

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION  
3 TRANSCRIPT OF PROCEEDINGS  
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7 Evidentiary Hearing  
8 May 1, 2008  
9 Jefferson City, Missouri  
Volume 23  
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12 In the Matter of the Joint )  
Application of Great Plains Energy )  
13 Incorporated, Kansas City Power & )  
Light Company, and Aquila, Inc., ) Case No. EM-2007-0374  
14 for Approval of the Merger of )  
Aquila, Inc., with a Subsidiary of )  
15 Great Plains Energy Incorporated )  
And for Other Related Relief )  
16

17 HAROLD STEARLEY, Presiding,  
18 REGULATORY LAW JUDGE

19 CONNIE MURRAY,  
ROBERT M. CLAYTON III,  
20 TERRY JARRETT,  
COMMISSIONERS.  
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23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR  
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1 P R O C E E D I N G S

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

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

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

17 MR. WOODSMALL: Yes, your Honor.

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

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

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

24 MR. DOTTHEIM: Mr. Stearley?

25 JUDGE STEARLEY: Yes.

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

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

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

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

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

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

15 MR. WOODSMALL: Thank you.

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

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

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

22 MICHAEL CLINE testified as follows:

23 CROSS-EXAMINATION BY MR. WOODSMALL:

24 Q. Good morning, sir.

25 A. Good morning.



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

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

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

7 A. Yes, I am.

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

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

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

14 A. Yes.

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

17 JUDGE STEARLEY: You may.

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

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

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

24 BY MR. WOODSMALL:

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

1 sir?

2 A. Yes, I do.

3 Q. And do you recognize that document?

4 A. Yes, I do.

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

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

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

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

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

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

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

1 Q. Okay. And what are those two?

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

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

8 A. Yes.

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

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

15 Q. I see.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23            Q.       Okay.

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

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

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

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

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

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

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

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

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

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

7 A. Yes.

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

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

14 Q. Okay.

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

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

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

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

3           A.       We have.

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

5           A.       March 6th.

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

7           A.       \$350 million.

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

11          A.       Yes, I am.

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

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

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

20 BY MR. WOODSMALL:

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

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

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

4           A.       Yes.

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

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

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

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

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

18          A.       No.

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

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

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



1           A.       That's correct.

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

4           A.       Generally, yes.

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

7           A.       In the short term.

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

13          A.       Yes.

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

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

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

25          A.       That's correct.

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

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

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

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

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

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

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

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

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

21 A. I don't believe they are.

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

24 JUDGE STEARLEY: Thank you, Mr. Woodsmall.

25 Examination by Staff, Mr. Dottheim?

1 MR. DOTTHEIM: No questions.

2 JUDGE STEARLEY: Public Counsel?

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

4 Thank you.

5 JUDGE STEARLEY: Black Hills?

6 MR. DeFORD: No questions.

7 JUDGE STEARLEY: Aquila?

8 MS. PARSONS: No questions.

9 JUDGE STEARLEY: Great Plains/KCPL?

10 MR. ZOBRIST: Just a couple of questions,

11 Judge.

12 CROSS-EXAMINATION BY MR. ZOBRIST:

13 Q. What is the position of the joint

14 applicants regarding whether they are requesting that the

15 Commission approve the regulatory additional amortization

16 provision for Aquila in this case?

17 A. We are not asking for approval in this

18 case.

19 Q. And I believe that in response to one of

20 Mr. Woodsmall's questions, you talked about an offset. Do

21 you recall that?

22 A. Yes.

23 Q. Just briefly describe for the Commission

24 what you mean when you say an offset.

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

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

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

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

9                   MR. ZOBRIST:  Nothing further, Judge.

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

13                  COMMISSIONER MURRAY:  No questions.  Thank  
14   you.

15                  JUDGE STEARLEY:  Commissioner Clayton?

16                  COMMISSIONER CLAYTON:  No questions.

17                  JUDGE STEARLEY:  Commissioner Jarrett?

18                  COMMISSIONER JARRETT:  No questions.

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

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

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

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

2 JUDGE STEARLEY: Right. I understand.

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

6 THE WITNESS: Thank you.

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

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

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

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

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

18 MR. TRIPPENSEE: Thank you.

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

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

25 MR. ZOBRIST: Judge, Great Plains and KCPL

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

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

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

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

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

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

21 RUSSELL TRIPPENSEE testified as follows:

22 CROSS-EXAMINATION BY MR. WOODSMALL:

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

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

1 Missouri Office of the Public Counsel.

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

4 A. Yes, I am.

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

7 A. Yes, I am.

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

10 A. Yes, I have.

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

14 A. I believe so, yes.

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

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

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

20 A. Yes, I do.

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

23 A. I have that.

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

1 is calculated?

2 A. Primarily Appendix F3 does.

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

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

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

11 A. The interest coverage ratio.

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

14 A. Funds from operations interest coverage.

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

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

20 Q. Yes, sir.

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



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

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

6 A. Yes.

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

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

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

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

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

20 A. No.

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

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

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

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

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

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

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

23 Q. Okay.

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

1 incur on a total company basis.

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

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

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

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

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

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

1 investments at all.

2 Q. Okay.

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

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

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

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

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

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

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

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

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

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

1           A.       Long-term construction project.

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

5           A.       Yes, there would.

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

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

16          Q.       Okay.

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

18          Q.       I'm starting to realize that.

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

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

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

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

8 MR. DOTTHEIM: No questions.

9 JUDGE STEARLEY: Public Counsel?

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

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

14 MR. MILLS: I would.

15 JUDGE STEARLEY: We will do that.

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

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

20 MR. DeFORD: No questions.

21 JUDGE STEARLEY: Aquila?

22 MS. PARSONS: No questions.

23 JUDGE STEARLEY: Great Plains/KCPL?

24 MR. ZOBRIST: No questions.

25 JUDGE STEARLEY: Mr. Mills?

1 REDIRECT EXAMINATION BY MR. MILLS:

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

5 A. Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

25 MR. WOODSMALL: I understand. Thank you.

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

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

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

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

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

3 BY MR. MILLS:

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

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

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

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

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

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

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

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

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

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

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

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

1 DIRECT EXAMINATION BY MR. WOODSMALL:

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

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

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

8 A. Yes.

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

11 A. Yes.

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

14 A. Yes.

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

17 A. Yes.

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

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

23 BY MR. WOODSMALL:

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

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

3                   MR. WOODSMALL: Sure.

4 BY MR. WOODSMALL:

5           Q.       Can you identify that document?

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

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

8           A.       Yes, it is.

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

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

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

23          A.       Can I see it again?

24          Q.       Sure.

25          A.       I would agree with parts of it.

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

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

8           Q.       And do you agree with that opinion?

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

14          Q.       Okay.

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

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

20          A.       Yes.

21          Q.       Is it in service?

22          A.       No.

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



1           A.       I'm not sure.

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

4           A.       Yes.

5           Q.       Are they in service?

6           A.       No.

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

10          A.       Yes.

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

14          A.       Yes.

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

17          A.       Yes.

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

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

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

1 amortization?

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

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

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

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

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

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

23 A. Yes, that's correct.

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

1 JUDGE STEARLEY: Thank you, Mr. Woodsmall.  
2 Examination by Public Counsel?  
3 MR. MILLS: I have no questions. Thank  
4 you.  
5 JUDGE STEARLEY: Black Hills?  
6 MR. DeFORD: No questions, thank you.  
7 JUDGE STEARLEY: Aquila?  
8 MS. PARSONS: No questions.  
9 JUDGE STEARLEY: Great Plains/KCPL?  
10 MR. ZOBRIST: None, your Honor.  
11 JUDGE STEARLEY: Staff?  
12 MR. DOTTHEIM: No questions.  
13 JUDGE STEARLEY: Questions from the Bench,  
14 Commissioner Murray?  
15 COMMISSIONER MURRAY: No questions,  
16 JUDGE STEARLEY: Commissioner Clayton?  
17 QUESTIONS BY COMMISSIONER CLAYTON:  
18 Q. Mr. Schallenberg, welcome back. I have  
19 some questions about these -- these suggested  
20 amortizations, and I need you to work me through a number  
21 of these pieces. First of all, you are knowledgeable  
22 about the CEP, the Comprehensive Energy Plan of Great  
23 Plains; is that correct?  
24 A. Yes.  
25 Q. And you're also knowledgeable about the CEP

1 or some sort of comparable plan with Empire?

