

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
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5 TRANSCRIPT OF PROCEEDINGS  
6  
7 Evidentiary Hearing  
8  
9 December 4, 2007  
10 Jefferson City, Missouri  
11 Volume 4  
12  
13

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

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

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

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1 P R O C E E D I N G S

2 JUDGE DIPPELL: This is Tuesday,  
3 December 4th, and we are back on the record in  
4 EM-2007-0374, and I believe we are going to begin with --  
5 I think the responses to the motion that I requested  
6 yesterday were just filed, and so we're going to give  
7 everyone a chance to review those responses and we'll take  
8 that up later in the morning or just after lunch.

9 MS. PARSONS: Your Honor, I did bring hard  
10 copies I'd like pass out to the parties if I could.

11 JUDGE DIPPELL: That would be good.

12 MR. ZOBRIST: Judge, Great Plains Energy  
13 e-filed it's opposition last night, and I also have hard  
14 copies. I placed them on some of the desks right here, so  
15 if anyone needs a hard copy, please let me know.

16 JUDGE DIPPELL: Thank you. I think what  
17 we'll do then is go ahead and ask Mr. Giles to come back  
18 to the stand. Mr. Dottheim, you had a question.

19 MR. DOTTHEIM: Yes, a more of a  
20 housekeeping matter. In looking at the GPE/KCPL/Aquila  
21 Exhibit list, I don't think I see listed as an exhibit the  
22 Joint Application and the attachments, and there was a  
23 late-filed exhibit also in August, and I think it would be  
24 appropriate, or I'd like to suggest that the application  
25 and the exhibit, the late-filed exhibit be marked as

1 exhibits also.

2 JUDGE DIPPELL: All right. Would there be  
3 any objection to marking those items and receiving them?  
4 I see none. So what I will do then is if it's all right,  
5 I'll add those to the applicant's exhibit numbers,  
6 starting with No. 32 for the application and its  
7 attachments. I think I'll -- should I mark the late-filed  
8 attachment separately or include it as -- I assume you  
9 don't have a preference.

10 MR. DOTTHEIM: They're actually I think two  
11 late-filed attachments. There's one that was filed on  
12 August 2 in response and in relation to paragraph 29 of  
13 the application, the transition services agreement, and  
14 the other document was actually a proxy statement  
15 containing certain financial documents that would be filed  
16 as late-filed exhibits.

17 JUDGE DIPPELL: Okay. I'll go ahead and  
18 mark the transition services agreement as No. 33 and the  
19 proxy statement as No. 34. Now, do any of those items  
20 contain HC information?

21 MR. RIGGINS: No.

22 JUDGE DIPPELL: Okay. I'll receive those  
23 three items into evidence.

24 (EXHIBIT NOS. 32, 33 and 34 WAS RECEIVED  
25 INTO EVIDENCE.)

1                   MR. BOUDREAU: Can I trouble you to go  
2 through the -- there's four new exhibits?

3                   JUDGE DIPPELL: Three new exhibits, the  
4 application, No. 32, the transition services agreement,  
5 No. 33, and the proxy statement, No. 34. If I could  
6 trouble either Mr. Dottheim or one of the applicants to  
7 make a copy for the court reporter of those three items  
8 sometime today or first thing in the morning?

9                   MR. RIGGINS: We'll do that.

10                  MR. BOUDREAU: And those have all been  
11 received?

12                  JUDGE DIPPELL: Yes.

13                  MR. CONRAD: Excuse me. Now, 32, that's  
14 the application, that's already in the record.

15                  JUDGE DIPPELL: Right.

16                  MR. CONRAD: We're just assigning it an  
17 exhibit number?

18                  JUDGE DIPPELL: And admitting it.

19                  MR. CONRAD: Is the rest --

20                  JUDGE DIPPELL: Mr. Conrad, I can hardly  
21 hear you.

22                  MR. CONRAD: I hate to inhale this, but is  
23 the rest of the material in the EFIS document somewhere,  
24 the EFIS system somewhere?

25                  JUDGE DIPPELL: Yes. Yes. Those are both



1 filings that were late filings to the application.

2 MR. DOTTHEIM: I don't know if Mr. Conrad  
3 is referring to the application. There were eight  
4 exhibits, or there are were eight exhibits that were  
5 identified that were -- that were also filed with the  
6 application that I would think would be -- would be part  
7 of Exhibit 32.

8 JUDGE DIPPELL: Yes.

9 MR. CONRAD: But they're already in EFIS?

10 JUDGE DIPPELL: Yes.

11 MR. CONRAD: And the other, 33 and 34 were  
12 not?

13 MR. DOTTHEIM: Yeah. I don't know, just  
14 being in EFIS, whether I consider them evidence or not.

15 JUDGE DIPPELL: They are in EFIS also.

16 MR. CONRAD: I'm not worried about that.

17 JUDGE DIPPELL: They are.

18 MR. CONRAD: I'm just trying to find out  
19 what it is and whether we've had an opportunity to look at  
20 it.

21 MR. DOTTHEIM: Yes, they --

22 MR. CONRAD: These aren't really late-filed  
23 as I understand it.

24 JUDGE DIPPELL: They were -- they were not  
25 attached to the original application, but they were filed

1 later in EFIS.

2 MR. CONRAD: Okay.

3 JUDGE DIPPELL: As part of the application,  
4 the proxy statement and the transition services agreement.  
5 Any other housekeeping matters before we resume?

6 MR. RIGGINS: I just have one, Judge.  
7 Before we resume cross-examination of Mr. Giles, and I  
8 didn't notice this until last night, in reviewing the  
9 schedule of witnesses, list of issues, it has Mr. Giles  
10 listed to appear on Thursday of this week to testify  
11 regarding actual debt cost recovery, and I believe that's  
12 a mistake because he does not address that issue in his  
13 surrebuttal testimony. The other two witnesses for the  
14 joint applications there, Mr. Bassham and Mr. Cline, do in  
15 fact address that issue. So I just --

16 JUDGE DIPPELL: So -- and those are your  
17 only witnesses on that issue?

18 MR. RIGGINS: That's correct. I don't know  
19 what happened but I --

20 JUDGE DIPPELL: Okay. That's probably just  
21 a mistake.

22 MR. RIGGINS: And with that, as far as  
23 we're concerned, the cross-examination can resume.

24 JUDGE DIPPELL: Thank you. Are you ready  
25 to go forward, then, Mr. Dottheim?

1 MR. DOTTHEIM: Yes.

2 JUDGE DIPPELL: Mr. Giles, you were sworn  
3 in yesterday and you remain under oath. Go ahead,  
4 Mr. Dottheim.

5 CHRIS GILES testified as follows:

6 CROSS-EXAMINATION BY MR. DOTTHEIM:

7 Q. Good morning Mr. Giles.

8 A. Good morning.

9 Q. Mr. Giles, does -- do you know whether GPE  
10 is under obligation to Aquila to use its best efforts to  
11 obtain regulatory approval in Missouri of the proposed  
12 transaction?

13 A. Yes, that's my understanding.

14 Q. Do you know whether the joint applicants  
15 held any meetings with the stakeholders other than the  
16 prehearing conference which occurred in May and the  
17 settlement conference that occurred in November?

18 A. We did not meet with any stakeholders prior  
19 to the close or prior to the transaction. Subsequent to  
20 that, we had meetings or conversations primarily with  
21 Staff.

22 Q. And were those informational meetings?

23 A. I wouldn't characterize them necessarily as  
24 informational meetings. They were meetings to talk about  
25 the proposed transaction and whether there was any room

1 for negotiation.

2 Q. Mr. Giles, it's been indicated to Staff  
3 that you had or have no work papers to your surrebuttal  
4 testimony; is that correct?

5 A. That's correct.

6 Q. Does KCPL have a services obligation  
7 contract with Aquila?

8 A. Not to my knowledge.

9 Q. Does KCPL have a services obligation  
10 contract with GPE referring to the additional amortization  
11 component of the proposed transaction?

12 A. I don't understand your question.

13 Q. Is there any requirement that KCPL has in  
14 this proceeding because of some contractual relationship  
15 to request that there be an additional amortization for  
16 Aquila?

17 A. No.

18 Q. Mr. Giles, you're familiar with the  
19 Stipulation & Agreement in the KCPL regulatory plan  
20 Case No. EO-2005-0329?

21 A. Yes.

22 Q. Do you recall the section that states this  
23 agreement is based on the unique circumstances presented  
24 by KCPL to the signatory parties. This agreement shall  
25 not be construed to have precedential impact in any other

1 Commission proceeding?

2 A. I believe that's what it says, yes.

3 Q. Mr. Giles, I'd like to refer you to page 3  
4 of your surrebuttal testimony, Exhibit 15, and I'd like to  
5 direct you to lines 19 and 20. In particular I'd like to  
6 direct you to the words inter-utility arrangements.

7 A. Yes, I see that.

8 Q. Your reference to inter-utility  
9 arrangements, are those inter-utility arrangements which  
10 you are referring to created by formal agreements between  
11 utilities?

12 A. Between utilities, in some cases, yes. In  
13 some, I don't believe so.

14 Q. Can you provide examples of both?

15 A. Well, the example I use in my testimony is  
16 the Iatan joint ownership. We do have operating  
17 agreements with the partners in those units, but unlike an  
18 entry utility or a parent versus a subsidiary, we are  
19 jointly owned. So there's a significant difference there.

20 Q. Can you provide any other examples of  
21 inter-utility agreements which you're referring to for  
22 which agreements exist, written agreements or there are no  
23 written agreements?

24 A. I can't think of any offhand.

25 Q. It's true, is it not, that the mergers

1 combinations, consolidations, integrations referenced in  
2 the GPE/KCPL/Aquila prepared testimony are not covered by  
3 a formal agreement or agreements between KCPL and Aquila?

4 A. You'll have to repeat that. I'm not  
5 following.

6 Q. All right. It is true, is it not, that the  
7 mergers, combinations, consolidations, integrations  
8 referenced in the GPE/KCPL/Aquila prepared testimony are  
9 not covered by a formal agreement or agreements between  
10 KCPL and Aquila?

11 A. Aquila and KCPL are not merging, and there  
12 is no agreement to merge. That's correct. GPE --

13 Q. The answer to my question is yes?

14 A. Well, I think you included GPE in your  
15 question.

16 Q. All right.

17 A. GPE is proposing to acquire Aquila, but  
18 KCPL is not merging its assets with Aquila. I was just  
19 trying to make sure I covered all three situations.

20 Q. Thank you. And so there are no formal  
21 agreements between KCPL and Aquila?

22 A. Not to my knowledge.

23 MR. DOTTHEIM: At this time I'd like to  
24 have a document marked as an exhibit. I think it's  
25 Exhibit 111.

1 JUDGE DIPPELL: Yes, Exhibit 111 is the  
2 next number.

3 MR. DOTTHEIM: If I may approach the Bench  
4 and the witness?

5 JUDGE DIPPELL: Yes, please.

6 (EXHIBIT NO. 111 WAS MARKED FOR  
7 IDENTIFICATION BY THE REPORTER.)

8 BY MR. DOTTHEIM:

9 Q. Mr. Giles, have you had a chance to take a  
10 look at what's been marked as Exhibit 111?

11 A. I have.

12 Q. And that is the response to Staff Data  
13 Request No. 285?

14 A. That's correct.

15 Q. And does that Data Request response confirm  
16 the answer you just previously gave?

17 A. It does.

18 Q. Mr. Giles, did you attend in September of  
19 this year the FRI session in Columbia, Missouri?

20 A. Yes, I did.

21 Q. I believe it was on September 26. Do you  
22 recall the date?

23 A. I don't recall the date, but I did attend.

24 Q. Do you recall Mr. Schallenberg talking with  
25 you at the FRI Conference and indicating to you his

1 concern that the mergers, combinations, consolidations,  
2 integrations addressed in the joint application and the  
3 joint filing of GPE, KCPL and Aquila at least were not  
4 covered respecting between KCPL and Aquila?

5 A. Mr. Schallenberg, according to my  
6 recollection, asked me if there were any requests  
7 contained or anything in the application or testimony that  
8 indicated KCPL and Aquila were merging, and he seemed to  
9 be implying that this was an issue. Didn't come out and  
10 state it was an issue. I indicated to Mr. Schallenberg I  
11 would get back with him, and prior to my getting back with  
12 him, he filed his testimony in this case, and it became  
13 very apparent to me at that time what his concern was.

14 Q. Mr. Giles, is it your testimony that all of  
15 the items that are proposed to occur as a result of the  
16 transaction in question and produce synergies from the  
17 consolidation of the operations of KCPL and Aquila are  
18 transactions that occur regularly between utilities in  
19 their normal course of business?

20 A. I don't think that's my testimony.

21 Q. Are the mergers -- are the merger synergies  
22 that the joint applicants assert will occur as a result of  
23 the proposed transaction synergies that can occur absent a  
24 merger or some form of transaction that needs  
25 authorization from the Missouri Public Service Commission?



1           A.       Yes. Let me clarify, because your question  
2 did not indicate merger of who, but yes, it's my testimony  
3 that the synergies that are based upon jointly operating  
4 functionally as Kansas City Power & Light, both Aquila and  
5 KCP&L under joint ownership by GPE is permissible under  
6 any Commission regulation, or, even though I'm not an  
7 attorney, any statute that my attorneys have informed me  
8 of.

9                       So yes, to answer your question, there's no  
10 asset combinations, there's no transference of assets  
11 between Aquila and KCPL, and the synergies that we have  
12 identified are all capable of being accomplished without  
13 Commission approval.

14           Q.       Could they have been accomplished absent  
15 the merger of the merger sub and GPE?

16           A.       No.

17           Q.       Mr. Giles, do you know whether GPE at some  
18 later time will seek to merge KCPL and GPE?

19           A.       I don't know specifically that there's been  
20 a determination. My recommendation would be for that to  
21 occur. My recommendation would be that within some time  
22 frame where it was appropriate and assets and rates were  
23 close enough, to merge the two, Aquila and KCPL. Assets  
24 have one common set of assets, one common set of rates.  
25 That would be preferred in my opinion.

1           Q.       Can there be a merger of KCPL and Aquila  
2     and there not be one set of rates for KCPL and Aquila?

3           A.       There could be, yes.

4           Q.       What time frame are you thinking of when  
5     you're saying that it would be your recommendation that  
6     there be a merger?

7           A.       Three to five years.

8           Q.       Are you aware of any discussions within GPE  
9     or KCPL of that nature referring to -- excuse me --  
10    referring to a possible merger of KCPL or Aquila in the  
11    future?

12          A.       It hasn't been a formal discussion. I've  
13    had informal discussions with both Mr. Chesser, Mr. Downey  
14    and Mr. Bassham that at some point this is what we ought  
15    to do.

16          Q.       What will be the determining factors  
17    regarding whether that will occur or not as far as you  
18    know?

19          A.       In my opinion, the determining factor is  
20    rate levels, because even though you may have a case where  
21    you could maintain separate rates, if you combine assets,  
22    you're essentially combining production facilities, which  
23    have widely disparate costs depending on the utility and  
24    different generating capacities, different generating  
25    types, nuclear plant versus old coal plants, gas plants.

1 And so to mix all of those, it would seem to me you just  
2 about have to consolidate rate schedules.

3 The only difference might be on the  
4 distribution side of the business, but at least some  
5 combination of rates for the production side. I think  
6 that's the key, and the investment that both KCP&L and  
7 Aquila will need to make in environmental equipment during  
8 the next three to five years should have a significant  
9 impact on the value of those assets and thus the rates.

10 So at this point, it's almost impossible to  
11 determine when this transition to a merger of Aquila and  
12 KCPL could occur, but knowing the environmental  
13 investments will need to be in place sometime in the 2013  
14 time frame, that's how I come up with my three to five  
15 years.

16 Q. Will any of the factors in the  
17 consideration of timing be the factors that Mr. Riggins  
18 raised in his opening statement and which Mr. Mills asked  
19 you about when he first cross-examined you yesterday  
20 afternoon?

21 A. I think those would certainly play a role  
22 as well.

23 Q. Mr. Giles, I'd like to refer you again to  
24 your surrebuttal testimony.

25 A. Okay.

1 Q. Page 5, lines 13 to 15.

2 A. Okay.

3 Q. And at page 5, lines 13 to 15 of your  
4 surrebuttal testimony, you state that GPE will be  
5 operating Aquila and KCPL as efficiently as possible, do  
6 you not?

7 A. Yes.

8 Q. GPE is a holding company, is it not?

9 A. Yes.

10 Q. Okay. Is your statement at page 5, lines  
11 13 to 15 that GPE itself will be performing utility  
12 functions?

13 A. The reference there is that Great Plains  
14 Energy is the owner of both Aquila and KCP&L. The actual  
15 operations will be Aquila and KCPL, and as a result of  
16 this transaction, largely KCPL will be operating both  
17 utilities. So my implication there is that functionally  
18 it's at the utility level. From an ownership, a strategy  
19 perspective, it's at the GPE level.

20 Q. Does GPE have any operating agreements with  
21 KCPL?

22 A. Not that I'm aware of.

23 Q. Are you aware, are any projected with  
24 either KCPL or Aquila?

25 A. Not that I'm aware of.

1           Q.       Mr. Giles, I'd like to refer you to page 6  
2 of your surrebuttal testimony, lines 9 to 12.

3           A.       Okay.

4           Q.       And at page 6, lines 9 to 12 of your  
5 surrebuttal testimony, you refer to Mr. Schallenberg's  
6 statement that there is no contract or agreement  
7 authorizing KCPL employees to provide services to GPE, and  
8 you state that there is no written agreement and none is  
9 required under the Commission's affiliate transactions  
10 rules, do you not?

11          A.       I do.

12          Q.       Have you recently read the Commission's  
13 affiliate transaction rules?

14          A.       I have not recently read them, no.

15          Q.       Have you read the Commission's affiliate  
16 transaction rules?

17          A.       Yes.

18                   MR. DOTTHEIM: May I approach the Bench and  
19 the witness?

20                   JUDGE DIPPELL: Yes.

21 BY MR. DOTTHEIM:

22          Q.       Mr. Giles, I'd like to direct you in  
23 particular to 4. You probably have already found the  
24 subsection I'm going to direct you to, but page 4, the  
25 center column, (4) (b) 4?

1           A.       Okay.

2           Q.       And that states, does it not, under  
3   recordkeeping, 4, then under B, each regulated electrical  
4   corporation shall maintain the following information in a  
5   mutually agreed to electronic format, paren, that is  
6   agreement between the Staff, Office of the Public Counsel  
7   and the regulated electric corporation, close paren,  
8   regarding affiliate transactions on a calendar year basis  
9   and shall provide such information to the Commission Staff  
10   and the Office of Public Counsel on or before March 15 of  
11   the succeeding year for a full and complete list of all  
12   affiliate transactions undertaken with affiliate entities  
13   without a written contract together with a brief  
14   explanation of why there was no contract. Did I read that  
15   correctly?

16          A.       You read it correctly, but you did not  
17   point out that the purpose of the affiliate transaction  
18   rule is to deal with --

19          Q.       Mr. Giles --

20          A.       -- unregulated activity.

21          Q.       Mr. Giles, I think you answered my  
22   question. Mr. Giles?

23          A.       I am answering.

24          Q.       Mr. Giles.

25                    JUDGE DIPPELL: Mr. Giles.

1 THE WITNESS: Yes.

2 JUDGE DIPPELL: You answered his question.

3 THE WITNESS: Repeat your question.

4 JUDGE DIPPELL: You answered it.

5 BY MR. DOTTHEIM:

6 Q. I think you answered the question,  
7 Mr. Giles.

8 A. Okay.

9 Q. Mr. Giles, are you familiar with KCPL's  
10 cost allocation manual in its submission to the  
11 Commission?

12 A. I am familiar with the process. I'm not  
13 familiar with the details.

14 MR. DOTTHEIM: At this time I'd like to  
15 have an exhibit marked.

16 JUDGE DIPPELL: All right.

17 MR. DOTTHEIM: It would be 112. I'd like  
18 to approach the Bench and the witness.

19 JUDGE DIPPELL: While Mr. Dottheim is  
20 passing that out, we've had a lot of interference on our  
21 webcast, and I would ask everyone to check and make sure  
22 that your cell phones and especially your Blackberries are  
23 turned off because they interfere with our -- when you get  
24 a message, even if the ringer is off, they interfere with  
25 the webcast.

1 (EXHIBIT NO. 112 WAS MARKED FOR  
2 IDENTIFICATION BY THE REPORTER.)  
3 BY MR. DOTTHEIM:

4 Q. Mr. Giles, I'd like to direct you in  
5 particular to the second page, the paragraph numbered 4,  
6 and also the -- the line underneath that.

7 A. Okay.

8 Q. And what's marked as Exhibit 112 is just  
9 the cover material to the KCPL submission of this year,  
10 cover letter and two pages, rather than copying the entire  
11 document, and on the two-page attachment, paragraph 4  
12 states, for a full and complete list of all affiliate  
13 transactions undertaken with affiliate entities without a  
14 written contract together with a brief explanation of why  
15 there was no contract, and then underneath the response,  
16 no KCPL affiliate transactions have occurred without a  
17 written contract. Have I read that correctly?

18 A. Yes.

19 Q. Mr. Giles, I'd like to direct you again to  
20 your surrebuttal testimony, page 7.

21 A. Okay.

22 Q. Lines 1 to 3.

23 A. Okay.

24 Q. Where you state, do you not, we anticipate  
25 that when the details regarding operations and services to



1 be provided by KCPL to Aquila and Black Hills are  
2 completed, post closing we will formalize them in written  
3 agreements. Have I read that correctly?

4 A. You have read it correctly.

5 Q. There is a transition services agreement  
6 that was filed with the Commission, am I correct?

7 A. I didn't hear the entire question.

8 Q. There has been filed by GPE/KCPL/Aquila a  
9 transition services agreement, has there not? Are you  
10 aware of that?

11 A. I'm aware we have been working on a  
12 transition services agreement. I'm not sure whether it's  
13 been filed or not, and I do need to make clear here that  
14 this is written fairly poorly, but the services to be  
15 provided by KCPL to Aquila and Black Hills is not  
16 referring to Aquila as a standalone entity. That is  
17 referring to services that will be provided to Black Hills  
18 that are currently being provided by Aquila. So I just  
19 wanted to make that clear.

20 Q. I'm going to hand to you a document that  
21 was filed on August 2, 2007, that earlier I asked that a  
22 late-filed exhibit number be reserved for it as  
23 Exhibit 33. If you would take a look at that document,  
24 and if you could identify it?

25 A. The cover letter indicates it is a

1 transition services agreement, an Amendment 1 to  
2 transition services agreement, including the schedule of  
3 services to be provided between the joint applicants and  
4 Black Hills Corporation.

5 Q. Okay.

6 A. There's a document attached to that.

7 Q. Mr. Giles, is that the document that you  
8 were referring to in your surrebuttal testimony?

9 A. Yes, to the extent that it's been  
10 completed. I'm not sure it's yet completed. It's been  
11 evolving over time, and I think this is where we were at  
12 the point in August of 2007. I'm not sure that we're not  
13 still working on this agreement.

14 Q. So are you indicating that there still will  
15 be another document to be finalized and provided?

16 A. I don't know. I don't know the status of  
17 it.

18 Q. At least your surrebuttal testimony  
19 indicates what you have just said, or that the document is  
20 still being worked on, it has not been finalized?

21 A. That's what's in my surrebuttal, yes, and I  
22 don't know that that's any different today one way or  
23 another.

24 MR. RIGGINS: Your Honor, I just note for  
25 the record that Mr. Marshall, who will be testifying

1 before too long in this proceeding, probably has better  
2 knowledge of the status of the transition services  
3 agreement than Mr. Giles. So to the extent Mr. Giles does  
4 not know the answer to these questions, Mr. Marshall will  
5 be able to answer them.

6 BY MR. DOTTHEIM:

7 Q. Mr. Giles, if I could return again to  
8 merger savings just briefly. Do you know whether any  
9 studies have been performed showing whether KCPL and  
10 Aquila's Missouri operations will experience any  
11 productivity gains during the 2007 to 2012 time period  
12 without the proposed merger transaction occurring?

13 A. I don't know of any specific studies. I  
14 know in our business planning process we continually  
15 strive for productivity gains and continually try to  
16 either maintain or reach a top quartile or top tier  
17 performance level in both cost and service.

18 MR. DOTTHEIM: At this time I'd like to  
19 have an exhibit marked.

20 JUDGE DIPPELL: All right. Exhibit 113.

21 MR. DOTTHEIM: May I approach the Bench and  
22 the witness?

23 JUDGE DIPPELL: Yes.

24 (EXHIBIT NO. 113 WAS MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 BY MR. DOTTHEIM:

2 Q. Mr. Giles, have you had a chance to take a  
3 look at that?

4 A. Yes.

5 Q. And it's a response to Staff Data Request  
6 339, is it not?

7 A. It is.

8 Q. And in response to the question, please  
9 provide copies of all documents which show that KCPL and  
10 Aquila's Missouri operations will experience no  
11 productivity gains during 2007 through 2012 time period to  
12 offset any inflationary pressure experience during this  
13 time period without the merger of KCPL with Aquila's  
14 Missouri operations, and the response is no such studies  
15 have been conducted.

16 A. That's correct.

17 Q. Is that accurate to the best of your  
18 knowledge?

19 A. It is. So far I seem to be batting a  
20 thousand.

21 MR. CONRAD: I'd like to move to strike  
22 that gratuitous comment.

23 MR. RIGGINS: Your Honor, if we strike all  
24 the gratuitous comments in this hearing, we will not have  
25 much of a transcript.

1                   MR. CONRAD: It was not in response to a  
2 question that I heard.

3                   JUDGE DIPPELL: I will strike the added  
4 remark as nonresponsive.

5 BY MR. DOTTHEIM:

6                   Q.       Mr. Giles, earlier in the proceeding when I  
7 asked you if there was any precedent for certain of the  
8 components of the joint applicants' transaction proposal,  
9 you made reference to Mark Oligschlaeger's rebuttal  
10 testimony in the UtiliCorp/Empire merger case -- excuse  
11 me -- the UtiliCorp/St. Joseph Light & Power merger case,  
12 I believe, am I correct?

13                  A.       I believe I said Mr. Oligschlaeger. I may  
14 have said or Mr. Traxler. I'm not sure. It was one of  
15 the two.

16                  Q.       Okay. I believe it was Mr. Oligschlaeger.

17                  A.       Okay.

18                  Q.       How are you familiar with  
19 Mr. Oligschlaeger's testimony from the -- from that merger  
20 case, the UtiliCorp/St. Joseph Light & Power merger case?

21                  A.       I read various orders, various points in  
22 time. I'm not even sure when I read it, but I recall  
23 seeing something.

24                  Q.       I can understand your referencing  
25 Mr. Traxler because there are other GPE/KCPL witnesses who

1     also mention Mr. Traxler in addition to Mr. Oligschlaeger,  
2     but I think you made reference to Mr. Oligschlaeger. I'd  
3     like to approach the witness. May I?

4                     JUDGE DIPPELL: Yes.

5     BY MR. DOTTHEIM:

6             Q.     Mr. Giles, I'd like to refer you to certain  
7     of Mr. Oligschlaeger's testimony which you didn't make  
8     note of when you made reference to his testimony yesterday  
9     afternoon. I'd like to first refer you to page 20, and  
10    let me ask you to identify the document that I handed to  
11    you. Is it on the cover page marked or shown as Exhibit  
12    No. 713, Staff overall recommendations, Mark  
13    Oligschlaeger, MoPSC Staff, rebuttal testimony, Case No.  
14    EM-2000-292, UtiliCorp United, Inc., and St. Joseph Light  
15    and Power Company?

16            A.     Yes.

17            Q.     And there's a date shown at the bottom of  
18    the cover page of May 2000?

19            A.     Yes, it is.

20            Q.     Again I'd like to refer you to page 20,  
21    line 13, and the sentence that begins towards the end of  
22    line 13, merger cost savings in contrast are very  
23    speculative and difficult, perhaps impossible to  
24    accurately measure. Merger savings are likely subject to  
25    contentious disputes in rate case hearings. One can never

1 be as sure of the amount of the savings component on the  
2 cost/benefit analysis as one can be of the amount of cost  
3 component in the premiums. It will always take a leap of  
4 faith to make a tentative determination that merger  
5 savings exceed merger costs, and that determination  
6 inherently places the risk of obtaining merger savings on  
7 the customers rather than utilities. For this reason, the  
8 Staff views recovery of acquisition adjustments in rates  
9 as detrimental to the public interest because of the very  
10 highly -- the very high likelihood that customers' rates  
11 are actually being increased as a result of the inclusion  
12 of merger premiums. Did I read that accurately?

13 A. Yes, you did.

14 Q. There are three other places I'd like to  
15 refer you to. I don't want to leave people the impression  
16 that I'm going to read from the entire testimony. But I'd  
17 next like to refer you to page 26, line 18. What I  
18 previously read was from a partial answer of  
19 Mr. Oligschlaeger's to a question, did I not, on page 20?

20 A. Yes.

21 Q. And on page 26, line 18, there's the  
22 question, why is it difficult to identify and quantify  
23 actual achieved merger savings on an after the fact basis?

24 Answer: Conceptually the difficulty is  
25 that it requires a comparison between actual financial

1 results achieved after a merger and what the financial  
2 results would have been for an entity if the merger had  
3 never taken place. Of course, no one can know what would  
4 have happened if a merger had not taken place if, in fact,  
5 a merger does take place. This requires guesswork on  
6 someone's part to come up with a hypothetical scenario in  
7 order to quantify actual merger savings.

8                   This guesswork can take two basic forms.  
9 First, an assumption that the involved entities' financial  
10 results at the time the merger was entered into would have  
11 essentially been frozen in place from that point on or,  
12 second, that some way can be found to accurately project  
13 prospectively and retrospectively what the entity would  
14 have done on a standalone basis, paren, that is, what  
15 savings will be or what would have been achieved, what  
16 major decisions will be or would have been made, et  
17 cetera, close paren.

18                   The first assumption is unrealistic in that  
19 no business entity stands frozen in place for an extended  
20 period of time. Second assumption involves hopelessly  
21 subjective speculation as to what a business concern will  
22 do or would have done when faced with a set of  
23 hypothetical facts and circumstances not actually known  
24 prospectively or necessarily even accurately known  
25 retrospectively. Did I read that accurately on pages 26



1 and 27?

2 A. Yes.

3 Q. I read down starting on line 18 on page 26  
4 down to line 12 on page 27, correct?

5 A. Yes.

6 Q. Okay. I'd like to refer you next to page  
7 47 of line 15 where it appears the question, question: If  
8 the Commission were to approve this requested merger, what  
9 is the Staff's recommendation regarding how merger savings  
10 and costs resulting from the merger transaction should be  
11 treated in future rate proceedings?

12 Answer: Through specific rate findings  
13 concerning merger savings and costs -- excuse me. Let me  
14 start that answer over.

15 Answer: Though specific rate findings  
16 concerning merger savings and costs should be reserved to  
17 those future rate cases, in general the Staff believes  
18 that traditional ratemaking practices when examined in the  
19 context of the occurrence of regulatory lag will be  
20 sufficient to achieve fair treatment of merger revenue  
21 requirement impacts from the prospective of both UCU  
22 customers and shareholders.  
23 Paren, in context of this case, fair treatment presumes  
24 that total merger savings will exceed total merger costs,  
25 close paren.

1                   In practice, use of traditional regulatory  
2 practices would mean that merger savings would be flowed  
3 to customers by means of periodic rate proceedings with  
4 appropriate merger costs, paren, that is cost to achieve,  
5 close paren, charged to expense as incurred as well. In  
6 between rate proceedings, UCU would be allowed to retain  
7 in total the net amount of any merger savings it can  
8 create. Regulatory lag allows, therefore, for fair  
9 sharing of merger savings between customers and  
10 shareholders in most situations, period.

11                   Did I read accurately from line 15 on page  
12 47 to line 6 on page 48?

13               A.       Yes.

14               Q.       And although I received an objection  
15 yesterday when I -- when I asked you about transaction  
16 costs, just solely for purposes of clarification because  
17 the quote I just had you read from referred to cost to  
18 achieve, I'd like to refer you to one other page, which  
19 will give us a definition of cost to achieve, and I'd like  
20 to refer you to page 9.

21                   And I'll -- before I read anything on it,  
22 I'd like to direct your counsel to line 16 to 21 where  
23 there's a definition of cost to achieve. The company  
24 defines cost to achieve as transition costs and  
25 transaction costs. The -- if I'm not mistaken, if I'm not

1 recalling it correctly, the Staff has defined cost to  
2 achieve as transition costs and has not defined  
3 transaction costs as cost to achieve. That's why I would  
4 cite you to that part of the testimony.

5 MR. RIGGINS: Well, there's not a question  
6 pending, but not knowing what the question is, I guess,  
7 since Mr. Giles did reference Mr. Oligschlaeger's  
8 testimony, I don't have a question with Mr. Dottheim  
9 asking him about that as long as we don't get back into  
10 what KCPL or Great Plains may be requesting in terms of  
11 transaction costs in this proceeding.

12 BY MR. DOTTHEIM:

13 Q. And I'm just -- Mr. Giles, would like to  
14 refer you to page 9, line 16.

15 A. Okay.

16 Q. Which is part of Mr. Oligschlaeger's  
17 answer. It states, the joint applicants' proposal would  
18 require customers to pay for merger transaction costs,  
19 which should be treated in a similar manner to the  
20 acquisition adjustment and be assigned to shareholders in  
21 entirety. In addition, the proposed regulatory plan would  
22 allow recovery from ratepayers of certain costs to  
23 achieve, paren, transition costs, close paren, that also  
24 should be assigned to shareholders, such as executive  
25 severance payments, paren, golden parachutes, close paren,

1 period. Did I read that accurately?

2 A. Yes.

3 Q. Thank you. Mr. Giles, have any documents  
4 been generated that would actually show projected rates  
5 for KCPL and Aquila customers that would show on the basis  
6 of the proposed merger that KCPL and Aquila customers'  
7 rates would be lower than they would be if KCPL and Aquila  
8 remained standalone companies?

9 A. I don't know to what extent that's been  
10 done. I think to the extent one can look at the various  
11 components of the proposed transaction, one can assume  
12 rates would be lower than they would be otherwise, but I  
13 don't know one way or another whether analysis has been  
14 done with all the various assumptions.

15 MR. DOTTHEIM: If I could have a moment,  
16 please?

17 BY MR. DOTTHEIM:

18 Q. Do you know if any detailed facility plans  
19 have been completed for the inclusion of Aquila employees  
20 into the KCPL facilities?

21 A. I know those plans are underway as we speak  
22 today.

23 Q. Mr. Giles, who bears the risk of post  
24 merger integration operations causing service quality  
25 issues that don't exist today?

1                   MR. RIGGINS: Your Honor, again, I think  
2 I'm going to interpose an objection. We have a witness  
3 coming up, Mr. Marshall, who addresses these kind of  
4 issues. Once again, Mr. Giles does not address all of  
5 these service quality issues in his testimony, which again  
6 is just rebutting specific issues raised by Staff, Public  
7 Counsel and the City of Kansas City, Missouri.

