

Exhibit No.:

Issues: *Aries Unit and
Acquisition of St. Joseph
Light and Power Company
Adjustment*

Witness: *Mark L. Oligschlaeger*

Sponsoring Party: *MoPSC Staff*

Type of Exhibit: *Direct Testimony*

Case Nos.: *ER-2004-0034 and
HR-2004-0024 (Consolidated)*

Date Testimony Prepared: *December 2003*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

DIRECT TESTIMONY

OF

MARK L. OLIGSCHLAEGER

FILED³

APR 28 2004

Missouri Public
Service Commission

**AQUILA, INC. d/b/a AQUILA NETWORKS-MPS (Electric and Steam)
AND AQUILA NETWORKS – L&P (Electric and Steam)**

**CASE NOS. ER-2004-0034 and HR-2004-0024
(Consolidated)**

*Jefferson City, Missouri
December 2003*

****Denotes Highly Confidential Information****

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Exhibit No. 64114
Case No(s). ER-2004-0034
Date 2/23/04 Rptr. KF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

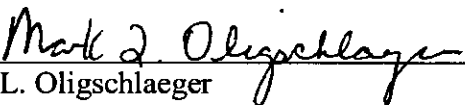
In the matter of Aquila, Inc. d/b/a Aquila Networks)
L&P and Aquila Networks MPS to implement a) Case No. ER-2004-0034
general rate increase in electricity.)
)

In the matter of Aquila, Inc. d/b/a Aquila Networks)
L&P to implement a general rate increase in Steam) Case No. HR-2004-0024
Rates.)
)

AFFIDAVIT OF MARK L. OLIGSCHLAEGER

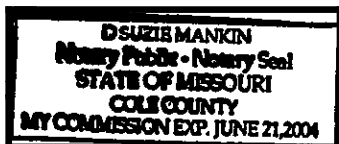
STATE OF MISSOURI)
) ss.
COUNTY OF COLE)


Mark L. Oligschlaeger, of lawful age, on his oath states: that he has participated in the preparation of the following Direct Testimony in question and answer form, consisting of 25 pages to be presented in the above case; that the answers in the following Direct Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



Mark L. Oligschlaeger

Subscribed and sworn to before me this 8th day of December 2003.





Notary Public

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TABLE OF CONTENTS
DIRECT TESTIMONY OF
MARK L. OLIGSCHLAEGER
AQUILA, INC. d/b/a AQUILA NETWORKS-MPS-ELECTRIC
AND AQUILA NETWORKS-L&P-ELECTRIC AND STEAM
CASE NOS. ER-2004-0034 AND HR-2004-0024
(Consolidated)

ARIES UNIT 3
ACQUISITION OF ST. JOSEPH LIGHT & POWER COMPANY 18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

DIRECT TESTIMONY
OF
MARK L. OLIGSCHLAEGER
AQUILA, INC. d/b/a AQUILA NETWORKS-MPS-ELECTRIC
AND AQUILA NETWORKS-L&P-ELECTRIC AND STEAM
CASE NOS. ER-2004-0034 AND HR-2004-0024
(Consolidated)

Q. Please state your name and business address.

A. Mark L. Oligschlaeger, P.O. Box 360, Suite 440, Jefferson City, MO
65102.

Q. Please describe your educational background and work experience.

A. I attended Rockhurst College in Kansas City, MO, and received a Bachelor of Science degree in Business Administration with a major in Accounting in 1981. I have been employed by the Missouri Public Service Commission (Commission or MPSC) since September 1981 within the Auditing Department. In November 1981, I passed the Uniform Certified Public Accountant (CPA) examination and, since February 1989, have been licensed in the state of Missouri as a CPA.

Q. Have you previously filed testimony before this Commission?

A. Yes, numerous times. A listing of the cases in which I have previously filed testimony before this Commission is given in Schedule 1, attached to this direct testimony. A listing of the issues I have addressed in filed testimony in dockets before the Commission since 1990 is provided in Schedule 2 to this testimony.

Direct Testimony of
Mark L. Oligschlaeger

1 Q. What knowledge, skills, experience, training or education do you have in
2 these areas of which you testifying as an expert witness?

3 A. I have been employed by this Commission as a Regulatory Auditor for
4 over 20 years, and have submitted testimony on ratemaking matters numerous times
5 before the Commission. I have also been responsible for the supervision of other
6 Commission employees in rate cases and other regulatory proceedings numerous times.
7 I have received training at in-house and outside seminars on technical ratemaking matters
8 since I began my employment with the Commission.

9 Q. With reference to Case No. ER-2004-0034, the Application by
10 Aquila, Inc. (Aquila/UtiliCorp or Company) d/b/a Aquila Networks - MPS (MPS) and
11 Aquila Networks L&P (L&P), to increase rates charged to their electric customers, have
12 you examined the books and records of Aquila/UtiliCorp pertaining to MPS and L&P?

13 A. Yes, with the assistance of other members of the Commission
14 Staff (Staff).

15 Q. Has Aquila, Inc. been known by other corporate names?

16 A. Yes. Prior to March 2002, Aquila was known as UtiliCorp United, Inc.
17 In this testimony, to avoid confusion when referring to actions or events involving Aquila
18 prior to or after March 2002, I will refer to the Company generically throughout its entire
19 history as "Aquila/UtiliCorp." Both MPS and L&P are divisions of Aquila/UtiliCorp.

20 Q. What is the purpose of your direct testimony?

21 A. The purpose of this testimony is to sponsor the rationale for the Staff's
22 adjustment to MPS's test year purchased power expenses to remove the portion of the
23 Aries unit expenses above the actual cost of the capacity supplied to the MPS customers.

