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 Transfer Operational Control of Certain Transmission Assets to the Midwest Independent Transmission System Operator, Inc.	)	Case No. EO-2008-0046

BRIEF OF AQUILA, INC.

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I. Introduction

In this case, Aquila, Inc. ("Aquila" or the "Company") is seeking the Commission's approval to transfer to the Midwest Independent System Operator ("MISO") operational control of its Missouri electric transmission assets, 100 KV and above. This arrangement will be reflected in an Agreement of Transmission Facilities' Owners to Organize the Midwest Independent System Operator, Inc. (the "MISO Agreement") currently on file with the Federal Energy Regulatory Commission ("FERC").[1]

At the hearing in this case on April 14, 2008, Aquila demonstrated that it satisfied its burden of making a *prima facie* case that the transaction is not detrimental to the public interest and, in fact, is beneficial to the public interest as evidenced by a cost-benefit study prepared by CRA International (the "CRA Study"). The CRA Study shows that the transfer of operational control of Aquila's transmission assets to MISO will result in substantial economic benefits as compared to Aquila not participating in a Regional Transmission Organization ("RTO"). In this circumstance, the parties asserting that the transaction is detrimental to the public interest have the burden of presenting sufficient evidence to support that assertion. *Re Gateway Pipeline Company*, 10 Mo.P.S.C.3d 520, 524 (2001).

[1] *See,* Odell, Ex. 001, p. 3, Sch. DO-1.

II. Statement of Facts

Aquila is a Delaware corporation that is authorized to conduct business in Missouri through its Aquila Networks-MPS and Aquila Networks-L&P operating divisions. It is engaged in providing electrical and heating utility services in Missouri in those areas certificated to it by the Commission.

The Aquila electric transmission system in the State of Missouri consists of 1257 miles of 345 KV, 161 KV and 69 KV transmission lines extending over an area from the northwest corner of Missouri as far as Lamar, and far east as Sedalia, except for the central Kansas City area. This system is interconnected with neighboring utilities at a number of points. The interconnected utility systems are Kansas City Power & Light Company ("KCPL"), City of Independence Power and Light, Associated Electric Cooperative, AmerenUE, Westar, MidAmerica Electric Company, Omaha Public Power District, Nebraska Public Power District, and The Empire District Electric Company ("Empire"). The retail native load on the transmission system consists of around 1960 megawatts. In addition, Aquila provides transmission service for seven municipal customers that are connected to the system. Aquila also provides transmission wheeling service over the system for a number of wholesale power marketing entities. The system is managed from an operations center located in Lees Summit, Missouri. (Odell, Ex. 001, p. 2). Aquila is a net purchaser of electric power. (Odell, Tr. 64; Proctor, Tr. 291).

MISO is a Delaware non-stock corporation. It is the RTO that provides operating and reliability functions in portions of 15 midwestern states and one Canadian province. FERC approved MISO as the nation's first RTO on December 20, 2001. MISO first began selling transmission service under its FERC-approved open access transmission tariff on February 1, 2002. Currently, MISO provides transmission services and energy market services pursuant to the terms of its open access transmission and energy markets tariff. (Doying, Ex. 004, p. 4). MISO has two (2) tie lines into the Aquila control area representing 1,207 million volt-amps (MVA) capacities. (Proctor, Ex. 012, p. 29).[2]

The historical context for the filing in this case is quite involved. In 1999, Aquila (then UtiliCorp United, Inc.) entered into an Agreement and Plan of Merger with St. Joseph Light and Power Company which was subject to various regulatory approvals, including the approval of this Commission and FERC. FERC's order approving that merger contained a requirement that the merged company file a plan to join an RTO. At that time, MISO was the only FERC approved RTO in the area. Consequently, Aquila entered into an agreement to join MISO on July 16, 2001. (Odell, Ex. 001, p. 3).

