

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of	)	
Aquila, Inc. d/b/a Aquila	)	
Networks - MPS and Aquila	)	
Networks - L&P for Authority to	)	Case No. EO-2008-0046
Transfer Operational Control of	)	
Certain Transmission Assets	)	
to the Midwest Independent	)	
Transmission System Operator, Inc.	)	

**STATEMENT OF POSITION AND PREHEARING BRIEF  
OF SOUTHWEST POWER POOL, INC.**

COMES NOW Southwest Power Pool, Inc. ("SPP") pursuant to Commission  
Order and for its Prehearing Brief state to the Commission the following:

**Introduction**

This proceeding involves the Application of Aquila, Inc. ("Aquila") to transfer operational control of certain of its transmission assets to the Midwest ISO. The Application was made pursuant to § 393.190 RSMo. 2000 and 4 CSR 240-3.110.

It is SPP's recommendation that the Commission reject the Application because the net effect of the transaction will be detrimental to the public interest. The evidence in the case shows limited interconnection capacity between Aquila and the Midwest ISO, causing the likelihood of congestion between Aquila and its proposed RTO. The preponderance of the other evidence in the record weighs against the transaction as well.

### **Statement of Position**

- 1. Is “not detrimental to the public interest” the appropriate standard for the Commission to use in making its determinations in this case?**

Yes, to the extent that Aquila filed its Application in accordance with § 393.190 RSMo. 2000 and 4 CSR 240-3.110 and the Commission determines to adjudicate the Application pursuant thereto, “not detrimental to the public interest” is the appropriate standard for the Commission to use in making its determination in this case.

- 2. Should the Commission determine that Aquila’s application to join MISO is not detrimental to the public interest? What considerations should the Commission take into account in making its determination?**

No, the Commission should determine that Aquila’s Application to join Midwest ISO is, in fact, detrimental to the public interest, and, therefore, the Commission should reject the Application. As SPP will more fully describe below in its Brief, there are a number of factors that the Commission should consider in making its determination. SPP suggests to the Commission that the most relevant considerations for its determination are the following, in order of relative importance:

1. Congestion/Reliability/Customer Service;
  2. Production Cost Savings potentially to be achieved by Aquila by participation in the SPP Markets;
  3. Market Development of the Midwest ISO and SPP;
  4. Union Electric Company’s continuing membership in MISO; and
  5. The Pending Acquisition of Aquila by Great Plains Energy that is the subject of Case No. EM-2007-0374.
- 3. If the Commission approves Aquila’s application to join MISO, should the Commission make its approval subject to certain conditions? If so, what are the conditions?**

Yes. Staff witness Mike Proctor identifies seven conditions the Commission should require the Parties to address in a Stipulation and Agreement in the event the Commission decides to conditionally approve Aquila joining the Midwest ISO. (Proctor Rebuttal, pp. 37, 38). While SPP takes no position on six of the seven conditions, SPP encourages the Commission to impose condition number six, related to a seams agreement between the Midwest ISO and AECl, on the applicant Aquila in the event it decides to conditionally approve Aquila's Application to join the Midwest ISO.

**4. In making its determination whether to grant Aquila's application to join MISO, should the Commission compare Aquila's membership in MISO to other alternatives? If so, what are the alternatives and what do the comparisons of the alternatives show?**

As SPP will more fully detail below in its Brief, the legal standard "not detrimental to the public interest" requires the Commission to compare Aquila's membership in SPP, the status quo, to Aquila's membership in the Midwest ISO, the request made in the Application. In its determination, according to the standard set forth in the Missouri Supreme Court's opinion in *State of Missouri, ex rel. AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732 (Mo. Banc 2003) ("AGP"), the Commission must consider reasonably expected consequences of these two alternatives.