8                   MR. MILLS: Judge, may I respond to that?

9                   JUDGE DIPPELL: Yes.

10                  MR. MILLS: We've had this objection  
11 before. If Mr. Giles doesn't know the answer to this  
12 because he didn't testify about it, he certainly can say  
13 he doesn't know, but there's no rule that says the  
14 cross-examination must be limited to what's in the direct  
15 testimony. In fact, 536.070(2) says that each party shall  
16 have the right to call and examine witnesses, to introduce  
17 exhibits, to cross-examine opposing witnesses on any  
18 matter relevant to the issues even though that matter was  
19 not the subject of the direct examination.

20                  So the law says that we can cross-examine  
21 Mr. Giles on anything that's relevant. If he doesn't know  
22 the answer, he can say he doesn't know the answer or he  
23 can say that somebody knows a better answer that's coming  
24 up later. But Mr. Dottheim can't be precluded from asking  
25 the question simply because Mr. Giles didn't put this in

1 his direct testimony. Thank you.

2 MR. DOTTHEIM: Again --

3 JUDGE DIPPELL: Mr. Dottheim?

4 MR. DOTTHEIM: And Mr. Mills has I think  
5 correctly cited 536.070(2), and at the same time, I would  
6 say that I don't believe that the question I've asked is  
7 irrelevant. I don't believe it is far afield from what  
8 Mr. Giles is testifying to. Again, he, the companies,  
9 joint applicants, have presented him as a policy witness.  
10 He has also been characterized as an overview witness.  
11 The questions are very relevant and as Mr. Lewis -- as  
12 Mr. Mills has said, if he doesn't know the answer, he can  
13 say he doesn't know the answer or direct the question to  
14 some other GPE/KCPL/Aquila witness.

15 JUDGE DIPPELL: Mr. Riggins, you wanted one  
16 last comment?

17 MR. RIGGINS: Just one point of  
18 clarification, Judge. Mr. Giles had not filed direct  
19 testimony in this case. He did not file supplemental  
20 testimony in this case. His testimony is surrebuttal.  
21 They're response to specific issues related to other  
22 witnesses. So to the extent it was characterized as  
23 direct testimony, I disagree with that characterization.

24 MR. DOTTHEIM: I'm sorry if I characterized  
25 it as --

1                   MR. RIGGINS: No, you did not. I think  
2 Mr. Mills did.

3                   MR. DOTTHEIM: Well, I guess the lesson to  
4 be learned from this is that some of us will be more  
5 circumspect when it is asserted that a witness is an  
6 overview or a policy witness and more closely go through  
7 their testimony and limit them to the issues that their  
8 testimony addressed, and if they are -- if the sponsoring  
9 party is not willing to have them testify on the broad  
10 subject area of the case, then they should be limited to  
11 the specific issues that were being tried and not be  
12 presented as policy or overview.

13                  JUDGE DIPPELL: Okay. I'm going to  
14 overrule the objection and let the witness answer if he  
15 knows. Do you recall the question, sir?

16                  THE WITNESS: I believe I do. I believe  
17 the question was who bears the risk of customer service in  
18 a merger.

19 BY MR. DOTTHEIM:

20                  Q. Yes. Who bears the risk of customer  
21 service, service quality issues arising post merger when  
22 an integration of facilities personnel occur?

23                  A. I believe all stakeholders bear that risk.  
24 I believe that customer service impacts the shareholder,  
25 it impacts the community, impacts the Commission, impacts

1 all stakeholders, customers that are involved. I think  
2 it's a shared risk.

3 MR. DOTTHEIM: Thank you, Mr. Giles.

4 JUDGE DIPPELL: Thank you. Are there  
5 Commission questions for Mr. Giles? Commissioner Murray?

6 COMMISSIONER MURRAY: I'm going to pass for  
7 the moment. Thank you.

8 JUDGE DIPPELL: Commissioner Jarrett?

9 COMMISSIONER JARRETT: No questions.

10 JUDGE DIPPELL: Chairman Davis?

11 QUESTIONS BY CHAIRMAN DAVIS:

12 Q. I guess if I stray to subjects that are not  
13 proper subject of your surrebuttal testimony, I guess  
14 people can offer objections.

15 Good morning, Mr. Giles.

16 A. Good morning.

17 Q. What is your role again for Kansas City  
18 Power & Light?

19 A. I am responsible for regulatory affairs,  
20 vice president.

21 Q. Okay. You're vice president of regulatory  
22 affairs?

23 A. Yes.

24 Q. And so were you involved in the development  
25 of the Kansas City Power & Light experimental regulatory



1 plan?

2 A. Yes, I was.

3 Q. And was that a collaborative process that  
4 Aquila was also involved in?

5 A. I believe so, yes. Aquila attended most  
6 all of the meetings to my recollection.

7 Q. And do you recall, did Aquila get the same  
8 deal that Kansas City Power & Light got?

9 A. No, they didn't. Primarily because -- my  
10 understanding is, and I was not involved in all of their  
11 discussions, by the way, because they had a separate  
12 discussion that I was not directly involved in. But my  
13 understanding is since they were already below investment  
14 grade, then it didn't make a lot of sense to have an  
15 amortization provision to get them to investment grade,  
16 and the situation was different for Aquila versus KCP&L.  
17 We were at investment grade and were attempting to  
18 maintain that. So from that aspect, it was a different  
19 circumstance.

20 Q. What was your impression? Do you think  
21 KCP&L could have come to this Commission as part of a rate  
22 case and filed for those amortizations and gotten them  
23 independent of the experimental regulatory plan that  
24 virtually all the parties except for Sierra Club and  
25 Concerned Citizens of Platte County agreed to?

1           A.       I don't think there's anything that would  
2     have prohibited the company from requesting that. I think  
3     given the regulatory --

4           Q.       Okay. Let's stop right there.

5           A.       Okay.

6           Q.       It's true, you can come here and ask for  
7     anything under the sun, is that not true, Mr. Giles?

8           A.       Well --

9           Q.       That's a yes or no question.

10          A.       Yes.

11          Q.       Yes, no, maybe, I don't know.

12          A.       Yes.

13          Q.       You can come in here and ask for anything  
14     that's allowed by law, correct?

15          A.       Correct.

16          Q.       Maybe some things that aren't allowed by  
17     law?

18          A.       Correct.

19          Q.       That doesn't mean you're going to get them?

20          A.       That's correct.

21          Q.       And do you have any mental impressions as  
22     to what would have happened if you hadn't had that  
23     experimental regulatory plan? Do you think there would  
24     have been some opposition to you saying, hey, we want our  
25     amortizations?

1           A.       I think we would not have requested the  
2   amortizations absent approval of building the coal plant.  
3   The two of go hand in hand, because we would not be coming  
4   in to the Commission and requesting an amortization to  
5   maintain credit unless we were spending over a billion  
6   dollars in these investments. So you can't really  
7   separate those two issues because our concern was we had  
8   to get some assurance that we would not be downgraded  
9   immediately if we announced this investment program.

10          Q.       Right. Okay. Now, Mr. Giles, did KCP&L as  
11   part of that experimental regulatory plan, did they offer  
12   up any other consideration?

13          A.       There were several different provisions in  
14   that plan, but yes.

15          Q.       Okay. And agreeing not to pursue a fuel  
16   adjustment mechanism for five years after the plan was  
17   constructed was another, I guess, piece of consideration  
18   of that agreement, was it not?

19          A.       I'm not sure of the time frame, but there  
20   was an agreement to not use a fuel adjustment at least  
21   during the time frame of the agreement.

22          Q.       Now, Aquila never made that deal, did they?  
23   That's not part of their experimental regulatory plan; is  
24   it?

25          A.       It is not.

1           Q.     Are you familiar at all with what they --  
2     now, you used to work for St. Joe Light & Power, didn't  
3     you?

4           A.     No.    That's Tim Rush.

5           Q.     That's Tim Rush?

6           A.     Yeah.

7           Q.     Okay.  Sorry.  Are you familiar at all with  
8     Aquila's balance sheet?

9           A.     Somewhat.

10          Q.     Somewhat?

11          A.     Well, I'm familiar with their operations,  
12     their -- generally their type of production facilities  
13     that they're serving.  I can't tell you what their balance  
14     sheet is.

15          Q.     You can't tell me what their balance sheet  
16     is?

17          A.     No.

18          Q.     So you can't put all the numbers together  
19     and show me how this is a positive benefit or at least a  
20     not detriment for consumers, right?

21          A.     I can provide some assistance, but I think  
22     the better person would be Mr. Bassham.

23          Q.     Okay.  So what -- if you can -- Judge,  
24     we've got the drawing board there behind him.  I'm eager  
25     to see Mr. Giles take a stab at it if he wants to.

1           A.       The -- I don't know if I need to go to a  
2 board, but I can.

3           Q.       Okay.

4           A.       The total -- if you look at the total value  
5 of the synergies, it's 755 million over ten years.

6           Q.       Okay.

7           A.       Okay.

8           Q.       Okay.

9           A.       305 million in the first five years.

10          Q.       Okay.

11          A.       The transaction costs are 95 million.

12          Q.       All right.

13          A.       The transition costs, 45 million.

14          Q.       All right. So you've got 130 million in  
15 transition and transaction costs?

16          A.       Correct. 100 --

17          Q.       And you've got -- and we're just assuming  
18 you're -- we'll just assume your number, you've got  
19 755 million in synergies, alleged synergies over a decade?

20          A.       Correct.

21          Q.       What else you got?

22          A.       You got 143 million in interest and  
23 repurchase costs.

24          Q.       Now, what is that?

25          A.       Okay. That is the difference between what

1 is in rates versus what the actual interest costs will be  
2 in that five-year period and the cost of buying out a  
3 large portion of the debt. So when we buy out a large  
4 portion of the debt, those interest save -- create  
5 interest savings, but they also create repurchase costs.

6 Q. Right.

7 A. So the combination of the higher interest  
8 rate on the one outstanding debt issuance netted against  
9 the savings and then the costs added to it, that's  
10 \$143 million.

11 Q. Okay.

12 A. And that's -- just for reference, that is  
13 included in Mr. Cline's testimony. So you can see where  
14 these numbers come from.

15 Q. Okay. All right.

16 A. So if you -- in our proposal, what we have  
17 suggested is the 95 million be all recovered in the  
18 five-year period, the transition costs be split 50/50 and  
19 the synergies be split 50/50 and the interest and  
20 repurchase costs all be recovered in the five-year period.  
21 So if you look at just that five year period, the benefits  
22 to customers are negative.

23 If you look at it on a ten-year period,  
24 where the costs have all been recovered and you still got  
25 a large amount of savings in that second five years, the

1 net benefit to customers is more like 400, 3 or 4 -- I  
2 haven't done the math, it's 3 or \$400 million.

3 So the issue that we have, that I guess the  
4 Commission has is there's several ways to move this to get  
5 benefits sooner. One way is to, just for example,  
6 amortize the costs over a longer period.

7 Q. Mr. Giles, can I cut you off there? Okay.

8 A. Okay.

9 Q. The 143 million in interest and repurchase  
10 costs for the debt that's out there that Aquila has that's  
11 over 7 percent, what -- what caused that debt to begin  
12 with?

13 A. Presumably the higher interest costs were  
14 caused by their falling below investment grade, which was  
15 largely attributable, my understanding, to their marketing  
16 and trading activities and their unregulated business.

17 Q. Do you know what Aquila's book value was in  
18 the last rate case?

19 A. I don't. I -- I don't recall.

20 Q. Okay. So if I just picked out a number and  
21 said it was roughly \$1 billion, you'd have no reason to  
22 dispute that, would you?

23 A. No.

24 Q. Okay. And how many customers does Aquila  
25 have in Missouri and Kansas?

1           A.       In Kansas, they no longer have electric  
2 customers.

3           Q.       No longer have electric customers?

4           A.       Right. They just have Missouri electric.

5           Q.       Okay.

6           A.       And that's all that we're focused on is  
7 Missouri.

8           Q.       So basically we've got 300,000 Missouri  
9 electric customers, is that roughly the right number, to  
10 the best of your knowledge?

11          A.       Yes.

12          Q.       So how much is KCP&L paying on a per  
13 customer basis for those 300,000 customers or GXP or the  
14 subsidiary or whoever?

15          A.       Well, I don't know offhand, because the way  
16 the transaction's working is we are paying \$4.54, but  
17 that's buying the entire company, then including all the  
18 gas properties, so then you have to --

19          Q.       Right. And you subtract out the gas  
20 properties and then you subtract out the cash from Black  
21 Hills. Okay.

22          A.       Right.

23          Q.       So --

24          A.       So if you do --

25          Q.       You know what those numbers are, don't you,



1 Mr. Giles?

2 A. I don't.

3 Q. You don't?

4 A. In my head I don't. I can get those  
5 numbers.

6 Q. Okay. But what, 900 something million or a  
7 billion or something like that?

8 A. Roughly, yeah, roughly 900 million.

9 Q. Roughly 900 million. And what's the total  
10 transaction cost here?

11 A. 4.54 per share.

12 Q. Didn't you read any of the press releases,  
13 Mr. Giles? Does no one here -- you know, does no one here  
14 ever look at what the big round numbers are or do they all  
15 just look at stock price?

16 A. Well, I think we look at the numbers, but I  
17 don't want to misstate anything.

18 Q. Okay. Well, you can multiply it out, 4.54  
19 times, was it 350-plus million shares? Might have an  
20 abacas in the back of the chambers if you need one.

21 A. Okay. 1.6 billion.

22 Q. Okay. So that's -- that's 1.6 billion for  
23 just the -- the stock. If you were just going to purchase  
24 all of Aquila's assets, what would those assets be worth?

25 A. Around \$900 million or -- the electric

1 Missouri assets.

2 Q. Right. The electric -- the electric  
3 Missouri assets are worth 900 million to a billion, and  
4 you've got roughly \$1.1 billion worth of debt that you're  
5 also assuming, correct?

6 A. Well, yes, but you're refinancing all of  
7 that debt.

8 Q. I understand that, but you're still  
9 assuming, I mean you're still taking it over?

10 A. Correct.

11 Q. Is this just a deal to bail out the Aquila  
12 shareholders?

13 A. No.

14 Q. No?

15 A. No.

16 Q. No. But that's part of the deal, isn't it?

17 A. No. Can I expand on that?

18 Q. Sure.

19 A. When we -- when we looked at this  
20 transaction, when you look at any transaction in this type  
21 of a situation, you look at how do you balance all the  
22 interests. There's shareholders for Aquila, there's  
23 shareholders for GPE, and there's obviously customers of  
24 both utilities. And what this comes down to, and try to  
25 paraphrase it here a little bit, but what it comes down to

1 is, we pay, offered to pay a fair price for the utility  
2 given a fair treatment in the regulatory process. And  
3 when I say that, I mean there are benefits here for  
4 customers above all the costs. On the other hand, had we  
5 bid on this utility and assumed in that bidding process  
6 that GPE/KCP&L would absorb all of these cost, rough  
7 number, 4 bucks. You used that yesterday.

8 Q. Uh-huh.

9 A. We wouldn't have this deal because, one,  
10 Aquila wouldn't have accepted it, and two, had they  
11 accepted it, it's unlikely their shareholders would have  
12 accepted it. So the balancing here is we're transforming  
13 this utility from Aquila to a new entity underneath GPE  
14 and largely operated by KCP&L. And what we focused on was  
15 how do we generate enough synergies to benefit customers  
16 and at the same time be able to recover the costs of the  
17 transaction.

18 Now, there are benefits over this period  
19 that more than cover the cost. In the five-year period,  
20 because of the way we structured the plan, the costs are  
21 in fact negative on the customers' side. But on the  
22 long-term for ten years, they've very positive. So on the  
23 other hand, so -- you see what I'm trying to get to?

24 Q. I understand. But once again, we'll get  
25 back to the question that I asked Mr. Chesser yesterday.

1 How is it that, if this is such a good deal for consumers,  
2 that you can't find one consumer representative here in  
3 this room who says, you know, I take the deal?

4 A. You want my opinion?

5 Q. Sure.

6 A. I believe it's an emotional issue. I  
7 believe --

8 Q. Rates are an emotional issue, Mr. Giles?

9 A. I understand, but let me better describe  
10 what I mean. The benefits of this transaction and the  
11 cost of this transaction aren't any different than any  
12 other transaction I've been involved with, and I've been  
13 involved in four of them prior to this one. Very similar.  
14 The difference is, there's an additional cost that doesn't  
15 show up in your face in this deal. We didn't have that in  
16 the other deals, and that's not only the interest  
17 component. Even though the benefits outweigh that, what  
18 this deal does and you'll hear Mr. Green and Mr. Empson  
19 testify along these same lines, what this deal does is it  
20 gives Aquila the opportunity, and its customers to get out  
21 of this pickle, and this is the only way to get out of it,  
22 with a merger.

23 Now, they have a standalone plan. Whether  
24 that can be implemented or not, we don't know.  
25 But the emotional issue that I believe exists with a lot

1 of the parties -- because frankly, I am totally surprised.  
2 I have been, what I'd say, dumfounded at the position the  
3 parties have taken in this case, and my position is it's  
4 an emotional issue because of the past of Aquila, and I  
5 think the parties can't get beyond that.

6 Q. Okay. We'll see if anyone has any  
7 emotional outbursts here shortly. All right. Mr. Giles,  
8 here's my impression, and you tell me where you think I'm  
9 wrong. Okay. You've got Great Plains putting up cash,  
10 stock, assuming debt for all told about \$3 billion. And  
11 then when you subtract out the Black Hills contribution,  
12 you're still looking at roughly 2 billion. And then from  
13 there you get assets that if you look at the book value  
14 may be worth about a billion, or if you go on a per  
15 customer basis and you say those customers are worth, say  
16 \$2,500 apiece, you're still substantially short.

17 And it looks like you've reached -- you've  
18 got a gap there that is such a large amount of money that  
19 it does not outweigh, you know, the \$755 million of  
20 synergies that your top number listed for the next decade,  
21 many of which are at least mildly speculative.

22 A. Those components aren't additive. That's  
23 where you're getting hung up is those are not additive  
24 components. The interest, the components -- the cost  
25 components and the benefits are related to -- the rate

1 base is not changing here, only on a going forward basis.  
2 So when we assume this debt, we are taking the cash from  
3 Black Hills and paying off that debt, we're refinancing or  
4 purchasing that debt. So that at the end of the day, when  
5 you look at the balance sheet, the debt/equity ratio is  
6 45/55. So it's 55 equity, 45 debt.

7 Q. Right.

8 A. Which is the same as GPE and KCPL. So that  
9 component and the rate base stayed fixed. Another place  
10 that I think it's confusing is when Mr. Cline talks about  
11 the debt, he's included additional capital expenditures  
12 over this five year time frame. So there's debt in those  
13 numbers that don't even relate to existing assets.

14 So there's a substantial amount of  
15 investment over the next five years we have to finance  
16 post transaction. So what Mr. Cline was doing in all of  
17 his analysis was showing what is that cost going to be.  
18 But I think they -- perhaps Mr. Cline and Mr. Bassham can  
19 do a better job than I can, but the two components aren't  
20 related.

21 Q. And it's all this pent up frustration that  
22 folks like Mr. Conrad have for Aquila and that's the  
23 reason why he's not just rushing up to embrace you?

24 MR. CONRAD: Could be other reasons.

25 THE WITNESS: Let me state it hopefully

1 more succinctly.

2 MR. CONRAD: Not that I have a problem with  
3 that.

4 THE WITNESS: No utility is going to  
5 purchase this company and be able to purchase this company  
6 at a price to be treated like this company. That's the  
7 bottom line. And what my impression from all of these  
8 parties, that's exactly what they want. They want some  
9 utility, GPE or standalone Aquila, to continue to not be  
10 able to recover costs. And when we look at it, we look at  
11 it as a new company going forward. The parties can't do  
12 that. They can't get out of the past. That's my opinion,  
13 and because of that, there's a no deal here. You  
14 either -- and that's the position they've taken is you --  
15 BY CHAIRMAN DAVIS:

16 Q. All right, Mr. Giles. Now, hypothetically  
17 speaking, if Aquila was going to liquidate today, they  
18 were just going to sell everything, retire all their  
19 debts, you know, what would they -- what would the  
20 shareholders have left at the end of the day?

21 A. You mean what would -- what would the value  
22 to the shareholders be?

23 Q. Uh-huh.

24 A. Assuming they're market price, I haven't  
25 looked lately, it's around \$4, \$4.10, that's what they'd

1 get.

2 Q. And how -- as I see it, you've got -- so  
3 you sell all the assets and retire all the debt, they're  
4 still going to end up with \$1.7 billion to distribute  
5 amongst the shareholders basically?

6 A. Yeah.

7 Q. Or -- well it would be less than that, but  
8 4.10 a share times number of shares, that's what they get?

9 A. Less the debt. I didn't --

10 Q. Ahh, less the debt.

11 A. You'd have to pay the debt.

12 Q. You'd have to pay the debt. So if you  
13 subtract a billion dollars for the debt or whatever you  
14 think the debt's worth, then it's substantially less than  
15 that. You're looking, I would say, at less than \$2 a  
16 share?

17 A. I'm having a hard time separating the  
18 Missouri piece from all the total piece. I don't disagree  
19 with you. I'm just not sure if you're right or wrong.

20 Q. All right. We'll take the -- we'll take  
21 the -- we'll take the don't disagree. All right. Thank  
22 you, Mr. Giles.

23 JUDGE DIPPELL: Commissioner Murray?

24 COMMISSIONER MURRAY: Just very briefly,  
25 Judge.



1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Mr. Giles, the costs and benefits that were  
3 calculated over the ten year period, were they calculated  
4 based on future value or net present value?

5 A. The numbers -- we've done it both ways.  
6 The numbers I was quoting to Mr. Davis were numbers that  
7 were escalated so that -- the 305 million in the first  
8 five years is escalated -- that's the sum, but it's  
9 escalated. Then the additional 450 million is an  
10 escalated amount as well. So they're not net present  
11 value.

12 Q. So are we not really taking into account  
13 the fact that if ratepayers are achieving a net detriment  
14 in the first five years, that the benefits to be achieved  
15 in the latter five years are less than actually shown?

16 A. The net -- the net present value of the 450  
17 is 340 million. So you still have substantial benefits  
18 above the cost, even on a present value basis.

19 Q. So the net present value of the 450?

20 A. Yes.

21 Q. Is 340, and then the initial five years,  
22 what was the detriment figure?

23 A. That is a total of 283 million. Now, that  
24 includes 100 percent of transition, so if you knock half  
25 of that off, it's closer to 268. You're really comparing

1 over the ten year time from the 260 to 755 in benefit or  
2 305 plus 340, which is 645 to the 260 million cost.

3 Q. But the -- I'm just wanting to look at the  
4 numbers that apply to ratepayers.

5 A. Okay.

6 Q. So give me the totals that apply to  
7 ratepayers.

8 A. As we proposed it, it would be 260 million.

9 Q. In the first five years there are costs to  
10 ratepayers?

11 A. Correct.

12 Q. Okay.

13 A. And as we proposed a sharing of the  
14 synergies after the transition costs, so if I take the  
15 305 million minus 45, which is 260, then customers would  
16 receive 130 million of that benefit.

17 Q. I got lost somewhere in there because --

18 A. Mr. Bassham is -- will be here on Thursday,  
19 and he will have a table that will show this. But I'm  
20 just sort of doing it on the back of the envelope here,  
21 but essentially we were proposing 143 and 95, half of the  
22 transition, which is 22, 5, and so that's a cost of  
23 260.5 million in the first five years.

24 Q. All right. And then how do you arrive at  
25 the second five year figure?

1           A.       The second five years, all of the costs, if  
2   you take the annual amount of savings that add up to the  
3   305 and escalate those savings by year, and I don't recall  
4   what the escalator was, it was roughly the inflation rate.  
5   You come up with an additional 450 million in the second  
6   five years, and there's no cost because those have all  
7   been recovered in the first five years. So the net  
8   benefit to customers is about \$300 million.

9           Q.       I'm sorry. Did you say billion or million?

10          A.       Million.

11          Q.       I'm not making sense of those numbers.

12   Second --

13          A.       May be --

14          Q.       Go through that again.

15          A.       May be my rounding. Okay. If -- let's  
16   just look at the -- in the first five years, you have on  
17   the customer side 143 million in interest and repurchase  
18   cost   Q.       I understand the first five years. Just

19   concentrate on the second, please.

20          A.       Okay. There is an additional 450 million  
21   in benefits, and there's no cost. So the net benefit, if  
22   you add the first five years net of the cost and the  
23   benefits with no costs in the second five years, you come  
24   up with about \$320 million.

25          Q.       And I don't understand what you're

1 subtracting from the 450, because it appears to me if  
2 you're looking at just ratepayer effects, is that what  
3 we're looking at?

4 A. Yes.

5 Q. That if the net cost in the first five  
6 years to ratepayers is 260 million, and then the --

7 A. 260, but then offset by 130 million in  
8 synergies.

9 Q. In the first five years?

10 A. In the first five years.

11 COMMISSIONER MURRAY: That's what I was  
12 missing. All right. Thank you.

13 JUDGE DIPPELL: Commissioner Jarrett?

14 QUESTIONS BY COMMISSIONER JARRETT:

15 Q. Good morning.

16 A. Good morning.

17 Q. Chairman Davis asked you several questions  
18 and you testified, and I'm paraphrasing a little bit I  
19 guess, for the first five years there's a negative impact  
20 on customers, but if you look at it out to ten years, it's  
21 a benefit --

22 A. Yes.

23 Q. -- to the customers. Can you address, use  
24 kind of that same analysis of five and ten years relating  
25 to GPE shareholders, what's the impact on them for five

1     years and ten years?

2             A.       In the first five years, given the  
3     proposal, the impact to GPE shareholders is a minimal  
4     accretion on earnings per share in the period '09, '10 of  
5     about 4 cents per share, earnings today around \$2 per  
6     share. So it's a minimal impact, a minimal accretive  
7     impact on GPE during that five year period.

8             Q.       And then what out to ten years?

9             A.       After ten years, all of the savings go back  
10    to customers. So, in effect, the value to GPE of this  
11    transaction longer term is the continued increases in  
12    growth in earnings from increased sales, increased  
13    investment for both Aquila and KCPL. So it sort of goes  
14    back to the traditional regulatory model where as your  
15    system grows, you grow your earnings, and that's basically  
16    what we're looking at, growth opportunities for GPE  
17    because Aquila's service area grows about a percent more  
18    than KCPL's.

19                    There's also additional capital we'll have  
20    to raise and invest. Rate base will increase and earnings  
21    will increase. So there's nothing in particular we will  
22    gain from the synergies during that second five years,  
23    just the normal operating benefits.

24                    COMMISSIONER JARRETT: Thank you.

25                    JUDGE DIPPELL: All right, then --

1                   COMMISSIONER MURRAY: One more question,  
2 Judge.

3                   JUDGE DIPPELL: Commissioner Murray.

4 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

5               Q.       Probably shouldn't venture here because I  
6 haven't thought this through, but if -- is it possible to  
7 quantify the benefits to the current Aquila shareholders  
8 versus the detriments or benefits to the Aquila -- current  
9 Aquila customers?

10           A.       Yes. We have in Tim Rush's testimony, and  
11 I think he's scheduled today, probably won't get to him  
12 until tomorrow, but he actually has a schedule that  
13 allocates all these costs to the jurisdictions. So what  
14 we've tried to do is allocate the costs, allocate the  
15 benefits and the costs consistently, so that if you've got  
16 significant benefits, you get more of the costs, and all  
17 of these numbers -- I'm glad you mentioned that. All  
18 these numbers are total. So there is an allocated piece  
19 to Missouri, to Kansas, and then within Missouri there's  
20 an allocated piece to Aquila, KCPL and St. Joe Light &  
21 Power, and that's all contained in Mr. Rush's testimony.

22                   COMMISSIONER MURRAY: Thank you.

23                   JUDGE DIPPELL: All right, then. Let's  
24 take a short break, and when we return, we will do further  
25 cross-examination based on questions from the Bench and

1     redirect, and after Mr. Giles, I'm believe we're going to  
2     move on to Mr. Green. Questions back there?

3                     MR. BOUDREAU: From my perspective, this is  
4     Staff's call as to whether or not -- Mr. Green and  
5     Mr. Empson are both going to be Staff's witnesses and I'll  
6     defer to them as far as order, but that's the way that  
7     they're schedule.

8                     JUDGE DIPPELL: Okay. And I just want to  
9     let you know the Commission does have their regularly  
10    scheduled agenda scheduled for -- starting at noon today.  
11    My intent is to go a little past noon in here and then  
12    break after they have finished their discussions on the  
13    KCPL rate case, which is on their agenda today, and then  
14    we'll break for lunch. So we'll be breaking after noon  
15    for lunch. So 10:40 come back here. Off the record.

16                    (A BREAK WAS TAKEN.)

17                    JUDGE DIPPELL: Let's go ahead and go back  
18    on the record. During the break, it was pointed out to me  
19    that literally everyone in this room is interested in the  
20    KCPL discussions on the Commission's agenda, so we'll just  
21    break at noon for the Commission's agenda and plan to come  
22    back after that.

23                    All right. Let's go ahead and resume then  
24    with further cross-examination based on questions from the  
25    Bench. Is there anything from Aquila?

1 MS. PARSONS: No, your Honor.

2 JUDGE DIPPELL: Black Hills?

3 MR. DeFORD: None, your Honor.

4 JUDGE DIPPELL: Do we have the locals,  
5 unions?

6 MS. WILLIAMS: Nothing, your Honor.

7 JUDGE DIPPELL: And Department of Energy,  
8 Dogwood Energy, Joint Municipals, City of Kansas City, St.  
9 Joe, Lee's Summit, Independence, Cass County, South Harper  
10 Residents. Mr. Coffman was here earlier. Ag Processing?

11 MR. CONRAD: Yeah, just a couple, just a  
12 couple of things.

13 RE-CROSS-EXAMINATION BY MR. CONRAD:

14 Q. Mr. Giles, do you have available to you I  
15 believe it is Mr. Zabors' filings in this proceeding?

16 A. I don't have them in front of me, no.

17 Q. Well, my copy of this is marked up, and I  
18 would suggest that we might want to spend just a moment on  
19 that. Do we have -- somebody have a copy of Zabors'  
20 document?

21 MR. RIGGINS: Wait just a minute. I think  
22 we can get one.

23 MR. FISCHER: I've got it.

24 THE WITNESS: Okay.

25 BY MR. CONRAD:



1           Q.       If you would, please, sir, turn to Schedule  
2 RTZ-6, which is titled, I think, Summary of Synergies.

3           A.       Okay.

4           Q.       Just so we're looking at the same thing,  
5 I'm seeing a bar graph there that has three bars.

6           A.       Yes.

7           Q.       And the right-hand bar has two shades.  
8 There's a shade for 305, I presume that means millions,  
9 and a different shade for a bar that sits on top of that  
10 of 302, again presumably millions, right?

11          A.       That's correct.

12          Q.       Now, the 305 is labeled to its right,  
13 regulated operating synergies. What is that, Mr. Giles?

14          A.       That is the synergies based upon the  
15 Missouri allocated portion of costs. In other words, if  
16 it's a -- I'll give you an example. If it's a -- an  
17 individual that allocates time among all of the businesses  
18 and we were eliminating that position, only the Missouri  
19 portion of that individual's time would be in the 305  
20 number. The remainder of it would be in the 302 number.

21          Q.       All right. Now, the total of the two bars  
22 stacked on top of each other I think, if I'm looking at  
23 this correctly, there's a number at the top of the stack  
24 607. That's the total, right?

25          A.       Right.

1           Q.       What's the label on the 302, the different  
2 color?

3           A.       That label is corporate operational savings  
4 not allocated to regulated utilities.

5           Q.       Now, would it be correct that if it's not  
6 allocated to the regulated utilities, it would also not be  
7 allocated in any way, shape or form to ratepayers,  
8 correct?

9           A.       That's correct.

10          Q.       So what this graph seems to me to be  
11 saying -- well, strike that.

12                   Is it true, then, that \$302 million of  
13 alleged synergy savings that the company is expecting here  
14 to receive are being allocated somewhere other than to the  
15 ratepayers but they nonetheless exist under your  
16 scenarios?

17          A.       Let me make sure I can clearly answer this.  
18 The 302 million in effect are unallocated costs at the end  
19 of the transaction. In other words, those are costs GPE  
20 is left with that we have to take out of the business.

21          Q.       Excuse me. You said costs or synergies?  
22 I'm looking at something that says synergies, operational  
23 savings. Have we switched to costs?

24          A.       In this case, it's the same thing. It's  
25 saying we are going to eliminate 305 million in costs or

1 added benefits that are allocated to Missouri electric,  
2 but there will remain costs of 302 million we've also got  
3 to eliminate that aren't currently or after post  
4 transaction aren't being allocated anywhere. We bought  
5 all those people.

6 Q. Well, I'm more confused than when I began,  
7 because I'm looking then at this, it says summary of  
8 synergies. I'm not finding -- I haven't gone through  
9 every word here and put a dot over the top of it like we  
10 used to have to do. With one exception, I don't even find  
11 the word costs, and those exceptions are in the second  
12 from the last and the last bullet. So what you're telling  
13 me then is the 607 is not savings but rather costs even  
14 though the exhibit is labeled synergies?

15 A. They become savings once they're  
16 eliminated.

17 Q. Oh, so they're -- so there's -- there's  
18 then \$302 million of savings in the form of eliminated  
19 costs that then are just being absorbed into KCP&L/GPE,  
20 correct?

21 A. Correct.

22 Q. Thank you. And would that then be a  
23 shareholder benefit?

24 A. No. It would -- it would be -- it is  
25 directly related to shareholders. Let me answer it this

1 way. To the extent we take them out, it's a shareholder  
2 benefit. To the extent we don't eliminate those costs,  
3 it's a shareholder detriment.

4 Q. Okay. Now, on the 305, one half of that is  
5 being assigned to the ratepayers, correct?

6 A. Correct.

7 Q. So if I total that half and the 302, do I  
8 not end up with 460 to shareholders?

9 A. No. You have to keep in mind that these --

10 Q. Okay. Just -- let me keep my mind separate  
11 from yours. Half of 305 is what?

12 A. First -- well, let me --

13 Q. Half of 305 is what, Mr. Giles?

14 A. Half of 305? It's 152.5.

15 Q. Now, add to that 302 and tell me what the  
16 sum of those two numbers is.

17 A. 454.5.

18 MR. CONRAD: Now, your Honor, I would leave  
19 to approach the witness, but I want to assure the Bench  
20 that I have no intention of embracing him.

21 JUDGE DIPPELL: You may approach.

22 BY MR. CONRAD:

23 Q. Mr. Giles, I want to show you first of all  
24 a little red book, kind of more or less red. Would you  
25 agree?

1 A. Brown.

2 Q. Brown. Okay. What's it say on it?

3 A. Missouri Revised Statutes 2000.

4 Q. And as we've verified, we also have a  
5 pocket part in here for Volume 11, correct so far?

6 A. Correct.

7 Q. Now, you've been regaling us somewhat with  
8 your ability to interpret what laws the Commission  
9 operates under. I wanted to show you one of those. It's  
10 very short, and might focus on 393.135. Do you have that  
11 before you?

12 A. I do.

13 Q. Would you read that for me, please?

14 A. Any charge made or demanded by an  
15 electrical corporation for service or in connection  
16 therewith which is based on the cost of construction in  
17 progress upon any existing or new facility of the  
18 electrical corporation or any other cost associated with  
19 owning, operating, maintaining or financing any property  
20 before it is fully operational and used for service is  
21 unjust and unreasonable and is prohibited.