On August 20, 2001, Aquila filed with FERC an application to transfer operational control over certain designated facilities to MISO. This application requested that FERC approve the transfer of operational control of the Aquila transmission system in Missouri, 100 KV and above, as well as systems in

[2] The Southwest Power Pool ("SPP") has fourteen (14) tie lines of 5,915 MVA capacities and Associated Electric Cooperative has ten (10) tie lines of 2,385 MVA capacities into the Aquila control area. (*Id.*)

another state, to MISO. This transfer was approved by FERC on September 13, 2001. Thereafter, on November 14, 2001, Aquila filed with FERC a supplemental application in order to list certain additional facilities that had been inadvertently omitted from the August 21, 2001, application, which was also approved by FERC on December 13, 2001. (Odell, Ex. 001, p. 3, Sch. DO-2).

Shortly thereafter, Aquila filed an application with the Commission for approval to transfer operational control of these facilities.[3] Aquila withdrew this application on January 2, 2002, because AmerenUE had withdrawn from MISO leaving Aquila with no physical connection to the RTO. Aquila was (and still is) dependent on AmerenUE for its physical connection to the MISO control area. AmerenUE's withdrawal from MISO did not sever all relationships between Aquila and MISO. In anticipation of turning over operational control of its Missouri transmission system to MISO, Aquila had already transferred security coordination responsibilities from SPP.[4] These security coordination responsibilities are still performed for Aquila by MISO. (Odell, Ex. 001, p. 4; Tr. 100).

On December 20, 2002, Aquila made a filing with FERC challenging the reasonableness of certain administrative costs proposed by MISO to be

[3] This Application was docketed by the Commission's Case No. EO-2002-125.

[4] Aquila's predecessors Missouri Public Service Company and St. Joseph Light & Power Company joined SPP in 1951 and 1958, respectively. Aquila continues to receive other services from SPP, including tariff administration, OASIS administration, available transmission capacity and total transmission capacity calculations, scheduling agent and regional transmission planning from SPP. (Monroe, Ex. 009, p. 2; Lesser, Ex. 017, p. 18; Odell, Tr. 97-100; Ex. 001, Sch. DO-3, p. 1).

assessed against Aquila pursuant to Schedule 10-B to the MISO tariff.[5] That challenge was subsequently settled by Aquila and MISO in 2003, one of the provisions of the settlement being that Aquila would file again for Commission approval to transfer operational control of certain of its electric transmission facilities to MISO and would diligently pursue that approval. (Odell, Ex. 001, p. 4; Tr. 100).

Consistent with that commitment, Aquila filed its second application with the Commission to join MISO on June 20, 2003.[6] That case was continued a number of times to allow AmerenUE's case for the transfer of control of its transmission facilities to MISO to progress.[7] Additional continuances were permitted to allow for the completion of cost-benefit studies. Ultimately, Aquila's case was dismissed by the Commission on May 12, 2005, without prejudice to refile at such time as additional system cost information became available. (Odell, Ex. 001, p. 5).

On February 26, 2004, AmerenUE was granted approval by the Commission to become a member of MISO for an interim period of 5 years. This development enabled Aquila to become a MISO member by providing a physical connection to the MISO control area. (Odell, Ex. 001, p. 5).

In 2006, Aquila contracted with CRA International ("CRA") to perform a cost-benefit analysis for Aquila's Missouri electric utility operations to assess the impact of the potential membership in an RTO (hereinafter sometimes referred to

[5] Docket No. ER02-871-000.
[6] That case was docketed by the Commission as Case No. EO-2003-0566.
[7] Case No. EO-2003-0271.

as the "CRA Study"). CRA was instructed to consider three scenarios: membership in MISO, membership in SPP,[8] and a move to a stand-alone status in which Aquila performs transmission and reliability related functions on its own. The performance of the study was preceded by a stakeholder meeting in November of 2006, at which time the scope of the study and the assumptions upon which it would be premised were discussed. Representatives of the Office of the Public Counsel ("OPC"), MISO and SPP participated.[9] (Odell, Ex. 001, p. 7).

The CRA Study was completed on March 28, 2007. Thereafter, another meeting with the same group of stakeholders, including Staff, was held and additional clarifying material was developed. (Odell, Ex. 001, p. 7; Sch. DO-4).