**5. To what extent should the Commission take into account the following in its determination of whether or not to approve Aquila's application to join MISO?**

**a. The CRA International, Inc. cost-benefit study sponsored by Aquila;**

Yes, as more fully discussed in the Brief below.<sup>1</sup>

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<sup>1</sup> SPP answers these questions in the affirmative or the negative without discussing the "extent" to which the Commission should consider each factor. As will be more fully discussed in the Brief below, the Commission must balance each of the considerations to determine whether the proposal in the Application

**b. Cost-benefit analyses sponsored by parties other than Aquila;**

SPP has not made extensive comment regarding the CRA International, Inc. cost-benefit study sponsored by Aquila (“CRA Study”), desiring instead to permit Aquila, the Midwest ISO, Staff and other parties to critique the analysis. However, CRA International did conduct a Cost-Benefit Analysis for SPP’s Regional State Committee (“RSC”), dated April 23, 2005 and revised on July 27, 2005. Section 7 of that Cost-Benefit Analysis consisted of “Aquila Sensitivity Cases.” The Cost-Benefit Analysis was filed in Case Nos. EO-2006-0141 and EO-2006-0142. SPP invites the Commission to take official notice of the Cost-Benefit Analysis filed in those cases.

**c. Costs and/or benefits not included in the CRA International cost-benefit study sponsored by Aquila or cost-benefit analyses sponsored by parties other than Aquila;**

Yes. Both Midwest ISO witnesses have opined that the Commission should consider the many qualitative benefits that an RTO brings to its members. SPP agrees. As described by SPP witness Monroe, those benefits are already being provided to Aquila by SPP.

**d. Aquila’s current relationships with MISO and SPP;**

Yes, as more fully discussed in the Brief below.

**e. Differences in the development of electricity markets between MISO and SPP;**

Yes, as more fully discussed in the Brief below.

**f. The proposed acquisition of Aquila by Great Plains Energy that is the subject of Case No. EM-2007-0374;**

Yes, as more fully discussed in the Brief below.

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will be a net detriment or a net benefit to the public interest. Based on this balancing test, SPP believes it is more important to discuss the considerations in relationship to their relative importance, which it has done in its Brief below.

**g. Union Electric Company's continuing membership in MISO;**

Yes, as more fully discussed in the Brief below.

**h. Aquila's obligation to MISO made in FERC Docket No. ER02-871 to file and support Aquila's application to join MISO;**

No. Aquila's obligation to the Midwest ISO made in Federal Energy Regulatory Commission ("FERC") Docket No. ER02-871 is not relevant to the Commission's determination in this case for three reasons. First, Aquila's commitment made in FERC Docket No. ER02-871 is to file and support an application to join the Midwest ISO, not to actually join the Midwest ISO. (Odell Direct, p. 4, l. 19). Second, to the extent that Aquila has filed its Application to join the Midwest ISO and the Commission determines to adjudicate the Application in accordance with § 393.190 RSMo. 2000, the Commission is in no way obligated to consider Aquila's commitments: "Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void." Third and finally, the circumstances underlying Aquila's commitment to file and support an application to join the Midwest ISO have clearly changed. The facts indicate that Aquila's commitments were made at a time before SPP became an RTO and under circumstances in which SPP would not be permitted to become an RTO and/or would be completely subsumed under the Midwest ISO. However, these circumstances no longer apply.

- 6. If the Commission authorizes Aquila to join MISO, should the Commission determine now whether all future FERC-approved administrative fees Aquila is assessed by MISO and all future costs Aquila incurs from MISO in making prudent purchases of capacity and/or energy to serve its bundled retail load should be considered to be prudently incurred expenses for purposes of including them in**

**Aquila's cost of service in Aquila's next general electric rate case  
before this Commission?**

No position.

**Brief**

**Introduction**

This Application is a product of stale commitments made by Aquila at a time in which circumstances were dramatically different than they are today in the electric utility industry. Consider that on July 16, 2001, almost seven years ago, Aquila entered into an agreement to join the Midwest ISO. (Odell Direct, p. 3, ls. 3-5). According to Aquila witness Odell, this was a consequence of two circumstances: (1) a FERC order conditioning the approval of the Agreement and Plan of Merger with St. Joseph Light and Power Company upon the merged company filing a plan to join an RTO and (2) the fact that the Midwest ISO was the only FERC-approved RTO in the area. (Odell Direct, p. 3, ls. 5-8). On December 20, 2002, Aquila filed a protest with FERC challenging the Midwest ISO's proposed Schedule 10-B, claiming that it was being charged for services other than security coordination service (the only service it was receiving from the Midwest ISO) through Schedule 10-B.<sup>2</sup> As part of the settlement of that protest, Aquila committed to refile with this Commission an application to join the Midwest ISO. (Odell Direct, p. 4).