22 Q. Okay. Before you close that up, look right  
23 below that language and there's a phrase in a paren. Do  
24 you see that?

25 A. I do.

1 Q. What does that say?

2 A. Adopted by initiative proposition No. 1,  
3 November 2nd, 1976.

4 Q. Now, do you know what that means?

5 A. I do.

6 Q. What does it mean, Mr. Giles?

7 A. My understanding, it is the prohibition  
8 against construction work in progress in rate base.

9 Q. If we need to get the language again, do  
10 you recall anything about financing in the language that  
11 you read?

12 A. I do.

13 Q. Now, is that what the regulatory  
14 amortization process is intended to do, support the  
15 financing?

16 A. No.

17 Q. Oh, it doesn't -- it doesn't support that?

18 A. It is -- it supports the credit metrics.

19 Q. And why would the credit metrics need  
20 support, Mr. Giles?

21 A. Because in today's environment, the rate of  
22 return typically authorized by the Commission is not  
23 sufficient to generate enough cash to meet credit metrics.

24 Q. Now, the rate of return is paid to whom?

25 A. It is paid to shareholders.

1           Q.       But we're talking about credit metrics,  
2 correct?

3           A.       Correct.

4           Q.       And credit is something other than what the  
5 equity shareholders advance, is that correct?

6           A.       Correct.

7           Q.       So let me get back again to your statement  
8 a few moments ago that going into a billion dollar  
9 construction program, you would need to have support in  
10 order for your credit metrics to stay up and that that  
11 would pertain to financing. What are you borrowing the  
12 money for, Mr. Giles?

13          A.       We're borrowing money for all -- all  
14 utility purposes.

15          Q.       Are you borrowing money to build Iatan 2?

16          A.       That's a portion of it.

17          Q.       Are you borrowing money to build Iatan 2,  
18 yes or no or you don't know?

19                 MR. RIGGINS: He answered the question,  
20 your Honor.

21                 THE WITNESS: I think I answered.

22                 MR. CONRAD: No, he didn't answer it.

23                 THE WITNESS: A portion of our borrowings  
24 are to finance Iatan 2.

25 BY MR. CONRAD:

1           Q.       So is Iatan 2 currently operational and  
2     generating power to the grid?

3           A.       No.

4           Q.       Absent the agreement of the parties to the  
5     regulatory plan, I think it is your -- it is your sense  
6     that the Commission could nonetheless authorize rates that  
7     included financing of the construction of plant that is  
8     not used and useful?

9           A.       I didn't say that.

10          Q.       Well, that's -- that's a good thing.  
11     Your -- your testimony seemed to be that you had received  
12     advice, however, that they could; is that correct?

13          A.       The additional amortization is no different  
14     than accelerated depreciation. It's a tool to generate  
15     cash. We have, and this Commission has approved  
16     accelerated depreciation in KCPL's rate case in 1996. So  
17     absent calling it amortization, the precedent is there and  
18     the Commission has, in fact, done it.

19          Q.       So is then your statement that the  
20     Commission has in the past approved rates that were  
21     unlawful and unreasonable and prohibited under that  
22     initiative proposition we read?

23          A.       No.

24          Q.       And so again, absent the agreement of the  
25     parties embodied in the regulatory plan stipulation not to



1 pursue that, might have a little legal problem, do you  
2 think?

3 A. I don't believe there's a legal problem.

4 Q. I see. Well, you may be alone. Thank you,  
5 sir.

6 JUDGE DIPPELL: Is there anything from  
7 Public Counsel?

8 MR. MILLS: Just a few questions. Thank  
9 you.

10 RECROSS-EXAMINATION BY MR. MILLS:

11 Q. Mr. Giles, in response to a question by  
12 Commissioner Davis, did you say that after this  
13 transaction was complete, that GPE's equity ratio would be  
14 about 45 percent?

15 A. The debt to equity would be 45/55.

16 Q. 55 percent equity?

17 A. 55 percent equity.

18 Q. Is there anything that's filed in this case  
19 that will show that GPE plans to quickly try to run that  
20 up to 57 percent equity?

21 A. Not that I'm aware of.

22 Q. Do you think it would be reasonable to do  
23 that?

24 A. I'm not in the position to say.

25 Q. How did the 55 percent equity ratio that

1     you're talking about come about? Is that just the way  
2     that the numbers came out or is that a target that you're  
3     shooting for?

4             A.       You'll need to ask Mr. Cline.

5             Q.       You don't know?

6             A.       I don't know.

7             Q.       Now, Mr. Giles, Commissioner Davis also  
8     asked you about whether you -- whether you, and I think he  
9     may have been talking about other witnesses were familiar  
10    with the big round numbers. Do you remember that  
11    question?

12            A.       I do.

13            Q.       Do you personally have any incentive,  
14    compensation or any kind of pay at stake on the success or  
15    failure of this merger?

16            A.       No, I don't.

17            Q.       Now, with respect to the portion of the  
18    Black Hills transaction that GPE is planning to use the  
19    proceeds of which to use at least partially to refinance  
20    and retire some debt, are you familiar with that part of  
21    the transaction?

22            A.       I'm aware of some additional cash, but I  
23    mean, that's all I'm aware of.

24            Q.       Do you know whether or not the cash from  
25    Black Hills is going to be used at least in part to

1     refinance or retire Aquila debt?

2             A.       Yes.

3             Q.       Are you aware of anything that would  
4     prevent Aquila, absent a three way transaction with Black  
5     Hills, GPE and Aquila, from simply selling its gas  
6     properties to Black Hills and using that money in the same  
7     way without GPE's involvement?

8             A.       I'm not following your question.  Could you  
9     repeat or rephrase?

10            Q.       If GPE wasn't involved in this deal, could  
11     Aquila sell its gas properties to Black Hills, use the  
12     proceeds from that to retire and refinance some of its  
13     debt?

14                   MR. RIGGINS:  I object, it's asking the  
15     witness to speculate.

16                   MR. MILLS:  Well, it's simply taking a  
17     piece of the transaction as proposed and asking whether or  
18     not that piece could go on by itself.  I don't believe  
19     that's speculation.

20                   JUDGE DIPPELL:  I'll overrule the objection  
21     and allow him to answer if he knows.

22                   THE WITNESS:  I don't know.

23     BY MR. MILLS:

24             Q.       Now, just to follow up on some of the  
25     questions that Commissioner Murray asked, and for these

1 questions I'm going to ask you to assume that either  
2 there's no inflation and no productivity gains over the  
3 next ten years or that the inflation rate and the  
4 productivity gains are exactly the same so they cancel  
5 each other out. We're not talking about escalating any  
6 numbers or deescalating numbers for productivity or  
7 inflation. Can you assume that with me?

8 A. Well, I think I can, but it depends on what  
9 your question is.

10 Q. Let's get to the question then. In what  
11 year do the cumulative detriments to ratepayers become  
12 less than cumulative benefits under the transaction as  
13 proposed?

14 A. I don't know.

15 Q. Is it after year five?

16 A. Yes.

17 Q. But you don't know -- is it before year  
18 ten?

19 A. Oh, yes.

20 Q. So somewhere between five and ten years  
21 out?

22 A. Yes.

23 Q. Okay. And is the transaction as proposed  
24 accretive to shareholders in year two?

25 A. I believe Mr. Chesser stated that that was

1 the case.

2 Q. Okay. Without changing the purchase price,  
3 because I know that's a no no, we're not going to talk  
4 about that, can you tell me a way that we can flip that,  
5 that we can get benefits to ratepayers in year two and  
6 have the shareholders wait for year five or later to get  
7 benefits? Is there any way you can restructure the deal  
8 without changing the purchase price to do that?

9 A. Yes.

10 Q. How do you do that?

11 A. Well, I haven't sat down and done it, but  
12 it can be done, and I believe when Mr. Bassham is  
13 testifying, he can probably do that.

14 MR. MILLS: That's all the questions I  
15 have.

16 JUDGE DIPPELL: Thank you. Is there  
17 further cross-examination from Staff?

18 MR. DOTTHEIM: Just a couple of questions.

19 RE-CROSS-EXAMINATION BY MR. DOTTHEIM:

20 Q. Mr. Giles, in response to a question from  
21 the Bench, you said that you were involved in four  
22 transactions before this and you weren't any more specific  
23 than that. What four transactions were you referring to?

24 A. I was involved in the Kansas City Power &  
25 Light acquisition of Kansas Gas and Electric. I was

1 involved in the UtiliCorp/Kansas City Power and Light  
2 merger of equals. I was involved in two WestStar mergers,  
3 Kansas City Power & Light with WestStar. That one  
4 transaction failed. Another transaction was entered into.  
5 So I'm counting that as two. So I've been involved in  
6 four.

7 Q. None of those transactions were actually  
8 consummated, were they?

9 A. No, they weren't.

10 Q. And you've previously referred to those  
11 four transactions when I was originally cross-examining  
12 you yesterday, did you not?

13 A. I believe I did.

14 Q. Mr. Giles, do you still have a copy of  
15 Mr. Oligschlaeger's rebuttal testimony in the  
16 UtiliCorp/St. Joseph Light and Power merger case?

17 A. I do.

18 Q. I'd like to refer you to page 17.

19 A. Okay.

20 Q. And I'd like to refer you to line 17 on  
21 page 17.

22 A. Okay.

23 Q. He makes reference to Case No. EM-96-248.  
24 Is that the UtiliCorp United/Kansas City Power & Light  
25 merger case to which you were referring?

1           A.       Yes, it is.

2           Q.       And I'm just going to read several lines  
3   from that page, that partial answer that starts on page  
4   17, line 17. In Case No. EM-96-248, UCU and KCPL proposed  
5   a regulatory plan for that merger which included the  
6   following terms: a 2 percent rate reduction for both KCPL  
7   and UCU Missouri customers effective immediately upon  
8   closing of the merger, establishment of an alternative  
9   regulation sharing plan with customer sharing to begin at  
10   a 12 percent return on equity, accelerated depreciation  
11   for Wolf Creek Nuclear Generating Station. Did I read  
12   line 17 to 24 accurately?

13          A.       Yes.

14                   MR. DOTTHEIM: Thank you, Mr. Giles.

15                   JUDGE DIPPELL: Is there redirect?

16                   MR. RIGGINS: I have a few.

17 REDIRECT EXAMINATION BY MR. RIGGINS:

18          Q.       Since, Mr. Giles, you have that provision  
19   handy that Mr. Dottheim just asked you about, are there  
20   any significant differences between UtiliCorp United of  
21   1996 and Aquila in 1996 between KCPL in 1996 and KCPL in  
22   2007? Excuse me. I think I misspoke. I meant  
23   differences between UtiliCorp in 1996 and Aquila in 2007.

24          A.       Yes. There's substantial differences in  
25   circumstance. In not only UtiliCorp and Aquila's case,

1 but also the rate environment we were in in 1996 was a  
2 rate reduction environment versus a rate increase  
3 environment today, and combine that with all the other  
4 differences, they're substantial.

5 Q. While you have Mr. Oligschlaeger's  
6 testimony handy, I think Mr. Dottheim asked you some  
7 questions or read a portion of the testimony contained on  
8 page 47. would you return to that page, please?

9 A. Okay.

10 Q. You recall the provision there that  
11 Mr. Dottheim was reading and asking you about?

12 A. Yes.

13 Q. Would you turn to the next page, please,  
14 page 48? Do you see the question beginning on line 14  
15 that states, are there instances in which regulatory lag  
16 may not provide for fair sharing of merger savings to a  
17 utility?

18 A. Yes.

19 Q. Could you read Mr. Oligschlaeger's answer  
20 to that question, please?

21 A. Answer: That is possible. In particular,  
22 when a company undergoing a merger faces increasing  
23 revenue requirements, even when estimated net merger  
24 savings are factored in, rate increase cases may serve to  
25 pass on achieved merger savings to customers without a



1 chance for the utilities to retain a share or merger  
2 savings for a reasonable period. In these instances, the  
3 Staff would not be opposed in concept to proposals by  
4 utilities to share merger savings in the context of a rate  
5 proceeding.

6 Q. Is the scenario Mr. Oligschlaeger is  
7 describing there applicable to the current situation of  
8 Aquila and Kansas City Power & Light?

9 A. Yes, it is.

10 Q. Yesterday Mr. Dottheim asked you some  
11 questions about the additional amortization provision. In  
12 particular I think he asked you what level of detail the  
13 companies have provided in their filing in this case  
14 around how the additional amortization procedure would  
15 work. Do you recall whether KCPL addressed that issue in  
16 its application filed in this case?

17 A. Yes. We indicated in the application under  
18 the same or similar terms and conditions as KCPL's  
19 amortization, and I would anticipate that the formulas are  
20 the same. It's a Standard & Poor's calculation for credit  
21 worthiness. It wouldn't vary between Aquila and Kansas  
22 City Power & Light.

23 MR. RIGGINS: Thank you. That's all I  
24 have.

25 JUDGE DIPPELL: Thank you. I believe that

1 is all we have for Mr. Giles.

2 MS. PARSONS: I have one question. Since  
3 we have read from Mr. Oligschlaeger's testimony several  
4 times and just pulled excerpts, I would suggest if it's  
5 agreeable to Staff to go ahead and admit it -- or mark it  
6 as an exhibit and admit it or either ask the Commission to  
7 take judicial notice of the testimony that was filed in  
8 EM-2000-292.

9 JUDGE DIPPELL: My only concern about that  
10 is how much additional information that will add to the  
11 record. Is that testimony pretty much related to that one  
12 issue or is there --

13 MR. DOTTHEIM: Yes, it is.

14 JUDGE DIPPELL: Would there be --

15 MR. DOTTHEIM: Staff has no objection to  
16 that.

17 JUDGE DIPPELL: Would there be any  
18 objection to the Commission taking official notice of  
19 Mr. Oligschlaeger's testimony in -- I forget the Case  
20 No. EM --

21 MR. DOTTHEIM: 2000-292.

22 MR. CONRAD: I haven't read that: If I  
23 ever read that, I don't have a vivid recollection of its  
24 contents right now. So it's not really possible for me to  
25 decide whether or not I have an objection to it without

1 looking at what's proposed. It's been used in  
2 cross-examination of -- Mr. Oligschlaeger was not listed  
3 as a witness. If Aquila wants to call him, I don't know,  
4 I suppose we can probably try to take him out of order.

5 If you want -- I suppose a compromise might  
6 be since those portions have been read into the record, if  
7 counsel simply wanted to identify those pages. I'm always  
8 a little bit itchy about taking official notice of  
9 something just because it's been filed in the system. The  
10 witness hasn't been subject to cross-examination. I'm not  
11 clear whether that's competent and substantial evidence.

12 JUDGE DIPPELL: Usually in a situation  
13 where statements -- and those statements were identified  
14 when Mr. Dottheim read them into the record. Sometimes it  
15 is helpful to have them in context for later review, so I  
16 think what I will do is hold off on ruling on that and  
17 allow Mr. Conrad to have an opportunity to review  
18 Mr. Oligschlaeger's testimony and determine if he has any  
19 objection at that time.

20 MR. CONRAD: That's acceptable here. Does  
21 Mr. Dottheim have a copy?

22 MR. DOTTHEIM: Yes.

23 JUDGE DIPPELL: Mr. Dottheim will get you a  
24 copy.

25 MR. CONRAD: I've got a lot of stuff to

1 deal with here. But we can try to get to that at some  
2 time.

3 JUDGE DIPPELL: Mr. Mills, do you want to  
4 make a statement?

5 MR. MILLS: If I may, and I'm not sure that  
6 I have an objection, but I would note that 536.070 again  
7 tells us about official notice, and it says, agencies  
8 shall take official notice of all matters of which the  
9 courts take judicial notice. They may also take official  
10 notice of technical or scientific facts not judicially  
11 cognizable within their competence. so I don't know that  
12 really 536 provides clear authority that you can take  
13 judicial notice of an entire piece of testimony.

14 JUDGE DIPPELL: I believe the Commission  
15 also has a rule regarding that.

16 MR. MILLS: That's true, and I think it  
17 mirrors 536.070 fairly closely. I can check. Anyway, if  
18 you're going to hold off on ruling, we can talk about --

19 JUDGE DIPPELL: I'm going to hold off on  
20 ruling. We'll deal with that later. Also, did Staff  
21 intend to offer Exhibit 111, 112 and 113?

22 MR. DOTTHEIM: Yes, the Staff offers  
23 Exhibits 111, 112 and 113.

24 MR. CONRAD: No objection here.

25 JUDGE DIPPELL: Would there be any

1 objection to those exhibits? Let's start with 111. Any  
2 objection to 111?

3 (No response.)

4 JUDGE DIPPELL: Seeing none, I'll receive  
5 it into evidence receive it into evidence.

6 (EXHIBIT NO. 111 WAS RECEIVED INTO  
7 EVIDENCE.)

8 JUDGE DIPPELL: 112?

9 MR. RIGGINS: Your Honor, subject to  
10 Mr. Dottheim's acknowledgement that Exhibit 112 is an  
11 incomplete document in the sense that it references  
12 numerous exhibits that are not attached to it, I have no  
13 objection to this being admitted.

14 MR. DOTTHEIM: Yes, and I thought I had  
15 indicated at the time that --

16 MR. RIGGINS: I thought you did.

17 MR. DOTTHEIM: -- that it was an incomplete  
18 document.

19 JUDGE DIPPELL: All right. Seeing no other  
20 objection, then we'll receive that into evidence.

21 (EXHIBIT NO. 112 WAS RECEIVED INTO  
22 EVIDENCE.)

23 JUDGE DIPPELL: Exhibit 113?

24 (No response.)

25 JUDGE DIPPELL: Seeing no objection, that's

1 received into evidence.

2 (EXHIBIT NO. 113 WAS RECEIVED INTO  
3 EVIDENCE.)

4 JUDGE DIPPELL: Thank you, Mr. Giles. I  
5 believe you may step down for now, and you're slated to  
6 return on other issues.

7 Let's go ahead then with the next witness,  
8 which I believe is Staff's witness Mr. Green, or Staff  
9 calling Mr. Green.

10 MR. DOTTHEIM: The Staff is going to call  
11 Mr. Empson before Mr. Green.

12 JUDGE DIPPELL: I'm sorry. Mr. Empson.  
13 I'm seeing head shaking. I had on the list it was  
14 Mr. Green. Is it Mr. Green or Mr. Empson?

15 MR. WILLIAMS: Empson.

16 JUDGE DIPPELL: Is everyone prepared to go  
17 forward with Mr. Empson. Okay.

18 (Witness sworn.)

19 JUDGE DIPPELL: Thank you.

20 JON EMPSON testified as follows:

21 DIRECT EXAMINATION BY MS. KLIETHERMES:

22 Q. Good morning, Mr. Empson.

23 A. Good morning.

24 Q. Could you state and spell your name for the  
25 record.

1           A.       My name is John R. Empson, it's J-o-n,  
2 middle initial R, last name is Empson, E-m-p-s-o-n.

3           Q.       And by whom are you employed at the present  
4 time?

5           A.       I'm employed by Aquila, Inc.

6           Q.       What is your current title?

7           A.       I'm senior vice president of regulated  
8 operations.

9           Q.       What are your job duties in that position?

10          A.       I have the leadership and management  
11 oversight for our regulated utility operations, both gas  
12 and electric. I have the gas and electric regulatory  
13 responsibility. I have central service responsibilities,  
14 which includes billing and call center, and I also am  
15 responsible for gas supply.

16          Q.       Are you familiar with a transaction  
17 involving Aquila, Black Hills and Great Plains Energy?

18          A.       Yes, I am.

19          Q.       And is that the matter of Case No.  
20 EM-2007-0374?

21          A.       Yes, it is.

22          Q.       What is your knowledge of that transaction?

23          A.       Effectively, Great Plains is buying Aquila,  
24 and there's a simultaneous transaction that occurs where  
25 our gas properties and our electric operations in Colorado

1 are being sold to Black Hills.

2 Q. Does Aquila have utility operations in  
3 Missouri?

4 A. Yes, we do.

5 Q. What are your job duties relative to those  
6 Missouri utility operations?

7 A. Again, since I have oversight  
8 responsibilities for all of our utilities, the operating  
9 vice president that is responsible for Missouri reports to  
10 me, as well as the other support functions like regulatory  
11 and central services that support those operations.

12 Q. What is your experience in utility  
13 regulation?

14 A. I have been involved in utility regulation  
15 for the approximate 22 years I've been with Aquila, Inc.  
16 Prior to that, I had positions within Northern Natural Gas  
17 Company, Northern Liquid Fuels where I was involved in  
18 regulatory proceedings and Commission relations.

19 Q. And what is your utility regulation  
20 experience relative to Aquila?

21 A. I've been involved in merger applications.  
22 I've been involved in rate case applications. I've been  
23 involved in debt collateralization applications, the whole  
24 array of things that would come before this Commission or  
25 any other Commission, I have typically been involved with.



1           Q.       And has the bulk of that experience been in  
2   Missouri?

3           A.       Not necessarily.  We've operated in seven  
4   states, so I was involved in all of our gas and electric  
5   jurisdictions in those capacities.

6           Q.       Have you been involved in utility mergers  
7   in the past?

8           A.       Yes.

9           Q.       What has been the nature of your  
10  involvement?

11          A.       I think there's two areas of involvement.  
12  First is in the -- in the actual merger process itself  
13  where I have been a witness in various proceedings, and  
14  then after the fact of trying to transition the acquired  
15  entity of the merged entity into our company.

16          Q.       And what mergers or merger activity have  
17  you been involved in?

18          A.       Well, in the state of Missouri, it would  
19  have been the St. Joe merger with Aquila, the Empire  
20  merger with Aquila, and KCPL, Kansas City Power & Light  
21  merger with Aquila.

22          Q.       You referenced a merger between Aquila and  
23  Empire.  Would you agree that that merger was not  
24  completed?

25          A.       I do.

1 Q. Why was that merger not completed?

2 A. It didn't receive the necessary regulatory  
3 approvals to move forward.

4 Q. Were you involved in the -- or you stated  
5 you were involved in the merger between Aquila, St. Joe  
6 and St. Joseph Light and Power. Did that merger encounter  
7 any difficulties after the merger closed?

8 A. We did not encounter any operational  
9 difficulties. We ran into some legal issues that ended up  
10 going through the various court processes.

11 Q. And could you expand on those difficulties?

12 A. Basically, the -- in a layman's explanation  
13 anyway, the challenge was made that the Commission hadn't  
14 properly addressed the recovery of the acquisition  
15 premiums since that could impact future rates, and so the  
16 courts, from what my knowledge, again, kind of remanded it  
17 back to the Commission to say you have to address that  
18 issue before the transaction can be approved.

19 Q. And would you agree that Aquila was once  
20 named UtiliCorp United, Incorporated?

21 A. I do.

22 Q. And will you forgive me if I occasionally  
23 forget that in these questions?

24 A. I will respond to either one.

25 Q. Did UtiliCorp once attempt to merge with

1 Kansas City Power & Light?

2 A. Yes, it did.

3 Q. What happened to that merger proposal?

4 A. There was a counter proposal made by  
5 WestStar to buy Kansas City Power and Light that was  
6 viewed more favorably by Kansas City Power and Light  
7 shareholders, so the transaction did not get approved.

8 Q. What is your experience relative to the  
9 Missouri practice regarding retention of synergies through  
10 mergers?

11 A. I think there's two areas. First of all,  
12 in our St. Joe transaction, there was identified a value  
13 for having joint dispatch between St. Joe and Aquila, and  
14 at the time there was also some transition costs that were  
15 being incurred. So my recollection is that the Commission  
16 agreed that, based upon the ability to do joint dispatch  
17 and, in fact, then measure those against the models where  
18 you would individually dispatch, you could identify those  
19 savings in value, and they allowed us then to amortize  
20 those transition costs over ten years and be recovered in  
21 rates.

22 The second area is more -- as we were  
23 evaluating the regulatory plan that was being proposed,  
24 given that we were not proposing in this case to recover  
25 any acquisition premium, I relied upon some of the

1 testimony in part that we have talked about today from  
2 Mr. Oligschlaeger, plus by Mr. Traxler and Mr. Proctor  
3 that kind of gave a model for how you would, in fact,  
4 share synergies in a transaction that didn't involve  
5 recovery of the premium.

6 Q. And in this case is joint dispatch proposed  
7 or future joint dispatch?

8 A. It is not identified yet in this case. I  
9 think that is something that has been identified as a  
10 future potential that could exist between the entities  
11 once an RTO decision has been made.

12 Q. Are you familiar with the elements of the  
13 regulatory plan that's been proposed in this case?

14 A. Yes, I am.

15 Q. Does this plan include a merger synergy  
16 sharing approach?

17 A. Yes, it does.

18 Q. What is your opinion regarding the ability  
19 to identify actual merger savings after a merger is  
20 completed?

21 A. In this case, there's been an extreme  
22 amount of work done to identify specific projects and how  
23 those merger savings might be realized. So they have  
24 identified specific projects, and if they're dealing with  
25 supply chain or they're dealing with other elements,

1     there'll be detailed work plans, so they will be kind of  
2     measured. And I believe Mr. Chesser testified and the  
3     future witnesses will testify of how they intend to do  
4     that.

5             Q.       I believe I asked you more generally  
6     regarding mergers, not this particular merger in terms of  
7     your experience, and identifying specific merger synergy  
8     savings.

9             A.       It would be the same type of answer.  
10    Typically when you get into a transaction, you're doing  
11    some detailed analyses, you've hired outside experts to  
12    come in and look objectively at both companies and try to  
13    identify areas where savings could be achieved.

14            Q.       And what cases in Missouri has the  
15    Commission adopted the merger synergy sharing approach  
16    proposed by GPE in this case?

17            A.       I'm not aware that in Missouri they've had  
18    an actual synergy sharing method adopted, only what I  
19    referred to before as the model that was kind of given to  
20    us in the St. Joe case, whereas if we weren't requiring to  
21    recover the premium, there was a path where they believed  
22    we could share 50/50 in sharing synergies over ten years.

23            Q.       In what cases in Missouri has the  
24    Commission adopted the transaction and transition costs  
25    recovery proposed by GPE in this case?

1           A.       Not familiar with all cases, but as I  
2 mentioned, our St. Joe case, there was an allowance to  
3 take some transition costs amortized over ten years and  
4 recovered in rates.

5           Q.       And is that identical to the treatment  
6 proposed in this case?

7           A.       It is not.

8           Q.       Has Aquila ever received Commission  
9 approval to recover transaction costs in Missouri?

10          A.       I'm not aware that we have on transaction  
11 costs. I tend to lump the two together and transition and  
12 transactions being cost to achieve. I know that's --  
13 might not be typically done, but as I'm looking at the  
14 transaction, these are costs that are being incurred to  
15 make the transaction final and give the value of the  
16 synergies back to the customers.

17                   MS. KLIETHERMES: If I could approach the  
18 witness?

19                   JUDGE DIPPELL: Yes. Is this a document to  
20 be marked?

21                   MS. KLIETHERMES: Yes.

22                   JUDGE DIPPELL: Staff's next exhibit number  
23 is 114.

24                   (EXHIBIT NO. 114 WAS MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

1 BY MS. KLIETHERMES:

2 Q. Have you had a moment to look at that  
3 document?

4 A. Yes. Very briefly, yes.

5 Q. Are you familiar with the information  
6 contained in that response?

7 A. This is the first time I've seen the Data  
8 Request. It was responded to by Rich Peterson and Ron  
9 Klote.

10 Q. And could you describe more fully what this  
11 document is?

12 A. It's a request by Bob Schallenberg. It's,  
13 please identify any Aquila acquisition of utility property  
14 in which Aquila requested recovery of its transaction  
15 costs. In each case that Aquila requested recovery of its  
16 acquisition costs, please indicate whether recovery was  
17 granted.

18 Q. When this response mentions transition cost  
19 recovery, do you know the recovery cost method granted?

20 A. With the response that we have provided to  
21 you?

22 Q. Yes.

23 A. Well, it identifies here that in  
24 ER-2005-0436, the one I referenced before, that transition  
25 costs were granted, and then ER-2007-004 was granted

1       again. So it was an amortization over ten years of the  
2       transition costs and then put back into rates.

3               Q.       I'm sorry. Did you have anything?

4               A.       Those are the two references I see to  
5       transition costs.

6               Q.       And do you know the recovery cost method  
7       granted in those instances?

8               A.       It was an amortization over ten years and  
9       added back into the cost of service.

10              Q.       Thank you. Have you been involved in the  
11       integration of operations of two or more entities after a  
12       merger transaction has closed?

13              A.       Yes, I have.

14              Q.       What has been the nature of that  
15       involvement?

16              A.       Primarily from a regulatory side, just to  
17       make sure all the tariffs are proposed, prepared and filed  
18       and be consistent with the regulatory approvals. I had  
19       staff doing it. I oversaw that.

20              Q.       What has been the nature of your  
21       involvement in the planning of the post closing day  
22       operations after this proposed transaction closes?

23              A.       I have not been directly involved in the  
24       transition teams. I've had personnel within my  
25       organization that have been.



1           Q.       What will be the nature of your involvement  
2     in the post closing day operations after this proposed  
3     transaction closes?

4           A.       At the point of close, I'm severed from the  
5     organization.

6           Q.       Do you know who will perform the functions  
7     and duties that you currently perform relative to Aquila's  
8     Missouri utility operations in the post closing day  
9     operations after this proposed transaction closes?

10          A.       As I explained earlier, I have kind of a  
11     broad responsibility. So they'll be split up. I believe  
12     Mr. Downey will have certain responsibilities, Mr. Giles  
13     on the regulatory side. I'm not sure on the gas supply  
14     side because we do some support for the electric  
15     operations, and Mr. Alberts, who is our central services  
16     person, I believe will report to Mr. Hurtigan.

17          Q.       What has been your experience regarding  
18     merger generated synergies?

19          A.       Could you expand a little bit by what you  
20     mean by my experience?

21          Q.       Have you observed merger generated  
22     synergies in the past?

23          A.       Yes, I have.

24          Q.       And in what mergers have you observed  
25     synergies?

1           A.       Be through the St. Joe case, the example I  
2     gave, there was some joint dispatch. There were also some  
3     savings from personnel consolidations in terms of the  
4     headquarters operations in St. Joe. We had, again, a  
5     detailed plan that was put before this Commission at the  
6     time of that transaction.

7           Q.       And in your experience, have merger  
8     generated savings always met or exceeded their projected  
9     values?

10          A.       On the joint dispatch, I believe they did.  
11     They might have been a little better. I've not gone back  
12     and reviewed any analyses in preparation for this docket  
13     to see what did happen in the St. Joe case for those  
14     synergies.

15          Q.       Have you performed an evaluation of  
16     synergies being proposed by GPE in this case?

17          A.       Our company did perform an evaluation of  
18     the synergies that are being proposed, yes, we did.

19          Q.       You personally?

20          A.       I was involved only from a review  
21     perspective where people within my group were involved and  
22     we sat down and talked about them, challenged whether or  
23     not they could really be achieved so that we could  
24     represent to our board that we felt the synergies were  
25     reasonable.

1           Q.       Have you previously been involved in any  
2     mergers that have achieved a comparable level of savings?

3           A.       I can't answer that question.

4           Q.       Have you --

5           A.       I've not gone back to measure percent  
6     reduction to see if they were achieved on a comparable  
7     basis. I'm not prepared to answer that question.

8           Q.       Have you previously been involved in any  
9     mergers that have generated savings within the time frame  
10    proposed in this case?

11          A.       Yes. Again, the St. Joe transaction, we  
12    were very effective in realizing some of those identified  
13    synergies at the time.

14          Q.       And for clarification, did you state  
15    earlier that you couldn't recall whether or not those  
16    savings met their projected values?

17          A.       We did not -- I'm sure some analysis was  
18    done. I'm just not recalling that analysis. That's been  
19    quite some time ago that transaction took place.

20          Q.       Do you know whether Aquila is planning to  
21    improve the productivity of its Missouri electric  
22    operation on a standalone basis?

23          A.       Yes, we are.

24          Q.       What are those plans?

25          A.       We've engaged in a Six Sigma process where

1 we have created an environment to be challenging any area  
2 to see if we gain some productivity, and then we set out  
3 goals for each year for what we're going to achieve. I  
4 believe we're probably in our third or fourth year of that  
5 program.

6 Q. You indicate you've been conducting a Six  
7 Sigma program for some time. What have been the past  
8 results of that program to improve efficiency?

9 A. We've been in my mind very effective.  
10 We've had total engagement of our operations people, our  
11 plant people. So it might be in a given year across all  
12 of our states we might be achieving I guess last year  
13 about \$15 million of productivity improvements. Some of  
14 them will be one time events. Others will be ongoing.

15 Q. And do those benefits generated by six  
16 sigma flow directly to shareholders?

17 A. In between rate cares, they would flow to  
18 shareholders, some of them would flow through our fuel  
19 adjustment clause that would go to the customers. The  
20 remainder would be trued up in the context of our next  
21 rate case, and given that we're now in that mode of almost  
22 annual rate increases, the customers will see that value  
23 very quickly.

24 Q. So ratepayers do see a benefit from your  
25 six sigma program?

1           A.       Definitely.

2           Q.       Absent a merger, does Aquila anticipate  
3 improving its operational efficiency through the six sigma  
4 program?

5           A.       Yes, we do.

6           Q.       Absent a merger, does Aquila anticipate  
7 improving its operational efficiency through continued  
8 research and other technical efforts?

9           A.       Yes, we do.

10          Q.       In your experience, for example, with the  
11 proposed UtiliCorp/KCPL merger that did not go through, is  
12 it possible that the due diligence process associated with  
13 the merger can reveal areas where operational efficiencies  
14 could be improved by either company on a going forward  
15 standalone basis even if the proposed merger is not  
16 successful?

17          A.       Would you just state that one more time? It  
18 was a long sentence for me.

19          Q.       I'll break it down if I can.

20          A.       Okay.

21          Q.       Are you familiar with the due diligence  
22 process that is commonly performed in connection with a  
23 proposed merger?

24          A.       Yes, I am.

25          Q.       Is it possible that that merger could -- or

1     that due diligence process, the very process of it could  
2     identify areas in which either company isn't performing at  
3     its most lean?

4             A.       Yes.

5             Q.       Would it then be possible, even if that  
6     merger does not go forward, for that company to adopt any  
7     efficiencies they may have uncovered in that process?

8             A.       I can't say for sure, because what we have  
9     found in this transaction, there are certain economies  
10    that you would gain that create those efficiencies. So  
11    for example, while we on a standalone basis might not be  
12    able to justify AMR, automatic meter reading, given that  
13    Kansas City Power & Light already has it, they've already  
14    incurred those fixed costs, we can then -- we could then  
15    justify it on an incremental basis. So I think it would  
16    be possible that you could identify things.

17            What we're finding in this transaction is  
18    that each of us has some unique strengths that we can  
19    leverage, and it gives us those economies that we can  
20    benefit from that we might not have been able to do or  
21    most likely wouldn't have done on our own.

22            Q.       Well, discounting for a moment economies of  
23    scales and those similar economies, do you think it's  
24    possible that the due diligence process could identify  
25    just general areas that either independent utility company

1     could improve its operating efficiency in?

2             A.       It might be possible, yes.

3             Q.       Has Aquila taken any actions to insulate  
4     its utility operations from its nonregulated activities?

