to act in full accordance with our
20 Commission rules as he has done. Thank you.

21 JUDGE STEARLEY: Commissioner Jarrett?

22 COMMISSIONER JARRETT: I just had a quick
23 question. Mr. Woodsmall, the Motion in Limine, what
24 relief was requested in that?

25 MR. WOODSMALL: There were two motions, and

1 I believe in both motions the relief was the rejection of
2 certain testimony. I believe in both of them it spells
3 out which pieces of testimony, page and line numbers that
4 were asked to be excluded.

5 COMMISSIONER JARRETT: And this is, I
6 guess, to Mr. Woodsmall, Mr. Mills, Mr. Dottheim. If --
7 if a party thinks that an application or a petition is
8 deficient on its face, shouldn't the parties file a Motion
9 to Dismiss or to make it more definite, and then wouldn't
10 the Commission, if they felt it was deficient, grant the
11 applicants leave to file an amended application, much like
12 you would see in a court? I mean, bringing up that an
13 application is deficient after a case has been tried,
14 don't you kind of waive that argument?

15 MR. WOODSMALL: The application -- it
16 depends on how you define deficient. The application
17 isn't deficient for the purposes of what is sought in that
18 application. The Commission can still grant relief by
19 that application. It's only deficient when you look at it
20 in the context now of all the evidence they've offered and
21 what they seek to do. So it depends on how you define
22 deficient.

23 MR. MILLS: And I would look at it slightly
24 differently in that the application is not deficient, and
25 certainly they could ask for authority to merge Aquila

1 into the Gregory sub and leave it at that and the
2 Commission could grant that. The Motion in Limine simply
3 said a lot of this evidence isn't relevant to that
4 particular transaction.

5 What it's relevant to is this indirect
6 merger of the operations of Aquila and KCPL which hasn't
7 been -- for which authority has not been requested. So
8 it's not that the application was deficient. It's that
9 they were providing evidence about a different kind of
10 relief which they didn't ask for.

11 MR. DOTTHEIM: And Commissioner, very
12 candidly, it did not occur to us for quite some time
13 that -- that the joint applicants hadn't in our view
14 properly filed the joint application, and in fact, we
15 actually were -- I mean, we were just -- I'm at a loss of
16 words really to describe, other than just taken aback when
17 it struck us, when we went back through the joint
18 application and literally realized that -- that what we
19 had assumed they had filed for they had not filed for.

20 And we first raised it with the -- the
21 joint applicants in September before we filed our report
22 to give them some forewarning as to where we were going to
23 come from, and we were far enough into the case at that
24 point that that's where we thought the timing had left us,
25 because our -- the schedule was such that the rebuttal

1 your candor on that, Mr. Dottheim. And I didn't mean to
2 exclude Mr. Zobrist and Mr. Fischer from responding to my
3 question. If you had any response?

4 MR. FISCHER: Well, Judge, I would say that
5 would be an appropriate way to raise such an issue, and
6 certainly September we would have been dealing with this a
7 lot earlier. I mean, we were aware that they had that
8 concern, but we thought it was not correct, and it was
9 never filed as a Motion to Dismiss that I know of.

10 I do want to as we're closing thank the
11 Commission and the other parties for the accommodations of
12 our various witnesses that we had throughout this matter.
13 I do appreciate that accommodation.

14 MR. WOODSMALL: Your Honor, and to the
15 extent it's timely, I would note, if the Commission found
16 this helpful, that the rules do provide, in addition to
17 Briefs, oral arguments. If the Commission would like the
18 opportunity later to ask questions of attorneys after they
19 read the Briefs, that option is available to you, and we
20 would certainly make ourselves available.

21 JUDGE STEARLEY: Thank you, Mr. Woodsmall.

22 COMMISSIONER CLAYTON: Judge, I just -- I
23 appreciate that comment from Mr. Woodsmall. We may take
24 you up on that.

25 I just feel like I need to respond to the

1 gratuitous comment about -- about the Judge issuing a
2 ruling. I want to be clear on some of these evidentiary
3 rulings that there was a reason why I asked for certain --
4 certain of these matters to be brought up in agenda
5 session to seek to overrule the Judge's decision and that
6 opportunity was taken away. So I just -- I want to be
7 clear on how these things have proceeded.

8 JUDGE STEARLEY: All right. Is there
9 anything else we need to take up at this time other than
10 our housekeeping matters?

11 All right. Very well. I'd first like to
12 turn our attention to our exhibits list and ask the
13 parties to please make sure that all exhibits have been
14 offered into evidence. From my listing, I have a question
15 for GPE. I wasn't here in December, but I have a number
16 of exhibits, 40 through, looks like 52 that involved Data
17 Requests, and I don't have it noted that any of those were
18 ever offered.

19 MR. ZOBRIST: They have not been, Judge.

20 JUDGE STEARLEY: Did you wish to offer
21 those at this time?

22 MR. ZOBRIST: No, sir.

23 JUDGE STEARLEY: Are there any other
24 exhibits the parties note that may have escaped our
25 attention?

1 MR. WOODSMALL: The only mention I would
2 make is to -- for me is Exhibit 306, which hasn't been
3 offered. We'll do that at the appropriate point.