2 A. Yes.

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

5 A. No.

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

7 A. No.

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

11 A. Yes.

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

15 A. That's correct.

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

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

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

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

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

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

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

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

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

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

9 Q. Okay.

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

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

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

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

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

2 A. With an additional amortization?

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

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

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

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

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

9           A.       That's correct.

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

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

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



1           A.       Yes.

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

7           A.       Well, whatever rate --

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

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

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

1           A.       Yes.

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

4           A.       Yes.

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

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

16          Q.       Okay.

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

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

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

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

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

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

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

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

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

8 Q. Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 grade?

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

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

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

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

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

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

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

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

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

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

17            Q.       The old phantom generators, right?

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

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

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

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

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

22           A.       Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 going to make any other agreements much tougher.

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

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

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

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

25                   COMMISSIONER CLAYTON: Well, investment



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

3 MR. ZOBRIST: Well --

4 COMMISSIONER CLAYTON: Maybe I'm wrong.

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

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

21 BY COMMISSIONER CLAYTON:

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

1 would we --

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

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

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

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

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

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

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

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

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

1 Plains case? Would it be --

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

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

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

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

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

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

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

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

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

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

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

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

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

25           A.       No.

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

4           A.       No.

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

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

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

1 transaction approved.

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

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

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



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

2 Q. Okay. Let me ask the question this way.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 COMMISSIONER JARRETT: No questions.

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

11 MR. WOODSMALL: Very briefly, your Honor.

12 RECROSS-EXAMINATION BY MR. WOODSMALL:

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

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

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

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

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

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

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

12          A.       There is -- yes.

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

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

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

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

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

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

3 MR. WOODSMALL: I have two questions.

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

11 JUDGE STEARLEY: Mr. Woodsmall?

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

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

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

17 MR. WOODSMALL: No.

18 BY MR. WOODSMALL:

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

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

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

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

13 A. Yes.

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

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

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

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

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

23 RECROSS-EXAMINATION BY MR. MILLS:

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



1     Aquila and KCPL. Do you recall that?

2             A.       Yes.

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

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

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

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

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

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

1 questions.

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

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

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

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

16 BY MR. MILLS:

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

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

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

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

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

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

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

7 MR. DeFORD: No questions.

8 JUDGE STEARLEY: Aquila?

9 MS. PARSONS: No questions.

10 JUDGE STEARLEY: Great Plains/KCPL?

11 MR. ZOBRIST: No questions.

12 JUDGE STEARLEY: Any additional questions  
13 by Staff?

14 MR. DOTTHEIM: No questions.

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

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

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

25 JUDGE STEARLEY: Are you requesting that

1 the Commission revise its earlier ruling?

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

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

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

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

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

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

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

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

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

15 JUDGE STEARLEY: This is the last day.

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

18 JUDGE STEARLEY: Certainly.

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

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

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

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

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

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

25                   And now, this summary determination thing

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

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

10 (A BREAK WAS TAKEN.)

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

14 THE WITNESS: Yes, sir.

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

23 COMMISSIONER CLAYTON: Thank you, Judge.

24 ROBERT SCHALLENBERG testified as follows:

25 BY COMMISSIONER CLAYTON:

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

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

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

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



1 state.

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

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

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

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

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

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

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

10 Q. Non-Kansas City based.

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

14 Q. Where's Mid America located?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Q. Okay.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

1 vendor problems.

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

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

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

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

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

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

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

25                   Q.       How is it different?

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

7 Q. It is not a comprehensive merger plan?

8 A. That's right.

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

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

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

25 But that proposal that I'm suggesting is

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

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

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

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

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

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

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

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

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

19 A. Yes.

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

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

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

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

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

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

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

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

25                    So I can do that kind of math and say

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

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

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

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

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

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

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

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10 Q. That's all on execution and implementation,  
11 but how do you describe that at the time a request for a  
12 merger occurs, at the time a plan is proposed? I mean,  
13 you can't -- you don't have a crystal ball. It's just on  
14 how execution is going to occur, or -- or how people will  
15 interact with Mr. Downey versus interacting with  
16 Mr. Green. So how should that proposal look at the time  
17 the application is filed?

18           A.           Well, when I'm doing my -- before the  
19   application was finally done, you have two parties here,  
20   but they get to do due diligence, and if I'm the buying  
21   entity, what I do then is I look at what's going to be the  
22   costs and the benefits of me taking over this enterprise  
23   and what's it going to look like.   So now -- and that  
24   determines what I'm willing to pay.

25 Now, when I'm doing that, if I take a



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

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

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

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

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

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

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

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

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

20 Q. Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 A. He is.

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

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

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

20 A. Yes.

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

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

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

3 Q. Is that even a relevant question?

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

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

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

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

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

6 A. No.

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

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

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

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

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



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

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

9 Q. Okay.

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

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

19 A. Right.

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

24 A. Clearly.

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

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

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

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

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

1 at that.

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

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

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

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

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

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

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

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

1 minus around that.

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

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

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

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

20 A. Yes.

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

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

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

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

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

1 Q. And what does Staff believe?

2 A. I'd say --

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

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

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

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

22 A. Yes.

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

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

3           Q.       A negative to the merger?

4           A.       Yes.

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

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

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

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

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



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

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

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

15 Q. On the employee side?

16 A. Yes.

17 Q. Why is that?

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

1 to that.

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

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

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

20           Q.       Is it possible to describe those cultures?

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

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

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

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

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

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

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

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

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

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

1 mind right now.

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

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

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

18 Q. Do you see that as positive?

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

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

3 Q. So larger scale brings benefits?

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

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

11 A. That's true.

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

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

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

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

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

25 A. Well, the intangible detriments is the fear

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

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

5             A.       I was saying worse off combined.

6             Q.       Oh, worse off combined?

7             A.       Yes, than they are standalone.

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

10            A.       Yes.

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

15            A.       Yes.

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

20            A.       Yes.

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

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

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

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

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

14 Q. Yes.

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

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

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

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

7 A. For the public interest.

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

11 A. Yes.

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

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

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



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

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

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

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

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

20 A. Are you asking generically?

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

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

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

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

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

10 COMMISSIONER MURRAY: No questions. Thank  
11 you.

12 JUDGE STEARLEY: Commissioner Jarrett?

13 COMMISSIONER JARRETT: No questions.

14 Thanks.

15 JUDGE STEARLEY: Ag Processing

16 MR. WOODSMALL: No questions, your Honor.

17 JUDGE STEARLEY: Public Counsel?

18 MR. MILLS: No, thank you.

19 JUDGE STEARLEY: Black Hills?

20 MR. DeFORD: No, thanks.

21 JUDGE STEARLEY: Aquila?

22 MS. PARSONS: No questions.

23 JUDGE STEARLEY: Great Plains/KCPL?

24 MR. ZOBRIST: No questions, Judge.

25 JUDGE STEARLEY: Staff?

1 MR. DOTTHEIM: No questions.

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

4 THE WITNESS: Thank you.

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

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

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

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

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

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

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

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

1 projects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

10 MR. DOTTHEIM: Yes.

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

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

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

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

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

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

4                   COMMISSIONER CLAYTON: What evidence would  
5 we see?

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

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

14                  MR. DOTTHEIM: Yes.

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

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

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

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

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

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

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

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

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

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

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

1 given the resources we have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

17                   MR. ZOBRIST: Judge, on --

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

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

3 MR. WOODSMALL: Before -- just so he can  
4 address everything at one time, the issue in the motions  
5 for reconsideration cause a little bit of conflict for us  
6 in the way that those are, in essence, reconsideration of  
7 interim orders. The statutes dictate that we file any  
8 points of error in the context of an application for  
9 rehearing when the Commission issues its Order.

10 So our reconsideration, our points of  
11 error, I do not believe now will be in any type of interim  
12 pleading, but will be contained in our ultimate  
13 application for rehearing if need be.

14 JUDGE STEARLEY: Thank you, Mr. Woodsmall.  
15 Sorry to interrupt, Mr. Zobrist. Please go ahead.

16 MR. ZOBRIST: No interruption. Hadn't  
17 started yet. Just before I forget, on Mr. Woodsmall's  
18 last point, he certainly -- his client is certainly free  
19 to raise these issues in an application for rehearing.  
20 I'm not aware of any rule that prevents any party from  
21 filing a motion for reconsideration at any point in a  
22 proceeding to ask the Judge and the Commission to  
23 reconsider an issue.

