BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

UPDATED PRE-HEARING BRIEF OF JOINT APPLICANTS GREAT PLAINS ENERGY INC., KANSAS CITY POWER & LIGHT CO. AND AQUILA, INC.

Karl Zobrist, MBN 28325
Roger W. Steiner, MBN 39586
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: (816) 460-2545
Facsimile: (816) 531-7545
email: kzobrist@sonnenschein.com
email: rsteiner@sonnenschein.com

James M. Fischer, MBN 27543
Fischer & Dority P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383
email: jfischerpc@aol.com

Mark G. English, MBN 31068
General Counsel
Great Plains Energy Incorporated
1201 Walnut
Kansas City MO 64106
Telephone: (816) 556-2608
Email: Mark.English@kcpl.com

William G. Riggins, MBN 42501
Vice President and General Counsel
Curtis D. Blanc, MBN 58052
Managing Attorney - Regulatory
Kansas City Power & Light Company
1201 Walnut
Kansas City MO 64106
Telephone: (816) 556-2785
Email: Bill.Riggins@kcpl.com
Email: Curtis.Blanc@kcpl.com

Attorneys for Great Plains Energy Incorporated and Kansas City Power & Light Company

James C. Swearengen, MBN 21510
Paul A. Boudreau, MBN 33155
Brydon, Swearengen & England P.C.
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone (573) 635-7166
Facsimile: (573) 635-0427
email: paulb@brydonlaw.com

Renee Parsons, MBN 48935
Senior Attorney
Aquila, Inc.
20 W. Ninth Street
Kansas City, MO 64105
Telephone: (816) 467-3297
Facsimile: (816) 467-9297
Email: renee.parsons@aquila.com

Attorneys for Aquila, Inc.

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Joint Applicants Great Plains Energy Incorporated ("Great Plains Energy"), Kansas City Power & Light Company ("KCPL"), and Aquila, Inc. ("Aquila") (collectively "Joint Applicants") submit this Updated Pre-Hearing Brief pursuant to the Commission's Second Order Adopting Procedural Schedule issued March 11, 2008.

Statement of the Case

With the filing of their Additional Supplemental Direct Testimony on February 25, the Joint Applicants now present the Commission with a proposal that brings Aquila into the corporate family of Great Plains Energy and KCPL on a basis that offers greater protection and more benefits to ratepayers.

Responding to issues and concerns raised during the December hearings by the parties and Commissioners, the Joint Applicants' additional testimony narrowed the scope of this proceeding by removing the following issues from the case that had been in controversy.

a. <u>Aquila Interest Expense</u>: Joint Applicants do not seek to recover in any future general ratemaking proceeding any interest expense in excess of equivalent investment-grade debt that is currently held by Aquila.

b. <u>Merger Savings</u>: Joint Applicants do not request a specific merger savings sharing mechanism, but rather will rely upon the traditional regulatory ratemaking process so that any merger savings will be passed through to Aquila and KCPL customers in future rate cases.

c. <u>Regulatory Amortizations</u>: Joint Applicants do not request authority in this proceeding for Aquila to use regulatory "Additional Amortizations" to maintain the investment-grade credit rating that Aquila anticipates receiving upon approval of its acquisition by Great Plains Energy.

d. <u>Aquila Senior Executive Severance Costs</u>: Joint Applicants will not request recovery in a future rate case of $16.7 million in severance expense related to departing Aquila senior executives. When combining this adjustment with the re-classification of $13.6 million in non-executive severance expense as Transition Costs, the total amount of Transaction Costs that Joint Applicants will seek to recover has been reduced from $95.2 million to $64.9 million, of which $47.2 million is Missouri jurisdictional.

Neither Staff, the Office of the Public Counsel ("OPC"), the Industrial Intervenors nor any other party has filed any testimony opposing or criticizing the Joint Applicants' February 25 proposal. Indeed, the only formal response to the Joint Applicants' current proposal has been Staff's eleventh-hour investigation into the potential relationship of KCPL's Comprehensive Energy Plan ("CEP") to the acquisition, apparently based on the allegations of anonymous *ex* *parte* communications filed at the Commission. This investigation took the form of 30-paragraph document requests attached to multiple subpoena *duces tecums*, and over 15 depositions of Great Plains Energy, KCPL and Aquila witnesses in late March and April.

Not one witness testified that the proposed acquisition of Aquila endangered the CEP construction projects or the financial well-being of KCPL, or that the CEP could not be carried out as the acquisition of Aquila proceeds. To the contrary, the evidence demonstrated that despite pressures on costs and scheduling at the Iatan projects, both the Aquila acquisition and the CEP were being properly managed. A fully vetted reforecast of the Iatan Unit 1 and Unit 2 projects will be completed at the end of April or early May and subsequently shared with the Commission and all other interested parties.

Additionally, on April 6 Great Plains Energy announced that it had entered into a definitive agreement to sell its unregulated subsidiary Strategic Energy, LLC for $300 million in cash. Proceeds from this transaction will be used to offset some of Great Plains Energy's anticipated financing needs in 2008. The credit rating agencies assumed the lower sales price of $250 million in their evaluation of the Joint Applicants' modified request for regulatory treatment.