4 MR. MILLS: And similarly with, I believe
5 it's 209 which we anticipate getting --

6 JUDGE STEARLEY: And we have one other
7 late-filed exhibit coming from City of Kansas City, I
8 believe as well. I mean, I gave them a May 9th deadline
9 if I remember correctly to get that filed with us.

10 Yes, Mr. Dottheim?

11 MR. DOTTHEIM: Judge, just out of an
12 abundance of caution, I -- my list -- I have that the
13 Staff has offered all of its exhibits and they've been
14 received, but I thought I'd ask you if that's what you're
15 showing.

16 JUDGE STEARLEY: I have one blank with
17 regard to it looks like Exhibit No. -- well, two blanks,
18 115 and there was a reserved number for 116, 115 being
19 identified as DR 0123 with a date of 6/14/07.

20 MR. DOTTHEIM: Yes.

21 JUDGE STEARLEY: I don't have any
22 indication that's been offered.

23 MR. DOTTHEIM: No. You're right.

24 JUDGE STEARLEY: Do you wish to offer that
25 at this time?

1 MR. DOTTHEIM: Yes.

2 JUDGE STEARLEY: Very well. Are there any
3 objections to the offering of Exhibit No. 115 by Staff?

4 MR. ZOBRIST: Well, I don't know what it
5 is.

6 MR. DOTTHEIM: Yeah. Well, let me -- I got
7 it. It's DR No. 123. I assume then you don't have a
8 copy?

9 JUDGE STEARLEY: I don't with me at the
10 moment. Would the parties like a few minutes to confer
11 and identify that document?

12 MR. MILLS: Judge, while we do that, can I
13 ask you to confirm or deny about whether 301 was admitted?

14 JUDGE STEARLEY: I have -- again, have
15 another blank there as well, which is an e-mail from
16 11/30.

17 MR. MILLS: It was one of the e-mails that
18 were made exhibits to the depositions of Chesser, Downey,
19 Empson or Green, and I know we discussed it a lot on the
20 record, so I would think it should be admitted.

21 JUDGE STEARLEY: Do the parties need a few
22 minutes to review that in addition to --

23 MR. ZOBRIST: I'm sorry, Mr. Mills. I
24 didn't catch that.

25 MR. MILLS: We were talking about

1 Exhibit 301, which according to my records and the Judge's
2 records has not been offered and admitted at this time.

3 MR. ZOBRIST: 301 is an e-mail of
4 November 3, of 2006?

5 MR. MILLS: Yeah, it was Exhibit 22 from, I
6 believe that would have been Mr. Green's deposition. We
7 can go back and pull that out and take a look at it.

8 MR. ZOBRIST: And I just apologize. I
9 didn't hear your question. I was chatting with
10 Mr. Dottheim. And I think since we don't have before us
11 Staff Exhibits 115 and 116, you know, we'll certainly work
12 with Mr. Dottheim to figure out what they are. We
13 certainly may not have objection to them.

14 MR. DOTTHEIM: Yeah. So those go back
15 to --

16 JUDGE STEARLEY: Would you like to file
17 those as late-filed exhibits, then?

18 MR. DOTTHEIM: Yes.

19 JUDGE STEARLEY: We'll handle it in that
20 manner.

21 MR. DOTTHEIM: That's right. We'll first
22 visit with the other parties.

23 MR. WOODSMALL: And I would offer 301 as
24 well, your Honor.

25 JUDGE STEARLEY: Let's turn our attention

1 to that. Does everyone know clearly what Exhibit No. 301
2 is so that they may or may not offer objections thereto?

3 MR. ZOBRIST: I think we need to include
4 that. I thought that was what Mr. Mills was --

5 JUDGE STEARLEY: We'll include that as
6 another late-filed.

7 MR. WOODSMALL: That's fine. Because I
8 don't know what it is either.

9 MR. MILLS: I can run upstairs and get a
10 copy of that one.

11 JUDGE STEARLEY: Well, I have no copy
12 either. Let's include that in those to be late-filed and
13 let's have those all late-filed by Friday the 9th.

14 MR. WOODSMALL: When you say late-filed,
15 are they -- I guess they've already been marked.

16 JUDGE STEARLEY: Let's say late offered.

17 MR. MILLS: I think that 301 may be one of
18 those in which there were several different rounds of
19 redaction, and I would hesitate to try to come up with a
20 copy that matches exactly what has been marked, so if --
21 so I think if we could reoffer that --

22 JUDGE STEARLEY: We'll take the others that
23 we know about as being late offered, the ones that we
24 don't as being late-filed.

25 Then with -- I notice on my sheet, too, I

1 have four numbers 1301 through 1304 which appears to be
2 from the City of Independence, and they are not present
3 and I have no record of them being offered.

4 MR. BLANC: They haven't participated in
5 these hearings directly, your Honor, but that was part of
6 the agreement to waive cross and to waive any objections
7 to the witness' testimony on the RTO issues.