5             A.       Yes, we have.

6             Q.       What actions has Aquila taken?

7             A.       Well, back in about 19 -- the late 1980s,  
8     mid to late 1980s as we were engaging in the strategy, we  
9     started a capital allocation process where, for our  
10    utility operations, we would do a comparable analysis and  
11    we filed rate cases. We would base that capital structure  
12    based on a comparable utility analysis.

13            We also at that time set up a debt  
14    allocation process where any debt that was needed at the  
15    utility level, even though it was procured at the  
16    corporate level, was assigned to those utilities and  
17    stayed with those utilities until it was retired. More  
18    recently in 2002 when we encountered some of the financial  
19    challenges, we developed a financial plan, and in that  
20    financial plan, a critical element of it was our, what  
21    I'll call protection of the utility customer plan.

22            We had three elements in that plan. The  
23    first one was we were going to protect them from any  
24    adverse financial impact. The second was we were going to  
25    enhance our customer service, and the third was we wanted

1 to enhance our regulatory transparency. We were going  
2 back to a state-based utility organization, and that we  
3 were emphasizing cost allocation manuals, affiliate  
4 transaction manuals, more of an open dialog with each one  
5 of our commissions and Staff.

6 So we had those three elements that we have  
7 committed to and have filed in virtually every rate case  
8 in any other docket we've had in all of our states that we  
9 are committed to.

10 Q. And in your opinion, sitting here today,  
11 are Aquila's regulated utility operations adequately  
12 insulated to the best of Aquila's abilities?

13 A. Yes.

14 Q. Are you familiar with Staff's report  
15 entitled Management Audit of Aquila, Inc. that was  
16 prepared in response to the Missouri Commission's Order  
17 issued June 13th, 2006 in Case No. EO-2006-0356?

18 A. Yes, I am.

19 Q. Do you know if this report has been  
20 attached to Staff's reports filed in this case?

21 A. Yes, it has, as well as -- as well as our  
22 response to that report.

23 Q. Which was going to be my next question.  
24 And to be more specific, was that response contained in an  
25 October 13th, 2006 letter from Dennis Williams to Lisa



1 Kremer?

2 A. Yes, it was.

3 MS. KLIETHERMES: And Judge, I do have a  
4 question, as an evidentiary matter. This report is  
5 attached, as was just stated, to Staff's Exhibit 100.  
6 Would you like that report to be separately introduced  
7 under a separate exhibit number for today's purposes or to  
8 wait until such time as that testimony is tendered?

9 JUDGE DIPPELL: Let's just leave it  
10 attached to the testimony and only have one copy.

11 MS. KLIETHERMES: That's fine certainly by  
12 me.

13 MS. KLIETHERMES: May I approach the  
14 witness?

15 JUDGE DIPPELL: Yes. This is a portion of  
16 your report?

17 MS. KLIETHERMES: Yes.

18 JUDGE DIPPELL: Just refer to it again and  
19 tell us where it is.

20 MS. KLIETHERMES: May the record reflect  
21 I've provided a copy of what I believe is Appendix A to  
22 Staff's report filed under Exhibit 100 in this case,  
23 Staff's Exhibit 100.

24 BY MS. KLIETHERMES:

25 Q. Do you recognize this document?

1           A.       Yes, I do.

2           Q.       What is this document?

3           A.       Well, the first page is the cover letter

4 going from Dennis Williams to Lisa Kremer just providing

5 our -- and then acknowledging that we're providing our

6 response to that Staff audit.

7           Q.       Do you know Dennis Williams?

8           A.       Yes, I do.

9           Q.       Do you know Mr. Williams' supervisor?

10          A.       Yes, I do.

11          Q.       And who is the supervisor?

12          A.       I am his supervisor.

13          Q.       Did you review Mr. Williams' comments

14 before this letter was sent to Ms. Kremer?

15          A.       Yes, I did.

16          Q.       Did you agree with Mr. Williams' comments

17 at that time?

18          A.       Yes, I did.

19          Q.       Do you agree with these comments today?

20          A.       Yes, I do.

21          Q.       Is it Aquila's intent to continue to

22 operate consistent with these comments absent a merger

23 with Great Plains Energy?

24          A.       Yes, it is, and with one point of

25 clarification, that we're always going to look for other

1 ways that we can enhance our ability to meet those  
2 objectives that I outlined earlier that are in our  
3 financial plan. So while we're very targeted on making  
4 sure that we do exactly what is in this memo, it doesn't  
5 mean that there wouldn't be other ways that we could  
6 further enhance value for our customers.

7 Q. And does this comment contain many of the  
8 insulation practices that you referred to in your  
9 testimony earlier today?

10 A. There are various references, like  
11 protections for regulated activities from participation in  
12 unregulated activities. So there's some headings in here  
13 that do refer to the various elements of what we have  
14 pledged to do.

15 Q. What has been Aquila's position relative to  
16 cost recovery from Missouri customers from the South  
17 Harper litigation?

18 A. We have not sought recovery of the actual  
19 litigation expense for South Harper.

20 Q. What is Aquila's position regarding  
21 recovery from Missouri customers for any costs that may be  
22 required to move the facility at South Harper?

23 A. We have not made a determination of that  
24 yet.

25 Q. What is Aquila's position regarding

1 recovery from Missouri customers for any costs that it may  
2 obtain related to the third party death on Lake Peculiar?

3 A. We haven't made any determination of that.

4 Q. Had Aquila personnel made personal and  
5 company commitments to state commissions relative to  
6 installations between business units?

7 A. Yes, we have.

8 Q. Who has made those personal commitments?

9 A. Myself.

10 Q. Did Aquila insist that GPE operate  
11 consistent with those commitments as a condition of the  
12 merger agreement between Aquila and GPE?

13 A. When you say insist, what we did was review  
14 the regulatory plan to make sure that the type of  
15 commitments that we were making to insulate our customers  
16 for any adverse financial impact were met and quality of  
17 service were being addressed. As I indicated, when we  
18 made those commitments, they were more of a position of  
19 neutrality of protection, and what we have in this case is  
20 the ability to actually create value for our customers  
21 through the synergies.

22 Q. Have these specific commitments that have  
23 been made by Aquila and Aquila personnel on prior  
24 occasions been carried into the merger agreement with GPE?

25 A. They have not.

1           Q.       Why not?

2           A.       As I indicated, we looked at the proposed  
3 regulatory plan and we felt this was a better alternative  
4 for our customers than what we could deliver on our own.  
5 So we did not insist that they maintain that commitment  
6 that was -- that we had made. We had different facts and  
7 circumstances that we were facing at the time we made  
8 those commitments. Those facts and circumstances have now  
9 changed within the context of this merger, and what we can  
10 do is provide greater value to the customers.

11          Q.       Was it your testimony earlier that absent  
12 this merger Aquila would not have viewed those facts and  
13 circumstances as being substantially different today than  
14 they were at the time those commitments were made?

15          A.       There's two statements I made. First,  
16 that, yes, we would abide by those, but if we on our own  
17 could identify another way to create greater value or  
18 protection for our customers, we felt we would have the  
19 obligation to come back to the Commission and explain what  
20 those options would be and to gain their approval.

21          Q.       Could Aquila have refused to sign the  
22 agreement absent a commitment from Great Plains Energy to  
23 operate the Aquila Missouri properties consistent with  
24 Aquila's commitments?

25          A.       That's kind of a legal question that you're

1 asking me. I'm not sure that from a legal perspective I  
2 can address it. If you would allow me to address it from  
3 a pure operational perspective, I can do that.

4 Q. Please.

5 A. It would have been our position that we had  
6 to look at the total value to our customers for this  
7 transaction, and if we did not believe that our customers  
8 were going to be getting benefits from this transaction,  
9 yes, in fact we could have not recommended to our board  
10 that the transaction go forward.

11 Now, whether our board would have agreed  
12 with that recommendation, I can't say, but from our  
13 perspective, that was the obligation that we had to our  
14 board was to ensure that this was going to create not only  
15 value for our shareholders but for our customers.

16 Q. And you may have answered this, so my  
17 apologies if I'm duplicative, but do you know if GPE has  
18 committed to operate in Missouri Aquila's properties  
19 consistent with Aquila's commitments?

20 A. On a broad commitment, yes, they're going  
21 to continue to operate our properties in a manner that is,  
22 as they would classify it, as tier one customer service.  
23 They are going to be transparent to the regulators, and  
24 they are providing benefits to the customers.

25 Q. Did Aquila know GPE's intent to proceed in

1     that manner at the time it executed its agreement with  
2     GPE?

3             A.       When we signed the merger agreement, we  
4     knew of what the proposed regulatory plan was at that  
5     time, because we'd been involved in negotiations with them  
6     on what the content would be, so we did understand what  
7     those commitments were going to be as captured in the  
8     regulatory plan.

9             Q.       Do you know if the agreement specifically  
10    requires GPE to honor Aquila's specific commitment to not  
11    charge Missouri customers for costs related to Aquila's  
12    nonregulated activities?

13            A.       The merger agreement does not.

14            Q.       And is signing an agreement that does not  
15    contain that provision consistent with Aquila's commitment  
16    to Missouri regulators?

17            A.       Yes, it is. As I mentioned, our overall  
18    commitment was to shelter our customers from any adverse  
19    impact. What we have the ability here to do is, through  
20    the synergy sharing mechanism, is to provide greater  
21    benefits to our customers through synergies that would not  
22    be realized without this transaction that offset the  
23    costs. So I view it as consistent. The components are  
24    different, but the overall goal that we have stated and  
25    that we're committed to still exists.

1           Q.       At the time Aquila made its commitment to  
2 regulators, did it in any way qualify or limit its  
3 commitments or reserve the right to alter components?

4           A.       I don't believe we had a caveat in any of  
5 those documents that we had. It's just more common sense  
6 from my perspective that those things that you were  
7 committed to do, they have a -- a better alternative, that  
8 we have an obligation on behalf of our customers to come  
9 before the Commission and present it.

10          Q.       And in your opinion, who determines whether  
11 or not it is appropriate to revise Aquila's commitments to  
12 regulators?

13          A.       It would come before this Commission. We  
14 have filed those commitments. We've said, here's how  
15 we're going to operate, and if we were going to change  
16 those commitments, we'd come before the Commission and ask  
17 for their approval.

18          Q.       So who is it who determines whether or not  
19 any change of those components in Aquila's commitments is  
20 satisfactory?

21          A.       There would be several of us involved. We  
22 would make those recommendations to Rick Green and then  
23 decide whether we wanted to move forward to change those  
24 commitments.

25          Q.       Did Aquila reserve the right to



1 unilaterally determine whether or not it was meeting its  
2 commitment to insulate ratepayers from its unregulated  
3 activity at the time it made that commitment?

4 A. Would you please restate that question  
5 again?

6 Q. When Aquila made a commitment to insulate  
7 Missouri ratepayers from its unregulated activity, did  
8 Aquila reserve the right to alter that commitment?

9 A. We did not in the official documents.  
10 Again, it's just good management practice that if things  
11 change, you should come back before the Commission if you  
12 have a better alternative.

13 Q. Then it's your opinion that that would  
14 require coming back before the Commission? It couldn't be  
15 a unilateral move on the part of Aquila?

16 A. We would not make it a unilateral move  
17 given the -- I have formal sworn testimony, Mr. Green has  
18 some formal sworn testimony that we would come back in and  
19 say this is why we believe it's a better alternative, and  
20 that if there was a disagreement, we would hold on with  
21 our current commitments.

22 Q. And are you saying that in the context of  
23 this merger or just in general that would be your  
24 operation?

25 A. This merger is a reflection of us coming

1 before the Commission with an alternative that we believe  
2 is superior to the commitments we have made in the past.

3 Q. Outside of the merger applications, did  
4 Aquila apprise the Commission Staff, the OPC or any other  
5 interested party of possible revisions to Aquila's  
6 commitment to insulate ratepayers from its unregulated  
7 activities?

8 A. We didn't have a direct conversation about  
9 that. There was one meeting that was held with the Staff  
10 just to talk in general about the parameters of the merger  
11 application.

12 Q. Did Aquila engage the Commission Staff, the  
13 office of Public Counsel or any other interested party in  
14 a dialog concerning the appropriateness of possible  
15 revisions to Aquila's commitment to insulate ratepayers  
16 from its unregulated activity?

17 A. We did not.

18 Q. What prevented Aquila from initiating a  
19 dialogue concerning the appropriateness, possible  
20 revisions to Aquila's commitment to insulate ratepayers  
21 from its unregulated activity?

22 A. Effectively, I think this type of a  
23 transaction is more of an acquisition, and so it's not a  
24 merger of equals, and so our view was the initiation of  
25 contacts and discussion about the overall regulatory plan

1 really resided with Great Plains Energy and KCPL and that  
2 we were going to participate, because we are not  
3 knowledgeable enough about their entire financial model to  
4 know how to approach those discussions or what to do in  
5 those discussions.

6 Q. So then does Aquila management view an  
7 acquisition as an obviation of its obligations and  
8 commitments to regulators?

9 A. No. As I mentioned, we're here now to talk  
10 about those obligations and commitments and to present our  
11 opinion on why this is a better alternative for our  
12 customers.

13 Q. What is Aquila's actual cost of capital?

14 A. Are you referencing our credit rating or  
15 what the actual debt cost is? Could you give a little  
16 more refinement of that question, please?

17 Q. Either or both.

18 A. Our current credit rate is not investment  
19 grade. I believe we're a B plus. And our cost of  
20 capital, we have not gone out into the long term markets  
21 for quite some time, so our overall cost as we assign to  
22 the utility properties, I believe in the last rate case we  
23 were between about 6.7 and 7.4 percent debt cost for St.  
24 Joe and MPS.

25 Q. Do you know what Aquila's cost of capital

1 is for ratemaking purposes as of the last rate case?

2 A. About those levels. We're right -- we'll  
3 hover around 7 percent let's say for the Missouri  
4 properties. Again, it depends on when the debt was  
5 issued. I mentioned our debt assignment process, when our  
6 utility properties need any type of financing, whether  
7 it's debt or equity, we assign it directly to them. So we  
8 have debt issuances that were issued 20 years ago that  
9 have been assigned to our Missouri properties or our  
10 Nebraska properties. They stay there until it's going to  
11 be retired, at which time then we go out into the market  
12 to issue new debt.

13 Q. Is there a differences between Aquila's  
14 actual cost of capital and their cost of capital for  
15 ratemaking purposes?

16 A. Yes, there is.

17 Q. What is the reason for that difference?

18 A. As I mentioned, as we have retired some  
19 debt, and we had the ability to retire it at a minimal or  
20 nominal cost as we were going through our financial  
21 restructuring, we then had to reassign some debt that  
22 existed on our balance sheet to our utility properties to  
23 fully capitalize them.

24 So we do have some debt that was issued  
25 that is not investment grade, that we have assigned to our

1 various utility properties at an investment grade cost.  
2 So in this case, if we were assigning debt, it might have  
3 been 7 percent, and our actual cost would have been  
4 14 7/8 or 9.95, which are the two issues that we have, so  
5 that difference is something that our shareholders have  
6 borne.

7 Q. And is that difference related to Aquila's  
8 commitments to insulate its ratepayers from Aquila's  
9 unregulated activity?

10 A. Yes, it is.

11 MS. KLIETHERMES: If I could approach?

12 JUDGE DIPPELL: Yes. You want this marked?

13 MS. KLIETHERMES: Please.

14 JUDGE DIPPELL: Exhibit 115.

15 (EXHIBIT NO. 115 WAS MARKED FOR

16 IDENTIFICATION BY THE REPORTER.)

17 BY MS. KLIETHERMES:

18 Q. Could you tell us what this document is?

19 A. This is a Data Request issued by Ashley  
20 Harrison that was answered by Lita Abaricia on, please  
21 identify the amount of annual interest expense which  
22 Aquila incurs that it does not seek to recover from any  
23 customers of any of its state regulated utility  
24 operations.

25 Q. And do you believe that -- do you have

1 reason to believe that the numbers in this response are  
2 likely accurate?

3 A. You know, I have no basis. The way the  
4 question is asked, we have a lot of debt that is still  
5 nonregulated debt that isn't assigned to any states or not  
6 attempted to assign to any states. So I don't have any  
7 idea what that annual interest expense is.

8 Q. Do you know who Ms. Abaricia is?

9 A. No, I do not.

10 Q. For purposes of our discussion today, could  
11 you assume that these numbers are correct?

12 MS. PARSONS: Objection. The witness  
13 already answered that question. He's not familiar enough  
14 with the numbers, he said.

15 JUDGE DIPPELL: I believe she's just asking  
16 him if he could assume they're correct for purposes of  
17 questioning. Do you have hypothetical questions that  
18 you're wanting to ask him or questions -- the witness has  
19 said he doesn't know if they're correct.

20 MS. KLIETHERMES: I believe we can pose as  
21 hypotheticals what I would like to accomplish.

22 BY MS. KLIETHERMES:

23 Q. Do you know the amount of corporate expense  
24 that Aquila absorbed in 2006?

25 A. Are we referring now to this -- the

1 document you handed me or is this a different?

2 Q. Not referring to the document.

3 A. I don't have an immediate recollection of  
4 what that corporate expense that we absorbed at the  
5 shareholder level was, the expense was.

6 Q. Could you ballpark that?

7 A. I mean, there's several different buckets  
8 that we look at that are costs that we would not charge to  
9 our customers. So if you assume the \$500 million of  
10 14 7/8 only has a cost that you would assign of 7 percent,  
11 and assuming that 100 percent of that was being assigned  
12 to the utility business, you would take 7 percent times  
13 the \$500 million of \$35 million a year of interest  
14 expense. We have other costs that we incur for various  
15 litigation actions that are ongoing that we have not  
16 assigned. We talked about the litigation costs on South  
17 Harper that we have not assigned. I really do not recall  
18 the order of magnitude of what those are. I know they've  
19 diminished substantially because most of the litigation  
20 has been completed.

21 So the only one that I really focus on from  
22 a regulatory perspective, given we are sheltering the  
23 cost, is the amount of the interest expense.

24 Q. So there is some amount, then, that Aquila  
25 shareholders absorb?

1           A.       Yes.

2           Q.       And is that retention consistent with  
3   Aquila's commitments to its utility consumers that we  
4   discussed earlier?

5           A.       Yes.   In the last rate case I filed  
6   testimony about how we went through all the accounting  
7   records to make sure we did isolate those costs that we  
8   didn't think should be included in our cost of service.

9           Q.       Did you sign a verification to the  
10   application filed in this case that the facts and contents  
11   are true?

12          A.       Yes, I did.

13          Q.       At the time you signed that application,  
14   did you know that GPE would be seeking recovery of  
15   Aquila's actual interest costs from its ratepayers?

16          A.       It was not part of the initial application.

17          Q.       When did you become aware of whether or not  
18   GPE would be seeking to do that?

19          A.       In their supplemental testimony that was  
20   filed with the new synergy analysis.

21          Q.       Do you know if Aquila expects to become  
22   investment grade absent a merger with GPE?

23          A.       Yes, we do.

24          Q.       When does Aquila expect to be rated  
25   investment grade?





1 MPSC-0297?

2 JUDGE DIPPELL: It's DR 0297.

3 MR. CONRAD: No objection.

4 JUDGE DIPPELL: Seeing no objection, I will  
5 receive that.

6 (EXHIBIT NO. 114 WAS RECEIVED INTO  
7 EVIDENCE.)

8 JUDGE DIPPELL: And did you want to offer  
9 the other one, or you're still waiting?

10 MS. KLIETHERMES: Not at this time.

11 JUDGE DIPPELL: And do you have additional  
12 public questions that you wanted to ask, or are you ready  
13 to go in-camera?

14 MS. PARSONS: Your Honor, if I might  
15 interject. This is Renee with Aquila, and we've during  
16 lunch discussed the in-camera proceedings, and we are --  
17 we'd waive that and go ahead and allow the public to hear  
18 Mr. Empson's response to the last question that was  
19 pending.

20 JUDGE DIPPELL: Okay. And also along those  
21 lines, for those of you that are curious, I do intend to  
22 rule on the motions regarding the highly confidential  
23 information before Mr. Green comes up to the stand.

24 Ms. Kliethermes, can you read your question  
25 back or do you need the court reporter to?

1 BY MS. KLIETHERMES:

2 Q. Well, if I could, just to preface with the  
3 prior question I asked to that was, do you know if Aquila  
4 expects to be investment grade absent a merger? I believe  
5 you had previously answered yes.

6 A. Yes, I do.

7 Q. And when does Aquila expect to be rated  
8 investment grade?

9 A. In the latest baseline presentation that  
10 we've given to our board, we are estimating that we will  
11 be -- have investment grade metrics by 2011, that we'll be  
12 a strong double B rating metric-wise in 2008, '09 and '10.  
13 And I mention baseline because that assumes we do nothing  
14 else to enhance our balance sheet on a standalone than  
15 just letting the 14 and 7/8 expire and the 995s expire.

16 Q. And to clarify, what did you say Aquila  
17 would achieve in 2008, what rating?

18 A. Double B metrics.

19 Q. And in 2009?

20 A. Double B.

21 Q. 2010?

22 A. Double B.

23 Q. And 2011?

24 A. Triple B minus.

25 Q. And that is absent this merger?

1           A.       That is absent this merger and absent any  
2     other reengineering we might do with our balance sheet.

3           Q.       So then your testimony today is that Aquila  
4     management believes that by the year 2011, absent this  
5     merger, and absent any other adjustment to the  
6     non-regulated debt, the debt attributable to non-regulated  
7     activities, that Aquila will be investment grade?

8           A.       That is correct.

9           Q.       What is the basis for that expectation?

10          A.       We just completed our next planning cycle,  
11     and so we've prepared detailed business plans and  
12     operating plans going forward, and that was what we  
13     presented to our board as our baseline plan for the next  
14     five years.

15          Q.       Will you provide that documentation?

16          A.       I believe we already have. It was an  
17     outstanding Data Request to see board presentations. It's  
18     my understanding that after that board presentation, we  
19     did package that together and put it over in  
20     Mr. Swaengen's office for the Staff or any of the  
21     intervenors to have access to on a highly confidential  
22     basis.

23          Q.       When was that board presentation?

24          A.       That would have been our most recent board  
25     meeting, so it would have been within the last three

1 weeks, I believe.

2 Q. Do you know if a copy of that is available  
3 in this hearing room at this time?

4 A. I don't believe it is. I think it was  
5 packaged together, but I'd have to defer to counsel.

6 MS. PARSONS: If I may, that presentation  
7 from our November 1st board meeting was submitted in an  
8 updated Data Request. I believe it was Data Request 282,  
9 281 or 292, and those materials are not here in the  
10 Commission's offices but are available at our local  
11 counsel's office.

12 MS. KLIETHERMES: Judge, could I reserve a  
13 late-filed exhibit number for that document?

14 JUDGE DIPPELL: Sure. The next exhibit  
15 number would be Exhibit 116. And can you describe that?

16 MS. PARSONS: November 1st board of  
17 directors presentation.

18 JUDGE DIPPELL: And do you know, would it  
19 have any highly confidential information in it?

20 MS. PARSONS: It would be highly  
21 confidential.

22 JUDGE DIPPELL: Okay. For now I'll mark --  
23 reserve a late-filed Exhibit No. 116HC.

24 MS. KLIETHERMES: And can we take that as a  
25 commitment from Aquila to direct us to that exhibit if we

1 have difficulty in finding it in your local counsel's  
2 office?

3 MR. BOUDREAU: I have it.

4 MS. PARSONS: I'm sure Mr. Boudreau's very  
5 organized, but I will help and assist you in any way I can  
6 to make sure you receive it.

7 MR. WILLIAMS: Paul, will Aquila commit to  
8 providing a copy of that document?

9 MS. PARSONS: We wouldn't -- just  
10 consistent with our past practices, we would not provide a  
11 copy of the document. The document has been made  
12 available for several months for -- several weeks for  
13 Staff to review and was also available at the deposition  
14 testimony of Mr. Empson and Mr. Green. So we would make  
15 it available for reviewing, but we --

16 MR. WILLIAMS: We're not asking to review  
17 it. We're asking that it be made a part of the record  
18 here. Do you want to bring in the original? Will you  
19 commit to do that?

20 MS. PARSONS: Well, before I commit to  
21 anything, I want to know what the Commission's going to  
22 hold related to the HC motions that are pending.

23 JUDGE DIPPELL: I can't very well admit  
24 something into evidence until everyone has seen it and  
25 you've had an opportunity to have it.

1 MR. CONRAD: Moreover --

2 MR. BOUDREAU: I think to the point, then,  
3 we're not going to make a commitment to produce it as an  
4 exhibit at the hearing because we have some other matters  
5 that we need to sort out. It's available for Staff's  
6 review, as has been made clear earlier, several weeks ago,  
7 and it will be handled the way that the rest of these  
8 documents have been handled.

9 MR. WILLIAMS: We're not asking it be made  
10 available for Staff's review. We're asking that it be  
11 made a part of the record for the Commission to review.

12 MR. BOUDREAU: I think the answer right now  
13 would be no.

14 MR. CONRAD: Well, then, let's not reserve  
15 an exhibit for it because an exhibit suggests that it's  
16 going to be made part of the record which means it could  
17 be transmitted to the courthouse.

18 JUDGE DIPPELL: Well, it hasn't technically  
19 been offered.

20 MR. CONRAD: I agree, but here we are.

21 JUDGE DIPPELL: I don't think there's a  
22 problem in reserving an exhibit number. We do that all  
23 the time with premarked exhibits. You-all might decide  
24 not to submit one of those or offer it. So I'm going to  
25 reserve the number. If the opportunity for it to come

1     into the record occurs, then we'll deal with it then.

2     BY MS. KLIETHERMES:

3             Q.       Does the -- does Aquila's expectation of  
4     investment grade rating in 2011 take into consideration  
5     Aquila's commitments to regulators?

6             A.       Yes, it does.

7             Q.       And does that achievement of investment  
8     grade rating in 2011 reflect Aquila's continued commitment  
9     to regulators without variance of the components of that  
10    commitment?

11            A.       Yes, it does.

12            Q.       Has Aquila participated in any  
13    collaborative approach discussions with any of the parties  
14    to Case No. EM-2007-0374?

15            A.       As I indicated before, we were not in a  
16    position to do -- to lead a collaborative effort. We did  
17    not participate in any collaborative effort. What we did  
18    have was an early meeting with two members of the Staff to  
19    define what was going to be in the actual filing as we  
20    knew it at the time.

21                    We got some feedback from Mr. Schallenberg  
22    and Mr. Henderson about what they felt were their concerns  
23    on the regulatory plan as it was known at that time. And  
24    we took those concerns into consideration as we were  
25    developing the final application in conjunction with



1 KCPL/GPE.

2 Q. And what was the date of that meeting?

3 A. It would have been toward the latter part  
4 of January, and I think Mr. Green was the individual that  
5 had a telephone conversation with the two of them and  
6 described it. I did not personally participate, but it's  
7 a matter of record in some of the e-mails that have now  
8 been made public.

9 Q. Is that January of 2007?

10 A. It would be January of 2007, yes. That's  
11 correct.

12 Q. Did Aquila engage other parties, such as  
13 the Staff or the Office of Public Counsel, in discussion  
14 of the proposed merger agreement before executing it?

15 A. As I indicated, the only conversation we  
16 had -- I'm sorry. Would you repeat that question again?

17 Q. Did Aquila engage other parties, such as  
18 the Staff and the Office of the Public Counsel, in any  
19 discussion of the proposed merger agreement before  
20 executing it?

21 A. No, we did not. We couldn't under  
22 confidentiality agreements.

23 Q. Did Aquila engage other parties, such as  
24 the Staff or the Office of Public Counsel, in discussion  
25 of the proposed merger agreement before applying for its

1 approval before this Commission?

2 A. Just in the one instance that I mentioned.

3 Q. And what was the date of that again?

4 A. That was the January 24th time frame, I  
5 believe, or 27th time frame.

6 Q. Of 2000?

7 A. Of 2007. Sorry.

8 Q. Sorry. Yes, 2007. You referenced some  
9 confidentiality agreements. Who were the other parties to  
10 those agreements?

11 A. My recollection was anybody that was  
12 participating in the process to look at acquiring Aquila  
13 had confidentiality agreements that were created, and so  
14 we had to maintain those confidences up until the time  
15 where they were mutually agreeable to release.

16 Q. So if those other parties, such as Great  
17 Plains, had agreed, you could have come before the  
18 Commission or Staff or Public Counsel?

19 A. That's in effect what happened when the  
20 meetings were held prior to the announcement of the  
21 merger, that we mutually agreed that it would be  
22 beneficial to have the meeting -- meetings as have been  
23 described.

24 Q. Could that have happened any earlier?

25 A. We didn't -- we were right down until the

1 end of the negotiations, and then once you get to that  
2 point, you want to make sure that you get something  
3 announced and out in the public so it doesn't leak into  
4 the public. So it would have been very difficult if not  
5 impossible to have an extensive collaboration and release  
6 of confidentiality prior to when it occurred.

7 Q. As a regulatory officer, is it Aquila's  
8 normal practice to attempt to engage all parties in  
9 discussions as a best effort to settle?

10 A. Yes, it is.

11 MS. KLIETHERMES: If I could approach?

12 JUDGE DIPPELL: Go ahead. Would you like  
13 this marked as an exhibit?

14 MS. KLIETHERMES: Yes, please.

15 JUDGE DIPPELL: The next number is 117.

16 (EXHIBIT NO. 117 WAS MARKED FOR  
17 IDENTIFICATION BY THE REPORTER.)

18 BY MS. KLIETHERMES:

19 Q. Have you had a moment to familiarize  
20 yourself with this document?

21 A. Yes, I have.

22 Q. And what is this document?

23 A. This is a Data Request from Bob  
24 Schallenberg to Aquila dated September 5th, 2007, asking  
25 us to provide a copy of Aquila's current strategic

1 business plan.

2 Q. And what was the number of that Data  
3 Request?

4 A. Data Request No. MPSC-0305.

5 Q. And who answered that Data Request?

6 A. Jon Empson.

7 Q. Are you familiar with Mr. Empson?

8 A. Yes, I am. I answered the Data Request.

9 Q. What was the date you answered that request  
10 on?

11 A. It was due on September 12th, and it was  
12 answered on September 12th, 2007.

13 Q. Now, I believe that this response on the  
14 first page identifies that there are two attachments. Is  
15 there only one attachment provided here today?

16 A. Yes, there is, just Attachment A.

17 Q. And is that document labeled Attachment A a  
18 portion of Aquila's response to this Data Request?

19 A. Yes, it is.

20 Q. Looking at the value section of your  
21 response, are collaborative approaches consistent with  
22 your value of open communication?

23 A. Yes, they are.

24 Q. What is your personal responsibility  
25 regarding the processing of this case?

1           A.       Well, as the officer responsible for our  
2     regulatory processes, I am responsible for trying to  
3     provide the best information to the Commission so they can  
4     make a decision in favor of this transaction.

5           Q.       Consistent with your values approach, do  
6     you consider it your responsibility to have initiated a  
7     collaborative discussion in this case?

8           A.       It would be very difficult for us. We're  
9     in a secondary position, and what we had to do was, given  
10    we don't understand the financial modeling of what is  
11    required by Great Plains, they really had to be taking the  
12    lead. We did talk at times about feedback and ways to  
13    move forward, but we viewed that as their determination of  
14    when and if to engage in any further collaborative  
15    processes.

16          Q.       If this merger is approved, do you know if  
17    it will be the policy of the merged company to, on a  
18    going-forward basis, at a minimum attempt to engage all  
19    parties in discussions?

20          A.       If the merger is to go ahead?

21          Q.       Yes. And that would be in reference to  
22    future cases that the company may be involved in.

23          A.       That is my understanding, that Mr. Chesser  
24    has stated his desire and interest of engaging in  
25    collaborative processes.

1           Q.       After the 1996 merger attempt, why did the  
2       companies that we today call Aquila and GPE wait ten years  
3       to attempt another merger similar transaction?

4           A.       I can't answer that.

5           Q.       You don't know?

6           A.       I guess there was not an opportunity where  
7       either party had an interest until we engaged in the  
8       formal process where we were having our company bid for  
9       sale.

10          Q.       At one point was there a possibility that  
11       Aquila would file a rate case in conjunction with the  
12       merger that's before us today?

13          A.       Yes.

14          Q.       Was this rate case suggested by GPE in its  
15       bid to acquire Aquila?

16          A.       It was suggested by GPE, not in the formal  
17       bid document that they had, if I recall correctly, but it  
18       was one of those elements that in their initial regulatory  
19       plan that they had listed.

20          Q.       At the time the parties were contemplating  
21       that rate case, was it intended that regulatory  
22       amortization would be addressed in that rate case?

23          A.       Yes, it was.

24          Q.       At the time the parties were contemplating  
25       that case, was it contemplated that the impact of any

1 regulatory amortization and Aquila's South Harper  
2 litigation costs would have come up?

3 A. I'm sorry. Would you repeat that question  
4 one more time?

5 Q. At the time the parties were contemplating  
6 that rate case, was it contemplated that the impact of the  
7 regulatory amortization and Aquila's South Harper  
8 litigation costs had been an issue in that case?

9 A. I need to separate those two elements  
10 because you talk about the amortization. The amortization  
11 would have been another factor within the context of the  
12 rate case, but the South Harper litigation costs were not  
13 something that we have ever tried to recover in rates and  
14 would not have included in the rate case filing.

15 Q. Well, allow me to be more clear, then.  
16 Would it have been possible that the interaction of those  
17 two, in what way and how and to what degree those two  
18 might interact would have been an issue in the rate case?

19 A. I don't believe the litigation costs would  
20 have been an issue on how they would interact because  
21 those costs were retained at our corporate level and would  
22 not be allocated down to the utility which you're looking  
23 at for the amortization. But again, the actual mechanics  
24 of how the formulas are used within the amortization  
25 process I'm not very knowledgeable about.

1           Q.       Well, and that's what I'm asking. If those  
2 mechanics of how those two issues would interact, would  
3 that have likely come up in the rate case, to the best of  
4 your knowledge?

5           A.       I really don't have enough knowledge of the  
6 mechanics to know if it would have come up or not. So I  
7 can't answer that question.

8           Q.       At the time the parties were contemplating  
9 that rate case, was the interaction of any regulatory  
10 amortization and Aquila's actual cost of debt, would that  
11 have been a likely matter?

12                   MS. PARSONS: I'm going to object to that  
13 question. First of all, I'm not sure it's relevant to the  
14 proceedings here. And second, I think the question was  
15 ambiguous and speculative.

16                   MS. KLIETHERMES: I can address any  
17 ambiguity that may have been there in a rephrasing, but I  
18 think this is highly relevant. This is how GPE had  
19 initially characterized its attempt to take over Aquila.

20                   MS. PARSONS: But the 2007 Aquila rate case  
21 is not part of this proceeding. It was not requested in  
22 the application. Therefore, it's not relevant to these  
23 proceedings.

24                   MS. KLIETHERMES: I believe our questioning  
25 goes to why it was not requested.



1 MS. PARSONS: Well, that's -- then perhaps  
2 you should ask that question.

3 JUDGE DIPPELL: Okay. Ms. Kliethermes, I'm  
4 going to ask you to rephrase your question. I'll overrule  
5 the relevance objection.