Direct Testimony of
Mark L. Oligschlaeger

1 My testimony will describe Aquila/UtiliCorp's decision to have its MPS division acquire
2 capacity from the Aries generating unit through a purchased power agreement (PPA, or
3 Power Sales Agreement/PSA) with an affiliated entity to increase Aquila/UtiliCorp's
4 overall profits. I am also addressing the Staff's treatment in this rate proceeding of the
5 cost impacts of Aquila/UtiliCorp's acquisition of St. Joseph Light & Power Company in
6 December 2000.

7 Q. How did the Staff obtain evidence to support its positions on the issues
8 addressed in this testimony?

9 A. The Staff obtained the evidence to support its positions on the issues
10 I address in this direct testimony through issuances of Staff data requests and interviews
11 of Company employees, both during the course of this rate case audit and also in the
12 Staff's audit of MPS' last Missouri electric rate proceeding, Case No. ER-2001-672. In
13 the matter of the Aries unit issue, the Staff conducted an interview with
14 Mr. Robert Holzwarth and Mr. Frank DeBacker on October 28, 2003, and an interview
15 with Mr. Max Sherman on October 29, 2003. Mr. Holzwarth, Mr. DeBacker and
16 Mr. Sherman are all current or former employees of Aquila. The Staff also interviewed
17 Mr. Terry Hedrick, Aquila/UtiliCorp's Director of Generation Services, on November 14,
18 2003. After these interviews, through Staff data requests, the Staff submitted its notes of
19 the meetings to Aquila for verification, which gave these interviewees the opportunity to
20 revise the meeting notes so that the notes accurately reflect what was stated at these
21 meetings.

22 **ARIES UNIT**

23 Q. Please describe the Aries generating unit.

Direct Testimony of
Mark L. Oligschlaeger

1 A. The Aries unit is a 585 megawatt (MW) combined cycle generating unit
2 located near Pleasant Hill, MO. The unit is effectively owned equally by Calpine
3 Corporation (Calpine) and Aquila/UtiliCorp. Both Aquila/UtiliCorp's and Calpine's
4 shares of the Aries plant are held by a jointly owned limited liability corporation named
5 Merchant Energy Partners – Pleasant Hill (MEPPH). The Aries unit began providing
6 power in simple-cycle mode in the summer of 2001, and started operating in combined-
7 cycle mode in February 2002.

8 Q. Who owns the Aries unit?

9 A. Cass County, MO holds legal title to the Aries unit, but has no authority to
10 operate the plant as a business. Cass County is leasing the plant to subsidiaries of Calpine
11 and Aquila/UtiliCorp.

12 Q. Please discuss the ownership structure of the Aries unit.

13 A. The Aries unit is being leased by Cass County through two separate
14 leases; a capital lease and an operating lease. According to the response to Staff
15 Data Request No. 507 from Case No. ER-2001-672, the capital lease involves
16 Cass County as the lessor and two banks (Union Bank of California and Bank One) as the
17 lessees. According to the response to Staff Data Request No. 429 in Case
18 No. ER-2001-672, the operating lease has Cass County as the lessor, with a fully owned
19 subsidiary of Aquila/UtiliCorp and a fully owned subsidiary of Calpine, the two partners
20 within MEPPH, as lessees. These lessees then convey power from the Aries unit through
21 their affiliate, MEPPH, to MPS, the regulated entity.

22 Q. Why are two leases required for the Aries unit?

Direct Testimony of
Mark L. Oligschlaeger

1 A. According to the response to Staff Data Request No. 511 from Case
2 No. ER-2001-672, "the capital lease between Cass County and Lessors A & B supports
3 the requirements of the Chapter 100 Bond financing required under Missouri statutes.
4 The Operating Lease between Lessors A & B and MEPPH supports the financing of the
5 plant."

6 Q. How has Cass County financed the construction of the Aries unit?

7 A. Cass County has issued one bond for the construction of this unit, which
8 MEPPH purchased. Therefore, MEPPH's owners, Aquila/UtiliCorp and Calpine, have
9 put up the money to finance 100% of the Aries unit.

10 Q. Is the Aries unit producing power for Missouri jurisdictional electric
11 customers?

12 A. Yes. Aries began its production of electricity in the spring of 2001 when
13 the unit operated two combustion turbines in simple cycle mode during its testing phase.
14 The two units began operating in June 2001, and continued through the summer of 2001.
15 During the fall of 2001 and early winter 2002, the Aries partners completed the combined
16 cycle unit and start production of electricity in the test phase. The combined cycle unit
17 began full production in late February 2002.

18 Q. Is there an agreement for the purchase of Aries power?

19 A. Yes. MPS and MEPPH have signed an agreement that reserves a portion
20 of the power produced by the Aries unit for customers of MPS from 2001 through 2005.
21 The power to be provided during the simple cycle phase of the unit's operation was
22 320 MW for the period of June September 2001. When the combined cycle unit became
23 operational in early 2002, the agreement provided for a maximum of 500 MW over the

1 peak periods in the remaining years 2002-2005 (April-September of each year), and a
2 maximum of 200 MW during non-peak periods (October-March of each year).

3 Q. Why did MPS agree to take power from the Aries unit?

4 A. MPS did not make an independent decision to enter into the PPA.
5 Aquila/UtiliCorp made the decision on behalf of its MPS division. MPS had need for
6 increased capacity, both as a result of load growth and the expiration of several long-term
7 PPAs it had entered into earlier with other regional utilities.

8 Q. When did Aquila/UtiliCorp decide to obtain power from its affiliated
9 company, MEPPH, to supply the power needs for Aquila's MPS division?