24 Commissioner Clayton, the Motion for  
25 Summary Determination was fully briefed about three or

1 four months ago, and Judge Dippell did, you know, issue an  
2 Order. So there are pleadings and legal arguments on that  
3 that you'll find in the file.

4 To go further, we do not interpret Ag  
5 Processing to be relevant to this case. In that case,  
6 Aquila, back then UtiliCorp, was acquiring St. Joseph  
7 Light & Power Company, and they requested the recovery of  
8 an acquisition premium. We're not requesting recovery of  
9 an acquisition premium, and we have abandoned the initial  
10 request for additional amortizations, and the parties  
11 continue to mischaracterize what GPE, you know, states  
12 that it may or may not do in a future Aquila rate case.  
13 That's something to be determined for the future.

14 If the parties have had witness -- pardon  
15 me. GPE and KCPL have had witnesses testify that, you  
16 know, they think having additional amortizations in the  
17 toolbox is a helpful tool, and that if the merger is  
18 approved, they, you know, intend to raise that with the  
19 parties, perhaps in the context of a future Aquila  
20 regulatory plan. If the parties don't agree, it may be  
21 abandoned, but it very well may be presented in another  
22 case in the future.

23 But as Mr. Schallenberg said, there's  
24 really nothing in the record here that allows you to make  
25 any kind of analysis of a dollar figure like an

1 acquisition premium would represent. He talked about the  
2 formulas that are being used in the KCPL regulatory plan.  
3 He talked about the formulas that I don't know about that  
4 apparently Empire District has in its regulatory plan.

5 We don't have any of those specifics here.  
6 The formula was -- there was no formula proposed to the  
7 Commission in the previous ask, and of course then the  
8 regulatory ask to be submitted to the Commission back in  
9 2007 has been modified and regulatory or additional  
10 amortizations have been removed from the case at this  
11 point.

12 So, you know, we think actually the  
13 position of GPE and KCPL, and I presume Aquila, are  
14 stronger today to say why you don't need to consider this  
15 much stronger today than it was from the original filing.

16 JUDGE STEARLEY: Mr. Dottheim, did you have  
17 anything?

18 MR. DOTTHEIM: No, other than GPE and KCP&L  
19 are not asking for an additional amortization in this  
20 case. But there is in evidence, and it is unequivocal,  
21 there is a March 25 presentation in New York City, there  
22 is an April 10 presentation in Chicago, and there's a  
23 notice of ex parte contact of a letter from Mr. Downey and  
24 Mr. Chesser which the Chairman filed that he had received,  
25 it was filed in the case, which shows that the company has

1 indicated that it will definitely ask, that is Aquila will  
2 definitely ask for an additional amortization in its next  
3 case whether or not it gets the parties to go along with  
4 the regulatory plan.

5 Those three documents will show that, do  
6 show that unequivocally regardless of how many times  
7 counsel and witnesses for the company attempt to give the  
8 impression to the Bench that that decision has not been  
9 made at this time.

10 MR. MILLS: Thank you. And just briefly, I  
11 think this issue did come up last week, and I think it was  
12 the Judge's ruling that if the -- if the motion was still  
13 live, that the Commission would take it with the case,  
14 which, you know, defeats a significant part of the point  
15 of filing a Motion for Summary Determination if it ends up  
16 taken with the case anyway.

17 But I do agree that it's still live, and I  
18 think for the reasons that Mr. Dottheim just raised and  
19 really that Mr. Zobrist raised, it would behoove the  
20 Commission to rule on it if it can because it is going to  
21 come up, it does influence the detriment and the -- and  
22 the benefits of the combination in the future, if -- you  
23 know, one of -- one of the things that's a big issue in  
24 this case is the credit rating of the combined entity.  
25 The rating agencies were given information that GPE will

1 seek additional amortizations in the future.

2 If the Commission can rule now that on the  
3 basis of the Motion for Summary Determination that that is  
4 not something that a company can unilaterally demand and  
5 get from the Commission, I think that will shape what the  
6 credit agencies will see as a result of this case.

7 So I think it is still a live issue in this  
8 case and I think it makes a difference to how this case  
9 proceeds.

10 COMMISSIONER JARRETT: I just have a  
11 question, Mr. Mills. Can we give advisory opinions?

12 MR. MILLS: It would not be an advisory  
13 opinion. There's evidence in this case that that is part  
14 of the transaction, that GPE will seek that in a future  
15 rate case. I mean --

16 COMMISSIONER JARRETT: That's a disputed  
17 fact, isn't it? I mean, Mr. Zobrist just disputed that,  
18 so how can we give a --

19 MR. MILLS: Well, there are a lot of --  
20 there are a lot of facts in this case that are disputed,  
21 and you-all will have to decide which is correct or which  
22 is not.

23 COMMISSIONER JARRETT: Right. And  
24 that's -- and that's a part of the case. But for summary  
25 judgment purposes, all the facts have to be undisputed;

1    isn't that correct?  You can't give summary judgment --  
2    have to rely on a fact that's in dispute, and isn't there  
3    evidence both ways on that?

4                   MR. MILLS:  There probably is evidence on  
5    both ways.

6                   MR. WOODSMALL:  To that point, though,  
7    summary judgment is only applicable prior to the hearing.  
8    Now that the hearing's done, it wouldn't be a summary  
9    judgment motion.  It would be just asking you to make a  
10   ruling on the request or nonrequest to the amortization  
11   based on the evidence as it's received, and it's no longer  
12   summary judgment.

13                  COMMISSIONER JARRETT:  So it's moot now.

14                  MR. WOODSMALL:  The motion as a motion for  
15   summary judgment is moot.

16                  COMMISSIONER JARRETT:  Right.

17                  MR. WOODSMALL:  The issue is still live.

18                  COMMISSIONER JARRETT:  Right.  Got you.

19                  MR. WOODSMALL:  And to the extent that I  
20   need to modify my motion to turn it, yes, I agree.

21                  COMMISSIONER CLAYTON:  That answers -- I  
22   think that answers the question.  I mean, the motion, I  
23   mean, now that -- well, what's the point of having a  
24   motion for summary determination once the hearing's over?  
25   It doesn't make any sense.  So really it does moot the



1 motion. So we don't have to deal with that separately.  
2 We'll just address the whole issue of regulatory  
3 amortizations somehow in the full case. Do you agree with  
4 that?

5 MR. WOODSMALL: Well, normally once the  
6 hearing occurs, any motions for summary determination are  
7 mooted. In this case, not only is the motion mooted, but  
8 the issue is mooted by the Judge's ruling that it's  
9 irrelevant. So no, you won't take it with the case  
10 anymore.

11 COMMISSIONER CLAYTON: Anything else from  
12 anybody? I had one other issue.

13 COMMISSIONER JARRETT: Yeah. I had one  
14 question of Mr. Dottheim. You mentioned when you were  
15 talking there were like three pieces of -- three different  
16 things, a couple of things that I believe were introduced  
17 into evidence and were received as part of the record,  
18 then you mentioned something that was filed by the  
19 Chairman, who is not participating in this case.

20 MR. DOTTHEIM: Yes.

21 COMMISSIONER JARRETT: Is that thing that  
22 you mentioned related to the Chairman, has it been  
23 received into evidence and is it a part of the record of  
24 this case?

25 MR. DOTTHEIM: Yes, it is. I believe it is

1 Exhibit 122.

2 COMMISSIONER JARRETT: I just wanted to  
3 make sure that you weren't asking us to consider something  
4 outside the record.

5 MR. DOTTHEIM: No.

6 COMMISSIONER JARRETT: Okay. Thank you.

7 MR. DOTTHEIM: No. And Commissioner, I  
8 don't know if this will come up, but in your -- in your  
9 questioning of Mr. Schallenberg, when you were asking him  
10 questions about intangibles that the Commission might  
11 consider regarding net benefits tests, I had raised in the  
12 pleading the Love 1979 Partners case, and I think that  
13 case might lend itself to the argument that the  
14 Commissioner -- that the Commission can consider  
15 intangibles other than not a necessarily absolute strict  
16 application of the net benefits test, things such as  
17 creditworthiness or investment downgrade.