6 BY MS. KLIETHERMES:

7 Q. At the time the parties were contemplating  
8 a 2007 rate case, was it within the contemplation of the  
9 parties that the rate case would have provided a forum for  
10 the discussion of regulatory amortization and Aquila's  
11 actual cost of debt among the parties to that rate case,  
12 which are also the parties to this case here?

13 A. In those discussions, the only element that  
14 we were looking at was the amortization. I remember no  
15 discussions about the actual cost of debt being in the  
16 rate case. That's something that we do not do ordinarily,  
17 we have not been doing in the filing of our rate cases.  
18 So I can't answer it any more than that.

19 Q. At the time the parties were contemplating  
20 that rate case, would the recovery of transaction,  
21 transition and synergy retention have been a likely matter  
22 of discussion?

23 A. Yes.

24 Q. Was Aquila able to persuade GPE to remove  
25 its request for an Aquila rate case from its bid to

1     acquire Aquila?

2             A.       We had interaction, and after a lot of  
3     dialog between our regulatory and accounting people and  
4     their regulatory and accounting people, they realized that  
5     a rate case was not required, but did put into the merger  
6     agreement a section that if we did not meet a specified  
7     credit metric, that they would require us to file a rate  
8     case that would be consistent with the regulatory plan  
9     filed in the merger agreement or the merger application,  
10    and that is part of the merger agreement.

11            Q.       At any time did Aquila insist that GPE not  
12    engage the parties in this case to a collaborative process  
13    to attempt to resolve issues or reach an overall  
14    settlement?

15            A.       No.

16            Q.       In its past rate cases, has Aquila utilized  
17    a collaborative approach to dispose of issues?

18            A.       Yes.

19            Q.       In its contemplation of the 2007 rate case,  
20    did Aquila intend or foresee the use of a collaborative  
21    approach to settle or at a minimum discuss with other  
22    parties the level of merger-generated synergies?

23            A.       I'm sorry. State that one more time so I  
24    make sure I understand it.

25            Q.       Certainly. In its contemplation of a 2007

1 rate case, did Aquila intend or foresee the use of a  
2 collaborative approach to settle or at a minimum discuss  
3 with other parties the level of merger-generated  
4 synergies?

5 A. Yes. It would have been after we had filed  
6 the application and going through the typical interaction  
7 process.

8 Q. In its contemplation of a 2007 rate case,  
9 did Aquila intend or foresee the use of a collaborative  
10 approach to discuss with other parties the regulatory  
11 amortization?

12 A. Yes.

13 Q. In its contemplation of a 2007 rate case,  
14 did Aquila intend or foresee the use of a collaborative  
15 approach to discuss with other parties Aquila's interest  
16 costs?

17 A. It would not have been part of our base  
18 rate case application. The whole process that was  
19 initially proposed was that Kansas City Power & Light was  
20 going to file their rate case, we were in an existing rate  
21 case, the merger application would be filed, and then we  
22 would file a rate case, and all three applications would  
23 be consolidated into a single decision, hopefully by the  
24 end of the year of 2007.

25 So while our rate case itself would not

1 have had a request for anything different than what we  
2 were talking about within the context of our normal rate  
3 case, I can't speculate to what that composition would  
4 have been because all the dynamics of the regulatory plan  
5 have changed. There's no longer a rate case there, and  
6 the composition is totally different.

7 Q. So then to clarify, is it your testimony  
8 that the reason that the 2007 rate case wouldn't have  
9 provided a forum for the issues of interaction of the  
10 regulatory amortization with interest costs, the South  
11 Harper litigation costs and Aquila's actual cost of debt,  
12 you say that's because it would never have been Aquila's  
13 intention to attempt to vary the way that it has insulated  
14 ratepayers from those matters?

15 A. Within the context of the rate case, and we  
16 had an obligation to file the rate case consistent with  
17 the regulatory plan that would have been submitted with  
18 the original application. So those elements of the  
19 regulatory plan at the time we filed the application were  
20 50/50 sharing of synergies, were recovery of transaction  
21 and transition costs, and the authority to future use of  
22 amortization. So those are the three elements that we  
23 would have been addressing that would have been  
24 consolidated into this larger docket.

25 Q. So then Aquila wouldn't have attempted to

1 use the regulatory amortization to recover its difference  
2 in actual energy costs -- interest costs rather from its  
3 interest costs for ratemaking purposes?

4 A. As a standalone entity, we would not.

5 Q. And as a standalone entity, Aquila wouldn't  
6 have attempted to use regulatory amortization to recover  
7 any potential South Harper litigation costs?

8 A. I don't -- I don't understand the linkage  
9 between the two of those. We would not have -- on a  
10 standalone basis, we made the decision, based upon our  
11 credit rating, that we would not seek amortization to  
12 elevate us up to investment grade and then to sustain.  
13 But the tie between South Harper litigation costs, I don't  
14 understand the link, because we're not going to -- we have  
15 not requested the recovery of the South Harper litigation  
16 costs.

17 Q. Did elimination of the rate case that had  
18 been proposed for 2007 obviate the need for Aquila to  
19 engage other parties in a collaborative approach  
20 concerning any of the issues we've just discussed?

21 A. No. As I mentioned, when the -- the merger  
22 application, this is not a merger of equals. It is really  
23 an acquisition. So the lead on collaborative processes in  
24 this application were really dependent upon the leadership  
25 of Great Plains and not our company.

1           Q.       Are you -- are you aware that the Missouri  
2   Public Service Commission Staff took the position in  
3   Aquila's last rate case that Aquila's rates for Aquila  
4   Networks - MPS should be based on the costs of five  
5   combustion turbines on a site such as South Harper owned  
6   by Aquila rather than the three combustion turbines Aquila  
7   actually installed and purchased power agreements?

8           A.       Yes, I am.

9                   MS. KLIETHERMES:   Judge, if I could offer  
10   the admission of, I believe it's Staff's 117.

11                  JUDGE DIPPELL:   Would there be any  
12   objection to Exhibit 117?   That's Data Request 0305.

13                  MS. PARSONS:   No objection.

14                  JUDGE DIPPELL:   Seeing no objection, I will  
15   receive that into evidence.

16                   (EXHIBIT NO. 117 WAS RECEIVED INTO  
17   EVIDENCE.)

18                  MS. KLIETHERMES:   That's all the questions  
19   I have.   Thank you, Mr. Empson.

20                  THE WITNESS:   Thank you.

21                  JUDGE DIPPELL:   Public Counsel?

22                  MR. MILLS:   Is it my turn?

23                  JUDGE DIPPELL:   I'm sorry.   I forgot I have  
24   to reverse my order.   Aquila?   No.   I'm sorry.   I'm sorry.  
25   Great Plains?

1 MR. RIGGINS: No questions.

2 JUDGE DIPPELL: Black Hills?

3 MR. DeFORD: No questions.

4 JUDGE DIPPELL: Unions?

5 MS. WILLIAMS: No questions.

6 JUDGE DIPPELL: And my absentee group,  
7 Department of Energy, Dogwood Energy, Joint Municipals,  
8 City of St. Joe, City of Lee's Summit, City of  
9 Independence, City of Kansas City, Cass County, South  
10 Harper Residents?

11 (No response.)

12 JUDGE DIPPELL: Ag Processing?

13 MR. CONRAD: No questions.

14 JUDGE DIPPELL: Public Counsel? It was  
15 your turn.

16 MR. MILLS: You were right the first time.  
17 I do have a few questions. Thank you.

18 CROSS-EXAMINATION BY MR. MILLS:

19 Q. Mr. Empson, let me start with some  
20 questions about Aquila's plan to improve its financial  
21 situation on a standalone basis. You answered some  
22 questions about that from Ms. Kliethermes. When did the  
23 current iteration of that plan come into being?

24 A. This latest plan would have been in our  
25 planning process for 2007 to go out. So we presented it

1 to the board at the November board meeting. So it  
2 evolved, you know, probably the three or four months prior  
3 to that.

4 Q. Is it substantially different from the plan  
5 that you had the year before and the year before that?

6 A. It is different than the plan we had  
7 before, the year before that. I'm not sure on  
8 substantially. There are several things that have  
9 occurred during that time frame that have improved the  
10 overall plan.

11 Q. Have those things improved your situation  
12 to a greater degree than the initial iterations of your  
13 financial improvement plan contemplated?

14 A. It's not truly inconsistent. I think our  
15 vision had, in the original financial plan, they were  
16 looking at in 2000-2003 was projecting that we could get  
17 out to investment grade, if I remember correctly, by about  
18 2012 when we knew the 14 and 7/8 and 995s would become  
19 due, so that higher interest was gone. The path to  
20 getting there now is a little different than it was back  
21 then, and so the elements are different and the timing is  
22 a little quicker, and the opportunity to further expedite  
23 are a little greater.

24 Q. In what -- what is your credit rating now?

25 A. B plus. Sorry. B plus.



1           Q.       And I believe you stated that you  
2 anticipate getting to double B by 2009 or --

3           A.       We will meet the double B metrics in 2008.

4           Q.       2008. Okay. When were you most recently  
5 upgraded?

6           A.       During this year sometime. I really don't  
7 recall exactly.

8           Q.       And let me just ask you about the baseline,  
9 because I think the numbers you're giving are consistent  
10 with the baseline as you've described it; is that correct?

11          A.       Correct.

12          Q.       Does the baseline contemplate any rate  
13 cases in Missouri?

14          A.       Yes, it would.

15          Q.       How many and when?

16          A.       I believe there are two baseline cases, and  
17 the exact timing is kind of dependent upon when we finish  
18 some of our environmental upgrades that were currently put  
19 into place -- that we're currently putting into place so  
20 we can make sure they get into cost of service, followed  
21 up by the one when Iatan construction is completed, so  
22 that we would get basically the environmental upgrades in  
23 the Iatan plant into base rates.

24          Q.       So is it -- am I understanding you correct  
25 to say that you will have one after Iatan 2 goes into

1 service and one between now and then?

2 A. We'll have one for the environmental  
3 investments that we are making and then one when Iatan 2.  
4 My recollection of the assumptions, those were the two  
5 primary rate cases in Missouri.

6 Q. And what environmental retrofits or  
7 upgrades are you talking about?

8 A. The ones required in Iatan 1 investments,  
9 and we also have some on Sibley that we're putting into  
10 service, but I can't give you any more detail than that.

11 Q. Do you know if the ones on Iatan 1 are  
12 complete?

13 A. I do not.

14 Q. Are you familiar at all with the current --  
15 the currently pending KCPL rate case?

16 A. From a far distance.

17 Q. You don't know whether KCPL is seeking  
18 recovery of Iatan 1?

19 A. I do not know the details on that.

20 Q. What is the timing of the other  
21 environmental upgrades that you mentioned?

22 A. To get into service in time for our next  
23 rate case, whenever the true-up period is for the rate  
24 case. They're installing some of the FCR equipment now.  
25 I just don't know when it's going to be completed. As

1 soon as it's completed, that's when we intend -- or know  
2 when it's going to be completed, we intend to file the  
3 case.

4 Q. Now, is there a date in this plan after  
5 which you would ask the PSC to allow you to set rates  
6 based on actual debt costs?

7 A. Which plan are you referring to, Mr. Mills?

8 Q. The financial plan you've been talking  
9 about, the plan -- your standalone plan to improve  
10 Aquila's financial situation over the coming years.

11 A. We intended to comply with our current  
12 capital allocation process. So when those debt issues  
13 expired, when they became due in July of 2012 or 2011 and  
14 additional debt was needed then for supporting our  
15 Missouri operations, we would then go out and raise that  
16 debt and have it populate the capital structure to support  
17 those utility operations.

18 So the soonest -- and I'm aware that some  
19 of the 2012s are supporting the Missouri operation. I'm  
20 not sure about the 2011s. So I would say the earliest  
21 would be 2012.

22 Q. And if for some reason at that point in  
23 time Aquila is not investment grade and so replacement  
24 debt was not at investment grade rates, would Aquila seek  
25 to put those in at actual rates or at the lower investment

1 grade rates?

2 A. Lower investment grade.

3 Q. And I think I understand this, but let me  
4 just ask you. When Aquila committed to protect ratepayers  
5 from its non-reg activities, was there ever an end date  
6 contemplated, that this is just going to stop at some  
7 particular year?

8 A. There was not.

9 Q. So when you and Mr. Green made that  
10 commitment, it was essentially open ended until such time  
11 as there were no longer detrimental effects from  
12 non-regulated activities; is that correct?

13 A. Or there was an opportunity to create  
14 incremental value that offset that potential detriment so  
15 that we could create value for our customers. So as with  
16 any type of analysis that you're doing, you're going to  
17 continue to look for those opportunities to create greater  
18 value or benefit for your customers.

19 Q. Now, under your standalone financial plan,  
20 is there a date at which Aquila anticipates being able to  
21 pay dividends to its shareholders?

22 A. I don't recall.

23 Q. You don't know whether there is or not?

24 A. I know there was a discussion, but no, I do  
25 not recall whether there was a specific date.

1           Q.     Now, you've been involved in utility  
2 regulation for quite a number of years; is that correct?

3           A.     Yes, sir.

4           Q.     When you're -- you first saw GPE's  
5 regulatory plan, did you say to yourself, wow, they're  
6 asking for a lot?

7           A.     That wasn't my reaction. My reaction was I  
8 need to sit down and understand their rationale for why  
9 they're asking for what they're asking, and then to make a  
10 determination that I could advise our board and our  
11 management whether given what they are requesting is  
12 something I feel we could get approved.

13          Q.     So you won't mind if I quote you as saying,  
14 when you saw that you said, I need to sit down?

15          A.     If you so choose to do that, Mr. Mills, I  
16 will accept it.

17          Q.     Now, are you on Aquila's board of  
18 directors?

19          A.     I am not.

20          Q.     Do you participate in board meetings?

21          A.     Yes, I do.

22          Q.     Frequently or rarely?

23          A.     Whenever I'm in town and able to  
24 participate, I try to participate.

25          Q.     Now, in your -- in your most recent rate

1 case, the 2007-004 case -- 0004 case, do you know what the  
2 difference was between Aquila's actual cost of debt  
3 assigned in Missouri and the cost of debt agreed to in  
4 that case?

5 A. My recollection was that what we had  
6 assigned as the cost of debt was accepted by the parties  
7 as what we have put into rates, and even though the  
8 statement I believe was made by Mr. Parsells, he doesn't  
9 agree with our debt assignment process, he wasn't sure how  
10 to modify it in order to come up with a different number  
11 and felt what we had was reasonable.

12 Q. I understand that. There was an  
13 agreed-upon cost of debt in that case. My question is,  
14 how much does that agreed-upon cost of debt differ from  
15 the actual cost of debt assigned to Missouri operations?

16 A. The agreed-upon is the actual cost of debt  
17 that we have assigned to Missouri.

18 Q. Okay. What is the difference between that  
19 amount and the cost of debt that is supported by the  
20 14 7/8 and the 11 percent debt?

21 A. I'm not sure again of the sliver that might  
22 have been assigned, what that delta was. All I know is  
23 there is an element of our 14 7/8 that was assigned. I  
24 just don't know the percentage of our total debt cost that  
25 was for that debt issuance.

1           Q.       You said a sliver. Do you think it's an  
2 insignificant amount?

3           A.       You know, from my perspective, I didn't  
4 really look at that. I was just looking at how we were  
5 going through the process of assigning the debt cost and  
6 whether it was consistent with our past practices.

7           Q.       Now, you talked about confidentiality  
8 agreements, and what confidentiality agreements prevented  
9 you from talking to Staff and OPC before the merger  
10 announcement?

11          A.       My understanding is that we had signed  
12 confidentiality agreements with both parties, all the  
13 parties that were looking at the transaction, and we did  
14 not make an ultimate decision on who -- if we were going  
15 to go forward with the transaction until January time  
16 frame. So my understanding is that neither party had the  
17 ability to go public with any type of information or have  
18 those agreements unless it was mutually agreed to.

19          Q.       And when you say all the parties, who do  
20 you mean?

21          A.       Any of the interested bidders that were  
22 looking at our company from the time we started this  
23 process until the end.

24          Q.       So you're not limiting that just to GPE and  
25 Black Hills and Aquila, you're talking about other bidders

1 as well?

2 A. Yes.

3 Q. Okay. Have you -- did you need to get  
4 releases from those confidentiality agreements in order to  
5 talk to regulators before the announcement?

6 A. My understanding, because we had some  
7 discussion about it, that we had to give verbal  
8 agreement -- I don't know if it was a formal release or  
9 not, but verbal agreement that it would be appropriate for  
10 Great Plains to go ahead and talk to Missouri and Kansas  
11 regulators, and that they had to agree that it was okay  
12 for us to also do such things.

13 Q. Were any of the other bidders involved in  
14 that particular process?

15 A. None of the other bidders, but Black Hills  
16 was involved in that process because we had meetings in  
17 the states that they were acquiring the properties also.

18 Q. Has Aquila sought releases from any of the  
19 other bidders, other bidders other than GPE and Black  
20 Hills to be able to release confidential information that  
21 was provided by those bidders?

22 A. To the best of my knowledge, no.

23 Q. And when I say bidders, I'm talking about  
24 people involved in the process, not necessarily they made  
25 formal bids, but whether they got involved enough to get



1 to the point of needing a confidentiality agreement.

2 A. Correct. My understanding is that they are  
3 still binding confidentiality agreements.

4 Q. Has Aquila sought any releases from any of  
5 those other parties?

6 A. To the best of my knowledge, we have not.

7 Q. Do you know whether you have  
8 confidentiality agreements with any of the consultants  
9 that assisted Aquila in evaluating bids, particularly the  
10 GPE/Black Hills bid?

11 A. I do not.

12 Q. Are you familiar with consultant contracts  
13 that do have confidentiality provisions in them through  
14 your experience as a regulatory --

15 A. Yes, I am.

16 Q. Do those agreements typically allow the  
17 consultants to decide whether or not the confidential  
18 information is released?

19 A. I'm sorry. I don't know.

20 Q. Now, let me just ask you because you may  
21 not be familiar enough to answer it, but do you know  
22 whether the regulatory amortizations that GPE now has are  
23 based on actual cash flows and actual coverage ratios?

24 A. I'm sorry. I do not know.

25 Q. Do you know whether in past Aquila rate

1 cases there have been issues about whether the actual cost  
2 of the South Harper facility should be included in rates?

3 A. I believe, if I recall right, there were  
4 some questions about the value that would go into rates.  
5 I don't remember the specifics right now.

6 Q. But it came up as an issue?

7 A. Yes, it did.

8 Q. Do you know whether Aquila in at least the  
9 rate case before the last one agreed to a hypothetical  
10 rate base amount for the South Harper facilities?

11 A. I don't recall it being a hypothetical  
12 amount. I think there was a base amount with some  
13 adjustments that we agreed to on some costs that wouldn't  
14 be recovered. I don't remember on the South Harper three  
15 turbines themselves it being hypothetical. I think  
16 Mr. Williams talked about the five turbines. There were  
17 two, what we called the phantom turbines that might have  
18 been based on a hypothetical.

19 Q. And I believe you testified that, at least  
20 in your most recent rate case, that the actual cost of  
21 the -- the high cost debt, the 14 7/8 and the 11 was not  
22 included in rates; is that correct?

23 A. That is correct. Whatever portion might  
24 have been needed as a debt cost to support the capital  
25 structure would have been put in at the then investment

1 grade rate.

2 Q. Now, with respect to the idea of -- that I  
3 think you described as one of the regulatory approaches  
4 being discussed was to have KCPL file a rate case, then  
5 KCPL, GPE and Aquila file a merger case, then Aquila file  
6 a rate case, and then all of those be consolidated?

7 A. That was an initial discussion for a  
8 potential plan, yes.

9 Q. Did you ever approach Staff or Public  
10 Counsel or any of the typical intervenors in your cases to  
11 discuss the idea of kind of a three-way combination with  
12 them?

13 A. My understanding was that the concept of  
14 having a 2007 rate case as part of the merger consolidated  
15 application was discussed with Mr. Schallenberg and  
16 Mr. Henderson, but that's the extent of the parties that  
17 you listed.

18 Q. Are you aware of, in Missouri, a rate case  
19 filed by one electric company being consolidated with one  
20 filed by another electric company?

21 A. Am I aware that that has occurred before?

22 Q. Yes.

23 A. I am not.

24 MR. MILLS: Those are all the questions I  
25 have. Thank you.

1 JUDGE DIPPELL: All right. Then is  
2 there -- are there questions from the Bench for  
3 Mr. Empson? Commissioner Appling?

4 COMMISSIONER APPLING: Judge, I have no  
5 questions of this witness.

6 JUDGE DIPPELL: Commissioner Jarrett?

7 COMMISSIONER JARRETT: No questions.

8 JUDGE DIPPELL: Chairman Davis?

9 QUESTIONS BY CHAIRMAN DAVIS:

10 Q. Good afternoon, Mr. Empson.

11 A. Good afternoon, Mr. Davis.

12 Q. I only have a few questions, but maybe I  
13 can -- you can help me get to some answers here. Are you  
14 familiar with Blackstone Group's participation in this  
15 transaction?

16 A. Yes.

17 Q. Okay. Would you characterize their role as  
18 a financial advisor to Aquila in connection with the  
19 proposed transaction?

20 A. Yes.

21 Q. Okay. Do you recall how much Blackstone  
22 Group was paid by Aquila or was paid for advising Aquila  
23 in this process?

24 A. I do not recall. I think that's in our  
25 prospectus.

1           Q.       Right.  So if I said it was roughly  
2     \$11 million, you'd have no reason to doubt that, would  
3     you?

4           A.       I'd have no reason to doubt it.

5           Q.       Okay.  Now, are you familiar with the SEC  
6     filings that were made pursuant to the merger?

7           A.       I would have read them at the time they  
8     were filed, so that familiarity might fade over time.

9           Q.       Okay.  Do you recall Blackstone putting a  
10    valuation on Aquila?

11          A.       Yes, I do.

12          Q.       Okay.  Do you recall -- do you recall what  
13    that valuation was on a per share basis?

14          A.       We have three different valuations  
15    performed, so I don't know if I can recall specifically  
16    the Blackstone valuation, but I believe that Blackstone,  
17    Lehman and Evercor all had separate evaluations that might  
18    have ranged from a low point of like \$2.80 to a high point  
19    of maybe \$4.11.

20          Q.       Okay.  So if we went back and looked at the  
21    SEC filings, I believe this may be dated March 6, 2007,  
22    there was a document entitled Aquila, Incorporated  
23    Investor Q&A.  It was filed as an exhibit to, I guess,  
24    whatever the 14A filing is.  It was also referenced on  
25    page 9 of Mr. Fleener's direct testimony.  It was just a

1     fleeting reference.

2                     In terms of a value per share basis,  
3     Blackstone estimated on the low side \$2.50 per share and  
4     on the high side \$3.56 per share. Do you have any reason  
5     to doubt those numbers?

6             A.     I doubt that that's what the numbers are in  
7     the SEC filing.

8             Q.     Okay.

9             A.     I'm sorry, Chairman. Is that your  
10    question, whether I doubt that?

11            Q.     Well, do you have any reason to doubt those  
12    numbers?

13            A.     Well, those were done at a point in time of  
14    the information that would have been available at the time  
15    of the filing. So the numbers obviously, if things have  
16    changed since the time of filing, could be different and  
17    could have been upgraded.

18            Q.     Okay. So at the time, back in March, did  
19    Blackstone value the shares of Aquila at a low of \$2.50  
20    and at a high of \$3.56?

21            A.     I don't have the document in front of me,  
22    but if you're reading from the document, I have no reason  
23    to doubt that you are reading it as accurately as  
24    possible.

25            Q.     Okay. And so if we took the midpoint of

1     \$2.50 and \$3.56, that would be \$3.03 per share, correct?

2             A.       That's correct.

3             Q.       Okay. And how much did -- how much  
4     consideration is being provided to Aquila by GXE on a per  
5     share basis? Do you recall?

6             A.       At the time that they made the offer, it  
7     was -- it would have been the equivalent to about \$4.54 a  
8     share, but that value changes over time because it's  
9     dependent on their share value at the time we close.

10            Q.       So it's dependent on their share value at  
11    the time this transaction actually closes?

12            A.       That is correct. There are two components  
13    of determining the price they pay. They pay a cash price  
14    of \$1.80 per share times the 375 million shares.

15            Q.       Right.

16            A.       Then we convert our shares at a rate of  
17    .0856 times the 375 million shares times their current  
18    price. At the time of the transaction, it was a little  
19    over \$32.

20            Q.       Right.

21            A.       It's currently around probably 29. So the  
22    value -- 29 and change. The value would then be lower as  
23    far as the actual price they're paying for the company.

24            Q.       Okay. But I guess this was all  
25    contemplated at the time this was -- this deal was agreed

1 to, was it not?

2 A. Yes. At the time the deal was agreed to,  
3 the equivalent value would have been about \$4.54. We were  
4 trading in the market at about \$4.70.

5 Q. So Blackstone's valuation was between \$2.50  
6 and \$3.56 per share?

7 A. That is what you stated, yes, in the  
8 documents.

9 Q. So how is that not an acquisition premium?

10 A. The valuation that they are basing their  
11 numbers on aren't based upon a determination of net plant  
12 that we have in utility service. They're looking at  
13 discounted cash flow methodologies based upon certain  
14 assumptions that they made, other methodologies, but it  
15 isn't a multiple -- or trying to look at the net plant we  
16 have in Missouri or other jurisdictions and trying to  
17 determine what the price should be paid.

18 Q. So setting aside all of the lengthy  
19 qualifications in Blackstone's analysis, which is it fair  
20 to -- is it fair to sum up Blackstone's analysis in that  
21 we just checked the math of the parties that they gave us?

22 A. I'm sorry. I didn't understand your  
23 question.

24 Q. Is it -- would it be fair to characterize  
25 all these qualifications that Blackstone put in their



1 analysis of the transaction as stating in essence all we  
2 did was check the math? They didn't actually look to  
3 verify any underlying assumptions, did they?

4 A. No. My recollection is they did look at  
5 some of the underlying assumptions in some business plans  
6 that they looked at at the time.

7 Q. So they did look at some, but not --  
8 certainly not all?

9 A. The reason we have Mr. Fleener as a witness  
10 here is to get into the details, because he was the  
11 primary person. So I can't tell you exactly what they  
12 looked at when they were doing that value, but I know he  
13 will be more than willing to get into a lot of detail with  
14 you on that.

15 Q. Okay. So if it's \$4.54 a share and there  
16 are 375.4 million shares outstanding, and then let's just  
17 say that the stock price is \$30 a share. Do you have a  
18 calculator there? Can you add that up for me?

19 A. At \$30 a share?

20 Q. Uh-huh.

21 A. The share component would be \$963 million,  
22 the cash component would be \$675 million, so the total  
23 would be \$1,638,000,000.

24 Q. So if Blackstone listed the equity value  
25 somewhere between \$939,000,000 and \$1,339,000,000, that

1 number is less than the number you just gave me, correct?

2 A. The number is less. I'm not sure the basis  
3 of their calculation, Mr. Chairman. Again, I think  
4 getting to the details of the transaction --

5 Q. You didn't -- you don't think Aquila paid  
6 them \$11 million to be wrong, do you?

7 A. I do not. I don't have the documents in  
8 front of me to look at all the assumptions, analyses.  
9 That's why we chose to have Mr. Fleener here, so if there  
10 are questions about the details, he can best address them  
11 to make sure we're comparing apples and apples. I am not  
12 capable of doing that this far removed from the data.

13 Q. Right. So if we took the midpoint of what  
14 Blackstone listed the equity value at, which would be  
15 \$1,119,000,000, and we assumed -- what do you -- what do  
16 you think the share price is today?

17 A. I haven't been checking, but it's between  
18 3.90 and \$4, is what I would guess.

19 Q. Okay. And then just trying to calculate  
20 out what -- what do you get with -- you get your .82  
21 shares of KCPL stock. I'm trying to figure -- that  
22 number's still going to come out about 1.6 billion, isn't  
23 it?

24 A. I'm sorry. I don't understand the  
25 calculations, Mr. Chairman.

1           Q.       All right. If KCPL is paying \$4.54 a share  
2 roughly times 375,400,000 shares, times whatever the other  
3 multiplier is, was it 29.80 or 29.70, whatever you think  
4 the share price is today, that still you just -- assuming  
5 we're just taking the big round number of what they're  
6 giving in terms of the \$1.80 equity per share that's being  
7 provided to Aquila as well as the .82 shares or whatever,  
8 you're still getting to a number of approximately  
9 1.6 billion, weren't you, or better?

10           A.       The cash value and the equity conversion  
11 value is 1 -- at the time of the transaction was  
12 \$1.7 billion. We went through the calculation of \$30. It  
13 was about \$1.6 billion.

14           Q.       Right.

15           A.       The disclosure by Kansas City Power & Light  
16 and Great Plains in their documents in the proxy estimated  
17 that at the full value they were paying a premium over our  
18 effectively rate base or net plant of \$130 million. That  
19 was at the stated price of 4.54. So there's been erosion  
20 even in a premium that was paid over the plant value or  
21 rate base value we have in the state of Missouri because  
22 their price is now less than \$32. It is now closer to  
23 \$29.50.

24                       So the total amount of money that has been  
25 paid for us is not -- or if we close today is not the

1     \$1.7 billion equity value. It's going to be closer to the  
2     1.6.

3             Q.       But if we go by Blackstone's valuation, all  
4     they're getting is 1.1, if we go by the midpoint, isn't  
5     it?

6             A.       That's an evaluation based upon a different  
7     methodology. What we're trying to look at is,  
8     understanding this is multiple transactions, we've got the  
9     Black Hills sale, we also have this, that when they looked  
10    at what the actual financial impact was going to be, there  
11    was only about a \$130 million, and that is in the proxy  
12    statement.

13            So I don't know all the mechanics to where  
14    they get there. When we look at this transaction on  
15    behalf of the customer, we can document that there is a  
16    benefit under the current proposed regulatory plan.

17            Q.       You can -- you can document that there is a  
18    benefit or you have a theory for documenting a benefit?

19            A.       We can take the numbers that we have in our  
20    application and you can show what those values are, and  
21    there are methodologies to ensure or processes to ensure  
22    that the customers will receive that benefit.

23            Q.       And who is the person that's going to do  
24    that?

25            A.       The person that will show you what that

1 process would be or --

2 Q. Yes. Is there one witness that can do  
3 that? Is that Fleener? Is that --

4 A. I'd be glad to walk through the process I  
5 used to understand this transaction in discussions with  
6 our board and could represent to them what I felt could be  
7 the benefits to our customers and to our shareholders.

8 CHAIRMAN DAVIS: Okay. All right. No  
9 further questions, Mr. Empson. Thank you.

10 JUDGE DIPPELL: Thank you. Commissioner  
11 Murray, did you have questions?

12 COMMISSIONER MURRAY: I don't believe so.  
13 Thank you.

14 JUDGE DIPPELL: Is there cross-examination  
15 based on questions from the Bench for Staff? I'm going  
16 backwards again, aren't I? I guess I should start with  
17 Great Plains.

18 MR. RIGGINS: No.

19 JUDGE DIPPELL: Black Hills?

20 MR. DeFORD: No questions.

21 JUDGE DIPPELL: Union?

22 MS. WILLIAMS: No questions.

23 JUDGE DIPPELL: I'm going to skip right to  
24 Ag Processing, if any of the other parties here.

25 MR. CONRAD: No, no questions.

1 JUDGE DIPPELL: Public Counsel?

2 MR. MILLS: Just briefly.

3 RECROSS-EXAMINATION BY MR. MILLS:

4 Q. Mr. Empson, in your experience, when a  
5 state regulatory commission awards a utility company a  
6 rate increase, does that utility's stock price usually go  
7 up in response?

8 A. I guess it would depend on the type of  
9 increase. A lot of times there will be -- the analysts  
10 are anticipating what kind of increase you are going to  
11 get, and it might be reflected in your stock price at the  
12 time of the award. If it's less than what they  
13 anticipated, your price could go down. If it's greater  
14 than they anticipated, there could be some other upward  
15 movement on that stock price. But there isn't a universal  
16 truth in my opinion anyway at the time of the award that  
17 there's some reflection on your stock price.

18 MR. MILLS: That's all I have. Thank you.

19 JUDGE DIPPELL: Staff?

20 MS. KLIETHERMES: No.

21 JUDGE DIPPELL: Is there redirect?

22 MS. PARSONS: Yes.

23 REDIRECT EXAMINATION BY MS. PARSONS:

24 Q. Mr. Empson, just a couple of questions to  
25 follow up on some of the questions the Chairman was asking

1     you. On the Blackstone evaluation -- on the Blackstone  
2     valuation, was it based on an Aquila standalone?

3             A.       That is my understanding, yes.

4             Q.       And would that evaluation have contemplated  
5     any of the synergies that are contemplated in this case?

6             A.       No, it would not.

7             Q.       And are you familiar with a C.S. First  
8     Boston valuation range?

9             A.       I am not.

10            Q.       Now I'm going to go back to some of the  
11     regular redirect. I've finished my questions regarding  
12     questions the Chairman has asked you.

13                    When you filed this application in April,  
14     did you believe that this transaction was beneficial to  
15     Aquila's customers?

16            A.       Yes, I did.

17            Q.       And can you explain why?

18            A.       At the time the transaction was initially  
19     proposed, there was \$500 million of estimated savings and  
20     about \$181 million of estimated transition/transaction  
21     costs. So if you look at the net benefit of the  
22     transaction, if you just net the two, you can see there  
23     would be \$320 million, and if it was shared, it would be  
24     \$160 million each. So just on a global view, it looked  
25     very favorable.

1                   In this transaction now, in the filing  
2     there was an agreement that we needed to update the  
3     synergy analysis to determine what the operational  
4     synergies were separate from some financial synergies, and  
5     that synergy analysis produced about \$305 million over the  
6     first five years.

7                   And as we looked at it going out for ten  
8     years, I think Mr. Giles was going through the numbers,  
9     there was a total of about \$755 million of synergies. Of  
10    those, about 152 million was going to go to Kansas City  
11    Power & Light, minus 22 and a half million dollars of  
12    transition costs. So they were going to net over ten  
13    years \$130 million. If you look at it from the customers'  
14    perspective, they were going to get \$603 million.

15                  And if you take out the 22 and a half  
16    million of synergies, the 95 million of transaction costs  
17    and about 145 million of interest cost that now would be  
18    borne by the customers, it was a net benefit of  
19    \$340.5 million over ten years.

20                  So given that kind of benefit, the  
21    challenge is then how do you get that value back to the  
22    customers under the context of a regulatory plan. And it  
23    was always our position, there was some guidance provided  
24    by Mr. Proctor in our last rate case, there was a  
25    mechanism to do that if we went down that path.



5 Q. And you mentioned Mr. Traxler and  
6 Mr. Oligschlaeger and Mr. Proctor's testimony. Is there  
7 any other consideration that you made when you were  
8 considering the regulatory plan that was being filed in  
9 this case?

25 The second part was on amortization. Our

1 initial concern when we had conversations with Great  
2 Plains/KCPL is they wanted the additional amortization in  
3 order to improve us from non-investment grade to  
4 investment grade within the context of the rate case and  
5 then to maintain it. We did not feel, given our  
6 conversations that we had had during our collaborative  
7 process, that amortization was an appropriate tool to be  
8 used to increase us from non-investment grade to  
9 investment grade.