10 A. Aquila/UtiliCorp signed a contract with its affiliate, MEPPH, in February
11 1999. The Aquila/UtiliCorp-MEPPH purchased power contract for the MPS division
12 needs is an affiliated transaction as defined under the Commission's current rules. These
13 rules define an "affiliated transaction" as:

14 ...any transaction for the provision, purchase or sale of any
15 information, asset, product or service, or portion of any product or
16 service, between a regulated electrical corporation and an affiliated
17 entity, and shall include all transactions carried out between any
18 unregulated business operation of a regulated electrical corporation
19 and the regulated business operations of an electrical corporation.
20 4 CSR 240-20.015(1)(B)

21 MEPPH is an affiliated entity with MPS in that it is a corporate subsidiary of
22 Aquila/UtiliCorp which, through an intermediary, is under common control with the
23 regulated electrical corporation.

24 Q. How is MEPPH an affiliate of MPS?

25 A. Aquila/UtiliCorp wholly owns Aquila Merchant Services which in turn
26 has, through its Capacity Services segment, a 50% ownership of MEPPH.
27 Aquila/UtiliCorp owns all of the assets of MPS (and L&P) that operates as a division of

1 Aquila/UtiliCorp. When the original agreement was signed on February 22, 1999 with
2 MEPPH to supply power to MPS starting in the summer of 2001, Aquila/UtiliCorp
3 signed the PPA for MPS.

4 Q. What is the Staff's position on appropriate ratemaking treatment of
5 affiliated transactions?

6 A. The Staff believes that affiliated transactions in which a regulated entity
7 receives goods or services from an unregulated affiliate should be valued for ratemaking
8 purposes at the lower of the fully distributed cost or market price of the goods and
9 services. This has long been the position of the Staff, and recently this policy was
10 codified in rules adopted by the Commission in 1999 concerning affiliated transactions,
11 4 CSR 240-20.015.

12 Q. Why is a "lower of fully distributed cost or market price" policy
13 appropriate for goods and services obtained by utilities from affiliated entities?

14 A. This policy is appropriate in order to avoid affiliate abuse. Affiliate abuse
15 is the phenomenon when a regulated utility makes a decision based not on the best
16 interests of its customers, but on the best interests of an affiliated entity or the regulated
17 utility's corporate parent. Another way of stating this is that affiliate abuse occurs when
18 a regulated utility enters into a transaction with an affiliated entity that will maximize
19 corporate profits at the expense of its customers when another course of action would
20 have been more economical for its customers.

21 Q. Given Aquila Merchant/MEPPH's affiliation to Aquila/UtiliCorp's MPS
22 division, does the Staff believe that Aquila/UtiliCorp's selection of MEPPH to supply the
23 future power needs for its MPS division to be reasonable?

Direct Testimony of
Mark L. Oligschlaeger

1 A. Yes, if the MPS division is charged a fair portion of the costs incurred to
2 to serve its power needs. In early 1999, in Case No. EO-99-369, Aquila/UtiliCorp
3 applied to the Commission for certain determinations required to be made by the
4 Missouri PSC under Section 32(k) of the Public Utility Holding Company Act
5 of 1935 (PUHCA) respecting its contract with MEPPH for supply of power from the
6 Aries unit. As part of its analysis of the Case No. EO-99-369 application, the Staff
7 reviewed the bidding process used by MPS as well as its decision to choose MEPPH as
8 the supplier of power. Based upon that review, the Staff concluded that MEPPH's bid
9 was a reasonable selection when compared to the other bids received.

10 Q. Why was the Commission asked to make certain determinations
11 respecting the PPA between MPS and MEPPH in Case No. EO-99-369?

12 A. Certain determinations by the Commission were necessary because
13 MEPPH is an affiliated exempt wholesale generator (EWG).

14 Q. What is an exempt wholesale generator?

15 A. An EWG is a non-regulated affiliate of a regulated electric utility that is
16 exclusively in the business of owning or operating, or both owning and operating, all or
17 part of an "eligible facility" and selling electric energy at wholesale. EWGs came into
18 existence as a result of Section 711 of the Electric Policy Act (EPAAct) of 1992
19 (Section 32 of PUHCA). Under EPAAct, regulated electric utilities are allowed to enter
20 into purchased power agreements with affiliated EWGs as long as certain determinations
21 are made by their state regulatory commissions.

22 Aquila/UtiliCorp filed Case No. EO-99-369 to obtain the necessary
23 determinations from the Missouri PSC regarding the PPA between MPS and MEPPH.

Direct Testimony of
Mark L. Oligschlaeger

1 Q. Did the Commission make the requested determinations for
2 Aquila/UtiliCorp in that proceeding?

3 A. Yes, it did. However, on page 4 of the Commission's April 22, 1999
4 Order Regarding Power Sales Agreement, in that case stated the following: "[t]his order
5 is in no way binding on the Commission or any party regarding a future rate or earnings
6 complaint case to contest the ratemaking treatment to be afforded the Power Sales
7 Agreement." Thus, any and all ratemaking determinations concerning the Aries unit PPA
8 were left to rate proceedings, such as this one. . The terms of the PPA was not deemed to
9 be reasonable for purposes of determining the costs of this power to be included in the
10 rates to be charged to the MPS's customers. This issue was deferred to the rate case in
11 which Aquila/UtiliCorp sought to recover the costs for the capacity and energy from the
12 Aries unit in the rates in charged to its customers.

13 Q. Did the Staff recommend that the Commission make the necessary
14 determinations respecting the PPA?

15 A. Yes, with conditions that included that the costs for this power to be
16 included in rates would be decided in a future rate case. The Staff did not support the
17 inclusion in rates the costs developed by the PPA. The Staff would not have proposed
18 that the Commission make the determinations required under Section 32(k) of PUHCA in
19 order for the transaction to proceed forward if the Company had required, or otherwise
20 made part of the application seeking this approval, that such an approval would have
21 included a ratemaking decision to include the costs determined by the PPA in the rates
22 charged to MPS division consumers. The Staff review of this Application was

Direct Testimony of
Mark L. Oligschlaeger

1 abbreviated since Aquila/UtiliCorp requested, and was granted, an expedited procedural
2 schedule for processing of the Application.