18 I think in that case the -- and it's en  
19 banc decision in the Missouri Supreme Court, an item such  
20 as considering how the City of St. Louis might dispose of  
21 its refuse could be considered by the Commission when the  
22 steam customers were complaining that -- that the transfer  
23 of the downtown steam system should be rejected by the  
24 Commission because it would lead to unreasonable increases  
25 in their rates.

1                   So in addition to the Love 1979 Partners  
2 case, I've cited the State ex -- excuse me, the State ex  
3 rel Ag Processing case, as have parties, but it belatedly  
4 occurred to me that the Love 1979 Partners case is -- is  
5 another case that if people were not citing to the  
6 Commissioners that -- and the Commissioners were not  
7 thinking of that case, that that's another significant  
8 decision.

9                   COMMISSIONER CLAYTON: Thank you,  
10 Mr. Dottheim. I do recall seeing the Love Partners case  
11 in one of the pleadings. How do you forget the name of  
12 the case that says Love Partners? I guess there's a  
13 number in that.

14                   Okay. That leads to my last issue, and  
15 that relates to the legal arguments that were promoted by  
16 some of the parties associated with the allegations of  
17 evidence supporting synergy savings, which I know the  
18 Commission has already dealt with in an Order and has  
19 allowed for that evidence to come in.

20                   What I wanted to do was give the attorneys  
21 an opportunity -- I'm struggling with this issue, and --  
22 and I want to say, I understand what all of you -- I know  
23 what you-all have filed. I want to say, so what? And  
24 explain to me why there is a distinction in the way the  
25 case was filed that would -- that would lead to completely

1 ignoring the potential for synergies associated with this  
2 merger.

3                   So I guess the questions are going to be  
4 directed more at the movants in that case. And I know  
5 we've already ruled, but I need -- as we work towards a  
6 conclusion as a matter of law, I think you filed the  
7 motions as a matter of law, that we cannot take up these  
8 synergy savings, I need you to convince me or explain to  
9 me why -- why this is a legal -- why the legal argument  
10 that these synergy savings should be completely excluded  
11 because the way the case was filed?

12                   MR. WOODSMALL: I will try. I will note  
13 that this is Mr. Conrad's motion and he has big shoes to  
14 fill. So be that as it may, Section 393.190 talks about  
15 the Commission's authority to grant utilities the ability,  
16 and I will -- I will ask you to read that and read how  
17 broad that statute is. It requires utilities to ask for  
18 authority any time they merge, combine, consolidate, in  
19 whole or in part, directly or indirectly. What could be  
20 more broad? So that statute requires utilities whenever  
21 they merge, combine or consolidate, in whole or in part,  
22 directly or indirectly to get Commission authority.

23                   What KCPL and Aquila are talking about here  
24 are merging, consolidating and combining parts, maybe not  
25 in whole, but parts of their operations. In fact, so many

1 parts it's everything but the generation. Everything you  
2 can imagine, finance, HR, legal, all overheads,  
3 transmission, distribution, planning, engineering,  
4 everything you can think of they are looking by  
5 implication to merge, combine or consolidate. They need  
6 Commission authority to do that.

7 COMMISSIONER CLAYTON: What have they  
8 actually asked for permission to do, then?

9 MR. WOODSMALL: They have asked solely --  
10 and I will ask you to go back and look at the Commission's  
11 notice in this case that came out immediately after the  
12 application. The Commission's notice even recognizes  
13 this. They have asked solely for the authority for GPE  
14 through a newly formed subsidiary, Gregory sub, to buy  
15 Aquila and to merge that sub into Aquila.

16 Their application does not seek  
17 authority -- go to the Wherefore clause to go to the  
18 prayer -- does not seek authority to merge, combine,  
19 consolidate, in whole or in part, directly or indirectly  
20 any parts of this company. That is the legal --

21 COMMISSIONER CLAYTON: Do you think  
22 there -- do you think there needs be a specific order  
23 relating to merging HR departments, a specific order  
24 relating to merging finance departments, merging  
25 accounting departments, merging linemen departments? Do

1 you think there needs to be a specific order related to  
2 every conceivable integration of these two entities?

3 MR. WOODSMALL: I think -- I think they  
4 could have put in their application, we ask pursuant to  
5 Section 393.190 the -- for the authority to combine every  
6 operation except for generation, and I think the  
7 Commission then could have approved that request.

8 COMMISSIONER CLAYTON: So if they would  
9 have included five words, it would have changed the whole  
10 deal? Tell me why that -- why that -- why five words  
11 makes such a big difference.

12 MR. WOODSMALL: It's a matter of notice.  
13 Look at chapter -- I can't -- I don't have the statutes in  
14 front of me, but in Chapter 536, there is a provision that  
15 talks about what must be in an application, and based upon  
16 that, what must go into the notice, because their  
17 application is deficient here, their notice -- the notice  
18 would be deficient. They are asking the Commission to  
19 grant them authority that's not in their application and  
20 thus far not in any notice.

21 COMMISSIONER CLAYTON: Does their  
22 application make reference to potential synergy savings  
23 that would come from integration of various aspects of the  
24 entity?

25 MR. WOODSMALL: I may stand corrected on

1 this. I do not believe that their application does.

2 COMMISSIONER CLAYTON: Okay. Do any  
3 pleadings do that in the case?

4 MR. WOODSMALL: Not pleadings that  
5 initiated the case and thus drove what the notice was.  
6 Certainly pleadings since and testimony since has talked  
7 about that, but it's more than just legal semantics.

8 COMMISSIONER CLAYTON: Well, but you just  
9 said if they would have added five words, that your client  
10 would be placed on notice of something completely  
11 different than what -- what -- what would occur in this  
12 transaction. And I guess I'm struggle with understanding  
13 the inclusion of five words that we'd be not arguing this  
14 issue -- issue here today.

15 MR. WOODSMALL: And I'm not going to admit  
16 that it would just be five words. It is -- it would be  
17 another clause in the prayer. And it's not --

18 COMMISSIONER CLAYTON: Just one clause?

19 MR. WOODSMALL: Who knows? But it's not  
20 just my client. Everybody out there that was provided  
21 notice --

22 COMMISSIONER CLAYTON: I understand. I  
23 understand.

24 MR. WOODSMALL: So there are people that  
25 should have been provided notice that these companies want

1 to merge, combine and consolidate that weren't provided  
2 that notice. And now the company asks you to provide them  
3 that authority.

4 COMMISSIONER CLAYTON: Who wants to go?  
5 Why don't we let all the movants go?

6 MR. MILLS: I'll go briefly. I'll try to  
7 address the "so what" part of your question.

8 COMMISSIONER CLAYTON: That's going to look  
9 really good in the record, you realize that, when this is  
10 reviewed.

11 MR. MILLS: The reason that matters is  
12 because what you're being asked to approve is a de facto  
13 merger, really that there are going to be no Aquila  
14 employees left. There's going to be no -- nobody guiding  
15 Aquila except for KCPL. So it really is a merger. But  
16 you don't have any of the attendant operating agreements.  
17 You don't have any of the plan of merger that you would  
18 normally get in a merger, and that's why it matters,  
19 because you're being asked on the surface to be -- to  
20 approve the narrow merger of Aquila into Gregory. What  
21 you're being asked in actuality to approve is all of the  
22 integration of the operation of Aquila with KCPL without  
23 the details on how that's going to happen.

24 COMMISSIONER CLAYTON: Okay. But what  
25 you've just said is that it's not because the way they



1 filed the application, it's because -- because they didn't  
2 file sufficient documents and evidence supporting the  
3 transaction, not just the -- the legal beginning of the  
4 case in an application? You're saying that basically  
5 there's not evidence to support their case?

6 MR. DOTTHEIM: It's everything. It's  
7 everything.

8 MR. MILLS: And -- and those are two  
9 separate arguments. I think they're both valid, and I  
10 think every one is important, but they're separate  
11 arguments. You're right.

12 COMMISSIONER CLAYTON: Okay. Mr. Dottheim.  
13 Quickly. Go ahead.

14 MR. DOTTHEIM: It's everything. It's a  
15 violation of the Commission's own Statute 393.190.1, the  
16 transaction is void. That's how the statute reads. It's  
17 not voidable. It's void.