On April 4, 2007, Great Plains Energy, Incorporated ("GPE"), KCPL and Aquila filed a Joint Application with the Commission requesting authority to undertake a series of transmissions whereby Aquila, like KCPL, will become a wholly-owned subsidiary of GPE. That filing has been docketed by the Commission as Case No. EM-2007-0374 and evidentiary hearings with respect to that Application concluded on May 1, 2008. That request is still pending. (Odell, Ex. 001, p. 6).

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[8] FERC granted SPP RTO status on February 10, 2004. Thereafter in June of 2006, the Commission authorized both KCPL and Empire to become members of SPP in Case Nos. EO-2006-0142 and EO-2006-0141, respectively. Aquila decided to include the SPP option as part of CRA's scope of work in order to give the Commission the universe of relevant information. (Odell, Tr. 73-74, 124-125).

[9] Staff was invited to the meeting but its representative was unable to attend. He was, however, briefed by the Company and CRA shortly thereafter. (Odell, Ex. 001. p. 7).

The most recent development of note has been the filing on November 1, 2007, by AmerenUE to extend its participation in MISO through April 30, 2012. This application was docketed by the Commission as Case No. EO-2008-0134. A final decision regarding AmerenUE's continued membership in the MISO RTO may not be known until June, 2008, or later. Aquila would not join MISO until such time as it is clear that AmerenUE will continue to be a member of MISO thus insuring that Aquila continues to have physical connection to the MISO RTO. (Odell, Ex. 002, p. 10).

III. Standard of Approval

In its April 16, 2008, Notice Regarding Filing of Briefs, the Commission directed the parties to address in detail the applicable legal standard in this case. The standard for approval of this transaction is not in dispute. Under Commission rule 4 CSR 240-3.110(1)(D), Aquila is required to demonstrate "[t]he reasons the proposed [transfer] of the assets is not detrimental to the public interest." Although the standard is not disputed, the application of that standard to the facts of this case clearly is.

The approval standard is one with which the Commission is quite familiar. Specifically, the Commission is required by law to approve Aquila's application unless an objecting party can demonstrate that doing so would be detrimental to the public interest. This rather minimal benchmark for approval was established by the Missouri Supreme Court in *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393 (Mo. 1934) concerning a stock sale. The Supreme Court's rationale is as relevant today as it was in 1934.

> 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 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.'

Id. at 400. The standard was expanded to apply to the transfer of assets in 1980. The Missouri Court of Appeals looked to the *City of St. Louis* decision in determining the right of a regulated sewer company to complete the sale of regulated assets. *State ex rel. Fee Fee Trunk Sewer Company v. Litz*, 596 S.W.2d 466 (Mo.App. 1980).

The application of this standard by the Commission in any particular case had become well known. In 1971, in a case involving the acquisition of the common stock of the Missouri Natural Gas Company by Laclede Gas Company, the Commission determined that all that needed to be shown to meet the test of no detriment was that the *status quo* be maintained. Specifically, the Commission found that the standard was met simply by showing that there would be no change in rates and no deterioration in service. *Re Laclede Gas Company*, 16 Mo.P.S.C. (N.S.) 334 (1971). The standard was refined by the Commission in 2000 in Case No. WM-2000-222 wherein the Commission determined that a party objecting to a transaction must present "compelling evidence" of a "direct and present public detriment."[10]

The Commission's application of the no detriment standard was revisited in 2003 when the Missouri Supreme Court reviewed the *City of St. Louis* case in

[10] *Re Missouri-American Water Company*, 9 Mo.P.S.C.3d 56, 59 (2000).

the context of an appeal of the Commission's Report and Order approving the UtiliCorp United Inc./St. Joseph Light & Power Company merger. The Court indicated that the Commission was required to evaluate the future impact on rates of a merger premium agreed to by UtiliCorp (now Aquila) in the context of its merger with St. Joseph Light and Power Company. *See, AG Processing, Inc. v. Public Service Commission*, 120 S.W.3d 732 (Mo. banc 2003) ("AGP"). Ascertaining the scope and effect of the *AGP* decision is still something of a work in progress. It is apparent, however, that the Commission's previously restrictive reading of the *City of St. Louis* decision has been called into question.