3 Q. Did Aquila/UtiliCorp consider the option of allowing its MPS division to
4 construct and operate a regulated generating unit to meet the MPS division power needs
5 in the 2001-2005 period?

6 A. No. By 1998, Aquila/UtiliCorp was operating under a policy of not even
7 considering the use of regulated generating units as an option for meeting the power
8 supply needs of its regulated electrical divisions. As a result of this policy,
9 Aquila/UtiliCorp decided to enter into a PPA to price power to its MPS division from the
10 Aries unit at a cost greater than the cost to the MPS division of providing this power to
11 itself. This practice has violated any appropriate policy governing pricing between
12 affiliated interests.

13 Q. Why was the short-term nature of the Aries PPA not been in the best
14 interests of the Company's customers?

15 A. The short term of the PPA (five years) exposes MPS customers to greater
16 risks associated with future market based pricing of power than would be the situation if
17 MPS owned the Aries unit.

18 Aquila/UtiliCorp's overall corporate strategy since at least the late 1990s has been
19 to construct merchant generating units to capture the value of its expectation of increased
20 electric power prices. This strategy was pursued both by selling power from merchant
21 generating units to non-native load customers via opportunities available through electric
22 restructuring initiatives, and also by selling power at higher prices to its native load
23 customers in Missouri through non-regulated generating units. This strategy is not

Direct Testimony of
Mark L. Oligschlaeger

1 appropriate in relation to Aquila/UtiliCorp's obligation to its MPS division customers to
2 make decisions that best protect their interests, and constitutes affiliate abuse.

3 Q. Is the MPS-MEPPH PPA an example of affiliate abuse?

4 A. Yes. The terms of the Aries unit PPA illustrates that Aquila/UtiliCorp did
5 not act in the best interests of its MPS divisions in entering into this PPA. The terms of
6 the Aries PPA was based upon a goal of maximizing profits for Aquila/UtiliCorp, its
7 corporate parent. The Aries PPA terms resulted in charging the MPS division amounts
8 far in excess of the costs to supply the power to the MPS division.

9 Q. What is the cost of Aries capacity supplied to the MPS division under the
10 terms of the MPS-MEPPH PPA?

11 A. The annual payments due to Cass County, the owner of the Aries unit,
12 under the operating lease with Aquila/UtiliCorp and Calpine, represent an appropriate
13 starting point for determining the cost of the Aries capacity. The response to Staff Data
14 Request No. 429 (amended response) from Case No. ER-2001-672, received
15 December 3, 2001, provided a list of annual "total project" lease payments due to
16 Cass County, the owner of the Aries unit, for the years 2002-2032. (This response is
17 attached as Highly Confidential Schedule 3 to this direct testimony.) During the
18 years 2002-2004 (the only full calendar years of the MPS-MEPPH PPA), the amounts to
19 be paid to Cass County under the lease agreement and the amounts MPS must pay
20 pursuant to the purchased power contract (from the Response to Staff Data Request
21 No. 55 in Case No. ER-2001-672) are as follows:

Direct Testimony of
Mark L. Oligschlaeger

1	Year	Payment to Cass Co.	MPS PPA Contract Payment
2	2002	** _____ **	** _____ **
3	2003	** _____ **	** _____ **
4	2004	** _____ **	** _____ **

5 On its face, in comparison to the Cass County annual lease payments, the capacity
6 charges to be paid by MPS for power from the Aries unit do not appear to be reasonable.
7 For example, Cass County was scheduled to receive a total of ** _____ ** in
8 capacity payments under its lease for the entire 585 megawatt unit in 2002, while MPS
9 was contractually obligated to pay ** _____ ** for an average of 350 MW
10 throughout that year (200 MW for January-March, 500 MW for April-September, and
11 200 MW for October-December). The same general relationship between the capital
12 lease payment and the MPS capacity payment exists for 2003 and 2004. Therefore, based
13 upon this information, it appears that a regulated entity, MPS, is being required to pay for
14 almost all of the costs of the Aries unit, even though it is not entitled to a proportional
15 amount of the unit's capacity. Meanwhile, MPS will not receive any benefit from any
16 power sales from Aries unit capacity above the contractual commitment to MPS. The
17 proceeds of any sales made to other entities will go directly to the Aries partners and not
18 to MPS. The MPS division is being charged costs related to the non-regulated sales of
19 the Aries unit not committed to the MPS division under the PPA. The PPA is an example
20 of affiliate abuse.

21 In short, MEPPH and Cass County are essentially recovering all of the capacity
22 costs for the entire Aries unit from MPS, even though MPS has not contracted to receive
23 the benefit of all of the Aries unit's capacity. Out of a total capacity of at least 585 MWs,

Direct Testimony of
Mark L. Oligschlaeger

1 MPS has contracted to receive 200 MWs year round, with another 300 MWs from April
2 to September. A comparison of the amounts due to Cass County from MEPPH and the
3 amounts MEPPH will receive from MPS suggest that MPS's required payments for
4 capacity are far in excess of the cost of capacity from the Aries unit.

5 Q. Please explain.

6 A. It is reasonable to assume that the lease agreements allow Cass County to
7 at least recover its fixed costs related to ownership of the Aries unit. That cost, between
8 ** _____ ** annually from 2002-2004 for a 585 MW generating unit, should be
9 compared to the "market value" of Aries power to MPS of ** _____ ** in the
10 same time period for an average of 350 MW of unit capacity annually. On average, MPS
11 has only contracted for approximately 60% of Aries unit capacity on an annual basis over
12 the term of the PPA, yet it has contracted to pay essentially 100% of the capacity costs of
13 the unit.

14 Q. Since MPS is only contracting for 350 MW of Aries capacity annually, on
15 average, who receives the benefit of the Aries unit capacity in excess of 350 MW?