Many events have transpired since Aquila first entered into an agreement to join the Midwest ISO on July 16, 2001. Since that time, on March 4, 2002, SPP and the Midwest ISO entered into a Purchase and Assumption Agreement whereby the Midwest ISO would purchase all the assets and assume all the obligations of SPP, which was later

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<sup>2</sup> See *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,346. P. 23.

filed with the FERC and then withdrawn. (Monroe Surrebuttal, pp. 3, 4). On August 8, 2002, Empire District Electric Company (“Empire”) received an Order from the FERC authorizing the transfer of functional control over its transmission facilities to the new company resulting from the consolidation of the Midwest ISO and SPP.<sup>3</sup> On July 25, 2003, the Midwest ISO filed a proposed Energy Market Tariff (TEMT), which was withdrawn on October 17, 2003.<sup>4</sup> This Commission approved the Stipulation and Agreement for AmerenUE to join the Midwest ISO, on February 26, 2004. On August 6, 2004, the FERC conditionally accepted the Midwest ISO’s tariff sheets to start its Energy Market.<sup>5</sup> Since that time, in October of 2004, SPP received approval from the FERC to become an RTO. (Monroe Surrebuttal, p. 4, l. 11). On June 13, 2006, this Commission granted the Applications of Empire and Kansas City Power and Light Company (“KCPL”) to transfer functional control of their transmission facilities to SPP pursuant to two separate Stipulation and Agreements in Case Nos. EO-2006-0141 and EO-2006-0142. Since that time, SPP implemented an Energy Imbalance Service (“EIS”) Market, providing a real-time energy market to its Members. (Monroe Surrebuttal, pp. 16, 17). At all times, Aquila has remained a Member of SPP.

### **Commission’s Analysis – Not Detrimental to the Public Interest**

This Commission has traditionally analyzed applications filed pursuant to section 393.190 of the Revised Statutes of Missouri under the standard of “not detrimental to the public interest.” The standard is based on a Missouri Supreme Court case, *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 73 S.W.2d 393 (Mo. Banc 1934), quoting from a Maryland Supreme Court decision:

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<sup>3</sup> *Empire District Electric Company*, 100 FERC ¶ 62,108 (2002).

<sup>4</sup> See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,193.

<sup>5</sup> *Id.*

To prevent injury to the public, in the clashing of private interest with public good in the operation of public utilities, is one of the most important functions of Public Service Commissions. It is not their province to insist that the public shall be benefited, as a condition to change of ownership, but their duty is to see that no such change shall be made as would work to the public detriment. "In the public interest," in such cases, can reasonably mean no more than "not detrimental to the public." 73 S.W.2d at 400.

In *AGP*, the Missouri Supreme Court confirmed that this standard is to be used in section 393.190 cases. Since the Commission is constrained in its analysis to only prevent harm to the public interest, it is constrained in considering only the alternatives of the status quo and the proposal described in the Application.

However, in making its analysis, this Commission must consider the reasonable consequences of both alternatives. According to the *AGP* Court,

The fact that the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger. While PSC may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was reasonable, and it should have considered it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public. The PSC's refusal to consider this issue in conjunction with the other issues raised by the PSC staff may have substantially impacted the weight of the evidence evaluated to approve the merger. The PSC erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp's being allowed to recoup the acquisition premium. *AGP*, 120 S.W.3d at 736.

The *AGP* case involved the appeal of the judgment of the Circuit Court of Cole County affirming this Commission's decision to approve the merger of Utilicorp United, Inc. and St. Joseph Light and Power Company. The proposed merger included a regulatory plan in which the applicants sought a five-year rate moratorium to be followed by a recovery from the ratepayers in the sixth year of a \$92,000,000 acquisition premium. The Commission rejected the regulatory plan and declined to consider the merger premium,



finding that to consider the acquisition premium was to prejudge the ratemaking factor outside the procedures of a rate case. The Court reversed and remanded the decision to the Commission. It determined the future rate impact of the merger premium to be a relevant and critical issue in the merger proposal.