Where this case is concerned, the specific question presented is whether the proposed transaction can be found to be detrimental to the public interest because there is a "better" option available to Aquila. As reflected in the testimony of Staff witness Dr. Michael Proctor, Staff maintains that there is an "opportunity cost" to Aquila in this case because the CRA Study indicates that the economic benefits to Aquila joining the SPP RTO are significantly greater than the economic benefits to joining MISO.[11] Witnesses for OPC and interveners Dogwood Energy, LLC ("Dogwood") and SPP have expressed similar views.

There is little decisional guidance on the validity of using a comparative benefits analysis. In 1998 before the *AGP* decision was handed down, the Commission had rejected Staff's argument that UtiliCorp's proposed sale of a natural gas transmission line to Williams Natural Gas Company ("Williams") should be denied because it believed a proposal made by Missouri Gas Energy

[11] Ex. 012, p. 3-4. Staff's order of preference is (1) Aquila in SPP, (2) Aquila in MISO and (3) Aquila stand-alone. (Tr. 348-349).

was a superior offer. Staff's claim of detriment was based on the theory that an alleged imprudent expenditure under the sale to Williams would ultimately be passed on to ratepayers. The Commission rejected this argument and approved UtiliCorp's application.[12]

More recently in a post-*AGP* case, the Commission once again addressed a variation of this same theme. In Case No. EO-2004-0108,[13] taking into account the holding in *AGP,* the Commission stated the following:

> 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 power supply less safe or less adequate, or which tends to make rates less just or less reasonable. The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the safety or adequacy of service. (emphasis added).

This appears to be the most current decisional guidance from the Commission and it is apparent that the Commission has not restricted the application of the *AGP* opinion only to the consideration of acquisition/merger premiums. Aquila believes that the application of the no detriment standard as articulated by the Commission in the *AmerenUE* case to the facts of this case justifies approval of Aquila's request.

[12] *Re UtiliCorp United Inc.,* 7 Mo.P.S.C.3d 543 (1998).
[13] *Re AmerenUE,* 13 Mo.P.S.C.3d 16, 40 (2004).

IV. Aquila's Request To Join MISO Should Be Approved

A. The Results of the CRA Study are Valid and Reliable and should Guide the Commission's Decision.

The principal item sponsored by Aquila in support of its request to join the MISO RTO is the CRA Study attached to Dennis Odell's direct testimony as Schedule DO-3. The conclusion of that study is that Aquila's membership in the MISO RTO is likely to result in net benefits of over $21 million over the period of 2008 through 2017. The net benefits cited in the study primarily take the form of trade benefits. These benefits are the decrease in costs of serving Aquila's Missouri load and come about as a result of Aquila's ability to displace its own generation with lower cost generation from other sources on a more economical basis as a member of an RTO. (Odell, Ex. 001, p. 8; Tr. 70). Inasmuch as the CRA Study demonstrates that joining MISO provides significant net benefits for Aquila's customers, the Company believes that approval of the Application would not be detrimental to the public interest.

The results of the CRA Study are entitled to great weight by the Commission in this case. No party has disputed the firm's expertise and experience in performing studies of this nature.[14] To the contrary, every party has acknowledged CRA's capabilities and competence.[15] Staff witness Dr. Michael Proctor testified that the CRA Study represents an unbiased analysis.

[14] *See,* Doying, Tr. 179; Monroe, Tr. 206; Pfeifenberger, Tr. 241-242; Proctor, Tr. 334; Volpe, Tr. 259; Lesser, Tr. 428-429).

[15] CRA's credentials are further burnished by the fact that AmerenUE recently hired the firm to perform a cost-benefit study of that company's continued membership in MISO. (Luciani, Tr. 142).

(Tr. 267). Significantly, Dr. Proctor testified that it provides a valid analysis upon which the Commission may rely in making its decision in this case. (Tr. 336).