18 COMMISSIONER CLAYTON: Okay. Help me with  
19 that. Why is it void? They're seeking to merge the  
20 subject company into a subsidiary.

21 MR. DOTTHEIM: If anyone seeks to challenge  
22 it, it's in violation of that -- of that statute, and  
23 they've told us, they told the Commission on the first day  
24 why they chose to proceed in this manner. They chose --  
25 they told the Commission in the -- in their opening

1 statement, they chose to proceed in this manner to avoid  
2 the liability of Aquila. That's why they chose not --  
3 amongst other reasons why not to merge the two companies.  
4 They chose -- they chose to proceed in this manner also,  
5 too, because although they say they didn't really think  
6 they have it, they didn't also want the downside risk that  
7 otherwise they might have before the FERC of -- of a  
8 market power issue if they actually sought to consolidate.

9 COMMISSIONER CLAYTON: Okay. So they've  
10 got reasons that they believe would warrant merging with  
11 the Gregory Corp with --

12 MR. DOTTHEIM: Or literally Aquila and  
13 Kansas City Power & Light.

14 COMMISSIONER CLAYTON: So why shouldn't  
15 they be able to file it that way? They've got reasons  
16 that support that. Do you think the way they filed it is  
17 detrimental in and of itself to the public interest?

18 MR. DOTTHEIM: Yes. It's a -- I mean, I --  
19 I -- I think at least that's why certain of us, whether it  
20 be the Staff of the Commission or the Office of the Public  
21 Counsel, exist is to point these matters out and why the  
22 statutes are written as they are -- as they are written.  
23 And besides those points, we have other reasons, even if  
24 they fix those items, the transaction as proposed is still  
25 detrimental.

1                   COMMISSIONER CLAYTON: I understand that.  
2 I understand that. I'm trying to get over this initial  
3 legal argument.

4                   MR. DOTTHEIM: Yes. I mean, on top -- on  
5 top of everything else, they did this, too.

6                   COMMISSIONER CLAYTON: On top of everything  
7 else. I need you to block all the rest of that off. But,  
8 I mean, the applicants are within their rights of filing  
9 it this way?

10                  MR. DOTTHEIM: Yes.

11                  COMMISSIONER CLAYTON: And they have their  
12 reasons to do this?

13                  MR. DOTTHEIM: Yes, and chose not to tell  
14 anyone until -- until the opening statement in the case,  
15 until they were pressed to do that when challenged by the  
16 testimony filed by Mr. Schallenberg on April -- on October  
17 10, and then --

18                  COMMISSIONER CLAYTON: Well, his report  
19 makes reference to this, that they didn't renew the  
20 synergies because they don't think any synergies exist,  
21 because as a matter -- well, not as a matter of law, but  
22 they haven't proposed a transaction that would enable any  
23 synergies?

24                  MR. DOTTHEIM: That's right, and then there  
25 was the Motion in Limine that further challenged.

1                   COMMISSIONER CLAYTON: Right. So when are  
2 you saying that you got -- that Staff got notice of  
3 integration of Aquila into KCPL?

4                   MR. DOTTHEIM: Well, I mean, when we --  
5 it -- it finally occurred to us that they actually  
6 hadn't -- hadn't applied for what we thought was proper  
7 form of a transaction, an actual merger.

8                   COMMISSIONER CLAYTON: Okay. Well, but you  
9 said that they're within their right to file it the way  
10 they filed it, so --

11                  MR. DOTTHEIM: Well, when I -- when I say  
12 within -- within their right, I mean, they can file  
13 whatever they want to file. When I say right, that -- you  
14 know, I mean, they can file -- they're wrong by filing in  
15 the manner they did. I mean, I don't want to play  
16 semantics.

17                  COMMISSIONER CLAYTON: I understand. I  
18 understand. But if they choose to file that way, then  
19 Staff argues that, well, if they're going to do that, then  
20 you can't take the benefit of potential synergies that  
21 would come from a different transaction --

22                  MR. DOTTHEIM: Yes.

23                  COMMISSIONER CLAYTON: -- that would be a  
24 merger between Aquila and KCPL, that's what Staff is  
25 saying, correct?

1                   MR. DOTTHEIM: And we're saying that we  
2 don't concur with the quantification regardless.

3                   COMMISSIONER CLAYTON: Right. Right. You  
4 don't buy it anyway. So what -- is there anything that  
5 would restrict the applicants from filing the case the way  
6 they have filed it, ignore synergies completely, so you  
7 don't have any -- you have no benefits that would be  
8 derived from that, and assume that -- you've got to make  
9 some assumptions here to get through. You don't have all  
10 the regulatory amortization stuff that's unique to this  
11 case. But if they agreed to eat, if their shareholders  
12 agreed to eat a number of costs to enable the transaction  
13 in that way, that would still be possible, wouldn't it? I  
14 mean, it's their right to file it the way they want?

15                  MR. DOTTHEIM: Well --

16                  COMMISSIONER CLAYTON: Maybe I'm wrong.

17                  MR. DOTTHEIM: I think it was Mr. Chesser  
18 on the -- on the -- it was Mr. Downey, and I think it was  
19 also Mr. Chesser, who -- who said they would not agree to  
20 take the risk or the cost of a downgrade if GPE/KCPL were  
21 ultimately downgraded if --

22                  COMMISSIONER CLAYTON: I mean, does Staff  
23 think that that is a valid concern?

24                  MR. DOTTHEIM: Yes.

25                  COMMISSIONER CLAYTON: And that -- that by

1     downgrading KCP&L, that would be a detriment to the public  
2     interest?

3                     MR. DOTTHEIM:   Of course.

4                     COMMISSIONER CLAYTON:   Okay.   So KCP&L's  
5     trying to avoid that?

6                     MR. DOTTHEIM:   KCPL is trying to avoid  
7     that.   They're also trying -- they're trying to -- well,  
8     if -- and if that does occur, they want to pass that on to  
9     the ratepayers.

10                    COMMISSIONER CLAYTON:   Okay.   I follow you.  
11    But that -- why should that, that information -- I  
12    understand that we will need to take that in the totality  
13    of the evidence as we get to work writing some Report and  
14    Order at the conclusion of this case, but why should they  
15    be precluded from offering evidence on potential synergies  
16    when -- just because the way they've structured it?

17                    I mean, you're going to have synergies that  
18    are there inherently.   Why should they be precluded from  
19    offering that evidence, is what I'm trying to ask?

20                    MR. DOTTHEIM:   The synergies don't match  
21    the application requested.   The application encompasses  
22    the authority at -- of what they -- they want.   The  
23    application is what they want, and if the Commission  
24    grants their application as it's written, no synergies  
25    will occur because they haven't asked to combine, and

1 without combination --

2 COMMISSIONER CLAYTON: If we allow the  
3 merger to proceed in the way that it's set up?

4 MR. WOODSMALL: Set up in the application.

5 COMMISSIONER CLAYTON: The way it's set up  
6 right now, at some later point would -- would Great Plains  
7 or the individual operating units then have to come in and  
8 ask for permission under 393.190 to merge KCP&L or would  
9 they be within their right to go ahead and merge them  
10 together because they're under one holding company?

11 MR. WOODSMALL: They would need to come in  
12 and ask to merge whichever wholes or parts directly or  
13 indirectly they seek to merge, combine or consolidate.

14 COMMISSIONER CLAYTON: Would -- I mean,  
15 would Aquila's two operating divisions need to do that?

16 MR. WOODSMALL: Yes.

17 COMMISSIONER CLAYTON: If you wanted -- if  
18 Aquila wanted to merge its two service territories, could  
19 they do that --

20 MR. WOODSMALL: The difference is --

21 COMMISSIONER CLAYTON: -- on its own and  
22 work it all out in a rate case?

23 MR. WOODSMALL: The difference is the  
24 Aquila subsidiaries, if you will, is not the correct word.  
25 Aquila operates these as divisions, so you wouldn't -- MPS

1 and L&P aren't separate companies. So you wouldn't be  
2 merging, combining or consolidating.