Thus, the Commission must consider the reasonably expected consequences of the two options set before it in the Application in this case: the status quo and the proposal set forth in the Application. The Commission must consider not only the existing benefits of Aquila's RTO participation as described in the testimonies of SPP witness Monroe and Midwest ISO witness Doying, but also the reasonably expected consequences of "Aquila in SPP" and "Aquila in MISO" as presented in the CRA Study.

#### **Commission's Analysis – Balancing the Evidence of Benefit and Detriment**

Applying the guidance provided in *AGP*, the Commission stated in *In the Matter of Union Electric Co. d/b/a AmerenUE*,<sup>6</sup>

What is required is a cost-benefit analysis in which all of the benefits and detriments in evidence are considered . . . [I]t requires the Commission to consider this risk [the risk of future rate increases] together with the other possible benefits and detriments and determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public. *Union Electric*, at 48.

The Commission went on to observe that,

In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable. *Union Electric*, at 49.

As the Commission has characterized it, this case is a cost-benefit analysis. The

Commission must consider qualitative as well as quantitative factors. It must consider

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<sup>6</sup> Case No. EO-2004-0108 (Report & Order on Rehearing), 13 Mo.P.S.C.3d 266 (2005) ("*Union Electric*"). Citations hereafter are given to page numbers in the Commission's unpublished Report & Order.

reliability as well as cost factors. It must consider factors that tend to make the power supply less safe or less adequate and which tend to make rates less just or less reasonable.

The Commission must consider all of the relevant evidence related to the proposed course of action in the Application and determine on balance whether the Application proposes a net benefit or a net detriment when compared to the status quo.

The witnesses in this case have presented a good discussion of the relevant and critical risk issues. SPP proposes that the following considerations are the relevant and critical issues, set forth in the order of their significance:

1. Congestion/Reliability/Customer Service;

Staff witness Mike Proctor has presented evidence that granting the Application will create significant risks from congestion due to limited interconnection capacity between Aquila and the Midwest ISO if Aquila becomes a member of the Midwest ISO Market. In his Rebuttal Testimony, Mr. Proctor compares the 5,915 MVA capacity between Aquila and SPP with the 1,207 MVA capacity between Aquila and the Midwest ISO. (Proctor Rebuttal, p. 29, l. 10). In his Cross-Surrebuttal Testimony, he concludes the following:

[B]ased on a comparison of the results of the additional analysis comparing Aquila in MISO versus Aquila in SPP, my conclusion is that Aquila in MISO results in greater congestion between Aquila's load and its participating, baseload generation resources located outside the Aquila control area (*i.e.*, Iatan, Jeffrey, Gentlemen and Cooper). It is because of this difference on congestion in the transmission system that Aquila in SPP shows greater trade benefits than from being in MISO, including both higher levels of generation from external baseload generating units and lower market prices for Aquila load. (Proctor Cross-Surrebuttal, pp. 2, 3).

Mr. Proctor also notes that the Dogwood plant is dispatched in the CRA Study in a less than efficient manner and at a higher cost to Aquila due to congestion indicated in the

“Aquila in MISO” case. (Proctor Cross-Surrebuttal, p. 12). SPP witness Carl Monroe agrees. He concludes that the CRA Study dispatch of the Dogwood plant in the “Aquila in MISO” case is significantly different from the “Aquila in SPP” case because Dogwood is needed to meet demand in the constrained Aquila area. (Monroe Surrebuttal, p. 21). Staff witness Proctor particularly notes that this did not occur in the “Aquila in SPP” case. (Proctor Cross-Surrebuttal, p. 12).

Midwest ISO witness Pfeifenger concludes that the limited interconnection capacity between Aquila and the Midwest ISO, described by Staff witness Proctor, does not impose a meaningful constraint on Aquila. He bases his conclusion on the fact that Aquila has historically purchased more energy from the Midwest ISO than from SPP. (Pfeifenger Surrebuttal, pp. 13, 14). The Commission should be circumspect about Mr. Pfeifenger’s conclusion, as it does not address the issue at hand. First, Aquila’s historical purchases arise out of circumstances in which Aquila is a Member of SPP and not a Member of the Midwest ISO. Therefore, his conclusion does not address conditions proposed in the Application. Second, as Staff witness Proctor makes clear in his Rebuttal Testimony, energy is not capacity. Aquila must have adequate capacity committed beforehand to meet its expected load. Energy purchases do not fulfill Aquila’s reliability obligation to meet its load. Third, Mr. Pfeifenger’s observations actually support SPP’s position. As a continuing Member of SPP, Aquila will be able to avail itself of the Midwest ISO energy market as it has in the past while maintaining the stronger interconnections with its RTO.