B. Professional Differences of Opinion Regarding the Assumptions in the CRA Study do not Render it Invalid.

Two of the parties in the case, MISO and the City of Independence (the "City") sponsored testimony that is critical of the CRA Study. Where this topic is concerned, the Commission should first keep in mind that the fundamental assumptions used by CRA in the performance of its cost-benefit study were discussed at a stakeholder meeting at the outset. (Odell, Tr. 110; Luciani, Tr. 139) Messers Volpe for the City and Mr. Pfeifenberger for MISO have nevertheless challenged the assumption in the CRA Study that SPP, like MISO, operates a day-ahead market. It is true that SPP does not yet operate a day-ahead market as does MISO, however, SPP operates an energy imbalance market.[16] Also, SPP is currently studying the potential to transition to a full Day 2 market. To the extent that SPP does so, it will be because the expected benefits to SPP exceed the expected cost. Conversely, if SPP does not move to a Day 2 market, one can assume that it is because the current situation is more cost beneficial to SPP members. The reason for assuming equivalency in markets was based on the idea that the assumption should accommodate expected circumstances over a long-term timeframe because the decision to join an RTO is generally one with long-term considerations. (Luciani, Ex. 003, p. 2-3; Proctor,

[16] Aquila witness Luciani observed that this difference in market structures may not be material consideration by noting that SPP has a real-time market that "might get many of the benefits that a full Day 2 market may do." (Tr. 141, 143).

Ex. 013, p. 20). The general assumption is that MISO and SPP ultimately will have similar markets. (Proctor, Tr. 272-273).

The City's witness, Mr. Volpe, has offered calculations to eliminate expected trade benefits prior to 2011. Although the concept behind doing so is principled, his calculations are flawed because he failed to eliminate the associated administrative costs. Also, he failed to present value the annual impacts. (Luciani, Ex. 003, p. 3). Lastly, his elimination of all trade benefits is not justified given that SPP operates a real-time market. (Luciani, Tr. 158). As such, his analysis is not a valid counterpoint to the CRA Study results.

Mr. Pfeifenberger's concern that jointly-owned and contracted units located outside of Aquila's service territory were not included in the GE-MAPS model for commitment does not undermine the validity of the CRA Study. As explained by Aquila witness Luciani, the GE-MAPS model recognizes pool ownership for jointly-owned production units so they are available for either pool. As such, Aquila resources located outside of its service territory were available to Aquila's Missouri operation in the CRA Study. CRA made an adjustment to Aquila's Missouri tie-line flows for jointly-owned and contracted units located outside of Aquila's control area in the calculation of trade benefits. (Ex. 003, p. 4).

Mr. Pfeifenberger also questions the study's assumptions with regard to the commitment and dispatch in GE-MAPS of the Dogwood combined-cycle generating plant (f/k/a Aries) which is located in the service territory of Aquila Networks-MPS. The CRA Study assumes that the Dogwood plant is a unit under

contract with Aquila, with Aquila paying market revenues for the output of the unit. (Luciani, Ex. 003, p. 4). Although this has been the case in the past, Dogwood is not currently under contract to Aquila. (Odell, Tr. 59).

This was a question that was addressed specifically at a post-study stakeholder meeting in May of 2007. (Luciani, Tr. 149). That analysis showed that the combination of gas prices, transmission limitations[17] and seams charges results in Dogwood being committed in dispatch more often in the Aquila in MISO scenario than is the case under an SPP scenario. It is important to note, however, Mr. Pfeifenberger's rebuttal testimony cites only 2008 model data.[18] If the remaining years of data in the ten-year study are considered, the Dogwood uplift in the stand-alone and the MISO cases declines over time. (Luciani Ex. 003, p. 5*).* Also, absent a contract between Aquila and Dogwood, alternative assumptions would have to be made about the disposition of Dogwood power output. For example, if the power is assumed to be exported, the Dogwood generation would need to be netted from the Aquila tie-lines in calculating Aquila trade benefits and replaced with additional purchases. (Luciani Ex. 003, p. 5). Aquila suggests that these assumptions are no more inherently valid than the assumptions embodied in the CRA Study.