16 A. If MEPPH can sell power from the Aries unit in excess of amounts
17 contracted for by MPS, MEPPH will essentially retain all of these sales proceeds. Again,
18 this is because the payment MEPPH will receive from MPS essentially equals MEPPH's
19 required payment to Cass County for all of the Aries unit capacity.

20 Q. Should the difference between the cost of Aries unit power and the
21 "market" price charged MPS for that power be of concern to the Commission?

22 A. Yes, among other reasons, because of the affiliated nature of the
23 MPS-MEPPH PPA.

Direct Testimony of
Mark L. Oligschlaeger

1 Q. Is the actual cost of Aries power to MEPPH under the Cass County lease
2 an appropriate valuation for cost under the "lower of cost or market" price position of the
3 Staff?

4 A. Yes. Aquila/UtiliCorp could have entered into the same financial
5 arrangements with Cass County for its MPS division that it did for its affiliated company
6 MEPPH, and thereby achieve the same cost levels for this power that MEPPH received
7 from these transactions. Even before its transformation into Aquila/UtiliCorp in the
8 1980s, MPS has a long history of constructing and financing power plants. The fact that
9 unregulated affiliate companies of MPS handled the Aries unit project was not based
10 upon MPS's inability to do so; rather, it was based upon a deliberate corporate policy of
11 Aquila/UtiliCorp to no longer have its regulated electric utilities build and own
12 generation. This policy provides an opportunity for Aquila/UtiliCorp to make additional
13 profits through sales of power by nonregulated affiliates to regulated affiliates that would
14 not be possible under traditional utility practices.

15 Q. Was MPS capable of negotiating the same deals with Cass County on the
16 Aries unit that MEPPH did?

17 A. Yes. In fact, it is MPS that has the long history of plant operations in
18 Cass County and Pleasant Hill, Missouri, not MEPPH, Aquila Merchant or Calpine. This
19 relationship with Cass County predates the transformation of MPS from a stand-alone
20 utility to a division of Aquila/UtiliCorp in the mid-1980s. MPS has been operating in
21 Pleasant Hill and the surrounding communities in Cass County for many decades. MPS's
22 first power production facility was located in Pleasant Hill at the site that continues to be
23 used today for Ralph Green 3, a combustion turbine. The Aries Combined Cycle unit is

Direct Testimony of
Mark L. Oligschlaeger

1 built on land that bounds an MPS substation and land that was once owned by MPS.
2 MPS sold part of the land in 1993 and Aquila/UtiliCorp reacquired the land to construct
3 Aries. Clearly, the MPS division of Aquila/UtiliCorp has more of the name recognition
4 in Cass County than do its affiliate companies, and that would be an advantage in
5 obtaining the type of "special" financing arrangements that has been entered into for the
6 construction of the Aries unit.

7 Q. How is the Aries PPA an example of affiliate abuse?

8 A. As previously stated, Aquila/UtiliCorp established the terms of the PPA
9 transaction so that it, in essence, recovers the entire cost for capacity of the Aries unit
10 from its captive MPS division customers. But, the MPS division has not contracted for
11 all of the Aries capacity during the period of the PPA, MEPPH is free to sell the power
12 not committed to MPS in the interchange market during the term of the PPA, and retain
13 all of these profits for itself without the burden of the capacity costs for the power it sells.
14 If Aquila/UtiliCorp had contracted directly with Cass County for the entire capacity
15 output of Aries and entered into the same financial arrangements with Cass County for its
16 MPS division that it did for the MEPPH affiliate, the MPS division would have the
17 excess capacity and energy available to sell in the interchange market, with the proceeds
18 of these off-system sales from Aries to other entities being used to offset the capacity
19 costs MPS division is being charged under the PPA for capacity to serve MPS's native
20 load customers when needed. But, if that course of action had been taken, the result
21 would have been lower rates for MPS customers instead of greater profits for
22 Aquila/UtiliCorp. Aquila/UtiliCorp having chosen a course of action respecting the Aries
23 PPA that maximizes its profits at the expense of MPS electric customers makes the Aries

Direct Testimony of
Mark L. Oligschlaeger

1 unit PPA an excellent example of affiliate abuse. This is why the ratemaking terms of the
2 PPA were not approved for ratemaking purposes in Case No. EO-99-369. These terms, if
3 adopted for ratemaking, would not support a finding that PPA was in the best interests of
4 consumers.

5 Q. Based on these facts, how does the Staff recommend that the Commission
6 treat the Aries PPA for ratemaking purposes?

7 A. The Staff recommends that the Commission price capacity from the Aries
8 unit on the basis of its cost, not the market value of capacity, since it is clear that the cost
9 of Aries power is lower than the market value of that power. The Commission should
10 consider the MEPPH capacity payments to Cass County as being a reasonable estimate of
11 the cost of Aries power, and prorate that cost to represent the share of the Aries unit
12 committed to MPS under the PPA.

13 Q. How did the Staff determine the appropriate portion of Aries unit costs to
14 be associated with the portion of the Aries unit being used to serve MPS's customers?

15 A. The Staff used the 2002 MEPPH payment to Cass County as the
16 applicable cost of all of the capacity of the 585 MW Aries unit. This payment was
17 ** _____ **. MPS receives an average of 350 MWs of capacity annually
18 (500 MWs from April to September, 200 MWs from October to March) of the 585 MWs
19 of capacity at the Aries unit. Staff developed a factor of 59.83% (derived by dividing
20 350 MWs by 585 MWs). This factor was applied to the ** _____ ** of costs for
21 the total Aries unit resulting in ** _____ ** being associated with MPS annual
22 power needs of the cost of Aries unit.