In the final analysis, the evidence presented to the Commission in this case identifies a significant risk of a detriment to the public interest due to limited interconnection capacity between Aquila and the Midwest ISO.

2. Production Cost Savings potentially to be achieved by Aquila by participation in the SPP Markets;

The Commission must consider the CRA Study filed with Aquila's Application, and it must consider the production cost saving potentially to be achieved by Aquila in the "Aquila in SPP" case. The Commission can not ignore issues simply because they may be addressed in subsequent cases. It must consider reasonably anticipated consequences of its decision in this case.

First, the Commission must understand that SPP is now a viable alternative to the Midwest ISO. It must recognize that Aquila is a present Member of SPP and has been for decades. Aquila has continued to fulfill its obligations under the SPP Membership Agreement up to the present time. (Monroe Surrebuttal, p. 5, l. 6). Aquila had an obligation, pursuant to a merger order from FERC, to file a plan to join an RTO prior to SPP becoming an RTO. (Odell Direct, p. 3). However, since the time that Aquila made its commitment to file this Application, SPP has become a FERC-approved RTO. Aquila instructed CRA to include SPP as one of the alternatives in the CRA Study. (Odell Direct, p. 7). All of these facts indicate that Aquila has a significant incentive to join an RTO as a market participant and that SPP is a viable alternative.

Second, the Commission must understand that SPP is an attractive alternative to the Midwest ISO. The CRA Study concluded that the net benefits over the 2008 – 2017 time period would be over \$21 million if Aquila joins the Midwest ISO and over \$86

million if Aquila joins SPP, based on the assumption that SPP will have a Day-Ahead Market comparable to the Midwest ISO's. (Odell Direct, p. 8).

Third, the Commission must understand that the SPP Day-Ahead Market will be a realistic option if the SPP cost-benefit study shows benefits in excess of the costs. SPP witness Monroe discusses the status of the SPP Market. The existing EIS Market provides a real-time market for the SPP Members. SPP is in the process of conducting a cost-benefit study on three scenarios of a Day-Ahead Market and scenarios of an Ancillary Services Market. (Monroe Surrebuttal, pp. 18, 19). He also expects that SPP could implement the markets between the end of 2010 and 2012. (Monroe Surrebuttal, p. 17). Finally, he observes a real desire on the part of SPP Members to capture any potential benefits as quickly as possible. (Monroe Surrebuttal, p. 16, l. 16). This is evidence regarding circumstances that are more than mere speculation.

However, this is not the final word. As Staff witness Proctor concludes, "[I]f the incremental cost of implementing any given market is greater than the incremental benefit, then CRA will have underestimated total net benefits to Aquila for the SPP scenario." (Proctor Rebuttal, p. 25, l. 21). Clearly, the potential benefits for Aquila participating in SPP's existing and proposed markets are significantly greater than the potential benefits for Aquila participating in the Midwest ISO Markets, as the CRA Study indicates.

The Midwest ISO has challenged the CRA Study, alleging various flaws.

However, Midwest ISO witness Pfeifenberger, after an extensive analysis, concludes:

The recently-received revised simulations further document that model limitations inappropriately bias estimated production cost benefits in favor of the "Aquila in SPP" case. The bias and estimation errors created by these modeling limitations are too large to conclude that the production cost savings of Aquila joining SPP

would be any larger than the savings associated with Aquila joining the Midwest ISO. Based on the discussed new insights about the modeling limitations and my previously-presented correction to the production cost savings estimated in the Aquila Study, I conclude that the production cost benefits of Aquila joining either the Midwest ISO or SPP likely will be in the 1% to 3% range. The market modeling efforts undertaken simply are not sufficiently precise to conclude that joining either the Midwest ISO or SPP would offer significantly larger production cost savings. Under some modeling assumptions these savings are slightly larger in SPP, while under alternative assumptions the savings may be slightly larger in the Midwest ISO. Accordingly, it is important to recognize that, in addition to these production cost studies, it is equally important and essential that the broader RTO as benefits discussed in Mr. Richard Doying's rebuttal testimony be examined and considered when assessing overall RTO benefits. (Pfeifenberger Supplemental Rebuttal, pp. 13, 14).