10                   Once we got over that hurdle and we looked  
11 within the context that they were willing to apply it in  
12 the same manner that it had been applied to them, we felt  
13 it was a reasonable approach. Didn't have a lot of detail  
14 on the mechanics, but that that was a reasonable approach.

15                   The final element of their plan was the  
16 transition and transaction costs. If you lump them  
17 together in the cost to achieve, knowing some of the  
18 transaction costs were going to be challenged, and our  
19 experience just on recovery of transition costs over a  
20 ten-year period, it seemed reasonable as a starting point  
21 that you would try to recover those as part of the  
22 transaction given the level of synergies that were going  
23 to be achieved.

24                   So I went through all three elements of the  
25 plan before making the recommendation that I felt it was a

1 reasonable regulatory plan for a starting point.

2 Q. Thank you. And what is Aquila's Missouri  
3 utility property position on rates?

4 A. There's been a lot of discussion about the  
5 nature of the transaction, and I think it's really  
6 important to understand that this in my mind is a  
7 transaction of complimentary strengths. At the present  
8 time, the St. Joe rates for residential, commercial and  
9 industrial are the lowest. They are lower than what we  
10 have on MPS or what Great Plains/KCPL has. Our rates  
11 right now for commercial and industrial are lower than  
12 where Great Plains is, but our residential are about a  
13 cent per kilowatt hour higher.

14 So I think it demonstrates that we have two  
15 very strong utilities that are going to be coming together  
16 and provide the value and benefits that we have in  
17 complimentary strength on a going-forward basis for our  
18 customers.

19 MS. PARSONS: Thank you, Mr. Empson. I  
20 have no further questions.

21 JUDGE DIPPELL: Thank you. I'm going to  
22 backtrack just a little bit, quite a bit actually. In  
23 Staff's original cross-examination, you referred to the  
24 Staff report that's been premarked as Exhibit 100, and I  
25 believe at that time you referred to Appendix A, and I

1 just wanted to clarify that that's Attachment 1.

2 MS. KLIETHERMES: Okay. My apologies. I  
3 was --

4 JUDGE DIPPELL: I just wanted to make sure  
5 I had that correct.

6 MS. KLIETHERMES: That said, it may in fact  
7 be Appendix A to Attachment 1, but I'm not entirely  
8 certain on that.

9 JUDGE DIPPELL: Okay. All right. Then  
10 seeing no further questions for Mr. Empson, I believe you  
11 may step down, sir.

12 THE WITNESS: Thank you.

13 JUDGE DIPPELL: I believe that's all of the  
14 questions for Mr. Empson, so he may actually be excused.

15 All right. I'm going to take another  
16 break, and when we come back, we'll deal with the motions  
17 regarding the confidential information. So let's take a  
18 15-minute break and come back at quarter 'til.

19 (A BREAK WAS TAKEN.)

20 JUDGE DIPPELL: Okay. We're back on the  
21 record after a break, and I want to take up the issue of  
22 the pending Motions to Declassify and Motion for  
23 Protective Order and back and forth, and I am going to  
24 begin by allowing Mr. Mills an opportunity to respond to  
25 Aquila's -- well, I'll let you respond to all of it.

1                   MR. MILLS: Okay. Because I was going to  
2 start with Great Plains and Kansas City Power & Light  
3 because there's fewer documents and it's a little more  
4 straightforward.

5                   Really, the primary thrust of what KCPL and  
6 GPE is saying is that information which at the time was  
7 involved in sensitive negotiations should continue to be  
8 protected as though it's involved in ongoing negotiations,  
9 even though those negotiations have now come to fruition,  
10 are now no longer sensitive, but, in fact, most of the  
11 results of those negotiations are part of the application  
12 we have here.

13                  For example, you know, they're talking  
14 about at the bottom of page 1, the very last sentence,  
15 they claim that it is highly confidential because it deals  
16 with the strategies being employed in contract  
17 negotiations. Well, those were employed in contract  
18 negotiations, but those contract negotiations are over and  
19 we have a deal, and what we're trying to figure out is  
20 whether we have a good deal.

21                  And I think it's very relevant that the  
22 public know how this particular deal was arrived at, and I  
23 don't think there's any harm that would come to either GPE  
24 or Aquila for the public to know how those two negotiating  
25 partners got to the current deal because they're no longer

1 currently negotiating.

2                   Now, there is with respect to -- and I'm  
3 not sure that this has -- any of it has to do with the  
4 KCPL stuff, but I do understand the fact that there are --  
5 there were other bidders or at least other interested  
6 parties who are not parties to this case and who do not  
7 have an application pending before the Commission, and I'm  
8 perfectly willing to go through these exhibits and have  
9 redacted all the stuff that has to do with the other  
10 bidders and the other interested parties. There's no  
11 reason for the Commission to consider what somebody else  
12 might have bid or when they were involved in the process.  
13 I'm certainly willing to have all that stuff excised.

14                   But in terms of the negotiations that took  
15 place between GPE, Black Hills and Aquila, I don't think  
16 any of that is confidential any longer because those  
17 negotiations are over and we're dealing with the results  
18 of those negotiations. So that's my response to GPE's and  
19 KCPL's response.

20                   And I think if you go through there, you  
21 know, they're talking about assumptions supporting the  
22 bid, negotiations for its bid, being employed in its  
23 negotiations for bid, was considering as it was  
24 formulating its final bid for Aquila, governed the  
25 strategies being employed. All of the stuff at the time

1 would have been valid argument, but it no longer is.

2 With respect to Aquila's pleading, first of  
3 all, the question of standing I don't think is really  
4 relevant. There's no standing requirement for the  
5 Commission to figure out what information is confidential  
6 and is not confidential.

7 The fact that the Public Counsel raised is  
8 because -- because Aquila didn't when they designated the  
9 information I don't think is relevant. I think as a  
10 statutorily appointed representative of the public, I  
11 think I have the right at any point to come in and say  
12 this information shouldn't be hidden from the public.

13 So I don't think the standing argument has  
14 any merit at all. There's nothing in the Commission's  
15 rules that talks about who has standing or who doesn't  
16 have standing to challenge the Commission.

17 With respect to the failure to comply with  
18 the discovery dispute procedures, the discovery dispute  
19 procedures presume that we have a starting point, that we  
20 have a written document that explains why information  
21 should be considered highly confidential, and from there a  
22 party challenging it needs to call the opposing counsel  
23 and then needs to set up a conference call with the judge.

24 As I said in my motion, I think it would be  
25 patently unfair to allow the parties who consider the

1 stuff to be highly confidential to skip their part of that  
2 procedure and then expect somebody else to come in and  
3 follow through on their part. There really wouldn't be  
4 anything to even talk about because, you know, at that  
5 point we wouldn't even know why they claim the stuff was  
6 highly confidential.

7                   Now, with respect to the specifics, a lot  
8 of what Aquila says -- well, not a lot, but one of the  
9 arguments they make is very similar to the one I've  
10 already addressed with KCPL, which is that this is -- this  
11 is contract negotiations. Well, contract negotiations  
12 should not be protected forever. They should be protected  
13 when the results and the ability of the negotiating  
14 parties could be affected by disclosure of the information  
15 to the public.

16                   We're way past that. The contract is in  
17 place. Disclosure of this information can't affect in any  
18 way the terms of the agreement. It's already been entered  
19 into. So it's not sensitive in that sense.

20                   There is an argument in Aquila's motion  
21 that, boiled down, is simply that communications to and  
22 minutes of boards of directors meetings should ipso facto  
23 be considered highly confidential. Well, the Bench has  
24 already ruled on that by yesterday declassifying certain  
25 portions of communications to Aquila's board.



1                   There's nothing in the Commission's rules  
2   that says that simply because it's minutes of a board  
3   meeting or it's a letter sent to a board, that it should  
4   be confidential. I don't think there's any merit to that  
5   argument whatsoever, and the Commission's already  
6   recognized that.

7                   And, for example, I don't disagree with  
8   Aquila on the standard that the Commission should look at.  
9   If there is a legitimate reason for some of this stuff to  
10  be protected, then the Commission should evaluate the harm  
11  to whoever -- to whoever may be caused harm with the  
12  benefit to the public.

13                  In this case, I mean, if you read, for  
14  example, page 7, the first paragraph, it doesn't talk  
15  about any specific harm. And if you read through, the  
16  only real specific harm that Aquila alleges is some sort  
17  of a nebulous chilling effect on the ability of its board  
18  of directors. I don't think that the fact that certain  
19  board of directors' communications and board of directors  
20  minutes that have to do with a transaction that is subject  
21  to regulatory approval are revealed in the context of that  
22  regulatory approval should have any chilling effect on the  
23  board at all.

24                  In fact, it seems to me that, you know, the  
25  board, knowing that regulatory approvals need to be

8                               Finally, we've got the point about  
9   confidentiality agreements. Most of the information in  
10 here has to do with information exchanged between Aquila  
11 and GPE about Aquila and GPE. Aquila and GPE can waive  
12 the confidentiality agreements whenever they want. They  
13 did so when they came and they talked to the Commissioners  
14 before they made the announcement. They could do it here  
15 today.

25 Finally, with respect to confidentiality

1   agreements between Aquila and its advisors, I asked some  
2   questions of Mr. Empson about this and he really didn't  
3   know, but I would be greatly surprised -- and certainly we  
4   haven't seen these confidentiality agreements, but I would  
5   be greatly surprised if they prevent the client from  
6   revealing information that the advisor has provided to the  
7   client.

8                   When you go out and hire somebody to do an  
9   analysis for you, the person you hired to do the analysis  
10  doesn't say, well, here are your numbers, but you can't  
11  tell anybody. That doesn't work that way. When you hire  
12  somebody to do that analysis, you tell the advisor, you  
13  can't tell anybody what you get with these numbers except  
14  for me. Then since I have paid you to do this analysis, I  
15  can do whatever I want with them. We don't know if that's  
16  the case. We don't have the confidentiality agreements  
17  that they claim apply, but I would be very surprised if  
18  that was not the case.

19                   That's all I have to say in response.  
20   Thank you.

21                   JUDGE DIPPELL: Okay. I have one question  
22   for you, Mr. Mills. Are these documents that you're  
23   intending to offer as evidence at some point?

24                   MR. MILLS: Many of them have already been  
25   offered yesterday, and most of the rest I plan to offer

1 today, yes, with respect to cross-examination of  
2 Mr. Green.

3 JUDGE DIPPELL: Okay. Does Great Plains  
4 want to have one last --

5 MR. MILLS: Shouldn't the -- as the moving  
6 party, shouldn't I get to open and close, or do they get  
7 to go last?

8 JUDGE DIPPELL: I'm sorry. It was Aquila  
9 that had a motion to -- also had a pending motion. I'll  
10 let you have one more bite, too, if it comes to that. I  
11 just want to make sure that I have everything, and I have  
12 a couple questions to ask them, too.

13 MR. ZOBRIST: Judge, I just have two  
14 clarifications. I don't need to argue any more. But on  
15 page 1, we were doing this last night, and some of my  
16 sentences are off, but in the first -- the bottom  
17 paragraph of page 1 of Great Plains Energy's opposition,  
18 it should be -- in the second sentence, in paragraph 1 of  
19 page 2, it should be sentence 4, and I meant to refer to  
20 the sentence that starts that communication as opposed to  
21 there. So if you're looking for that sentence, you might  
22 not have been able to find it.

23 JUDGE DIPPELL: I'm sorry. Tell me again  
24 where that is.

25 MR. ZOBRIST: Three lines up from the

1 bottom where it says, sentence three, quote, their  
2 communication. Judge, it should read sentence four,  
3 instead of there, that. Then on page 2, there's a  
4 correction in the third paragraph, second line. It now  
5 reads, however, sentence three describes the specific  
6 dollar amounts. It should read sentence four.

7 That's all I have, and I'd be glad to  
8 answer any questions you have.

9 JUDGE DIPPELL: Okay. Actually, I think my  
10 question is for Aquila. Did Aquila have anything?

11 MS. PARSONS: Yes, I do. Did you have  
12 questions you wanted to ask now or do you want to wait?

13 JUDGE DIPPELL: Go ahead with your  
14 statement.

15 MS. PARSONS: Well, I'd like to respond to  
16 some of the comments Mr. Lewis made. First of all, I  
17 think the rule clearly establishes that strategies  
18 employed in the past tense during contract and  
19 consideration of contract negotiations is -- would protect  
20 any documents, including all of our board materials  
21 related to any strategies that were considered in  
22 negotiating the merger agreement.

23 The rule doesn't say after the agreement is  
24 signed and executed, that the HC designation should be  
25 released. The rule is meant to protect HC documents until

1   there's -- until it's -- it could be 'til infinity.  
2   There's nothing in the rule that says that the protection  
3   ends at a certain time once one of these one through seven  
4   conditions have been met.

5                   In addition, I think that the strategies,  
6   by disclosing the information that Mr. Lewis has asked  
7   Aquila to disclose, would -- first of all, it discloses  
8   mental impressions of our board members. It discloses  
9   strategies that our board members undertook in putting  
10  this agreement together. It discloses the path the board  
11  took.

12                   If a transaction like this ever -- if for  
13  some reason this deal doesn't close and Aquila has to  
14  enter -- or decides to enter into some future agreement,  
15  all of those strategies will be disclosed to the public  
16  which could put -- which could be detrimental to Aquila's  
17  position.

18                   And in addition, Mr. Lewis argued that  
19  there should be some -- that there's some benefit in  
20  disclosing the documents. I would direct Mr. Mills'  
21  clients to the proxy statements that Aquila files that are  
22  consistent with the SEC rules and that provide public  
23  access to all relevant documents that -- and information  
24  that they need about our corporation.

25                   And in addition, I would -- I would liken

1   this rule 4 CSR 240-2.135 to the privilege that -- the  
2   attorney/client privilege. Once a matter is closed, a  
3   case is tried, a client dies, that privilege is not  
4   waived. And I would hold that -- or I would argue that  
5   this privilege is also not waived just because an  
6   agreement has been signed. The information is still  
7   highly confidential. It still contains proprietary  
8   information, such as confidential and private technical,  
9   financial and business information of Aquila.

10                   And I did outline all of my procedural  
11   deficiencies in Mr. Mills' motion, so I'll stand on that.  
12   I won't go into any further argument on that, unless the  
13   Commission or your Honor has any questions about that.

14                   JUDGE DIPPELL: My question is, can you --  
15   I was a little unclear. Can you explain to me exactly why  
16   minutes of your board of directors are considered highly  
17   confidential just as a matter of course, not contemplating  
18   negotiation strategies or that kind of thing?

19                   MS. PARSONS: The minutes will typically  
20   summarize what was discussed in the closed meeting.  
21   Therefore, those discussions would potentially disclose  
22   confidential information, proprietary information, and  
23   information that's included under the Commission's rule  
24   under 240-2.135, subsection (1)(b) 1 through 7.

25                   JUDGE DIPPELL: That includes even the

1 agenda of the meeting?

2 MS. PARSONS: Well, not necessarily. I  
3 mean, I think the agenda comes on -- that's not part of  
4 the board minutes necessarily, it's my understanding. The  
5 board meetings don't include the agenda. The board  
6 materials would include an agenda.

7 JUDGE DIPPELL: I'm trying to find my notes  
8 here. For example, Exhibit 4 includes the agenda of the  
9 meeting. Why should that remain highly confidential?

10 MR. REITZ: I'm Chris Reitz, General  
11 Counsel for Aquila. It goes to the broader principle.  
12 That is Rick Green and our board should be able to meet  
13 and have private discussions that the company knows aren't  
14 just going to be made public to the world. And if  
15 Mr. Mills is looking for more disclosure, he should  
16 respect what we're asking for, and that is a process where  
17 our CEO and our board can have discussions and nobody  
18 knows what their agenda is. The public doesn't know what  
19 the agenda is. It might be important to our board that  
20 we're talking about legal due diligence, employee  
21 considerations.

22 I mean, if everything just can be made open  
23 to the public, what will happen is I as corporate  
24 secretary will have a board agenda that just says the  
25 board is going to meet, and we're going to have minutes



1     that simply say the board met, and that is going to result  
2     in less disclosure to Mr. Mills because there won't be the  
3     detailed minutes that record what discussions took place  
4     that he can take a look at and they can be discussed with  
5     the Commission in-camera.

6                     It is -- it really is -- I mean, our  
7     primary objection is about a broader principle, that our  
8     CEO cannot send the board update about business matters  
9     without a concern that it's going to, you know, be made --  
10    be read about in the papers like some of the e-mails that  
11    we saw this morning. And if that happens to be the ruling  
12    of the Commission, then I'll tell Rick, look, you've got  
13    to have everything by conference call.

14                    JUDGE DIPPELL: What about Exhibit 5, did I  
15    miss that? Hasn't the information in that exhibit already  
16    been made public through the course of this proceeding?

17                    MS. PARSONS: This is a -- this exhibit,  
18    this is a document that Great Plains sent to us, and under  
19    our confidentiality agreement we can't disclose the  
20    document without their consent. So if they will consent  
21    to release the document, we don't have a concern about  
22    that, but as of now, we're bound by a confidentiality  
23    agreement.

24                    JUDGE DIPPELL: And does Great Plains  
25    continue to have an objection to --

1 MR. ZOBRIST: Which exhibit is that, Judge?

2 JUDGE DIPPELL: It's Exhibit 5. It's a  
3 letter dated November 21st, 2006 from Great Plains. I'm  
4 specifically looking at the first page of the letter and  
5 then separately looking at the remainder.

6 MR. ZOBRIST: I think our response -- in  
7 our response, that's Exhibit 101HC, is it not, Mr. Mills,  
8 or 102?

9 JUDGE DIPPELL: Is that the same?

10 MR. ZOBRIST: And we indicated in our -- on  
11 page 2 of our motion that a number of paragraphs -- in  
12 fact, most of that document except for a couple of  
13 paragraphs we said may be declassified.

14 JUDGE DIPPELL: Okay. I apologize. I  
15 didn't realize that was the same -- same exhibit. Okay.  
16 Okay. Are there any other comments from any of the other  
17 parties on these issues?

18 MR. WILLIAMS: Judge, I would just like to  
19 state on behalf of the Staff that I believe all the  
20 materials that are in dispute were provided to the Staff  
21 with the understanding that the Staff would treat them in  
22 a highly confidential manner. They were used at  
23 depositions that were taken on the 27th and the 28th of  
24 November, just so you have those facts.

25 JUDGE DIPPELL: Mr. Conrad, do you have a

1 comment?

2 MR. CONRAD: Very briefly. And it seems to  
3 sometimes be forgotten, and apparently by our friends at  
4 Aquila, these are not usual companies. These are little  
5 animals that are called public utilities. That means they  
6 are public trustees. Their document of trust is the  
7 certificate of convenience and necessity.

8 That means that their doings, whatever  
9 those doings may be, are subject to public scrutiny,  
10 except and to the limited extent that we provide them with  
11 confidentiality for the purposes that Mr. Mills has  
12 pointed out. The presumption is public disclosure, and  
13 anybody who takes a position on the board of directors for  
14 a public utility had ought to know that, and they had  
15 ought to so conduct themselves that their activities and  
16 discussions are open to public scrutiny. That's the  
17 default. The default is not secrecy.

18 What I think I heard from Aquila's counsel  
19 was that if this is revealed, they'll take additional  
20 measures to make it yet more difficult for the public to  
21 find out about the doings of a public utility. That's not  
22 an approach that I'd like to hear.

23 JUDGE DIPPELL: Mr. Mills, did you want to  
24 have your one last shot?

25 MR. MILLS: Just very briefly. First, in

1 sort of a general view at this, I think really the -- for  
2 the most part, and in this case in particular, the  
3 Commission ought to take the strategy that as much  
4 information as can possibly be revealed to the public  
5 should be revealed to the public absent some specific  
6 showing of some real harm to a utility from revealing it.  
7 Unless you can find that there is some real harm, it ought  
8 to be made public. The deliberations, the evidence ought  
9 to be public to the greatest extent possible.

10 Second, although the Commission's rules  
11 don't say this, I think once you begin with that  
12 presumption, which I don't think is really in contest,  
13 then I think you lead inexorably to the conclusion that  
14 the utility or whichever party it is that seeks to keep  
15 the information from the public bears the burden of proof.

16 And I think in this case neither KCPL nor  
17 Aquila has done enough to show that there will be harm.  
18 There's some speculative information that, oh, gosh, if  
19 this falls through and we try to negotiate sometime in the  
20 years to come and somebody knows what our board said in a  
21 board meeting, that we just won't be able to get to a good  
22 deal to sell Aquila again. That's just way too  
23 speculative.

24 The Commission's got concrete decisions to  
25 make based on concrete facts in this case, and as much as

1 possible all of those facts ought to be in the public  
2 record. That's just sort of my general approach to  
3 confidential information in general and in particular in  
4 this case.

5                   And in line with what Mr. Williams said, I  
6 will note that, although I'm seeking to have the  
7 Commission release this information, I certainly have not  
8 released any on my own. In fact, everything I've done has  
9 treated it as highly confidential, and I will continue to  
10 do so until the Commission tells me otherwise.

11                   And with respect to the argument that  
12 Mr. Reitz made, I think -- I don't think the Commission  
13 should be blackmailed. You have a set of facts here. You  
14 have a set of information. You should not let Aquila's  
15 General Counsel come in here and say, well, if you release  
16 this stuff, we're going to take steps to make our board  
17 meetings so opaque that no one will ever know what happens  
18 in the future.

19                   I don't think you should yield to that. I  
20 think you should take the course that you would take here  
21 regardless of what kind of threats Aquila makes about how  
22 they're going to run their board in the future. I think  
23 you should totally disregard that argument. Thank you.

24                   JUDGE DIPPELL: Okay. Let's get down to  
25 this, then, and finally decide something, and here are my

1 thoughts. I believe there is the potential for some real  
2 harm with a lot of this information because I do believe  
3 if this transaction is not approved, it could cause harm  
4 to Aquila in future negotiations.

5 A lot of this information is their complete  
6 negotiation strategy, and I think that's covered under the  
7 Commission's rule which says strategies employed, to be  
8 employed or under consideration. I think that's the  
9 strategies they employed. I think that that can be  
10 considered to fall under the Commission's rule.

11 So with regard to those items that are the  
12 strategies employed, I'm going to continue to keep those  
13 as highly confidential. I guess I don't -- I have to  
14 agree with Mr. Mills in that I don't like the suggestion  
15 that Aquila would attempt to change their practices under  
16 the Commission's ruling, but like I say, I consider  
17 these -- most of these to be negotiations, and that's  
18 sufficient enough for me to rule the way I'm ruling.

19 So I guess the easiest way is basically for  
20 me to go through this and just rule on each document  
21 because otherwise I don't know how it can be clear for  
22 later questioning. With regard to -- I'm going to start  
23 with Aquila's motion.

24 MR. MILLS: Judge, are you going to go  
25 through sort of by the numbers assigned to them at the

1 depositions?

2 JUDGE DIPPELL: Yes.

3 MR. MILLS: I think that would be easiest  
4 for all of us to follow.

5 JUDGE DIPPELL: You guys help me keep it  
6 straight on which ones are also the exhibits from the  
7 hearing.

8 So Exhibit No. 4, the board of directors  
9 meeting, January 20th, 2007, I believe that that document  
10 in its entirety will remain HC. Obviously it contains the  
11 strategies.

12 Exhibit 5 is also the same as one of the  
13 other exhibits; is that correct?

14 MR. WILLIAMS: I believe other than a  
15 signature, it's the same as Exhibit No. 27.

16 MR. ZOBRIST: Which is Exhibit 102.

17 JUDGE DIPPELL: Yes, Exhibit 5 is the same  
18 as Exhibit 27, and you already declassified that or --

19 MR. ZOBRIST: All but the paragraphs that  
20 were set forth in Great Plains Energy's opposition. I'm  
21 glad to go through those with you, Judge.

22 JUDGE DIPPELL: Could you point those out  
23 again, please?

24 MR. ZOBRIST: Page 1, we had no problem.  
25 On page 2, the paragraph entitled purchase price we

1 believe should be excluded or remain HC. On page 3, we  
2 believe paragraph 7 and 9 should remain excluded, and  
3 that's it.

4 JUDGE DIPPELL: 7, employee compensation,  
5 and 9, exclusivity?

6 MR. ZOBRIST: Correct.

7 JUDGE DIPPELL: And I will rule that way.  
8 That exhibit -- I'm sorry. Was that all? Was there  
9 anything on the other page?

10 MR. ZOBRIST: No, nothing.

11 JUDGE DIPPELL: So Exhibit 5, the first  
12 page is public. The second page and third pages are  
13 public except for paragraphs 1, 7 and 9, and the last page  
14 is public.

15 Exhibit No. 7, Aquila stated that the first  
16 part could be public down to the subheading.

17 MS. PARSONS: Yes, the subheading titled  
18 Project 132 Update.

19 JUDGE DIPPELL: I have to say that I'm  
20 reluctant to keep confidential the information about  
21 introducing Mr. Chesser. I guess I shouldn't go any  
22 farther. I'm going to keep that Project 132 Update  
23 paragraph highly confidential. I'm going to make the next  
24 paragraph public with the exception of the sentence that  
25 starts, Mr. Chesser then reviewed.



1                   MR. MILLS: I'm sorry. You lost me. The  
2 Project 132, that whole section you're going to keep  
3 highly confidential?

4                   JUDGE DIPPELL: Yes.

5                   MR. MILLS: And then going on to, I'm  
6 sorry, where?

7                   JUDGE DIPPELL: The next paragraph, the  
8 first three sentences are public, and the remainder of  
9 that paragraph is highly confidential.

10                  MR. MILLS: So beginning with, he then  
11 described, is that where you start to treat it as highly  
12 confidential?

13                  JUDGE DIPPELL: No. That sentence may be  
14 public. The next sentence is where I start with the  
15 highly confidential.

16                  MR. MILLS: Okay. Got you.

17                  MR. CONRAD: I'm sorry. You started with  
18 Exhibit 4 and then Exhibit 5 and then went to 7. In any  
19 of the packs that I had, including those at depositions,  
20 the first one is 9. What is Exhibit 4? What's the  
21 number?

22                  JUDGE DIPPELL: I'm talking about the  
23 exhibits that were attached to the Motion to Make Certain  
24 Documents, Request for Waiver and Motion for Expedited  
25 Treatment that was filed on December 3rd.

1 MR. CONRAD: I'm got three --

2 JUDGE DIPPELL: You need to speak into the  
3 microphone.

4 MR. CONRAD: I'm trying to. We've got  
5 three sets of numbers. We've got the numbers that were  
6 assigned at the depositions, we've got the numbers on some  
7 of these that were assigned in the hearing room yesterday,  
8 and then you've got a third set of numbers.

9 JUDGE DIPPELL: I don't have a third set of  
10 numbers.

11 MR. CONRAD: What's Exhibit 4, then?

12 JUDGE DIPPELL: Exhibit 4 is Exhibit 4 from  
13 the deposition attached to the motion that was filed on  
14 December 3rd.

15 MR. CONRAD: To whose deposition?

16 MR. MILLS: Exhibit 4 was an attachment to  
17 the deposition of Mr. Green.

18 JUDGE DIPPELL: It's the first exhibit  
19 attached to the motion filed on December 3rd.

20 MR. WILLIAMS: At the depositions, there  
21 were a total of four depositions. We went sequentially in  
22 numbers. So if an exhibit was used in the first  
23 deposition and used later, it would still have the same  
24 number.

25 MR. CONRAD: Well, first number -- the

1 first deposition number that I have in Mr. Green's  
2 deposition is 9.

3 MR. WILLIAMS: Mr. Empson was deposed  
4 first.

5 MR. CONRAD: I understand that. Somebody  
6 just told me it was Green's deposition.

7 JUDGE DIPPELL: Well, I'm going to repeat  
8 again, these were the attachments to the motion that was  
9 filed on December 3rd.

10 The last paragraph, full paragraph of that  
11 will also be HC. The remainder can be public. I'll keep  
12 the agenda attachment highly confidential.

13 Exhibit 8, was there also a similar  
14 disclaimer at the beginning of that?

15 MS. PARSONS: Yes. Excuse me.

16 JUDGE DIPPELL: Go ahead.

17 MS. PARSONS: Everything up to MPSC rate  
18 case update or -- oh, yeah, everything before that.

19 JUDGE DIPPELL: That will be made public.  
20 The remainder down to the last sentence and signature will  
21 be kept highly confidential.

22 Exhibit No. 9 will be kept highly  
23 confidential.

24 Exhibit No. 11, the caption and the  
25 salutation and the first full paragraph can be made

1 public. The remainder will be kept highly confidential,  
2 with the exception of the signature.

3 MS. PARSONS: I'm sorry, your Honor. I  
4 missed the exhibit.

5 JUDGE DIPPELL: Exhibit No. 11.

6 MR. MILLS: Okay. I think we're --

7 JUDGE DIPPELL: It's an e-mail dated  
8 Wednesday, August 9th.

9 MR. MILLS: Can you tell us which part of  
10 Exhibit 11?

11 JUDGE DIPPELL: The caption down through  
12 the first full paragraph will be public. The remaining --  
13 the bullet points will be highly confidential, the  
14 signature can be public.

15 Exhibit No. 12, again, the caption through  
16 the paragraph labeled board meetings, that entire  
17 paragraph can be public. The remainder on that page will  
18 be highly confidential. The ending paragraph and the  
19 signature may be public.

20 MS. PARSONS: Your Honor, just for  
21 clarification, where it starts interest of bidders, and  
22 everything beyond that is HC?

23 JUDGE DIPPELL: Yes, down to the -- down to  
24 the closing paragraph on the following page.

25 Exhibit No. 13, the caption and through the

1 first line after Dear Directors, I wanted to provide  
2 another update regarding the status of Project 132, can be  
3 public. The next four paragraphs will be HC. The last  
4 paragraph can be public.

5 Exhibit 14, that main paragraph in the  
6 body, Project 132 is HC. The remainder can be public.  
7 Part of it's already been redacted.

8 Exhibit 15, the caption can be public, but  
9 I'm going to keep everything after Dear Aquila Directors  
10 as HC.

11 Exhibit 16 is the same. The caption and  
12 Dear Directors is public. The remainder remains HC.

13 17, 18, I'm going to stand with my earlier  
14 ruling. I'm going to keep the remainder highly  
15 confidential. Exhibit 19 is HC in its entirety.

16 Exhibit No. 20 is the -- also stands with  
17 my earlier ruling. The rest remains HC.

18 Exhibit 21, can you tell me your argument  
19 again why that remains HC or can that be made public?

20 MS. PARSONS: Your Honor, in our motion we  
21 agreed to declassify Exhibit 21.

22 JUDGE DIPPELL: Okay. So Exhibit 21 is  
23 made public. Exhibit 22 remains HC in its entirety.  
24 Exhibit 23 remains HC in its entirety. Exhibit 24 has  
25 been declassified by the company in its entirety.

1                   Now, then, so the other exhibits that were  
2 marked yesterday are not included in that packet, and that  
3 is remaining what was marked in the hearing room  
4 Exhibit 101HC, which was Deposition Exhibit 26. And I'm  
5 going to keep those portions confidential, with the  
6 exception of those items that the company has declassified  
7 in their response. The company did a detailed line by  
8 line. I don't think I need to go through that again,  
9 unless anybody wants me to continue.

10                   So with regard to Exhibits 101, 103 and  
11 104, and I've already dealt with 102, those will remain HC  
12 as to those portions not declassified by the company. Any  
13 additional questions?

14                   MR. ZOBRIST: There is Exhibit 105, Judge.

15                   JUDGE DIPPELL: I'm sorry. 105 is included  
16 in that.

17                   MR. ZOBRIST: Thank you.

18                   JUDGE DIPPELL: And when I say exhibits  
19 with the three digit number numbers, I mean that were  
20 marked and entered yesterday. Okay. Sorry that took so  
21 long.

22                   MR. WILLIAMS: I do have a question, Judge.

23                   JUDGE DIPPELL: Yes.

24                   MR. WILLIAMS: Are you putting the onus on  
25 the party who offers the exhibit to prepare the public

1 version or will you put that on the companies who are  
2 asserting portions of those documents remain HC?

3 MR. ZOBRIST: On behalf of Great Plains  
4 Energy, since I spent about two hours doing this last  
5 night, I can do it probably quicker than anybody else in  
6 the room. I'll be glad to do it and provide those  
7 tomorrow morning, if that's all right.

8 JUDGE DIPPELL: I would appreciate that  
9 very much, and yes, I would like --

10 MS. PARSONS: I could also do it.

11 JUDGE DIPPELL: I would like the companies  
12 to provide a public version of those documents that can  
13 be -- I suppose a public and a -- if you can mark the HC  
14 version also, that can be placed -- if these exhibits when  
15 they are attached to the transcript so there can be a  
16 public version of the exhibit.

17 MR. ZOBRIST: The HC version is what you  
18 have right now.

19 JUDGE DIPPELL: Right.

20 MR. MILLS: Before we move on, Judge, may I  
21 make a request?

22 JUDGE DIPPELL: Yes.

23 MR. MILLS: Pursuant to 4 CSR 240-2.130(4),  
24 I would like to request that the presiding officer refer  
25 the matter to the Commission for determination of this

1 ruling. That section provides, in extraordinary  
2 circumstances where prompt decision by the Commission is  
3 necessary to promote substantial justice, the presiding  
4 officer may refer a matter to the Commission for  
5 determination during the progress of the hearing, and I  
6 request that you do so.

7 JUDGE DIPPELL: And in your opinion,  
8 Mr. Mills, does that require a quorum of the Commissioners  
9 or just the Commissioners who are present?

10 MR. MILLS: It's your rule.

11 JUDGE DIPPELL: I'm asking your opinion.

12 MR. MILLS: In my opinion, it says the  
13 Commission, and I don't believe the Commission can act  
14 without a quorum.

15 JUDGE DIPPELL: All right. Well, then, as  
16 bad as I hate to do it, let's take a ten-minute break and  
17 I will see if a quorum of the Commission will come in.

18 MR. CONRAD: Before we go off the record, I  
19 would also endorse that request Mr. Mills has made, just  
20 so we're on board. And I have to confess to you, you went  
21 through those fast enough, and I'm not as familiar with  
22 them as apparently either Mr. Mills or KCPL counsel, but  
23 in what -- and I'm looking at 18. Maybe this is  
24 declassified. But the period of time of people's  
25 appointment to the MPSC, it remains HC? You know, it



1 appears to me when you -- when you end up --

2 JUDGE DIPPELL: That has been declassified.

3 MR. CONRAD: It has been? Well, that's  
4 good. There are other places that the word good as a  
5 single word in a sentence was determined to remain highly  
6 confidential. There were other periods in which single  
7 sentences that had no content to them at all that were  
8 confidential, you have classified as confidential.

9 So just take it to the Commission and we'll  
10 take it to the next step. I want to be on board with his  
11 motion and his reference.

12 JUDGE DIPPELL: And so you are. Let's take  
13 a break until five 'til.

14 (A BREAK WAS TAKEN.)

15 JUDGE DIPPELL: Okay. During the break, I  
16 discussed Mr. Mills' motion with each of the  
17 Commissioners, and here's what we've decided: Since the  
18 company is willing to provide us in the morning a redacted  
19 version, according to my ruling, of the documents, the  
20 Commission is going to wait to make its ruling until it  
21 has those documents at hand so that it can see my ruling  
22 rather than try to redo what I just did.