23 Q. Are there alternative ways of assigning the cost of Aries power to MPS?

Direct Testimony of
Mark L. Oligschlaeger

1 A. Yes. It can be argued that the additional power MPS purchases in the
2 peak months under the MEPPH PPA is more valuable than the 200 MWs MPS purchases
3 on a year round basis. Schedule 4 attached to this direct testimony represents an
4 alternative valuation of the MPS Aries PPA that follows this approach. Basically,
5 Schedule 4 assumes that the 385 MWs of Aries that MPS does not reserve from October
6 to March of each year can be sold to other entities at ** ____ **/KW-month, the same
7 price MPS pays for its 200 MW of power during this six-month off-peak period.
8 Schedule 4 also assumes that the 85 MW of Aries capacity MPS does not reserve in the
9 peak months can be sold to third parties at ** ____ **/KW-month from April to
10 September, the same price MPS pays for capacity during the six-month peak period.
11 Under this scenario, Schedule 4 shows that MPS should be responsible for 61.31% of the
12 cost of Aries capacity. Applying this factor to ** _____ **, the capacity payment
13 to Cass County, the result would be an assignment of ** _____ ** of capacity
14 cost to MPS for ratemaking purposes.

15 Q. What amount does the Staff recommend that the Commission use for
16 setting rates for the MPS division of Aquila/UtiliCorp in this proceeding?

17 A. To be conservative, the Staff recommends that the Commission utilize the
18 valuation presented in Schedule 4 of this testimony: ** _____ ** (total
19 Company) on an annual basis.

20 Q. Are you sponsoring the Aries unit PPA adjustment to the income
21 statement?

22 A. No. I provided these amounts to Staff Auditing witness
23 Graham A. Vesely to incorporate into the Staff's overall adjustment to MPS' test year

1 purchased power expense. However, I am responsible for defending the rationale for this
2 Staff adjustment in this rate proceeding.

3 Q. Did the Staff propose a similar adjustment relating to the Aries PPA in the
4 last MPS general rate proceeding in Missouri, Case No. ER-2001-672?

5 A. Yes, it did.

6 Q. Have there been significant changes in the financing and ownership
7 structure of the Aries unit since that rate proceeding?

8 A. Yes, there have been several.

9 ** _____
10 _____

11 _____
12 _____

13 _____
14 _____ **.

15 ** _____
16 _____

17 _____ **.

18 The Staff does not believe these two events change in any way the rationale for its
19 proposed adjustment to MPS's test year purchased power costs under the Aries PPA.

20 **ACQUISITION OF ST. JOSEPH LIGHT & POWER COMPANY**

21 Q. Have there been major changes to Aquila/UtiliCorp's Missouri
22 jurisdictional operations in the last several years?

Direct Testimony of
Mark L. Oligschlaeger

1 A. Yes. As previously referenced, Aquila/UtiliCorp closed on its acquisition
2 of St. Joseph Light & Power Company (L&P), a Missouri utility offering electric, natural
3 gas and industrial steam services, on December 31, 2000.

4 Q. Did Aquila/UtiliCorp pay a premium for acquiring L&P?

5 A. Yes. During the course of Case No. EM-2000-292, Aquila/UtiliCorp's
6 application before the Commission for approval of the L&P acquisition, Aquila/UtiliCorp
7 estimated that the premium it would pay for the L&P properties would be approximately
8 \$93 million. The actual premium paid for L&P by Aquila/UtiliCorp in late 2000 was in
9 fact larger, approximately \$108 million. When grossed up for deferred tax revenue
10 requirements, the total premium amount for the L&P properties is \$176,494,000
11 (Response to Staff Data Request No. 381 in Case No. ER-2001-672).

12 Q. Did Aquila/UtiliCorp estimate that it would achieve certain merger
13 savings associated with the L&P transaction?

14 A. Yes. In Case No. EM-2000-292, Aquila/UtiliCorp estimated that it could
15 create approximately \$184 million in savings in operating costs over the first ten years of
16 the L&P acquisition.

17 Q. In its Report and Order in Case No. EM-2000-292, did the Commission
18 address how L&P acquisition costs and savings were to be treated for rate purposes?

19 A. No. The Commission did indicate that all rate questions concerning L&P
20 merger costs and savings were to be reserved for future rate proceedings, and would not
21 be decided by the Commission in the context of the acquisition case.

Direct Testimony of
Mark L. Oligschlaeger

1 It is my understanding that, as a result of recent court proceedings, the
2 Commission's Report and Order in Case No. EM-2000-292 relating to treatment of the
3 acquisition premium costs has been remanded back to the Commission.

4 Q. What is the Staff's position in general on appropriate rate treatment of
5 merger/acquisition costs and savings in rate proceedings?

6 A. The Staff's position on these matters, as consistently expressed over time,
7 is as follows.

8 Merger and acquisition costs, in the nature of merger premiums/acquisition
9 adjustments and transaction costs, should not be allowed in customer rates, for reasons
10 that will be addressed later in this testimony.

11 Merger and acquisition savings, to the extent they are reflected in a utility's actual
12 test year, update period or true-up period financial results, generally should be reflected
13 in customer rates. A utility's "costs to achieve," also known as transition costs, incurred
14 to bring about savings should be allowed recovery in customer rates, usually through an
15 amortization to expense. (Transition costs generally include items such as relocation and
16 training costs for employees, and costs to integrate the two former utilities' computer and
17 telecommunications systems.)

18 Q. If actual merger savings are passed on to customers in rates, doesn't that
19 give all of the cost benefits of a merger to a utility's customers, not shareholders?

20 A. No. A utility can still retain the benefit of merger and acquisition benefits
21 for a period of time through "regulatory lag."

22 Q. What is regulatory lag?

Direct Testimony of
Mark L. Oligschlaeger

1 A. Regulatory lag is the passage of time between when a utility's financial
2 results change and when that change is reflected in the utility's rates. In the Staff's
3 opinion, regulatory lag provides utilities with significant incentives to increase their
4 productivity and achieve savings because the utilities' shareholders will reap the benefit
5 of the increased profits that result for some time before the increased profitability can be
6 reflected in a rate case to reduce customer rates. Alternatively, regulatory lag provides
7 utilities with significant incentives to prevent decreases to earnings
8 (e.g., expense increases) because such reduced profitability will be borne by their
9 shareholders until the point in time that a rate proceeding initiated to increase customer
10 rates can be processed by a regulatory authority.