Mr. Pfeifenberger also challenges the use of the pool commitment assumption in the GE-MAPS runs in the CRA Study. The alternative to the use

[17] Dr. Proctor explains that the Dogwood plant is dispatched more as a consequence of congestion caused by limited transmission that restricts energy imports from MISO. (Proctor, Ex. 013, p. 12).

[18] Dr. Proctor testified that he had reviewed the additional CRA "run" omitting the Dogwood plant which "indicated that Aquila in SPP still resulted in somewhat higher net benefits than Aquila in MISO." (Ex. 013, p. 8, 11, 16).

of pool commitment is system commitment. CRA has traditionally used pool commitment rather than system commitment because it believes the former provides a more appropriate reflection of unit commitment process performed by an individual pool than does system commitment. This point was considered by CRA which concluded that there was no reason to believe that the system commitment assumption would work to the advantage of either the SPP or MISO scenarios. (Luciani, Ex. 003, p. 7). Staff believes that pool commitment is a "realistic view of Aquila as a stand-alone utility." (Proctor, Ex. 013, p. 11).

Finally, MISO has questioned the assumption of scheduling planned unit outages. The CRA Study assumes that maintenance of Aquila units will be scheduled based on load shapes of the market in which Aquila is participating. This is an assumption that is consistent to all units in the pool and to all units in other pools and thus treats all entities in the pool on a consistent basis. Moreover, CRA has applied the same standard planned outage modeling assumption in other RTO cost-benefit studies it has performed. Mr. Luciani testified that it is his view that allowing GE-MAPS to schedule planned outages against the pool load shapes is the better modeling assumption. (Ex. 003, p. 7).

Ultimately, it is not surprising that some informed differences in professional opinion might exist regarding how to perform such modeling and what assumptions should be used. The existence of such differences, however, should not render the results obtained from a professionally and independently performed analysis invalid.

The CRA Study contains numerous assumptions that could vary from actual experience. (Proctor, Tr. 273, 301). This is inherent, however, in the process of modeling based on projections of future events. The bottom line is that the modeling techniques and simulations performed in conjunction with the CRA Study are fundamentally sound. Its results provide a reasonable best estimate. (Proctor, Tr. 274). Moreover, they are generally consistent with those used in the studies upon which the Commission has depended when approving the applications of AmerenUE, KCPL and Empire to join RTOs.[19] Ultimately, the CRA Study represents a reasonable, valid and independent analysis of the economics of Aquila's RTO alternatives.[20] It can be relied upon by Aquila and by the Commission in evaluating those alternatives. (Luciani Ex. 003, p. 7; Proctor Tr. 336). While it is possible to model multiple scenarios assuming numerous combinations of assumptions, the performance of these studies is quite expensive and it is simply not practical or economical to produce numerous iterations to address every possible eventuality. (Proctor, Tr. 338). In this regard, it is important for the Commission to keep in mind that the modeling assumptions were discussed with the stakeholders prior to the CRA Study being performed and, also, at the conclusion of the study.

[19] Dr. Proctor has testified that the modeling concept employed by CRA "is similar to what is used in almost all the cost-benefit studies for RTO participation I have reviewed." (Ex. 012, p. 16).

[20] It is worth noting that two parties with no direct economic interest in the outcome of the case, Staff and OPC, support the results of the CRA Study.

C. The Commission should Give Due Regard to Aquila's Business Judgment.

Because the CRA Study provides a valid analysis upon which Aquila can rely upon in evaluating its alternatives, it follows that its decision to pursue membership in MISO would not be detrimental to the public interest inasmuch as it shows approximately $21 million of economic benefit over the 2008 to 2017 timeframe when compared to a stand-alone scenario.[21] A number of other parties (Staff, OPC, SPP, Dogwood) contend that the CRA Study actually justifies a denial of the Application because it reflects an even greater economic benefit to Aquila of $86 million (i.e., $65.8 million more of trade benefits) over the same timeframe were it to join SPP. (*See,* Odell, Ex. 001, Sch. DO-3, Table 1, p. 4).[22] In essence, they suggest that the Application should be denied because it is not the optimal business choice. Aquila respectfully suggests that this contention is not determinative.