The best case that Mr. Pfeifenberger can put forward is that "either the Midwest ISO or SPP would offer significantly larger production cost savings." However, Staff witness Proctor finds that Mr. Pfeifenberger's approach, even after all his other changes, still has Aquila in SPP with higher trade benefits than Aquila in the Midwest ISO. (Proctor Cross-Surrebuttal, p. 47, l. 18). In addition, he finds that Mr. Pfeifenberger's approach is based on the use of the "system-wide unit commitment" logic to the GE-MAPS program which biases the analysis in favor of Aquila in the Midwest ISO. (Proctor Cross-Surrebuttal, pp. 16, 17).

Based on all the evidence in the record, continued participation in SPP is a viable and attractive alternative to the Midwest ISO. Additional SPP markets are realistic options for the SPP Members. If the Commission determines to grant Aquila's Application, it will foreclose the potential opportunity for Aquila to receive the significantly greater production cost benefit from participating in the eventual SPP markets. In addition, this consideration fails to counterbalance the significant detriment from being in a congested situation within the Midwest ISO.

### 3. Market Development of the Midwest ISO and SPP;

City of Independence, Missouri witness Volpe has alleged that since SPP does not yet have a Day Ahead Market, SPP is less beneficial to Aquila than described in the CRA Study. (Volpe Rebuttal, pp. 6-9). While the observation is worthy of the Commission's consideration, his short-term analysis should not override longer term considerations. A short-term benefit should not outweigh longer term benefits. The Commission itself has said as much.

The *AG Processing* decision does not, as Public Counsel asserts, require the Commission to deny approval where a risk of future rate increases exists. Rather, it requires the Commission to consider this risk together with the other possible benefits and detriments and determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public. *Union Electric*, at 48.

Therefore, Staff witness Proctor is right to conclude that the Commission should base its decision on the long-term view. (Proctor Rebuttal, p. 26, l. 15).

4. Union Electric Company's continuing membership in MISO;

In *Union Electric*, the Commission concluded that it must consider possible benefits and detriments and determine whether the transaction "tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable." *Id.* at 49. Union Electric Company is the only Midwest ISO Member through which Aquila has interconnection with the Midwest ISO. Since it is unclear how Union Electric Company will relate to the Midwest ISO, the proposed transaction will certainly create uncertainty in how Aquila will be able to relate to its RTO. This is an issue the Commission must consider.

5. The Pending Acquisition of Aquila by Great Plains Energy that is the subject of Case No. EM-2007-0374;

Likewise, the pending Acquisition of Aquila by Great Plains Energy introduces issues that are a complicating factor for Aquila joining the Midwest ISO. One of the

affiliates of Great Plains Energy, KCPL, has previously been granted permission by this Commission to transfer functional control of its transmission assets to SPP in Case No. EO-2006-0142. Aquila, the other affiliate in the proposed merger and Applicant in this case, is presently a Member of SPP. Granting the Application may create uncertainty between the two potential affiliates. This is also a factor the Commission should consider.

### **Conclusion**

These factors, when weighed in balance, make it clear that the transfer of operational control of Aquila's transmission assets to the Midwest ISO would be detrimental to the public interest. The issue of transmission congestion between Aquila and its RTO alone is a sufficient detriment to give the Commission pause. Based on the evidence in the record, there are not benefits to be derived from the transaction that will counterbalance that detriment. As a matter of fact, the preponderance of the remaining evidence weigh against the proposed transaction. For these reasons, the Commission should reject Aquila's Application.

Respectfully submitted,

/s/ David C. Linton

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was sent via e-mailed on the 18<sup>th</sup> day of March, 2008, to the following:

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