11 Related to mergers and acquisitions, the Staff believes that the phenomenon of
12 regulatory lag can produce material benefits for the combining companies' shareholders
13 over time if significant cost savings related to the merger/acquisition can be produced
14 between rate proceedings.

15 Q. Can Aquila/UtiliCorp gain the benefit of merger savings from the L&P
16 acquisition through regulatory lag for a period of time?

17 A. Yes. A significant amount of merger savings was projected by
18 Aquila/UtiliCorp in the merger application in Case No. EM-2000-292 to result from the
19 L&P acquisition. By the time new rates from the present rate increase case go into effect,
20 over three years will have elapsed in which Aquila/UtiliCorp will have had the
21 opportunity to benefit from merger savings through the operation of regulatory lag.

22 Q. Can the amount of L&P acquisition savings be accurately identified at this
23 time?

Direct Testimony of
Mark L. Oligschlaeger

1 A. No. In general, it is extremely difficult, and perhaps impossible, to
2 accurately identify the amount of merger savings caused by a merger transaction after-
3 the-fact. This point has been discussed extensively in Staff testimony in many past
4 merger and acquisition applications, including Case No. EM-2000-292.

5 Q. Why is it very difficult to “track” and quantify the amount of savings
6 resulting from merger transactions?

7 A. Quantifying the amount of merger savings requires a comparison between
8 the actual costs of a company after a merger with the costs that the company would have
9 incurred if the merger or acquisition had not taken place. The latter part of the equation
10 represents a hypothetical measurement of costs under a “what if” scenario, and cannot be
11 determined in a manner that parties can likely agree is objective and that can be readily
12 agreed to by parties to a rate case.

13 Q. Why did the Staff not include in its cost of service any acquisition
14 adjustments?

15 A. There are numerous reasons for the Staff’s opposition to above-the-line
16 recovery of acquisition adjustments/merger premiums in rates. Among the major reasons
17 are the following:

18 1. The decision to enter into a merger or acquisition transaction is a
19 voluntary one, made by utilities (generally subject to approval by their
20 shareholders) based upon their perception of overall shareholder interests.
21 Therefore, any increase in the purchase price for utility properties that
22 exceed the net original cost of the assets in question should be the
23 shareholders’ responsibility.

- 1 2. Utilities usually attempt to justify recovery of acquisition adjustments in
2 rates based upon an assertion that achieved merger savings exceed the
3 revenue requirement impact of the acquisition adjustment, and that it is
4 only "fair" that merger costs be reflected in rates as merger savings are.
5 However, due to the inherent inability to accurately track merger savings
6 after-the-fact, quantification of merger savings is much more difficult than
7 quantification of merger costs which, in comparison, are more
8 straightforward in nature and identifiable. Therefore, any regulatory
9 body's deliberation on merger savings recovery issues concerning
10 acquisition adjustments will unavoidably center on very subjective and
11 contentious assertions about the level of merger savings actually achieved,
12 with very little objective evidence available to the regulatory authority on
13 which to assess the validity of merger savings claims.
- 14 3. In this instance, Aquila/UtiliCorp chose to account for the L&P
15 transaction as a "purchase" transaction for financial accounting purposes,
16 rather than as a "pooling" transaction. Acquisition adjustments at the time
17 of the Aquila/UtiliCorp-L&P merger only had to be booked for a purchase
18 transaction, not poolings, under the financial accounting rules in place
19 when the L&P acquisition was announced and closed. Aquila/UtiliCorp
20 could have chosen to structure the L&P transaction as a pooling, and could
21 have totally avoided the need to amortize an acquisition adjustment to
22 expense on its income statement (and seek recovery of the amortization in

1 rates). However, Aquila/UtiliCorp chose to structure the deal as a
2 purchase, for reasons related to its shareholders interests.

3 4. One reason Aquila/UtiliCorp chose to acquire L&P was its perception of
4 substantial benefits in non-regulated areas of Aquila/UtiliCorp's
5 operations. Among these benefits was Aquila/UtiliCorp's belief that
6 L&P's generating units had a much greater market value than their net
7 book value indicated. For this and other reasons, a substantial portion of
8 the L&P acquisition adjustment would need to be allocated to non-
9 regulated operations before any consideration should be given to granting
10 rate recovery to the remaining (regulated) portion. In the L&P merger
11 application case, Aquila/UtiliCorp refused to propose a specific allocation
12 of the acquisition adjustment to non-regulated operations.

13 5. Regulatory lag usually will allow a utility sufficient opportunity to retain
14 the benefit of merger savings for a period of time. For example,
15 Aquila/UtiliCorp will have had the opportunity to retain merger savings
16 from the L&P acquisition for over three years by the time new rates from
17 this proceeding go into effect.

18 Q. Does the Staff recommend that Aquila/UtiliCorp be allowed to retain a
19 portion of alleged merger savings through a "sharing" of merger savings?

20 A. No. Allowing a utility to "share" a portion of merger savings, instead of
21 reflecting all incurred merger savings in customer rates, would result in rates being set by
22 means other than from the company's actual cost of service. Such sharing of merger
23 savings is best viewed as another means of recovering merger costs in rates, including the

Direct Testimony of
Mark L. Oligschlaeger

1 acquisition adjustment, and the Staff is opposed to recovery of acquisition adjustments
2 for the reasons already stated in this testimony. Currently, MPS customers already pay
3 some of the highest rates in the State for electricity. This rate request seeks Commission
4 approval to allow Aquila/UtiliCorp to charge its MPS division the highest electric rates in
5 Missouri.