23 So from here we will continue to treat  
24 those items as HC until the Commission rules. So does  
25 that mean that you want to proceed with the next witness,

1     which is Mr. Green, or does it make more sense for him to  
2     appear tomorrow?

3                     MR. WILLIAMS:  You might want to give us a  
4     few minutes.

5                     JUDGE DIPPELL:  Well, discuss among  
6     yourselves.

7                     MR. WILLIAMS:  Because it's my  
8     understanding the company has declassified some of the  
9     information already.

10                    JUDGE DIPPELL:  True.

11                    MR. WILLIAMS:  It may make sense to  
12    proceed.  I'd like to talk to the company.

13                    JUDGE DIPPELL:  Let me give you just a few  
14    minutes to discuss that and we'll go off the record.

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

16                    JUDGE DIPPELL:  Okay.  Back on the record.

17                    MR. WILLIAMS:  I think we can make some  
18    headway with Mr. Green without getting into those exhibits  
19    at this point given that we've got at least an hour, and  
20    probably at the point where I would start getting into  
21    those exhibits, we can just maybe terminate the  
22    proceedings for today and see where we are tomorrow.

23                    JUDGE DIPPELL:  I think that sounds good,  
24    and Mr. Green looks anxious to join us on the stand.  Then  
25    let's go forth with Mr. Green.

1 (Witness sworn.)

2 JUDGE DIPPELL: All right. Mr. Williams,  
3 you can go ahead.

4 RICHARD C. GREEN testified as follows:

5 CROSS-EXAMINATION BY MR. WILLIAMS:

6 Q. What is your name?

7 A. Richard C. Green.

8 Q. And how do you spell your name?

9 A. Richard, R-i-c-h-a-r-d, C, and Green,  
10 G-r-e-e-n.

11 Q. Who employs you and in what capacity?

12 A. Aquila employs me as Chief Executive  
13 Officer.

14 Q. What are your duties as Chief Executive  
15 Officer of Aquila?

16 A. General oversight of the company.

17 Q. When did Aquila begin considering the sale  
18 of Aquila?

19 A. It would have began in fall of '05, first  
20 part of '06.

21 Q. And the bid process that resulted in the  
22 agreement that's before this Commission, could you give an  
23 overview of that, kind of the milestones and approximately  
24 when they occurred?

25 A. At the end of '05 and the beginning of

1 2006, I received different inquiries of interest in the  
2 company. I reported those various inquiries to the board  
3 in our February meeting. They considered them and started  
4 thinking about having a formal process since there was  
5 some interest.

6                   The point being, if there was an offer to  
7 come that offered more value for the shareholders and one  
8 that could be done with the best interest of the customers  
9 and also our employees, it would be something that we  
10 would need to pursue if that was able to achieve things  
11 that we could not in standalone.

12                   With that thought process, in May of '06 we  
13 started to talk with investment bankers. In the beginning  
14 of the summer, information memorandums went out. The  
15 bankers, investment bankers culled through rather large  
16 lists of prospects and really screened them down to the  
17 ones that would have the highest potential and interest.  
18 And a more formal process went from that point as to the  
19 ones that were interested in signing a confidentiality  
20 agreement, which was approximately seven.

21                   We marched through a fairly typical process  
22 with them, management presentations in August, and on  
23 through the process where it was reduced to one bidder,  
24 which was the combination of Great Plains and Black Hills.  
25 That bid we received middle of November, and began those

1 final discussions toward an announcement February 7th,  
2 2007.

3 Q. You said there were inquiries of interest  
4 back in '05 to '06, and you had a meeting with your board  
5 of directors in February to initiate a more formal  
6 process. Was that February of 2006?

7 A. To discuss a process, yes, February of  
8 2006.

9 Q. And then in the summer of '06, you  
10 indicated there were some informational memoranda. Who  
11 were those informational memoranda sent to or received  
12 from?

13 A. They were given to individuals that were  
14 willing to sign a confidentiality agreement regarding  
15 their interest in Aquila, and I believe the number of  
16 parties at that point in time was seven.

17 Q. And when did those parties sign  
18 confidentiality agreements, approximately?

19 A. June time frame, maybe beginning of July.  
20 I don't remember exactly.

21 Q. June of 2006?

22 A. 2006.

23 Q. Then you reference management presentations  
24 you said in August. Was that of '06?

25 A. Yes, it was.

1           Q.       And can you elaborate on what those  
2 management presentations were and to whom they were made?

3           A.       Management presentations are where the  
4 selling company management holds a meeting, makes a  
5 presentation to interested parties separately, because at  
6 this time the parties don't know who is actually involved  
7 in the process. And so we held those meetings during the  
8 month of August for the interested parties at the time.

9           Q.       And then you said that Great Plains made  
10 what you called a bid in mid November. Was that mid  
11 November of 2006?

12          A.       Yes, it was.

13          Q.       And when was it that Great Plains and Black  
14 Hills became the sole party interested in acquiring  
15 Aquila?

16          A.       It would have been in mid November also.

17          Q.       Is that at the point in time when you  
18 received that bid you referred to?

19          A.       It would have been a week or days in  
20 between probably.

21          Q.       In between, would that have been before you  
22 received the actual bid or after?

23          A.       We received the bid, and we would have  
24 known that they were the only bidder perhaps days or a  
25 week, a couple of weeks before that time.

1           Q.       I'm going to come back to those matters  
2 later, but I'm also going to be getting into HC material  
3 perhaps at that point. So I'm going to move on to  
4 something else.

5                   Do you know the value of the assets of  
6 Great Plains Energy and its subsidiaries on a consolidated  
7 basis?

8           A.       I do not.

9           Q.       Do you know the amount of liabilities of  
10 Great Plains Energy and its subsidiaries on a consolidated  
11 basis?

12          A.       I do not.

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

14          A.       I do.

15          Q.       What is that value?

16          A.       Approximately \$1.5 billion.

17          Q.       Do you know what the value of Aquila's  
18 regulated assets in Missouri are?

19          A.       \$1.1 billion.

20          Q.       Do you know the amount of Aquila's  
21 liabilities?

22          A.       Our liabilities, our debt outstanding is  
23 1.1 billion.

24          Q.       Which has a larger service area in  
25 Missouri, Aquila or Kansas City Power & Light Company?

1           A.       Aquila has a larger service territory.

2           Q.       Which serves more electric customers in  
3 Missouri, Aquila or Kansas City Power & Light Company?

4           A.       I think Aquila does by a few thousand.

5           Q.       Do you know how many electric customers  
6 Aquila serves in Missouri?

7           A.       A little over 300,000.

8           Q.       Did Kansas City Power & Light Company agree  
9 that it is incumbent upon Kansas City Power & Light  
10 Company to take prudent and reasonable actions that do not  
11 place its investment grade debt rating at risk as part of  
12 its experimental regulatory plan in Missouri the  
13 Commission approved in case No. EO-2005-0329?

14          A.       I do not know.

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

22          A.       I do not know.

23          Q.       Has Aquila made commitments to the Missouri  
24 Public Service Commission to insulate its ratepayers from  
25 the impacts of Aquila's non-regulated activities?



1           A.       Yes, we have.

2           Q.       What commitments has Aquila made to the  
3   Missouri Public Service Commission to insulate its  
4   ratepayers from the impacts of Aquila's non-regulated  
5   activities?

6           A.       Going back as far as 1986, we have made a  
7   commitment to this Commission that as we go outside the  
8   boundaries of the state of Missouri, that any negative  
9   things that happen will not flow back to the state.  
10   However, if there are positives, such as the synergy of  
11   spreading overhead costs, that benefit will come back to  
12   the state of Missouri.

13          Q.       Did you personally state that commitment by  
14   Aquila to this Commission?

15          A.       I did.

16          Q.       Hasn't Aquila used an investment grade cost  
17   of debt rather than its actual cost of debt in determining  
18   its cost of service in rate cases before the Missouri  
19   Public Service Commission?

20          A.       Yes, we have.

21          Q.       Does Aquila anticipate becoming investment  
22   grade if Great Plains Energy does not acquire Aquila?

23          A.       Yes, we do.

24          Q.       When?

25          A.       Right now, our plans call for that to

1     happen with the metrics of investment grade in 2011.

2             Q.       Did you rely on any external materials in  
3     developing that estimation?

4             A.       Could you explain external materials?

5             Q.       Materials that were created by consultants  
6     or others that were not employees of Aquila.

7             A.       Financial advisors would have seen our plan  
8     that we've had in recent years that we continue to update,  
9     a plan which is public in the proxy right now, and that  
10    plan has been seen by advisors.  There were not advisors  
11    that helped put it together, though.

12            Q.       Did you get any feedback from those  
13    financial advisors on Aquila's estimate as to when it  
14    would become investment grade?

15            A.       I don't remember with that specifically.  
16    Clearly given what we've been walking through in this  
17    process, there's been quite a good amount of conversation  
18    about our plan to make sure that it is reasonable, because  
19    it is the plan that the financial advisors relied on to do  
20    their valuations and give their fairness opinion.  So it  
21    has received a great deal of scrutiny.

22            Q.       What is that plan that Aquila has put  
23    together where it estimates it would become investment  
24    grade by 2011?

25            A.       It is our plan.  I mean, it is in the

1 proxy. You could go to whatever page it is in the proxy  
2 and you could see our forecast out to 2012.

3 Q. Well, what does the plan entail that allows  
4 Aquila to achieve investment grade status by 2011?

5 A. It's just a continuation of finding  
6 efficiencies in the utility business, investing in the  
7 utility business going forward. It's just a  
8 straightforward utility building business plan.

9 Q. Are the applicants in this case proposing  
10 that if Great Plains Energy is authorized to acquire  
11 Aquila, Aquila's actual debt interest cost is to be  
12 included in Aquila's cost of service in post acquisition  
13 rate cases?

14 A. I believe that to be true.

15 Q. And is Aquila an applicant in this case?

16 A. We are an applicant.

17 Q. Are the applicants in this case proposing  
18 that if Great Plains Energy is authorized to acquire  
19 Aquila, a regulatory amortization be available in future  
20 rate cases to enable Aquila post acquisition to have  
21 sufficient cash flow to maintain credit ratings during  
22 periods of construction?

23 A. I believe in the application what is stated  
24 is the authorization to use amortization in future rate  
25 cases upon Aquila being investment grade, so that the

1     amortization is to maintain investment grade, not to  
2     achieve investment grade.

3             Q.       Did the Missouri Public Service Commission  
4     Staff take the position in Aquila's last rate case that  
5     Aquila's rates for Aquila Networks - MPS should be based  
6     on the cost of five combustion turbines on a site such as  
7     South Harper owned by Aquila rather than the three  
8     combustion turbines actually installed as well as  
9     purchased power agreements?

10            A.       I'm not sure about that.

11            Q.       Who would know about that?

12            A.       John Empson.

13            Q.       Is the regulatory plan that's been proposed  
14     in this case, does it address such a treatment of  
15     generation owned by Aquila?

16            A.       It does not.

17            Q.       How long have you worked for regulated  
18     utilities in the United States?

19            A.       Forty years.

20            Q.       And which utilities have you worked for?

21            A.       They would all be the predecessors to  
22     Aquila.

23            Q.       As well as Aquila?

24            A.       As well as Aquila.

25            Q.       Have you been involved in utility mergers

1 in the past?

2 A. I have.

3 Q. Have you been involved in the mergers of  
4 utilities operating in Missouri in the past?

5 A. I have.

6 Q. Approximately how many utility mergers have  
7 you been involved with altogether?

8 A. The range of 12 to 15.

9 Q. And how many of those mergers involved  
10 utilities operating in Missouri and excluding this current  
11 case?

12 A. Two.

13 Q. Has any commission in this country  
14 authorized regulatory amortization as part of authorizing  
15 the acquisition or merger of a regulated utility?

16 A. Not that I'm aware of.

17 Q. What were the two mergers that you were  
18 involved with utilities operating in Missouri in the past?

19 A. UtiliCorp's merger with St. Joe Light &  
20 Power, and also UtiliCorp's attempted merger with Empire  
21 District Electric that was not successful.

22 Q. And was -- is UtiliCorp a predecessor of  
23 Aquila?

24 A. It is.

25 Q. You indicated UtiliCorp actually acquired

1 St. Joseph Light & Power?

2 A. That's correct.

3 Q. So you've been involved in merger  
4 activities post acquisition?

5 A. Yes, I have.

6 Q. Have you seen the regulatory plan contained  
7 in this case?

8 A. I have been briefed on it.

9 Q. Are you aware of any similar type of  
10 regulatory plan in any other utility merger case?

11 A. Here in the state of Missouri or more  
12 broadly?

13 Q. More broadly.

14 A. I have synergies as a common piece of the  
15 regulatory plan, as are transition/transaction costs are  
16 items that I've seen in other places.

17 Q. What about the amortization?

18 A. I have not seen the amortization.

19 MR. WILLIAMS: And I'm afraid that I would  
20 get into HC, potentially get into HC material post that  
21 question.

22 JUDGE DIPPELL: Okay.

23 MR. WILLIAMS: And I would rather not skip  
24 around.

25 JUDGE DIPPELL: Okay. What about would

1     there be any other cross-examination that wouldn't be  
2     in-camera that the parties would have of Mr. Green?

3                     MR. MILLS:   Judge, I have some.  Most of  
4     it's likely to be HC, though.

5                     JUDGE DIPPELL:  Okay.  Well, we can either  
6     go ahead and go in-camera or we can go to the next witness  
7     and bring Mr. Green back in the morning.

8                     MR. MILLS:  I can't see who's behind me.  
9     Do no other parties have cross-examination for Mr. Green?

10                    JUDGE DIPPELL:  I didn't see any.  Is  
11     there -- are there other questions for Mr. Green that  
12     aren't in-camera questions?

13                    MR. CONRAD:  I probably have -- you know,  
14     I'm still a little bit at sea as to what's --

15                    JUDGE DIPPELL:  I understand, Mr. Conrad.

16                    MR. CONRAD:  I probably have one.

17                    MR. MILLS:  And I have a handful that are  
18     not HC.

19                    JUDGE DIPPELL:  Okay.  Let's go down the  
20     list, and if you have non-HC questions for Mr. Green,  
21     let's go ahead and get them out of the way.

22                    MR. WILLIAMS:  Judge, it's not that I don't  
23     have more questions.  I was under the impression we were  
24     going to try to get some done today and then --

25                    JUDGE DIPPELL:  Mr. Williams, can you skip

1 your in-camera portion?

2 MR. WILLIAMS: I can try to.

3 JUDGE DIPPELL: Okay. Well, why don't you  
4 continue with as much as you can do, and we'll try to save  
5 that for one grouping tomorrow.

6 BY MR. WILLIAMS:

7 Q. Did you inform Aquila's board of directors  
8 in late December of 2006 that Great Plains Energy was,  
9 regarding the acquisition of Aquila, pushing for  
10 significant change to the regulatory strategy in Missouri?

11 A. Yes.

12 Q. How did you communicate that to Aquila's  
13 board of directors?

14 A. Through an e-mail.

15 Q. Does that e-mail contain highly  
16 confidential information?

17 A. I'm not sure without seeing the whole  
18 e-mail.

19 MR. WILLIAMS: Can I get an exhibit marked,  
20 please?

21 JUDGE DIPPELL: Yes. Staff's next exhibit  
22 number is 118.

23 MS. PARSONS: And Judge, this was one of  
24 the exhibits that you ruled was in its entirety was HC.  
25 Excuse me. You ruled that the heading and dear directors



1     could be disclosed to the public, but the rest of the  
2     e-mail was HC.

3                     MR. CONRAD: Well, it's been disclosed now.

4                     JUDGE DIPPELL: Anyway, HC. We'll mark it  
5     as HC, 118.

6                     MR. ZOBRIST: What's the deposition exhibit  
7     number?

8                     MR. WILLIAMS: 16.

9                     (EXHIBIT NO. 118HC WAS MARKED FOR  
10    IDENTIFICATION BY THE REPORTER.)

11                    JUDGE DIPPELL: Mr. Williams, I'm sorry, do  
12    you have one more copy? Thank you. This is Deposition  
13    Exhibit No. 16, Hearing Exhibit No. 118HC.  
14    BY MR. WILLIAMS:

15                    Q.     Without getting into the content of it,  
16    what is Exhibit -- what is what's been marked as Exhibit  
17    No. 118HC?

18                    A.     It is an e-mail that I sent to the Aquila  
19    board of directors.

20                    Q.     And is it the e-mail you referred to  
21    earlier where you communicated to the board of directors  
22    that Great Plains Energy was pushing for a significant  
23    change in regulatory strategy?

24                    A.     Yes, it is.

25                    Q.     Have you had an opportunity to review the

1 content of Exhibit 118HC?

2 A. I have.

3 Q. Are the statements -- were the  
4 statements -- at the time the statements were made, were  
5 they true to the best of your knowledge, information and  
6 belief?

7 A. Yes, they were.

8 MR. WILLIAMS: Judge, I think this is going  
9 to be too cumbersome to try to go forward.

10 JUDGE DIPPELL: Okay. Let me see if there  
11 are any additional non-in-camera cross-examination  
12 questions from the other parties. If it's too cumbersome  
13 to pick them out, then we'll save them for the in-camera  
14 session, and then I'll see if there are any non-in-camera  
15 questions from the Bench. Great Plains?

16 MR. ZOBRIST: No questions.

17 JUDGE DIPPELL: Black Hills?

18 MR. DeFORD: No questions.

19 JUDGE DIPPELL: The unions?

20 MS. WILLIAMS: No, your Honor.

21 JUDGE DIPPELL: Any of the cities? Joint  
22 Municipals? Dogwood Energy? Department of Energy? South  
23 Harper residents?

24 (No response.)

25 JUDGE DIPPELL: Ag Processing, do you want

1 to defer?

2 MR. CONRAD: I'll do my one if you want.

3 JUDGE DIPPELL: Okay.

4 CROSS-EXAMINATION BY MR. CONRAD:

5 Q. Mr. Green, you testified, I believe, and by  
6 that I'm referring to your deposition, that neither  
7 Aquila, Great Plains Energy or KCPL have endeavored to  
8 have a collaborative process involving this case, meaning  
9 this merger case; is that correct?

10 A. Yes, not that I'm aware of.

11 Q. Why?

12 A. I think collaboration before the  
13 announcement of a merger is not possible given the  
14 financial disclosure rules post announcement. Again,  
15 being the ones acquired, we lack the judgment and  
16 financial modeling to be able to make those decisions  
17 going forward and rely on Great Plains to take the lead in  
18 approaching the regulatory commission and intervenors.

19 Q. And you recall that you were deposed in  
20 this matter on Tuesday, November the 27th, that afternoon?

21 A. I do.

22 Q. Did that occur in the Eagle Conference  
23 Room?

24 A. It did.

25 Q. And you remember that I was there and some

1 other attorneys were there?

2 A. I do remember that.

3 Q. And you remember that there was a court  
4 reporter there?

5 A. I do.

6 Q. And you remember that you were sworn before  
7 you gave that testimony?

8 A. That's correct.

9 Q. I show you now, sir, a portion of that  
10 deposition, and direct you to that question and that  
11 answer (indicating).

12 JUDGE DIPPELL: Could we get a reference  
13 number?

14 BY MR. CONRAD:

15 Q. I ask you -- I ask you if you have your  
16 recollection refreshed as to that testimony?

17 JUDGE DIPPELL: Mr. Conrad, can you refer  
18 to what page and so forth you're referring the witness to?

19 MR. CONRAD: 135.

20 JUDGE DIPPELL: Page 135. Is there a line  
21 number for the question?

22 MR. CONRAD: Appears to begin on line 7.

23 JUDGE DIPPELL: Line 7.

24 THE WITNESS: Okay. I've read this.

25 BY MR. CONRAD:

1           Q.       What was the answer that you gave me at  
2   that time, sir?

3           A.       As to collaboration, I responded I don't  
4   know.

5                   MR. CONRAD:  Thank you.  That's all I have  
6   that's not NC or HC or whatever it is.

7                   JUDGE DIPPELL:  Thank you.  Public Counsel?

8                   MR. MILLS:  I do have some questions, I  
9   believe, that are non-highly-confidential.  I'll be happy  
10  to start with those.

11  CROSS-EXAMINATION BY MR. MILLS:

12           Q.       Mr. Green, do you have a seat on Aquila's  
13  board?

14           A.       I do.

15           Q.       Are you, in fact, the chairman of that  
16  board?

17           A.       I am.

18           Q.       As a board member and perhaps even more so  
19  as chairman, do you have fiduciary duties to Aquila?

20           A.       I do.

21           Q.       Do you have an obligation to be truthful to  
22  the board of directors?

23           A.       I do.

24           Q.       Do you believe that there would be adverse  
25  consequences to you if you mischaracterized to the board

1 significant matters?

2 A. Very much so.

3 Q. Have you ever done so?

4 A. No, I have not.

5 MR. MILLS: May I approach?

6 JUDGE DIPPELL: Yes.

7 BY MR. MILLS:

8 Q. Mr. Green, I'm going to hand you -- unless  
9 you already have a copy, I'm going to hand you a copy of  
10 what's been marked Exhibit 17 to your deposition. Is that  
11 an e-mail from you to a number of people?

12 A. It looks like --

13 Q. There are other things there, but is the  
14 top sheet --

15 A. Just the top sheet?

16 Q. -- an e-mail?

17 A. Yes, the top sheet is an e-mail from me to  
18 the Aquila board of directors.

19 Q. And I'm not really going to get into the  
20 body of the e-mail. I want to talk about the recipients  
21 primarily. To whom was this e-mail sent? Who are all  
22 those people?

23 A. Across from the to, those would be the  
24 individuals that are on the board of Aquila.

25 Q. So there are eight individuals on the

1 board; is that correct?

2 A. Yes.

3 Q. And those are all on the to section of the  
4 e-mail?

5 A. Correct.

6 Q. Who are the people on the CC section?

7 A. CC would be part of my management team, and  
8 looks like various board of director assistants.

9 Q. Can you identify each of the recipients for  
10 me, by name as opposed to by e-mail address and who they  
11 are and what they do?

12 A. In the copy or the to or both?

13 Q. Well, I believe you've identified that in  
14 the to, those are the eight -- well, the seven other  
15 directors other than yourself; is that correct?

16 A. Yes.

17 Q. So just the CC's.

18 A. Beth Armstrong, chief accounting officer,  
19 John Empson.

20 Q. I'm sorry. Chief accounting officer for?

21 A. Aquila.

22 Q. Okay.

23 A. Jon Empson, senior vice president, Aquila;  
24 Leo Morton, senior vice president of Aquila; Keith Stan,  
25 past chief operating officer of Aquila. Debbie Bellville

1 is assistant to a director. I'm not sure which one.  
2 Debbie Hacket I believe is Irv Hockaday's assistant. I'm  
3 listed here, Rick Green. Loretta Harris, I think Loretta  
4 works in our legal department. Jennifer Sessions would be  
5 an assistant to one of the board of directors, as would  
6 Joyce Smitheran. Karleen Mahn would also be assistant to  
7 our directors. Chris Reitz, our general counsel. And  
8 then Barb Grady, I would assume that would be another  
9 assistant to one of our directors.

10 Q. Okay. Do you know who these people are by  
11 name and which directors they're assistants to?

12 A. I am uncertain to that.

13 Q. Okay.

14 A. I mean, I could find out, but I don't know  
15 off the top of my head.

16 MR. MILLS: Judge, with respect to the  
17 motion to declassify some of this information, I think  
18 it's relevant to that that this e-mail, which is part of  
19 it, and several of the other e-mails were sent to a much  
20 more broad audience than the board of directors itself.  
21 And to the extent that this e-mail was sent to people that  
22 Mr. Green can't even identify, I think that Aquila has  
23 effectively waived any claim of confidentiality if it was  
24 sent out to approximately 20 recipients as opposed to  
25 simply 8 board members, and some of them are not even able



1 to be identified. I would just note that for the record.

2 If there is more discussion about whether  
3 or not this stuff should be kept highly confidential, I  
4 think the Commission should take that under consideration.

5 MS. PARSONS: Can Aquila respond?

6 JUDGE DIPPELL: Yes.

7 MS. PARSONS: All of the e-mail addresses  
8 are the same consistent throughout. Sending an e-mail to  
9 a director's assistant is no -- is not a waiver of any  
10 confidentiality. The assistants are bound by  
11 confidentiality. They print it out, put it on the  
12 director's desk. I don't think that's a waiver of any  
13 privilege, and I would argue that we have -- Aquila has  
14 not waived any privilege by simply sending an e-mail out  
15 to the directors' assistants or to the leadership, any of  
16 our executives that participate in the board meetings.

17 JUDGE DIPPELL: I'm sure the Commission  
18 will take those arguments into account when they make  
19 their ruling.

20 BY MR. MILLS:

21 Q. Mr. Green, I had some questions for you  
22 about Aquila's standalone financial plan. Were you here  
23 this morning, I believe, yes, when Mr. Empson testified?

24 A. I was.

25 Q. And I asked him some questions about that.

1 Do you have any different information than what Mr. Empson  
2 gave?

3 A. I would agree with what Mr. Empson said.

4 Q. Then I don't need to go through that  
5 again.

6 With respect to -- and I believe you have a  
7 copy of it there -- Exhibit 18 to your deposition --

8 A. I have it.

9 Q. Which has been, I believe if I'm correct,  
10 has been posted to EFIS in a form sort of blacked out very  
11 similar to the copy you have there. Is that correct,  
12 Judge?

13 JUDGE DIPPELL: Yes.

14 BY MR. MILLS:

15 Q. This e-mail is sent to the same recipients  
16 in general as Exhibit 17; is that correct?

17 A. It appears so.

18 Q. At least the board of directors and then  
19 some other people who may be assistants to them. You sent  
20 this on what date?

21 A. January 25th.

22 Q. And in that e-mail -- in that e-mail, you  
23 place it by beginning with since my last update; is that  
24 correct?

25 A. That's correct.

1           Q.       And if you will look at Exhibit 17, would  
2 Exhibit 17 have been your last update?

3           A.       I believe so.

4           Q.       Okay. So in Exhibit 18, when you talk  
5 about Mike Chesser and I met with Chairman Davis since  
6 your last update, that would have been on January 24th; is  
7 that correct?

8           A.       Correct.

9           Q.       And you sent this e-mail, which has been  
10 identified at your deposition as Exhibit 18, the day after  
11 that meeting; is that correct?

12          A.       That's correct.

13          Q.       To your board of directors?

14          A.       Yes.

15          Q.       Is the information contained in that e-mail  
16 correct?

17          A.       Yes, it is.

18                 MR. MILLS: Judge, with that, I'd like to  
19 offer Exhibit 18 as it has been marked into the record in  
20 this case.

21                 JUDGE DIPPELL: It hasn't been given a  
22 hearing number, so I will --

23                 MR. MILLS: I have copies of it that are  
24 not lined out the way you have done it. I will -- since  
25 we're getting close to the end of the day, may I have a

1 little leeway --

2 JUDGE DIPPELL: Yes.

3 MR. MILLS: -- and get one of those Magic  
4 Marker copies and have that copied for the parties if they  
5 don't have it already?

6 JUDGE DIPPELL: Yes. And you can print  
7 those --

8 MR. MILLS: I will print that off of EFIS  
9 so it's exactly the way you've done it and submit it to  
10 the court reporter tomorrow.

11 JUDGE DIPPELL: Public Counsel's next  
12 exhibit number is 203. I'm sorry. Were you -- were you  
13 marking those all as one exhibit or just Exhibit 18?

14 MR. MILLS: Just what is Exhibit 18. I  
15 would like to have that marked.

16 JUDGE DIPPELL: Okay.

17 MR. WILLIAMS: That's the public version?

18 MR. MILLS: Yes. I will file a public  
19 version. I can -- I guess I can file the rest as HC, but  
20 I would rather -- if there is some chance that, upon  
21 polling the Commission, that your ruling may not stand on  
22 that, or is that -- is that still under consideration with  
23 these exhibits as well?

24 JUDGE DIPPELL: Yes. The remainder -- the  
25 parts that were left HC of this exhibit are still under

1 consideration.

2 MR. MILLS: Pursuant to my request to poll  
3 the Commission?

4 JUDGE DIPPELL: Pursuant to your request to  
5 poll the Commission.

6 MR. MILLS: Then I would rather not even  
7 admit it as an HC exhibit until tomorrow morning when we  
8 know whether or not that will be changed or upheld, if  
9 that's okay with you.

10 JUDGE DIPPELL: Okay.

11 MR. MILLS: And I don't believe that I have  
12 any more non-highly-confidential questions.

13 JUDGE DIPPELL: All right.

14 MR. MILLS: Or at least that wouldn't -- it  
15 would be highly confidential now. They may not be --

16 JUDGE DIPPELL: I understand.

17 MR. MILLS: -- if those change.

18 JUDGE DIPPELL: I'm actually following  
19 this. Maybe nobody else is, but I actually am.

20 All right. Are there any questions from  
21 the Bench that don't need to be in-camera? Commissioner  
22 Murray?

23 COMMISSIONER MURRAY: I don't believe I  
24 have any. Thank you, Judge.

25 JUDGE DIPPELL: You'll get an opportunity

1 after Staff finishes its cross to have another chance.

2 Commissioner Appling?

3 COMMISSIONER APPLING: I think I'm going to  
4 wait 'til tomorrow morning if I have any questions.

5 JUDGE DIPPELL: Commissioner Jarrett?

6 COMMISSIONER JARRETT: I'll pass at this  
7 time, too.

8 JUDGE DIPPELL: Chairman Davis?

9 QUESTIONS BY CHAIRMAN DAVIS:

10 Q. Good evening, Mr. Green.

11 A. Good evening.

12 Q. So Mr. Green, in your e-mail here I'm going  
13 to read from you -- I'm going to read from Exhibit 18.  
14 They're going to hand me the redacted version.

15 MR. ZOBRIST: Which has been marked as  
16 Exhibit 203?

17 JUDGE DIPPELL: It has been marked as  
18 Exhibit 203, yes.

19 BY CHAIRMAN DAVIS:

20 Q. Is it your -- I mean, you've testified that  
21 you stand behind everything in this e-mail, correct?

22 A. Yes, I have.

23 Q. So I'm going to paraphrase this. So when  
24 you say, Chairman Davis is willing to move quickly to get  
25 the transaction approved, it's your recollection that I

1     said that to you?

2             A.       In the context of the next sentence,  
3     Mr. Chairman.

4             Q.       Okay. In the context of the next sentence.  
5     Now, what does -- what does that mean?

6             A.       What I recall, Mr. Chairman, when we  
7     were --

8             Q.       Okay. Tell me what -- tell me what you  
9     recall.

10            A.       As we were talking, the conversation went  
11    broader to utility mergers around the country, and it had  
12    been true that others had not made that -- had not been  
13    successful. What I heard from you was a desire to move a  
14    process that was decisive to an answer as opposed to the  
15    example I put out here, it would be the next sentence, it  
16    would be the second sentence, referring to the delayed  
17    action of regulators in the state of New Jersey. So  
18    that's why I think the context of the following sentence  
19    is important.

20            Q.       Okay. So yes, no, maybe or I don't know is  
21    the answer to the next question, unless you think there's  
22    some other nebulous answer that I'm not aware of. So when  
23    you say, Chairman Davis said that he is willing to move  
24    quickly to get the transaction approved, did I say that?

25            A.       No.

1           Q.       Okay. And you don't see that that  
2       constitutes a material misrepresentation to your board, as  
3       Mr. Mills was discussing with you earlier?

4           A.       I don't, because I think it's pulled out of  
5       context.

6           Q.       Mr. Green, do you recall anything else  
7       about our conversation that's not in the e-mail from that  
8       day on or about January 24th?

9           A.       My recollections of our conversation would  
10      be in these e-mails. Beyond what's in these e-mails would  
11      be items that I think at my deposition I talked about.  
12      Perhaps we had some discussions around Ameren's problems  
13      at the time or other general conversation. But as far as  
14      Aquila business, what I recall is in these e-mails.

15          Q.       Okay. Do you ever recall me giving you any  
16      disclaimers at all?

17          A.       Disclaimers in what way, Mr. Chairman?

18          Q.       Well, I don't want to put words in your  
19      mouth. If you don't know what a disclaimer --

20          A.       I don't believe there's --

21          Q.       For instance, and I -- I don't want to lead  
22      you into an answer here, Mr. Green, but do you ever recall  
23      me saying that, you know, we have to decide each case  
24      based on the facts and the law presented in that case, the  
25      standard disclaimer that you see at a lot of my PowerPoint



1 presentations, et cetera?

2 A. Certainly. There was no expectation that  
3 you would do otherwise.

4 CHAIRMAN DAVIS: Judge, I don't have any  
5 further questions at this time.

6 JUDGE DIPPELL: All right. Would there be  
7 any additional cross based on questions from the Bench  
8 from Staff?

9 MR. WILLIAMS: (Shook head.)

10 JUDGE DIPPELL: From Public Counsel? I'm  
11 sorry. I'm going backwards again. Perhaps I should start  
12 with Great Plains.

13 MR. ZOBRIST: No questions.

14 JUDGE DIPPELL: Black Hills?

15 MR. DeFORD: No questions.

16 JUDGE DIPPELL: The unions?

17 MS. WILLIAMS: No.

18 JUDGE DIPPELL: Not seeing anyone else,  
19 I'll skip the other parties. Praxair or Ag Processing?

20 MR. CONRAD: This I guess relates to  
21 Chairman Davis' question. Before I do this, I want to be  
22 sure that the first sentence of the second paragraph on  
23 Exhibit 18 is not HC.

24 JUDGE DIPPELL: That's public.

25 RECROSS-EXAMINATION BY MR. CONRAD:

1           Q.       I want you to focus your attention,  
2   Mr. Green, on that first sentence of the second paragraph.  
3   Do you see the phrase the transaction, second line?  
4           A.       Toward the end, yes, I do.  
5           Q.       Are you familiar with any other languages  
6   other than English?  
7           A.       I am not.  
8           Q.       Do you know what an article is in the  
9   English language?  
10          A.       No, I could not list articles for you.  
11          Q.       Do you know the difference between a  
12   transaction and the transaction?  
13          A.       I do.  
14          Q.       So we're talking about a definite article  
15   here, the transaction. What, sir, is the transaction?  
16          A.       This would be referring to the possibility  
17   of a combination between Great Plains and Aquila.  
18          Q.       That's the only detail, the transaction, is  
19   that it?  
20          A.       That's what I believe -- that's what this  
21   does refer to.  
22          Q.       Now, this is distributed by you to at least  
23   members of your board and what you're asserting are their  
24   assistants, correct?  
25          A.       Yes.

1           Q.       And this is, as I believe Mr. Mills  
2     established, a follow-up to an earlier update?

3           A.       That's correct.

4           Q.       I guess my question, sir, is what message  
5     were you attempting to communicate to your board with that  
6     sentence?

7           A.       That Chairman Davis had a desire to be  
8     decisive if there was a combination of the two companies  
9     that was going to come before this Commission.

10          Q.       Now, you're addressing this to people who  
11     are theoretically privy?

12          A.       Say it again, sir.

13          Q.       Theoretically privy to the details of the  
14     transaction; isn't that correct?

15          A.       That's correct.

16          Q.       So again, I want to ask you a question  
17     about that first sentence. When you say move quickly to  
18     get the transaction approved, what message are you trying  
19     to create in the mind of your board of directors? And I  
20     would say -- I'll rephrase that. Not your board, but  
21     Aquila's board of directors.