3 COMMISSIONER CLAYTON: And they have their  
4 own tariffs, they are their own operating entity, right?

5 MR. DOTTHEIM: You already approved that.  
6 You approved that in -- I think it's EM-2000- -- it's --

7 COMMISSIONER CLAYTON: I didn't approve  
8 anything. I wasn't here.

9 MR. DOTTHEIM: Excuse me. Well, that --  
10 that -- that was approved and I think it was year 2000  
11 approximately. There was actually a merger of UtiliCorp  
12 and St. Joseph Light & Power, which the -- which the  
13 Commission approved.

14 COMMISSIONER CLAYTON: Okay. I want to  
15 give -- you guys may not -- you may choose to say nothing,  
16 and that's fine, but I want to give you a chance, the  
17 applicants.

18 MR. ZOBRIST: Judge, just a couple of  
19 points, and Mr. Fischer's got one or two.

20 Just look at paragraph 34 of our  
21 application. What it states is that total pretax  
22 synergies for KCPL and Aquila are estimated to reach  
23 approximately 15 -- \$500 million over five years. So we  
24 gave full part -- we gave the parties full notice of where  
25 we intended to derive the synergies from, and it was the



1 coordination of Aquila and KCPL. And it goes on for two  
2 pages on pages 14 and 15 of the application. We also  
3 stated that it was going to consist of Aquila being  
4 acquired by this Gregory Acquisition Company, I think,  
5 which is just there for the purposes of the acquisition  
6 and that Aquila would continue to survive.

7                   So I think we've given the parties full  
8 notice, we've given them full disclosure of the nature of  
9 the transaction. And we also asked in the Wherefore  
10 clause, citing Section 393.190 as well as a host of other  
11 Missouri statutes and sections from the Code of State  
12 Regulations, to approve the merger as well as subpart K  
13 granting such other relief as may be necessary and  
14 appropriate to accomplish the purposes of the merger and  
15 this joint application and to consummate the merger and  
16 the related transactions in accordance with what we  
17 presented.

18                   COMMISSIONER CLAYTON: Who were the joint  
19 applicants in this case?

20                   MR. ZOBRIST: Kansas City Power & Light,  
21 Great Plains Energy, Incorporated and Aquila, Inc.

22                   COMMISSIONER CLAYTON: Okay. I'm sorry.  
23 Mr. Fischer?

24                   MR. FISCHER: Judge, I would also just  
25 point out that the application itself mentions the

1 prefilled testimony, incorporates all the testimony that we  
2 filed in this case on all those synergies, and there is no  
3 notice problem here. Everybody knew from the beginning  
4 that we were talking about nearly \$600 million or plus in  
5 synergies that we were going to be trying to accomplish,  
6 and that makes -- that is the whole reason for the  
7 transaction. We can't -- without those synergies, it  
8 makes no sense. It just makes no sense at all. And  
9 that -- that's the whole reason that this transaction is  
10 in the public interest.

11 I'd also mention to you, if you go to Chris  
12 Giles' testimony, the supplemental, he says that if the  
13 Commission determines that a joint operating agreement of  
14 some kind is needed, we're certainly willing to provide  
15 that. If that's the whole problem of the other folks,  
16 that they don't have enough documentation after all these  
17 witnesses to know what we're going to do, we've offered to  
18 provide a joint operating agreement so they can look at it  
19 in writing.

20 Now, a lot of other companies operate  
21 together, they -- they -- well, for example, jointly  
22 operate Iatan 1 together without having an approved joint  
23 operating agreement of all sorts to -- to get synergies,  
24 and we just feel like this is really a red herring.

25 MR. WOODSMALL: Your Honor, two points.

1 The Iatan issue is not the same. There was never a  
2 merger, combination or consolidation at Iatan. It was  
3 built that way. In order to have a merger, you have to  
4 have two coming into one. It was always a one.

5 As to the notice, I ask you again, go back  
6 and look at the notice that the Commission sent out. The  
7 Commission didn't understand from the application that  
8 there was a merger of KCPL and Aquila. There was no  
9 mention in the Commission's notice of such action. It  
10 only states the acquisition by GPE of Aquila. So if there  
11 is -- if there is no notice problem, then the Commission  
12 was fooled by it as well.

13 MR. DOTTHEIM: The -- maybe Mr. Woodsmall  
14 can clarify. I'm not recalling the notice argument prior  
15 than today. The Staff has not made, I don't believe,  
16 earlier a notice argument. The joint operating  
17 agreement, the reference to Iatan, well, there is a joint  
18 operating agreement for Iatan. It certainly is most  
19 definitely different, but there is a joint operating  
20 agreement and there has always -- always been.

21 But even -- even with joint operating  
22 agreements, that still doesn't get, I believe, the  
23 Commission past the point of 393.190.1. The joint  
24 applicants still have not properly filed for Commission  
25 authorization.

1                   And finally, when Mr. Giles took the stand,  
2   I believe on Monday, I believe we heard for the first  
3   time, Mr. Mills asked him whether the joint applicants  
4   were asking for in the Commission Report and Order, the  
5   adoption of the allocation factors and the allocation  
6   methodology that were in his supplemental testimony that  
7   was filed on February 25, 2008, and he said yes, and that  
8   was the first indication that we received of that.

9                   And if you take a look at the companies'  
10   joint application, there is no request anywhere. There is  
11   no request in the Wherefore clauses for the adoption by  
12   the Commission of allocation factors or allocation  
13   methodology, so --

14                  COMMISSIONER CLAYTON: Doesn't that go to  
15   the assertion on behalf of everyone? Not the -- the  
16   moving parties in this instance? That goes to, you know,  
17   the sufficiency of the merger plan or the method of  
18   integration. It doesn't -- that's not a legal argument  
19   that means as a matter of law they can't discuss certain  
20   factors, and that's what I'm trying to get at. I don't --  
21   the issue that I'm struggling with is a matter of law, the  
22   way the case is filed, it precludes them from showing  
23   certain types of evidence. That's what I'm --

24                  MR. DOTTHEIM: Understood. And generally,  
25   the Staff does not seek to preclude a party from making

1 its arguments to the Commission.

2 COMMISSIONER CLAYTON: But you-all joined  
3 in that motion to preclude the evidence, didn't you?

4 MR. DOTTHEIM: Ultimately -- ultimately  
5 yes, because of the significance --

6 COMMISSIONER CLAYTON: Okay.

7 MR. DOTTHEIM: -- because of the  
8 significance of the issue. We did not -- we did not  
9 independently file a Motion in Limine ourselves.

10 COMMISSIONER CLAYTON: But you're on that  
11 motion. It's your motion. You're a joint movant in that.

12 MR. DOTTHEIM: No, we're not.

13 COMMISSIONER CLAYTON: You're not?

14 MR. DOTTHEIM: No, we're not.

15 COMMISSIONER CLAYTON: I thought it was a  
16 joint motion on --

17 MR. MILLS: I think Staff filed something  
18 later saying they agreed with it.

19 MR. DOTTHEIM: No. Mr. Thompson --  
20 Mr. Thompson joined -- joined in that -- that motion on  
21 the very first day of hearings on December 3. We're  
22 not -- we're not literally on that document.

23 COMMISSIONER CLAYTON: Okay. Anyone else?  
24 I think I'm finished with my inquiry. Did you have  
25 anything else, Mr. Mills?

1                   MR. MILLS: No. I'd be happy to answer  
2 more questions, but I think I've given you everything --

3                   COMMISSIONER CLAYTON: I think I'm  
4 finished. I want to thank everyone for giving me an  
5 opportunity to ask these questions. This has been helpful  
6 on all of these issues, and I'll put it to rest right  
7 there.

8                   COMMISSIONER MURRAY: Judge?

9                   JUDGE STEARLEY: Thanks, commissioner  
10 Clayton. Commissioner Murray?

11                  COMMISSIONER MURRAY: Thank you. I just  
12 want to make sure, just so the record is clear, to the  
13 extent that this exchange was factual rather than purely  
14 legal, and much of it was factual, that those -- none of  
15 those arguments by the attorneys will be considered as  
16 evidence in this case.

17                  And also to make it very clear that this  
18 Commission is not challenging the authority of the  
19 presiding officer to act in full accordance with our  
20 Commission rules as he has done. Thank you.

21                  JUDGE STEARLEY: Commissioner Jarrett?

22                  COMMISSIONER JARRETT: I just had a quick  
23 question. Mr. Woodsmall, the Motion in Limine, what  
24 relief was requested in that?