6 Q. Please summarize the Staff's position concerning the L&P acquisition as it
7 relates to this rate proceeding.

8 A. The Staff's position on reflecting the impacts of the L&P acquisition in
9 this rate proceeding is as follows:

- 10 1. The Commission should base MPS's and L&P's rates on those divisions'
11 actual cost of service, including L&P merger savings incurred to date and
12 reflected in MPS's and L&P's revenue requirements, if any.
- 13 2. The Commission should not include the L&P acquisition adjustment or
14 transaction costs in rates in this proceeding.
- 15 3. The Commission should not allow any "sharing" of L&P merger savings
16 in this proceeding, as that would allow for an indirect means of recovering
17 the L&P acquisition adjustment.

18 Q. Does this conclude your direct testimony?

19 A. Yes, it does.

MARK L. OLIGSCHLAEGER

<u>COMPANY</u>	<u>CASE NO.</u>
Kansas City Power and Light Company	ER-82-66
Kansas City Power and Light Company	HR-82-67
Southwestern Bell Telephone Company	TR-82-199
Missouri Public Service Company	ER-83-40
Kansas City Power and Light Company	ER-83-49
Southwestern Bell Telephone Company	TR-83-253
Kansas City Power and Light Company	EO-84-4
Kansas City Power and Light Company	ER-85-128 & EO-85-185
KPL Gas Service Company	GR-86-76
Kansas City Power and Light Company	HO-86-139
Southwestern Bell Telephone Company	TC-89-14
Western Resources	GR-90-40 & GR-91-149
Missouri-American Water Company	WR-91-211
UtiliCorp United Inc. / Missouri Public Service	EO-91-358 & EO-91-360
Generic: Expanded Calling Scopes	TO-92-306
Generic: Energy Policy Act of 1992	EO-93-218
Western Resources, Inc./Southern Union Company	GM-94-40
St. Louis County Water Company	WR-95-145
Union Electric Company	EM-96-149
St. Louis County Water Company	WR-96-263
Missouri Gas Energy	GR-96-285
The Empire District Electric Company	ER-97-82
UtiliCorp United, Inc./Missouri Public Service	ER-97-394
Western Resources, Inc./Kansas City Power & Light Company	EM-97-515
United Water Missouri, Inc.	WA-98-187
Missouri-American Water Company	WM-2000-222

MARK L. OLIGSCHLAEGER

<u>COMPANY</u>	<u>CASE NO.</u>
UtiliCorp United Inc. / St. Joseph Light & Power Company	EM-2000-292
UtiliCorp United Inc. / The Empire District Electric Company	EM-2000-369
Green Hills Telephone Corporation	TT-2001-115
IAMO Telephone Company	TT-2001-116
Ozark Telephone Company	TT-2001-117
Peace Valley Telephone Company, Inc.	TT-2001-118
Holway Telephone Company	TT-2001-119
KLM Telephone Company	TT-2001-120
Missouri Gas Energy	GR-2001-292
The Empire District Electric Company	ER-2001-299
Oregon Farmers Mutual Telephone Company	TT-2001-328
Ozark Telephone Company	TC-2001-402
Gateway Pipeline Company, Inc.	GM-2001-585
Missouri Public Service	ER-2001-672
Union Electric, d/b/a AmerenUE	EC-2002-1
Laclede Gas Company	GA-2002-429

MARK L. OLIGSCHLAEGER

Company Name	Case Number	Issues
Western Resources	GR-90-40 and GR-91-149	Take-Or-Pay Costs
Missouri-American Water	WR-91-211	True-up; Known and Measurable
Missouri Public Service	EO-91-358 and EO-91-360	AAO
Generic Telephone	TO-92-306	Revenue Neutrality; Accounting Classification
Generic Electric	EO-93-218	Preapproval
Western Resources & Southern Union Company	GM-94-40	Regulatory Asset Transfer
St. Louis County Water	WR-95-145	Policy
Union Electric Company	EM-96-149	Merger Savings; Transmission Policy
St. Louis County Water	WR-96-263	Future Plant
Missouri Gas Energy	GR-96-285	Riders; Savings Sharing
Empire District Electric	ER-97-82	Policy
Missouri Public Service	ER-97-394	Stranded/Transition Costs; Regulatory Asset Amortization; Performance Based Regulation
Western Resources & Kansas City Power & Light	EM-97-515	Regulatory Plan; Ratemaking Recommendations; Stranded Costs
United Water Missouri	WA-98-187	FAS 106 Deferrals
Missouri-American Water	WM-2000-222	Conditions
UtiliCorp United & St. Joseph Light & Power	EM-2000-292	Staff Overall Recommendations
Utilicorp United & Empire District Electric	EM-2000-369	Overall Recommendations
Green Hills Telephone	TT-2001-115	Policy
IAMO Telephone Company	TT-2001-116	Policy

Company Name	Case Number	Issues
Ozark Telephone Company	TT-2001-117	Policy
Peace Valley Telephone	TT-2001-118	Policy
Holway Telephone Company	TT-2001-119	Policy
KLM Telephone Company	TT-2002-120	Policy
Missouri Gas Energy	GR-2001-292	SLRP Deferrals; Y2K Deferrals; Deferred Taxes; SLRP and Y2K CSE/GSIP
Empire District Electric	ER-2001-299	Prudence/State Line Construction/Capital Costs
Ozark Telephone Company	TC-2001-402	Interim Rate Refund
Gateway Pipeline Company	GM-2001-585	Financial Statements
Missouri Public Service	ER-2001-672	Purchased Power Agreement; Merger Savings/Acquisition Adjustment
Union Electric Company	EC-2002-1	Merger Savings; Criticisms of Staff's Case; Injuries and Damages; Uncollectibles
Laclede Gas Company	GA-2002-429	AAO Request

SCHEDULE 3 and 4

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