As the Commission noted in 2005, the fact that a transaction is not the least cost alternative does not necessarily justify the conclusion that the transaction is detrimental to the public interest.[23] The Commission must take into

[21] The use of a stand-alone scenario that ignores Aquila's current relationships with both MISO and SPP also has been the source of some critical comment but it is a reasonable comparison in that it is not realistic to assume that this interim status could continue indefinitely. (Odell, Tr. 131).

[22] It is this fact that accounts for the anomalous circumstance that the proponents of the Company's request in this case are most critical of the CRA Study results whereas those opposing the Application are most supportive of those results.

[23] Dr. Proctor noted by way of analogy that the Commission's resource planning rules do not require that the preferred plan chosen by the utility be the least cost option. (Tr. 379).

account the reasonable basis for the business decision, giving due regard for the Company's management discretion.

It is axiomatic that the Commission is an administrative body of limited powers created by state law. Accordingly, it only has such powers as are expressly conferred upon it by the statutes and reasonably incidental thereto. *State ex rel. and to the Use of Kansas City Power & Light Company v. Buzard*, 315 Mo. 763, 168 S.W.2d 1044, 1046 (1943); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W.2d 925, 928 (Mo. banc 1958). Although the Public Service Commission Act ("Act") is remedial in nature, and should be construed liberally, neither convenience, expediency, or necessity are proper matters for consideration in the determination of whether an act of the Commission is authorized by statute. *State ex rel. Kansas City v. Public Service Commission*, 301 Mo. 179, 275 S.W. 462 (Mo. banc 1923); *State ex rel. Utility Consumers Council of Missouri, Inc., v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc 1979).

The Commission's authority to regulate certain aspects of the public utilities' operations and practices does not include the right to dictate the manner in which the company should conduct its business. *State ex rel. City of St. Joseph v. Public Service Commission*, 30 S.W.2d 8 (Mo. banc 1930). The *City of St. Joseph* case involved an appeal by the City of St. Joseph, Missouri of an order of the Commission affixing the value of property of St. Joseph Water Company for ratemaking purposes and approving a schedule of rates. In rejecting Appellant's contention that the Commission should not have authorized

an administrative charge imposed on the operating company by its parent company, the Missouri Supreme Court stated the following:

> The holding company's ownership of the property includes the right to control and manage it, subject, of course, to state regulation through the Public Service Commission, but it must be kept in mind that the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business. The company has the lawful right to manage it own affairs and to conduct its business in any way it may choose, provided that in doing so, it does not injuriously affect the public. The customers of a public utility have the right to demand efficient service at a reasonable rate, but they have no right to dictate the methods which the company must employ in the rendition of that service. It is of no concern of either the customers of the water company or the Commission, if the water company obtains necessary material, labor, supplies, etc. from the holding company, so long as the quality and price of the service rendered by the water company are what the law says it should be.

Id. at 14. Similarly, in *State ex rel. Harline v. Public Service Commission*, 343 S.W.2d 177 (Mo.App. 1960), the court observed that the Commission's powers are "purely regulatory". *Id*. at 181. Further, the Act provides "regulation which seeks to correct the abuse of any property right of a public utility, not to direct its use." *Id*. The Court of Appeals elaborated on this important principle:

> The utility's ownership of its business and property includes the right to control and management, subject, necessarily to state regulation through the Public Service Commission. The powers of regulation delegated to the Commission are comprehensive and extend to every conceivable source of corporate malfeasance. Those powers do not, however, clothe the Commission with the general power of management incident to ownership. The utility retains the lawful right to manage its affairs and conduct its business as it may choose, so long as it performs its legal duty, complies with lawful regulation and does no harm to the public welfare.

Thus, the Commission has no authority to manage Aquila's business or substitute its business judgment for that of Aquila's, so long as the Company is

meeting its public service obligation to provide safe and adequate service to its patrons.

As noted by Company witness Odell, Aquila is under an obligation with MISO as part of a settlement in 2003 to request the Commissions' approval to transfer operational control of its facilities to MISO and diligently pursue that approval.[24] It is operating under the reasonable expectation that MISO would demand an exit fee in the event the Company were to decide not to pursue membership in that organization. (Odell, Tr. 95). This, taken together with the CRA Study's results indicating cost savings of approximately $21 million over a ten year period from joining MISO, justifies the Company's decision to seek the Commission's approval to join the MISO RTO.