22          A.       My answer would be the same.

23          Q.       That's the impression you're trying to  
24     create in Mr. Singer's mind?

25          A.       That's correct.

1 Q. And in Irv Hockaday's mind?

2 A. That's correct.

3 MR. CONRAD: I think that's all I have  
4 right now.

5 JUDGE DIPPELL: Public Counsel, did you  
6 have any?

7 MR. MILLS: Just a couple.

8 RE-CROSS-EXAMINATION BY MR. MILLS:

9 Q. And really just to follow up on the  
10 questions that Mr. Conrad just asked, as you use the  
11 phrase the transaction in that sentence, do you have  
12 reason to believe that what the board understood the  
13 transaction to be at that point in time, January 25th,  
14 2007, was any different than what Chairman Davis  
15 understood the transaction to be?

16 A. I don't believe so.

17 Q. Okay. Now, I think -- and I may have  
18 misunderstood the question. This sentence here says,  
19 Chairman Davis said that he wants to see a strong utility  
20 in the western part of the state and is willing to move  
21 quickly to get the transaction approved. That's what you  
22 said he said in this e-mail. But in response to a  
23 question from him, did you just say that he didn't say  
24 that?

25 A. Right. I think here when you take that

1 piece of that sentence out of that paragraph, I think  
2 you're taking it out of the context and implying something  
3 that never crossed my mind, our board's mind, and  
4 certainly would not be anything that Chairman Davis would  
5 consider.

6 Q. So he didn't say what you said he said?

7 A. When you pull it out of context, you're  
8 correct.

9 MR. MILLS: Judge, I'm at a loss. I guess  
10 I have no further questions.

11 CHAIRMAN DAVIS: Judge, just a follow-up to  
12 Mr. Mills' question, could you instruct the witness to  
13 answer the question yes, no, maybe or I don't know?

14 MR. MILLS: I think he answered the  
15 question to the best of his ability, and I don't know what  
16 else to say.

17 JUDGE DIPPELL: I'm not sure which  
18 question.

19 CHAIRMAN DAVIS: The last question that  
20 Mr. Mills asked him. We can have the court reporter --

21 MR. MILLS: I can say it again. What I  
22 asked him was, so Chairman Davis didn't really say what he  
23 said you said?

24 THE WITNESS: No, he did not.

25 MR. MILLS: Okay.

1 JUDGE DIPPELL: All right. Let's see.

2 Where are we? Staff?

3 MR. WILLIAMS: Judge, if you want to  
4 continue on, I think I've identified some additional  
5 questions I can go ahead and ask safely now.

6 JUDGE DIPPELL: Okay. Did you have --  
7 well, you can include in those questions any cross related  
8 to the Chairman's questions.

9 RECROSS-EXAMINATION BY MR. WILLIAMS:

10 Q. Did Aquila initiate a collaborative process  
11 to seek an amortization similar to the amortization in  
12 Kansas City Power's -- Power & Light Company's regulatory  
13 plan? And I'm referring to the time period prior -- or  
14 related to the agreement that's the subject of this case  
15 when I'm referring to the collaborative process. Let me  
16 try the question again.

17 In the context of this, the transaction  
18 that's the subject of this case, did Aquila initiate any  
19 collaborative process to seek an agreement on an  
20 amortization that's similar in nature to the amortization  
21 that Kansas City Power & Light Company has in its  
22 regulatory plan?

23 A. We did not.

24 Q. Why not?

25 A. I don't -- we have decided that we have had

1 no need for amortization at Aquila and are not familiar  
2 with particulars of it or the process, and so it's  
3 something that we did not initiate.

4 Q. Do Aquila and Kansas City Power & Light  
5 Company have different regulatory issues in Missouri?

6 A. Yes, we do.

7 Q. When did Great Plains Energy make its final  
8 nonbinding bid?

9 A. I believe it was around the middle of  
10 November.

11 Q. And at the time it made that, how did it  
12 transmit that final nonbinding bid to Aquila?

13 A. It was a written bid sent to our financial  
14 advisors.

15 Q. Did that written bid identify some of the  
16 details regarding Great Plains Energy's bid to acquire  
17 Aquila?

18 A. I believe it did.

19 Q. Were there any conditions on contacts with  
20 regulators?

21 A. I believe I recall in that letter that  
22 there was mentioned the desire to have informal contacts  
23 with the regulators in Missouri and Kansas.

24 Q. Was there anything stronger than just a  
25 desire to have contacts?

1           A.       Quite frankly, I don't remember that  
2 specifically without the document in front of me.

3           Q.       Let me hand you what was earlier marked as  
4 Exhibit 102HC.

5                   JUDGE DIPPELL: Just for everybody playing  
6 along at home, that document, with the exception of the  
7 signature, is the same as another -- is the same as  
8 Exhibit 5 from the deposition. All right. Is that  
9 correct?

10                  MR. WILLIAMS: I believe that's correct.

11                  JUDGE DIPPELL: Okay.

12                  MR. WILLIAMS: I also believe portions of  
13 that document have been reclassified as public by Great  
14 Plains Energy.

15                  JUDGE DIPPELL: That's what I was getting  
16 at.

17 BY MR. WILLIAMS:

18           Q.       Have you had an opportunity to review that  
19 document?

20           A.       I have looked at it.

21           Q.       And what is that document?

22           A.       It is the final nonbinding indication of  
23 interest from Great Plains.

24           Q.       And what was the date of that document?

25           A.       November 15th, 2006.



1           Q.     And is there any indication in that  
2 document about a contact by -- with regulators?

3           A.     I'm not finding it.

4           Q.     Give me a moment.

5           A.     I've found something.

6           Q.     Has the last paragraph on the second page,  
7 which I believe is public, been designated public by Great  
8 Plains Energy?

9           A.     Yes. It says, in order to deliver a  
10 transaction which will create this immediate and  
11 sustainable long-term value for Aquila and Great Plains  
12 shareholders, we require informal discussions with  
13 regulators prior to the execution of a definitive merger  
14 agreement for this transaction.

15          Q.     And what transaction was this transaction  
16 as referred to in this document?

17          A.     The combination of Great Plains, Black  
18 Hills and Aquila.

19          Q.     Do you know if such discussions took place?

20          A.     I do know that discussions took place.

21          Q.     When did those discussions take place?

22          A.     January 24th.

23          Q.     And which regulators were those discussions  
24 with?

25          A.     On the 24th, there was my discussion with

1 Chairman Davis, and then I believe -- I believe Mike  
2 Chesser had discussions on the same day, but I don't know  
3 those details. As to the date of the Kansas regulators, I  
4 am uncertain of that. I myself had a phone call, and I'm  
5 not sure whether it was later that week or the next week.

6 Q. And when did the parties execute a  
7 definitive merger agreement?

8 A. It would have been on February 6th.

9 Q. Is it Aquila's approach to regulators on  
10 matters such as the acquisition of Aquila by Great Plains  
11 Energy to present a hard and fast proposal and try to  
12 convince the regulators on the proposal?

13 A. That is not Aquila's general approach.

14 Q. What is Aquila's general approach?

15 A. We're more interested in bringing up issues  
16 and ideas with the Commission, the Commission Staff,  
17 before we take any steps forward to get reactions,  
18 feedback, suggestions, general input.

19 Q. Are you familiar with the phrase the devil  
20 is in the details?

21 A. I have heard that phrase.

22 Q. What does that phrase mean to you?

23 A. It means that something can look fine on  
24 the surface, but once you dig into it, you can find  
25 problems.

1           Q.       In this transaction where Great Plains  
2 Energy is seeking to acquire Aquila, is the devil in the  
3 details?

4           A.       I do not believe so. I think there are  
5 clear benefits to the customers in this transaction. It's  
6 just a matter of deciding how we get those benefits to the  
7 customers.

8           Q.       Were there any contacts between Aquila and  
9 Great Plains Energy regarding Great Plains Energy's  
10 acquisition of Aquila before the agreement was executed  
11 with representatives of the Missouri Public Service  
12 Commission Staff or the Office of the Public Counsel?

13          A.       Could you say the last -- I'm sorry.

14          Q.       I'm referring to this -- this proposed  
15 acquisition of Aquila, before the agreement was executed,  
16 were there any contacts to discuss the details of the  
17 proposed acquisition agreement with the Missouri Public  
18 Service Commission Staff or the Office of the Public  
19 Counsel?

20          A.       I did have a call with the Staff, Wess  
21 Henderson and Bob Schallenberg. I did not have a call  
22 with Lewis Mills.

23          Q.       And when was the call with Bob Schallenberg  
24 and Wess Henderson?

25          A.       I believe it was the morning of the 24th,

1 January 24th, 2007.

2 Q. And did you provide details regarding the  
3 proposal?

4 A. I would say outlines. At that time the  
5 2007 rate case was of issue and on my mind, and that dealt  
6 with amortization. So in explaining the concept of the  
7 possibility of the two companies coming together, I would  
8 have mentioned those features.

9 Q. What is the 2007 rate case you just  
10 referred to?

11 A. That was an early negotiation point between  
12 Great Plains and Aquila where Aquila would have a 2007  
13 rate case after we got out of our at that time running  
14 case at the direction of Kansas City Power & Light.

15 Q. When did that become a negotiation issue  
16 between Aquila and Great Plains Energy, the 2007 rate  
17 case?

18 A. I think we've talked about that earlier  
19 this afternoon on Exhibit 16 is when I talked about that  
20 in an e-mail board, and that was on December 27th. So  
21 that would have been something that would have come up,  
22 you know, a week, ten days, somewhere in that  
23 neighborhood.

24 Q. Maybe mid December of 2006?

25 A. Yes, maybe, or later.

1           Q.       And who initiated the discussions about  
2   Aquila filing a 2007 rate case in connection with the  
3   acquisition of Aquila?

4           A.       Great Plains did. I don't recall who the  
5   individual was, though, however.

6           Q.       And what was Aquila's reaction to that  
7   being proposed?

8           A.       We didn't think it was the best way to go.

9           Q.       Did you have any discussions with Mike  
10   Chesser regarding Aquila filing a 2007 rate case?

11          A.       I believe one of these e-mails reflects  
12   that I brought it up at a breakfast meeting with Mike.

13          Q.       I'm not asking what the e-mail reflects.  
14   Did you have a conversation with Mr. Chesser regarding  
15   Aquila filing a 2007 rate case in connection with the  
16   acquisition of Aquila?

17          A.       I did.

18          Q.       And what happened as a result of that  
19   conversation, if anything?

20          A.       Well, I think the result of the  
21   negotiations, which I think was partly influenced by the  
22   conversation between Mr. Chesser and myself as well as  
23   others involved in the issue, was to only move ahead with  
24   the 2007 rate case if Aquila's FFO to debt ratio was to  
25   drop to a certain level.

1 Q. And did Aquila's FFO to debt ratio drop to  
2 that level?

3 A. It did not.

4 Q. And what is FFO to debt?

5 A. It's a ratio of funds from operation is  
6 a -- compared to your debt. It is a metric used by rating  
7 agencies to -- one of a few metrics used by rating  
8 agencies to judge one's credit quality.

9 Q. I believe I asked you with regard to  
10 Exhibit 118HC if at the time you made the statements in  
11 that exhibit they were true. If you were to -- would you  
12 have any changes to those statements now if you -- any  
13 corrections to those statements?

14 A. Exhibit 18?

15 Q. I believe it was Deposition Exhibit 16.

16 A. 16.

17 Q. Should be your e-mail of December 27, 2006.

18 A. It is. With a quick review of the  
19 December 27th e-mail, I don't see anything in there that I  
20 would offer for correction at this time.

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

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

3 A. Yes, they are requesting that, with the  
4 expectation that the synergies will be realized.

5 Q. Are the applicants in this case proposing  
6 that if Great Plains Energy is authorized to acquire  
7 Aquila, the Commission amortize the amount of about  
8 \$95 million over five years for recovery of the  
9 transaction costs for the acquisition and include the  
10 annualized amount in Aquila's cost of service for recovery  
11 in rates?

12 MS. PARSONS: I'm going to object. I think  
13 that was a compound question. I think if Mr. Williams  
14 could break it down, it would be better answered.

15 JUDGE DIPPELL: I agree, it was a --

16 MR. WILLIAMS: It's lengthy.

17 BY MR. WILLIAMS:

18 Q. Are the applicants in this case proposing  
19 that if Great Plains Energy is authorized to acquire  
20 Aquila, the Commission amortize the amount of about  
21 \$95 million over five years for recovery of transaction  
22 costs for the acquisition?

23 A. They are requesting amortization for the  
24 transaction costs. I believe it's five years, but I'm not  
25 certain.

1           Q.       Are they also requesting that the  
2     annualized amount of whatever they're requesting for the  
3     transaction costs be included in Aquila's cost of service  
4     for recovery in rates?

5           A.       I don't know exactly what cost of service  
6     they're planning to put that in. I don't know.

7           Q.       When you say you don't know, are you  
8     referring to whether it's just in Aquila's cost of service  
9     or if it would also include Kansas City Power & Light's  
10    cost of service?

11          A.       I don't know if it's just Aquila's cost of  
12    service.

13          Q.       But they are proposing that it be included  
14    in rates of either Kansas City Power & Light Company or  
15    Aquila or both?

16          A.       Yes.

17          Q.       Are the applicants in this case proposing  
18    that if Great Plains Energy is authorized to acquire  
19    Aquila, the Commission amortize the amount of about  
20    \$45 million over five years for recovery of transition  
21    costs for the acquisition?

22          A.       No. I believe it's half that amount, as  
23    far as for the customers.

24          Q.       Okay. And are they asking, then, that half  
25    of \$45 million, the annualized amount of that be recovered



1 from Aquila's customers?

2 A. Of the transition costs, yes.

3 Q. Is there a requirement Kansas City Power &  
4 Light Company and Aquila have common ownership before  
5 their regulated utility operations in Missouri -- sorry.  
6 Try that again.

7 Is there a requirement Kansas City Power &  
8 Light Company and Aquila have common ownership before  
9 their regulated utility operations in Missouri can be  
10 integrated?

11 A. I don't know.

12 Q. Is there a requirement Kansas City Power &  
13 Light Company and Aquila have common ownership before  
14 their regulated utility operations in Missouri -- try this  
15 again.

16 Is there a requirement Kansas City Power &  
17 Light Company and Aquila have common ownership before they  
18 can discuss any arrangements to share assets or operations  
19 of the regulated utility operations in Missouri?

20 A. I don't know.

21 Q. Didn't Aquila and Kansas City Power & Light  
22 Company seek to merge about ten years ago?

23 A. They did.

24 Q. Did that merger close?

25 A. It did not.

1 Q. Why not?

2 A. A competitive offer was offered by WestStar  
3 at the time, and the Kansas City Power & Light  
4 shareholders voted down the UtiliCorp merger transaction.

5 Q. Did Kansas City Power & Light Company pay  
6 Aquila about \$50 million because the transaction did not  
7 close?

8 A. I believe that's true.

9 Q. More recently, did Kansas City Power &  
10 Light Company contact Aquila to explore saving  
11 opportunities from the joint operation of their regulated  
12 utility systems in Missouri?

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

14 Q. Within the past few years, did Kansas City  
15 Power & Light Company approach Aquila seeking to explore  
16 opportunities for savings from the joint operation of the  
17 regulated utilities operations of each company?

18 A. I was approached by Mike Chesser with a  
19 suggestion that there could be some combination, but at  
20 that point in time we already had started the internal  
21 discussions toward the process that we've covered this  
22 afternoon.

23 Q. When were you approached by Mike Chesser?

24 A. It would have been just ahead of the  
25 information booklets going out in June of '06, so May or

1 April of '06, something like that.

2 Q. And you said Mr. Chesser approached you.  
3 What was it he proposed?

4 A. It was simply exploring ideas of how the  
5 two companies could combine.

6 Q. And what ideas were discussed?

7 A. There really wasn't any ideas discussed  
8 because we were already internally thinking through a  
9 process. There wasn't much sense in exploring anything.

10 Q. Well, what did he say to you?

11 A. Would you be interested in talking,  
12 exploring, talking about and exploring ideas of combining  
13 the two companies?

14 Q. And what was your response?

15 A. At this time that would not be productive  
16 because internally we've already started discussions about  
17 a process that you'll have an opportunity to participate  
18 in.

19 Q. Do Aquila and Kansas City Power & Light  
20 Company have any agreements to jointly operate any assets?

21 A. Not that I'm aware of. I'm sorry. We do  
22 with Iatan.

23 Q. Do you have any other joint agreements?

24 A. Not that I'm aware of.

25 Q. Do you have any joint agreements with any

1 other entities for operating assets?

2 A. We would have one with WestStar and the  
3 Jeffrey Energy Center.

4 Q. And what asset would that be?

5 A. Jeffrey Energy Center.

6 Q. Is that a generating facility?

7 A. Generating facility.

8 Q. And that agreement for joint operation of  
9 assets, is that -- with WestStar, is that a written  
10 agreement?

11 A. It would be, yes.

12 Q. And the agreement with Kansas City Power &  
13 Light Company regarding the Iatan facility, is that a  
14 written agreement as well?

15 A. It is.

16 Q. Has Aquila ever entered into an agreement  
17 for the joint operation of any of its assets where that  
18 agreement was not reduced to writing?

19 A. Not that I recall.

20 Q. And do those written agreements detail the  
21 ownership rights of the parties to the agreement as well  
22 as the operating responsibilities?

23 A. I'm not familiar with what's in the  
24 agreement.

25 Q. So you don't know?

1           A.       I don't know.

2           Q.       And are both of those operating agreements  
3 for generating assets?

4           A.       They are.

5           Q.       Are the applicants in this case claiming  
6 there will be many types of merger synergies if Great  
7 Plains Energy acquires Aquila as proposed in this case?

8           A.       Yes.

9           Q.       Wouldn't many of those same type of merger  
10 synergies be available ten years ago?

11          A.       There certainly would have been merger  
12 synergy opportunities in the merger ten years ago.  
13 Exactly what they were, I don't recall.

14          Q.       Is Great Plains Energy planning to spend  
15 more capital on Aquila if Great Plains Energy acquires  
16 Aquila than Aquila plans to spend if it is not acquired?

17          A.       I believe that's true.

18          Q.       Do you know if Great Plains Energy has  
19 indicated it will not seek recovery from Aquila customers,  
20 through Aquila customer rates, those additional  
21 expenditures?

22          A.       I do not know.

23          Q.       Does Kansas City Power & Light Company  
24 operate utility property better than Aquila?

25          A.       I think we're both strong companies with

1 some strengths and some weaknesses, but both on a national  
2 basis I think on norm perform better than national  
3 averages.

4 Q. My question to you is whether or not Kansas  
5 City Power & Light Company operates utility property  
6 better than Aquila.

7 A. I think some parts they do, yes.

8 Q. Does Kansas City Power & Light Company  
9 provide better customer service than Aquila?

10 A. I think Kansas City Power & Light has good  
11 customer service. I think Aquila can help in the  
12 combination of -- with our customer service, with our call  
13 center.

14 Q. Is Kansas City Power & Light Company's  
15 customer service better than Aquila's customer service?

16 A. I'm getting the companies mixed up on who's  
17 better. Could you read that again?

18 Q. Does Kansas City Power & Light Company  
19 provide better customer service than Aquila?

20 A. You know, I think they both supply good  
21 customer service, and I think the combination is going to  
22 take that good to a higher level.

23 MR. WILLIAMS: Judge, would you instruct  
24 the witness to say yes, no or I don't know, or maybe he's  
25 got some other answer he can provide that I haven't

1 thought about.

2 JUDGE DIPPELL: Mr. Green, can you answer  
3 his question? Does Kansas City Power & Light provide  
4 better customer service than Aquila?

5 THE WITNESS: I don't know.

6 BY MR. WILLIAMS:

7 Q. And I think earlier you indicated that in  
8 some respects Kansas City Power & Light Company operates  
9 utility property better than Aquila, did you not?

10 A. In some aspects, yes.

11 Q. Does that mean that in some aspects that  
12 Aquila operates utility property better than Kansas City  
13 Power & Light Company?

14 A. That's correct.

15 Q. Can you provide some specific examples  
16 where Aquila operates utility property better than Kansas  
17 City Power & Light Company?

18 A. I think there's two areas that I'd offer up  
19 for examples. One would be in the generation area. I  
20 think we're better operators of gas turbines, where on the  
21 other hand I think Kansas City Power & Light will make our  
22 coal-fired fleet a lot better.

23 The other area would be supply chain. I  
24 think we've refined and optimized our supply chain quite a  
25 bit. That will be of assistance to Kansas City Power &

1 Light in the combination.

2 Q. So you're saying Aquila has a better supply  
3 chain than Kansas City Power & Light Company?

4 A. Yes.

5 Q. Does Kansas City Power & Light Company have  
6 better generation plant availability than Aquila?

7 A. I think they're better at generation in  
8 general. I don't know avail-- I don't recall availability  
9 numbers in particular.

10 Q. Can Aquila provide safe and adequate  
11 service at just and reasonable rates if it's not acquired  
12 by Great Plains Energy?

13 A. Yes.

14 Q. And how do Aquila's customer rates compare  
15 to those of Kansas City Power & Light Company?

16 A. Except for the MPS residential rates,  
17 Aquila rates are lower. In St. Joe, the residential,  
18 commercial/industrial are lower. At MPS, the  
19 commercial/industrial are lower.

20 Q. Who makes the ultimate decision that Aquila  
21 will file a rate case in Missouri?

22 A. Ultimate decision rests with our regulatory  
23 team, Jon Empson and myself, and that's shared with my  
24 leadership team to come to an ultimate decision.

25 Q. So are you saying it's a consensus decision



1 or does someone have final decision-making authority?

2 A. I certainly have final decision-making  
3 authority, but it's done on a team-based method.

4 Q. And if Aquila is acquired by Great Plains  
5 Energy, currently who's planned to be the person who will  
6 decide when Aquila will file a rate case in Missouri?

7 A. It will be somebody in the Great Plains  
8 management organization.

9 Q. Do you know anything beyond that?

10 A. I don't.

11 Q. What assurance can you provide to this  
12 Commission that the merger synergy estimates that the  
13 applicants' witnesses have provided in this case will be  
14 met or exceeded within the time frames that they set out?

15 A. The only assurances or knowledge I have is  
16 the detailed planning work that's gone in to each of the  
17 synergies areas and the fact that our different business  
18 heads have looked at that work and agreed that it's a  
19 reasonable synergy.

20 Q. And if those merger synergy estimates are  
21 not achieved and Aquila is not able to reduce its future  
22 cost to provide service in Missouri, who suffers the  
23 consequences?

24 MS. PARSONS: I'm going to object again.  
25 That's another compound question.

1 JUDGE DIPPELL: I'm afraid I missed the  
2 question. I'll have to have Mr. Williams repeat it.

3 MR. WILLIAMS: If the estimated merger  
4 synergies are not achieved and the estimated reductions in  
5 Aquila's future cost to provide service in Missouri are  
6 not achieved, who suffers the consequences?

7 JUDGE DIPPELL: Overruled. You can answer  
8 the question.

9 THE WITNESS: Clearly if the benefit of the  
10 synergies is not achieved, then that benefit will not flow  
11 to the customers. And on Aquila's part, I'm not sure what  
12 you're referring to as far as Aquila cost reduction. But  
13 clearly if one can reduce costs, it's to the benefit of  
14 the customer, and if you can't do that, then a benefit of  
15 that won't go to a customer.

16 BY MR. WILLIAMS:

17 Q. Does Aquila make any effort to reduce its  
18 cost of operation?

19 A. We do. We have a very disciplined process  
20 that we've talked about referred to as the Six Sigma  
21 program at Aquila.

22 Q. And has Aquila achieved savings as a result  
23 of that Six Sigma program?

24 A. It has.

25 Q. And does it anticipate that it will achieve

1 savings in the future through the Six Sigma program?

2 A. We will.

3 Q. And do you know if the Six Sigma program  
4 will continue if Aquila's acquired by Great Plains Energy?

5 A. I don't know if it will continue in a  
6 formal sense. I know Great Plains in recruiting a number  
7 of our people have recruited some Black Belt Six Sigma  
8 trained people, Black Belt being the highest designation  
9 of that. So they carry with them that discipline, and  
10 it's the way they go about their business, and so they  
11 would carry their business out with that discipline inside  
12 Great Plains or Kansas City Power & Light.

13 Q. And do those operational savings that are  
14 achieved through your Six Sigma program flow through to  
15 customers?

16 A. Eventually they would. Six Sigma programs  
17 can produce benefits in the capital area, cash area,  
18 earnings area, and I think those benefits at the time of  
19 rate cases do have the potential to flow to customers.

20 Q. In the merger synergy savings proposal in  
21 this case, why aren't all the costs to achieve subtracted  
22 from synergies before being split 50/50?

23 A. I don't know.

24 Q. For the integration of Kansas City Power &  
25 Light Company and Aquila's operations to succeed, what are

1 the key elements?

2 A. Well, the key elements of the integration,  
3 I think the first thing is organizing around the people.  
4 Second thing is organizing the work. Those are two things  
5 that considerable amount of time and effort is gone to to  
6 date, and then with that it's executing the work. That  
7 work has been identified in the sense of different synergy  
8 areas.

9 Q. What key elements could cause the  
10 integration of Kansas City Power & Light Company's and  
11 Aquila's operations to not succeed?

12 A. I think it would be the normal risk that  
13 anybody has with operating plants. Maybe not as timely.  
14 Maybe other problems.

15 Q. Would any of the key elements that you said  
16 are necessary for the integration to succeed also be key  
17 elements that could cause it to fail?

18 A. Yes.

19 Q. Which of those items you identified as key  
20 elements for the integration to succeed would be key  
21 elements that could cause it to fail?

22 A. Well, first if you don't have the right  
23 people in the right places, you're not going to get  
24 started right. Secondly, if you have not put your plan  
25 together correctly, then that certainly could cause

1 problems.

2 As I mentioned, both those efforts have  
3 received a great deal of time and effort at this point in  
4 time, and then clearly in any plan like that, you have an  
5 execution risk that you have to be aware of, and if you  
6 run into particular risks or things that don't work out  
7 the way you planned, you need to regroup, replan and  
8 continue to move ahead.

9 Q. Has anyone sought your opinion of any of  
10 the integration planning activities that have taken place  
11 so far?

12 A. No.

13 Q. Do you have a personal opinion as the  
14 validity of the synergies estimates that are being  
15 proposed in this case?

16 A. My opinion would be relying on our business  
17 people that looked at them, and their conclusion has been  
18 they're reasonable.

19 Q. So you don't have an independent opinion?

20 A. I do not.

21 Q. Have you ever been involved in a merger or  
22 acquisition where the level of merger synergy savings that  
23 are proposed in this case has been achieved?

24 A. I'm not sure because I've not been in a  
25 situation where there's been such an articulation of the

1 annual synergy benefits.

2 Q. I'll come back to that. What actions can  
3 this Commission take if it approved the application in  
4 this case as proposed but the estimated synergy savings as  
5 proposed are not achieved?

6 A. I'm sorry. Read that again.

7 Q. What actions can this Commission take if it  
8 approved the application in this case as it's been  
9 proposed --

10 MS. PARSONS: I'm going to object that that  
11 calls for a legal conclusion.

12 MR. WILLIAMS: May I finish the question?

13 MS. PARSONS: Excuse me.

14 BY MR. WILLIAMS:

15 Q. What actions can this Commission take if it  
16 approved the application in this case as it's been  
17 proposed but the estimated merger synergy savings as have  
18 been proposed are not achieved?

19 MS. PARSONS: I would object. That calls  
20 for a legal conclusion.

21 JUDGE DIPPELL: I'll sustain the objection.

22 MR. WILLIAMS: I need a few minutes to look  
23 for something.

24 MR. MILLS: Judge, just for planning  
25 purposes, how late do you plan to go tonight?

1 JUDGE DIPPELL: Well, I thought we would  
2 get as far as we could. I wasn't originally planning to  
3 go past six. Since Mr. Williams got on a roll, I thought  
4 maybe we would try to get as far with Mr. Green as we  
5 could to make up some lost time. I suspect we'll be  
6 winding down soon. I had intended to start again in the  
7 morning at 8:30.

8 While he's looking for that, I have one  
9 clarification question to ask Great Plains. When we were  
10 discussing Exhibit 102HC, if you still have that,  
11 Mr. Zobrist.

12 MR. ZOBRIST: Yes, ma'am.

13 JUDGE DIPPELL: I noticed in your pleading  
14 upon further review, I didn't see your recommended  
15 treatment for paragraph 10.

16 MR. ZOBRIST: Public.

17 JUDGE DIPPELL: All right. Then my  
18 previous ruling is modified to include that as public.

19 MR. MILLS: Judge, while we're clarifying  
20 things, I don't have on my notes what happened with  
21 Exhibit 30.

22 JUDGE DIPPELL: I'm sorry. Exhibit 30?

23 MR. MILLS: It was Exhibit 30 to the  
24 deposition. It was the January 8 telephonic board  
25 meeting.

1 JUDGE DIPPELL: Was that attached to your  
2 motion?

3 MR. MILLS: I believe so.

4 MR. ZOBRIST: To Great Plains? I don't  
5 remember Exhibit 30 being part of the motion.

6 MR. MILLS: So Exhibit 30 is still highly  
7 confidential as far as we know?

8 JUDGE DIPPELL: I don't -- I didn't have  
9 that attached to my motion, but --

10 MR. MILLS: It may not have -- I may not  
11 have scanned it properly. We may have to -- okay.

12 JUDGE DIPPELL: If that comes up, it may  
13 have to be the subject of a separate motion.

14 Mr. Williams, if you need more time, I have  
15 a feeling that no one will object if we just adjourn for  
16 the evening.

17 MR. WILLIAMS: That's fine. I do need more  
18 time.

19 JUDGE DIPPELL: All right, then. We'll go  
20 ahead and call it an evening, and we'll continue in the  
21 morning at 8:30 with the rest of Mr. Green's testimony.

22 MR. RIGGINS: Judge, may I inquire?  
23 Pursuant to our discussion on Monday, Mr. Chesser and  
24 Mr. Downey will be back tomorrow. So for purposes of  
25 planning, when we start in the morning is the plan to



1 finish Mr. Green, then bring Mr. Chesser up to continue  
2 his testimony and then to bring Mr. Downey up after  
3 Mr. Chesser? I think that was originally the plan.

4 JUDGE DIPPELL: I think it makes more sense  
5 to continue with Mr. Green until he's finished, and then,  
6 yes, bring Mr. Chesser back.

7 MS. PARSONS: Your Honor, we also have  
8 Mr. Fleener, who's been here for a couple of days, who's  
9 waiting to testify after Mr. Green. I don't know. I did  
10 request -- I did send out an e-mail to see if parties had  
11 questions for Mr. Green, if we could excuse him from the  
12 proceedings, and I didn't hear back from most parties.

13 JUDGE DIPPELL: Mr. Green?

14 MS. PARSONS: I'm sorry. Excuse me.  
15 Mr. Fleener. And I'd be interested to know if anybody  
16 would be willing to excuse him at this point. I know that  
17 the Commission would have to approve that, too, but since  
18 I didn't hear back from parties, I was just interested to  
19 know whether or not there would be cross-examination for  
20 Mr. Fleener.

21 MR. WILLIAMS: Staff does have questions.

22 JUDGE DIPPELL: Staff has questions.

23 MS. PARSONS: Yes, I did hear from  
24 Mr. Williams.

25 JUDGE DIPPELL: Well, Staff has questions.

1 I apologize. I know there were some other conflicts. If  
2 we're pushing into other people's conflict days, please  
3 remind me of that.

4 There's also an e-mail from Ms. Roby asking  
5 the same thing about her witnesses on Monday and Tuesday.  
6 So you might take a look at your e-mail this evening and  
7 get back to her about that.

8 For now, we'll try to keep going in order,  
9 unless we run into somebody's conflict. Do you have  
10 something else, Mr. Williams? You look puzzled.

11 MR. WILLIAMS: I found the passage I was  
12 looking for to follow up on.

13 JUDGE DIPPELL: That's all right. Bookmark  
14 it for tomorrow.

15 MS. PARSONS: Just for clarification, you  
16 said if we're going to go in order, would that mean  
17 Mr. Fleener would be next after Mr. Green?

18 MR. BOUDREAU: That was the order.

19 JUDGE DIPPELL: Yes. Unless you-all decide  
20 something different, but I'll let you decide that among  
21 yourselves.

22 MR. RIGGINS: So it's Green, Fleener,  
23 Chesser and Downey; is that correct?

24 JUDGE DIPPELL: I'm sorry. We did say that  
25 we would bring Mr. Chesser back in the morning, so --

1 MR. RIGGINS: Just tell me.

2 JUDGE DIPPELL: We're going to finish  
3 Green, we're going to finish Chesser, and then we will  
4 start back with the witnesses that we haven't gotten in  
5 the order that they were on the list.

6 MR. RIGGINS: So that would be Downey and  
7 Fleener.

8 JUDGE DIPPELL: I don't have my list in  
9 front of me. Here it is. Okay. Yes. I have Mr. Fleener  
10 was originally scheduled after Mr. Empson. So let's  
11 finish Green, let's finish Chesser and then --

12 MR. BOUDREAU: Just as a matter of  
13 convenience, are there going to be a lot of questions for  
14 Mr. Fleener? He's been here for three days. If it's  
15 going to go fairly quickly, it would be nice to free the  
16 gentleman up. He's been here. He's been scheduled since  
17 early on.

18 JUDGE DIPPELL: I understand, and I  
19 apologize that things have been moving so slowly, but I  
20 don't know how to get around that.

21 MR. BOUDREAU: That's why I'm suggesting,  
22 if there's not a lot of questions for him, maybe it won't  
23 take that long to get through him. Staff's got some  
24 questions they said. Perhaps it's only about a 15 or  
25 20-minute experience.

1 JUDGE DIPPELL: Well, why don't you-all  
2 discuss that before you leave the room, and in the morning  
3 you can let me know.

4 Let's go ahead and go off the record. Be  
5 here at 8:30.

6 WHEREUPON, the hearing of this case was  
7 recessed until December 5, 2007.

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16	DR No. MPSC 2-20070905	315	374
17	EXHIBIT NO. 114		
18	DR No. MPSC-0297	382	410
19	EXHIBIT NO. 115		
20	DR No. MPSC-0123	405	
21	EXHIBIT NO. 116		
22	November 1 Board of Directors		
23	Presentation	*	
24	EXHIBIT NO. 117		
25	DR No. MPSC-0305	419	430
26	EXHIBIT NO. 118HC		
27	December 27, 2006 e-mail	505	
28	*Late-filed exhibit.		
29			
30			
31			
32			
33			
34			
35			

## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 ) ss.  
4 COUNTY OF COLE )

5 I, Kellene K. Feddersen, Certified  
6 Shorthand Reporter with the firm of Midwest Litigation  
7 Services, and Notary Public within and for the State of  
8 Missouri, do hereby certify that I was personally present  
9 at the proceedings had in the above-entitled cause at the  
10 time and place set forth in the caption sheet thereof;  
11 that I then and there took down in Stenotype the  
12 proceedings had; and that the foregoing is a full, true  
13 and correct transcript of such Stenotype notes so made at  
14 such time and place.

15 Given at my office in the City of  
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR  
18 Notary Public (County of Cole)  
19 My commission expires March 28, 2009.  
20  
21  
22  
23  
24  
25