25                  MR. WOODSMALL: There were two motions, and

1 I believe in both motions the relief was the rejection of  
2 certain testimony. I believe in both of them it spells  
3 out which pieces of testimony, page and line numbers that  
4 were asked to be excluded.

5 COMMISSIONER JARRETT: And this is, I  
6 guess, to Mr. Woodsmall, Mr. Mills, Mr. Dottheim. If --  
7 if a party thinks that an application or a petition is  
8 deficient on its face, shouldn't the parties file a Motion  
9 to Dismiss or to make it more definite, and then wouldn't  
10 the Commission, if they felt it was deficient, grant the  
11 applicants leave to file an amended application, much like  
12 you would see in a court? I mean, bringing up that an  
13 application is deficient after a case has been tried,  
14 don't you kind of waive that argument?

15 MR. WOODSMALL: The application -- it  
16 depends on how you define deficient. The application  
17 isn't deficient for the purposes of what is sought in that  
18 application. The Commission can still grant relief by  
19 that application. It's only deficient when you look at it  
20 in the context now of all the evidence they've offered and  
21 what they seek to do. So it depends on how you define  
22 deficient.

23 MR. MILLS: And I would look at it slightly  
24 differently in that the application is not deficient, and  
25 certainly they could ask for authority to merge Aquila

1     into the Gregory sub and leave it at that and the  
2     Commission could grant that. The Motion in Limine simply  
3     said a lot of this evidence isn't relevant to that  
4     particular transaction.

5                     What it's relevant to is this indirect  
6     merger of the operations of Aquila and KCPL which hasn't  
7     been -- for which authority has not been requested. So  
8     it's not that the application was deficient. It's that  
9     they were providing evidence about a different kind of  
10    relief which they didn't ask for.

11                    MR. DOTTHEIM: And Commissioner, very  
12    candidly, it did not occur to us for quite some time  
13    that -- that the joint applicants hadn't in our view  
14    properly filed the joint application, and in fact, we  
15    actually were -- I mean, we were just -- I'm at a loss of  
16    words really to describe, other than just taken aback when  
17    it struck us, when we went back through the joint  
18    application and literally realized that -- that what we  
19    had assumed they had filed for they had not filed for.

20                    And we first raised it with the -- the  
21    joint applicants in September before we filed our report  
22    to give them some forewarning as to where we were going to  
23    come from, and we were far enough into the case at that  
24    point that that's where we thought the timing had left us,  
25    because our -- the schedule was such that the rebuttal



1 filing was due on October 12. So we advised the joint  
2 applicants, in particular Kansas City Power & Light, at I  
3 think it's the Financial Research Institute in Columbia in  
4 September what we were going to file in October, and we  
5 went ahead and filed it and proceeded forward.

6 And it is in Mr. Schallenberg's report, and  
7 the joint applicants or GPE/KCPL objected in part  
8 yesterday to his report on the basis of that being in his  
9 report. But we were -- we were so far into the case at  
10 that point that that is how we chose to proceed. Frankly,  
11 if it had occurred to us at an earlier stage, we would  
12 have -- we would have met with the company. We would  
13 have -- we would have talked and maybe we could have  
14 proceeded differently.

15 Frankly, it's probably just the human  
16 condition, but people seem to ascribe to each other  
17 motives when they -- motives do not exist, and that is why  
18 we proceeded in the manner that we did. If we had been  
19 more perceptive, we would have discovered what we think we  
20 have discovered as far as a failing of the filing at a  
21 much earlier stage, but we didn't. It's not that we  
22 changed our minds about the filing. It's that we came to  
23 an understanding of the filing that we hadn't initially  
24 reached.

25 JUDGE STEARLEY: Right. And I appreciate

1 your candor on that, Mr. Dottheim. And I didn't mean to  
2 exclude Mr. Zobrist and Mr. Fischer from responding to my  
3 question. If you had any response?

4 MR. FISCHER: Well, Judge, I would say that  
5 would be an appropriate way to raise such an issue, and  
6 certainly September we would have been dealing with this a  
7 lot earlier. I mean, we were aware that they had that  
8 concern, but we thought it was not correct, and it was  
9 never filed as a Motion to Dismiss that I know of.

10 I do want to as we're closing thank the  
11 Commission and the other parties for the accommodations of  
12 our various witnesses that we had throughout this matter.  
13 I do appreciate that accommodation.

14 MR. WOODSMALL: Your Honor, and to the  
15 extent it's timely, I would note, if the Commission found  
16 this helpful, that the rules do provide, in addition to  
17 Briefs, oral arguments. If the Commission would like the  
18 opportunity later to ask questions of attorneys after they  
19 read the Briefs, that option is available to you, and we  
20 would certainly make ourselves available.

21 JUDGE STEARLEY: Thank you, Mr. Woodsmall.

22 COMMISSIONER CLAYTON: Judge, I just -- I  
23 appreciate that comment from Mr. Woodsmall. We may take  
24 you up on that.

25 I just feel like I need to respond to the

1 gratuitous comment about -- about the Judge issuing a  
2 ruling. I want to be clear on some of these evidentiary  
3 rulings that there was a reason why I asked for certain --  
4 certain of these matters to be brought up in agenda  
5 session to seek to overrule the Judge's decision and that  
6 opportunity was taken away. So I just -- I want to be  
7 clear on how these things have proceeded.

8 JUDGE STEARLEY: All right. Is there  
9 anything else we need to take up at this time other than  
10 our housekeeping matters?

11 All right. Very well. I'd first like to  
12 turn our attention to our exhibits list and ask the  
13 parties to please make sure that all exhibits have been  
14 offered into evidence. From my listing, I have a question  
15 for GPE. I wasn't here in December, but I have a number  
16 of exhibits, 40 through, looks like 52 that involved Data  
17 Requests, and I don't have it noted that any of those were  
18 ever offered.

19 MR. ZOBRIST: They have not been, Judge.

20 JUDGE STEARLEY: Did you wish to offer  
21 those at this time?

22 MR. ZOBRIST: No, sir.

23 JUDGE STEARLEY: Are there any other  
24 exhibits the parties note that may have escaped our  
25 attention?

1                   MR. WOODSMALL: The only mention I would  
2 make is to -- for me is Exhibit 306, which hasn't been  
3 offered. We'll do that at the appropriate point.

4                   MR. MILLS: And similarly with, I believe  
5 it's 209 which we anticipate getting --

6                   JUDGE STEARLEY: And we have one other  
7 late-filed exhibit coming from City of Kansas City, I  
8 believe as well. I mean, I gave them a May 9th deadline  
9 if I remember correctly to get that filed with us.

10                  Yes, Mr. Dottheim?

11                  MR. DOTTHEIM: Judge, just out of an  
12 abundance of caution, I -- my list -- I have that the  
13 Staff has offered all of its exhibits and they've been  
14 received, but I thought I'd ask you if that's what you're  
15 showing.

16                  JUDGE STEARLEY: I have one blank with  
17 regard to it looks like Exhibit No. -- well, two blanks,  
18 115 and there was a reserved number for 116, 115 being  
19 identified as DR 0123 with a date of 6/14/07.

20                  MR. DOTTHEIM: Yes.

21                  JUDGE STEARLEY: I don't have any  
22 indication that's been offered.

23                  MR. DOTTHEIM: No. You're right.

24                  JUDGE STEARLEY: Do you wish to offer that  
25 at this time?

1 MR. DOTTHEIM: Yes.

2 JUDGE STEARLEY: Very well. Are there any  
3 objections to the offering of Exhibit No. 115 by Staff?

4 MR. ZOBRIST: Well, I don't know what it  
5 is.

6 MR. DOTTHEIM: Yeah. Well, let me -- I got  
7 it. It's DR No. 123. I assume then you don't have a  
8 copy?

9 JUDGE STEARLEY: I don't with me at the  
10 moment. Would the parties like a few minutes to confer  
11 and identify that document?

12 MR. MILLS: Judge, while we do that, can I  
13 ask you to confirm or deny about whether 301 was admitted?

14 JUDGE STEARLEY: I have -- again, have  
15 another blank there as well, which is an e-mail from  
16 11/30.

17 MR. MILLS: It was one of the e-mails that  
18 were made exhibits to the depositions of Chessser, Downey,  
19 Empson or Green, and I know we discussed it a lot on the  
20 record, so I would think it should be admitted.