8 JUDGE STEARLEY: Okay. I'm assuming we're
9 not getting an offering then of these four exhibits?

10 MR. DOTTHEIM: 1301 to 1304?

11 JUDGE STEARLEY: Or were those somehow
12 incorporated in the testimony of those parties which we've
13 already ruled upon?

14 MR. DOTTHEIM: Yeah. I -- for some reason
15 I have those marked as received on 4/23.

16 JUDGE STEARLEY: Okay. I had just marked
17 Exhibit 1300, I believe, the testimony of Mr. Mahlberg,
18 and I'm not sure if these exhibits were incorporated in
19 his testimony or not. To the extent that they were, they
20 will have already been offered and received.

21 MR. BLANC: And just as a point of
22 clarification, my comments were limited to the prefiled
23 testimony and not the Data Request responses.

24 JUDGE STEARLEY: Well, if they were
25 included with his testimony, they definitely have already

1 been received. If not, we don't have a sponsor to offer
2 those, so they will not be offered.

3 MS. PARSONS: And your Honor, on
4 Exhibit 301, I have down that it was filed in EFIS on
5 12/19 as an exhibit. So I don't know if -- because it's
6 filed, if that means it's been offered or received. But
7 it's been filed.

8 MR. WOODSMALL: This is the distinction
9 that I was kind of hinting at as the difference between
10 late-filed and late offered. So if it -- if it's in EFIS
11 and it's been filed, I will late offer. If it hasn't been
12 filed, then I will late file, if that's acceptable.

13 JUDGE STEARLEY: That's certainly
14 acceptable.

15 MR. WOODSMALL: I appreciate your
16 indulgence.

17 JUDGE STEARLEY: Are there any other issues
18 with exhibits we need to take up? Hearing none, it's my
19 understanding the briefing schedule has already been set
20 in this matter. Post hearing Briefs are due on the 2nd of
21 June, along with proposed Findings of Fact and Conclusions
22 of Law.

23 MR. ZOBRIST: Judge, I just raised with the
24 parties, and they were going to check their schedules and
25 there may be some issues, but since we're finishing

1 approximately a week early from the last scheduling Order,
2 which had hearings going through May 7, we were wondering
3 if we could advance that by seven days?

4 MR. MILLS: Judge, from my point of view,
5 finishing early puts the briefing schedule from totally
6 impossible to something about two days short of totally
7 impossible. So I -- I'm sympathetic to Mr. Zobrist's
8 request, but June 2nd from -- with two weeks of Empire
9 hearings between now and then, June 2nd is approaching
10 very quickly.

11 MR. WOODSMALL: We have the same problem.
12 Our firm represents clients down in the Empire case and we
13 have two weeks of Empire hearings in the interim, plans
14 for Memorial Day holiday that have been planned for months
15 and months and months. To try to move that up is going to
16 be very impossible, as Mr. Mills would say.

17 JUDGE STEARLEY: I think the Commission
18 would prefer that we had good post hearing Briefs as
19 opposed to hasty post hearing Briefs.

20 MR. WOODSMALL: I don't know if that will
21 ensure it, but I'll do my best.

22 JUDGE STEARLEY: Well, at least I'll try to
23 achieve that goal. We'll keep with the June 2nd date.
24 Are there any other housekeeping matters we need to take
25 up at this time?

1 Hearing none, the hearing in Case No.
2 EM-2007-0347 is hereby adjourned. Thank you all very
3 much.

4 WHEREUPON, the hearing of this case was
5 concluded.

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1	I N D E X		
2	AG PROCESSING'S OFFER OF PROOF		
3	MICHAEL CLINE		
	Cross-Examination by Mr. Woodsmall	2948	
4	Cross-Examination by Mr. Zobrist	2959	
5	RUSSELL TRIPPENSEE	Cross-Examination by Mr.	
	Woodsmall	2962	
6	Redirect Examination by Mr. Mills	2971	
7	RUSSELL TRIPPENSEE (In-Camera Session - Volume 24)		
	Redirect Examination by Mr. Mills	3023	
8	ROBERT SCHALLENBERG		
9	Cross-Examination by Mr. Woodsmall	2980	
	Questions by Commissioner Clayton	2986	
10	Recross-Examination by Mr. Woodsmall	3020	
	Recross-Examination by Mr. Mills	3023	
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

	EXHIBITS INDEX	MARKED	RECEIVED
1			
2			
3	EXHIBIT NO. 306		
4	Credit Ratio Ranges and Definitions	2949	2962
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified

Shorthand Reporter with the firm of Midwest Litigation
Services, and Notary Public within and for the State of
Missouri, do hereby certify that I was personally present
at the proceedings had in the above-entitled cause at the
time and place set forth in the caption sheet thereof;
that I then and there took down in Stenotype the
proceedings had; and that the foregoing is a full, true
and correct transcript of such Stenotype notes so made at
such time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR
Notary Public (County of Cole)
My commission expires March 28, 2009.