D. The Commission Can Place Conditions on Aquila's Membership in MISO.

The Commission's Staff opposes Aquila's Application in this case.[25] Nevertheless, Staff witness Dr. Proctor has testified that should the Commission approve the Company's request, it should condition its approval. Staff's recommended conditions appear on pages 37 and 38 of Dr. Proctor's rebuttal testimony (Ex. 012).

Aquila understands that conditions recommended by Dr. Proctor are similar to those adopted in the context of the Commission approving KCPL's

[24] Dogwood witness Janssen asserts the obligation is "stale" because it was undertaken in 2003 (Ex. 015, p. 11) but this is not the same as saying it is non-existent.

[25] It is worth noting that Staff, unlike Dogwood and SPP, is not recommending that Aquila be authorized to join SPP. As correctly noted by Dr. Proctor, "Aquila has not requested Commission authorization to join SPP." (Ex. 012, p. 4).

and Empire's requests to join SPP. As a general matter, Aquila is not opposed to these conditions except to the extent that Aquila is not able to unilaterally agree to them. Otherwise, it could delay Aquila's membership in MISO.

Also, the Company is dependent on AmerenUE for its physical connection to MISO and, consequently, any change in AmerenUE's membership in MISO would impact Aquila's situation. (Odell, Ex. 002, p. 10, Tr. 107). In that regard, the outcome of Ameren's Application in Case No. EO-2008-0134 is worthy of special mention. If AmerenUE's application in that case is approved as filed, that approval would ensure that Aquila will have a physical connection to MISO through April of 2012. OPC witness Kind testified to several developments in that case and, generally, about related topics. (Ex. 014, p. 5-6). It is fair to say that the AmerenUE/MISO situation is an evolving one the outcome of which is uncertain at this time, however, this provides no reason for the Commission not to take action in this case. Aquila suggests that the Commission could condition its approval of the Company's Application in this case on AmerenUE's continued membership in MISO. (Odell, Ex. 002, p. 11).

E. The Pending Acquisition of Aquila by Great Plains Energy.

OPC witness Kind suggests that the Application in this case not be approved because of the uncertainty as to the outcome of Case No. EM-2007-0374. He mentions the question of whether the generating units of KCPL and Aquila will be jointly dispatched. (Ex. 014, p. 4).

There is nothing in the record in this case addressing the plans GPE might have for joint dispatch if the Commission authorizes the acquisition. Aquila notes, however, that GPE witness Giles has testified in the hearings in Case No. EM-2007-0374, that GPE has not sought authority for those units to be jointly dispatched.[26] As such, this does not appear to be a factor that needs to be taken into account by the Commission in making is decision in this case.

In any event, whether and when the Commission approves the proposed acquisition of Aquila by GPE is unknown and should not, therefore, be a consideration in how the case is decided. The CRA Study assumes Aquila will continue as a separate operating company and that circumstance will not change even if Aquila is acquired by GPE.

CONCLUSION

As demonstrated herein, Aquila's membership in MISO is projected to provide trade benefits of approximately $21 million over a ten year period when compared to Aquila in a stand-alone scenario. This solitary circumstance, taken together with Aquila's obligation to seek the Commission's approval for membership in MISO, justifies a finding in this case that the Company's request would not be detrimental to the public interest and that its Application to join MISO and to enter into the MISO Agreement should be approved.

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[26] "Q. Mr. Giles, the joint applicants are not presently seeking to jointly dispatch the KCPL and Aquila generating facilities, are they?

A. No, we are not. . . . . The implications of joint dispatch are such that there could be transfer of revenue or value between the two companies, which would impact rates directly or indirectly. So my position would be that there would need to be some sort of an agreement with the Commission, not just between Aquila and KCPL." (Case No. EM-2007-0374, Tr. Vol. 11, p. 1482-1483).

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 29th day of May, 2008, to the following:

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