21 JUDGE STEARLEY: Do the parties need a few  
22 minutes to review that in addition to --

23 MR. ZOBRIST: I'm sorry, Mr. Mills. I  
24 didn't catch that.

25 MR. MILLS: We were talking about

1 Exhibit 301, which according to my records and the Judge's  
2 records has not been offered and admitted at this time.

3 MR. ZOBRIST: 301 is an e-mail of  
4 November 3, of 2006?

5 MR. MILLS: Yeah, it was Exhibit 22 from, I  
6 believe that would have been Mr. Green's deposition. We  
7 can go back and pull that out and take a look at it.

8 MR. ZOBRIST: And I just apologize. I  
9 didn't hear your question. I was chatting with  
10 Mr. Dottheim. And I think since we don't have before us  
11 Staff Exhibits 115 and 116, you know, we'll certainly work  
12 with Mr. Dottheim to figure out what they are. We  
13 certainly may not have objection to them.

14 MR. DOTTHEIM: Yeah. So those go back  
15 to --

16 JUDGE STEARLEY: Would you like to file  
17 those as late-filed exhibits, then?

18 MR. DOTTHEIM: Yes.

19 JUDGE STEARLEY: We'll handle it in that  
20 manner.

21 MR. DOTTHEIM: That's right. We'll first  
22 visit with the other parties.

23 MR. WOODSMALL: And I would offer 301 as  
24 well, your Honor.

25 JUDGE STEARLEY: Let's turn our attention

1 to that. Does everyone know clearly what Exhibit No. 301  
2 is so that they may or may not offer objections thereto?

3 MR. ZOBRIST: I think we need to include  
4 that. I thought that was what Mr. Mills was --

5 JUDGE STEARLEY: We'll include that as  
6 another late-filed.

7 MR. WOODSMALL: That's fine. Because I  
8 don't know what it is either.

9 MR. MILLS: I can run upstairs and get a  
10 copy of that one.

11 JUDGE STEARLEY: Well, I have no copy  
12 either. Let's include that in those to be late-filed and  
13 let's have those all late-filed by Friday the 9th.

14 MR. WOODSMALL: When you say late-filed,  
15 are they -- I guess they've already been marked.

16 JUDGE STEARLEY: Let's say late offered.

17 MR. MILLS: I think that 301 may be one of  
18 those in which there were several different rounds of  
19 redaction, and I would hesitate to try to come up with a  
20 copy that matches exactly what has been marked, so if --  
21 so I think if we could reoffer that --

22 JUDGE STEARLEY: We'll take the others that  
23 we know about as being late offered, the ones that we  
24 don't as being late-filed.

25 Then with -- I notice on my sheet, too, I

1 have four numbers 1301 through 1304 which appears to be  
2 from the City of Independence, and they are not present  
3 and I have no record of them being offered.

4 MR. BLANC: They haven't participated in  
5 these hearings directly, your Honor, but that was part of  
6 the agreement to waive cross and to waive any objections  
7 to the witness' testimony on the RTO issues.

8 JUDGE STEARLEY: Okay. I'm assuming we're  
9 not getting an offering then of these four exhibits?

10 MR. DOTTHEIM: 1301 to 1304?

11 JUDGE STEARLEY: Or were those somehow  
12 incorporated in the testimony of those parties which we've  
13 already ruled upon?

14 MR. DOTTHEIM: Yeah. I -- for some reason  
15 I have those marked as received on 4/23.

16 JUDGE STEARLEY: Okay. I had just marked  
17 Exhibit 1300, I believe, the testimony of Mr. Mahlberg,  
18 and I'm not sure if these exhibits were incorporated in  
19 his testimony or not. To the extent that they were, they  
20 will have already been offered and received.

21 MR. BLANC: And just as a point of  
22 clarification, my comments were limited to the prefiled  
23 testimony and not the Data Request responses.

24 JUDGE STEARLEY: Well, if they were  
25 included with his testimony, they definitely have already



1    been received.  If not, we don't have a sponsor to offer  
2    those, so they will not be offered.

3                   MS. PARSONS:  And your Honor, on  
4    Exhibit 301, I have down that it was filed in EFIS on  
5    12/19 as an exhibit.  So I don't know if -- because it's  
6    filed, if that means it's been offered or received.  But  
7    it's been filed.

8                   MR. WOODSMALL:  This is the distinction  
9    that I was kind of hinting at as the difference between  
10   late-filed and late offered.  So if it -- if it's in EFIS  
11   and it's been filed, I will late offer.  If it hasn't been  
12   filed, then I will late file, if that's acceptable.

13                  JUDGE STEARLEY:  That's certainly  
14   acceptable.

15                  MR. WOODSMALL:  I appreciate your  
16   indulgence.

17                  JUDGE STEARLEY:  Are there any other issues  
18   with exhibits we need to take up?  Hearing none, it's my  
19   understanding the briefing schedule has already been set  
20   in this matter.  Post hearing Briefs are due on the 2nd of  
21   June, along with proposed Findings of Fact and Conclusions  
22   of Law.

23                  MR. ZOBRIST:  Judge, I just raised with the  
24   parties, and they were going to check their schedules and  
25   there may be some issues, but since we're finishing

1 approximately a week early from the last scheduling Order,  
2 which had hearings going through May 7, we were wondering  
3 if we could advance that by seven days?

4 MR. MILLS: Judge, from my point of view,  
5 finishing early puts the briefing schedule from totally  
6 impossible to something about two days short of totally  
7 impossible. So I -- I'm sympathetic to Mr. Zobrist's  
8 request, but June 2nd from -- with two weeks of Empire  
9 hearings between now and then, June 2nd is approaching  
10 very quickly.

11 MR. WOODSMALL: We have the same problem.  
12 Our firm represents clients down in the Empire case and we  
13 have two weeks of Empire hearings in the interim, plans  
14 for Memorial Day holiday that have been planned for months  
15 and months and months. To try to move that up is going to  
16 be very impossible, as Mr. Mills would say.

17 JUDGE STEARLEY: I think the Commission  
18 would prefer that we had good post hearing Briefs as  
19 opposed to hasty post hearing Briefs.

20 MR. WOODSMALL: I don't know if that will  
21 ensure it, but I'll do my best.

22 JUDGE STEARLEY: Well, at least I'll try to  
23 achieve that goal. We'll keep with the June 2nd date.  
24 Are there any other housekeeping matters we need to take  
25 up at this time?

1                   Hearing none, the hearing in Case No.  
2   EM-2007-0347 is hereby adjourned. Thank you all very  
3   much.

4                   WHEREUPON, the hearing of this case was  
5   concluded.

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## I N D E X

## AG PROCESSING'S OFFER OF PROOF

## MICHAEL CLINE

Cross-Examination by Mr. Woodsmall	2948
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Cross-Examination by Mr. Zobrist	2959
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RUSSELL TRIPPENSEE	Cross-Examination by Mr.	
Woodsmall	2962	

Redirect Examination by Mr. Mills	2971
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RUSSELL TRIPPENSEE (In-Camera Session - Volume 24)	
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Redirect Examination by Mr. Mills	3023
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## ROBERT SCHALLENBERG

Cross-Examination by Mr. Woodsmall	2980
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Questions by Commissioner Clayton	2986
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Recross-Examination by Mr. Woodsmall	3020
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Recross-Examination by Mr. Mills	3023
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3	EXHIBIT NO. 306		
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## 1 C E R T I F I C A T E

2 STATE OF MISSOURI )  
3 COUNTY OF COLE ) ss.

4 I, Kellene K. Feddersen, Certified  
5 Shorthand Reporter with the firm of Midwest Litigation  
6 Services, and Notary Public within and for the State of  
7 Missouri, do hereby certify that I was personally present  
8 at the proceedings had in the above-entitled cause at the  
9 time and place set forth in the caption sheet thereof;  
10 that I then and there took down in Stenotype the  
11 proceedings had; and that the foregoing is a full, true  
12 and correct transcript of such Stenotype notes so made at  
13 such time and place.

14 Given at my office in the City of  
15 Jefferson, County of Cole, State of Missouri.

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17 Kellene K. Feddersen, RPR, CSR, CCR  
18 Notary Public (County of Cole)  
My commission expires March 28, 2009.

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