The evidence in this case continues to show that the long-term advantage in Aquila's becoming an operating subsidiary of Great Plains Energy, in coordination with KCPL, will result in greater scale operational efficiencies, and that rates over time are expected to be lower than they would be otherwise.

Great Plains Energy's acquisition of Aquila makes sense for many reasons. First, the geographical service territories of the utilities are adjacent, therefore increasing the potential for economies of scale and improved reliability. Second, Aquila and KCPL are already joint owners of the Iatan 1 generating unit and are partners in the Iatan 2 project. Third, combining the headquarters and support functions of the two companies, which are both located in the Kansas City area, will be smooth and uneventful. Most importantly, the financial effect of Great Plains Energy's acquisition of Aquila is expected to result in investment-grade credit metrics for Aquila and lower debt costs. This credit rating improvement and Great Plains Energy's financial support will permit Aquila to have greater access to capital markets on more reasonable terms. Finally, the merger will improve the overall business risk profile of Great Plains Energy, which will benefit the ratepayers of both Aquila and KCPL.

Based on an unusually detailed analysis, the Joint Applicants conservatively estimate savings from the transaction at $755 million over ten years, with $305 million occurring during the first five years, 2008-2012. The prospects of Aquila and KCPL working together in a coordinated and efficient fashion, within a financially healthy holding company, will clearly bring benefits to ratepayers over the next several decades. These possibilities have already been recognized by the shareholders of Aquila and Great Plains Energy, who approved the transaction in early October 2007.

However, in order to bring these benefits to KCPL and Aquila ratepayers in a timely fashion, it is imperative that the Commission act favorably on this matter as soon as practicable.

I. Overview of the Merger Transaction

The Joint Applicants request authority for Aquila to merge with a subsidiary of Great Plains Energy ("Merger"). The Merger is conditioned on a separate but related transaction occurring first in which Black Hills Corporation ("Black Hills") will purchase Aquila's gas assets in Iowa, Nebraska, Kansas, and Colorado, as well as Aquila's electric assets in Colorado ("Black Hills Purchase"). Following the close of the Black Hills Purchase, the Merger will result in Great Plains Energy acquiring Aquila's Missouri-based utilities, Aquila Networks-MPS and Aquila Networks-L&P. Great Plains Energy will also acquire Aquila's steam operations in St.

Joseph, Missouri, as well as its merchant services operations, which primarily consist of the 340 MW Crossroads generating facility in Mississippi and certain residual natural gas contracts.

The Joint Applicants do not propose to consolidate KCPL's and Aquila's service territories. They also do not propose to merge the corporate structures of KCPL and Aquila or to transfer any Aquila assets to KCPL. KCPL and Aquila will continue to operate as separate and distinct corporations under their respective Commission-approved tariffs. Nonetheless, the Merger will result in significant synergy savings by bringing KCPL and Aquila under common operation.

As explained in the Direct Testimony of Great Plains Energy's Chief Financial Officer Terry Bassham, Black Hills will pay Aquila approximately $940 million in cash in consideration for the Black Hills Purchase. That purchase is controlled by the Asset Purchase Agreement ("APA") and the Partnership Interests Purchase Agreement ("PIPA"). The APA controls Black Hills' purchase of Aquila's natural gas assets in Nebraska, Kansas and Iowa. The PIPA controls Black Hills' purchase of Aquila's electric and natural gas assets in Colorado. Following the closing of the APA and PIPA transactions, Black Hills will own and operate the natural gas assets of Aquila in Nebraska, Kansas, Iowa, and Colorado. Black Hills will also own Aquila's Colorado electric assets.

The Merger will occur immediately following the consummation of the Black Hills Purchase. It will be accomplished by Gregory Acquisition Corp. ("Merger Sub"), a Delaware corporation and direct, wholly-owned subsidiary of Great Plains Energy, merging with and into Aquila, with Aquila as the surviving entity. As a result, Aquila will become a direct, wholly-owned subsidiary of Great Plains Energy, just as KCPL is today.

Upon consummation of the Merger, Aquila stockholders will receive the consideration of stock and cash called for under the Agreement and Plan of Merger. Each share of Aquila's common stock will convert into the right to receive (i) 0.0856 of a share of common stock, no par value, of Great Plains Energy's common stock and (ii) a cash payment of $1.80. Based on Great Plains Energy's closing NYSE stock price of $24.99 on April 15, 2008, the Merger represents a value of $3.94 per share of Aquila common stock. Great Plains Energy will also assume approximately $1 billion of Aquila's net debt and other liabilities.

The Merger and Black Hills Purchase have already received all of the necessary approvals except from this Commission. Aquila's shareholders approved the transactions on October 9, 2007. The shareholders of Great Plains Energy approved the transactions on October 10, 2007. The transactions did not require the approval of Black Hills' shareholders. The Federal Energy Regulatory Commission ("FERC") approved the transactions in October. Great Plains Energy Inc., 121 FERC ¶ 61,069 (Oct. 19, 2007). In addition, on August 27, 2007, the Federal Trade Commission announced that it granted early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"). The Iowa Utilities Board and the Nebraska Public Service Commission have approved the Black Hills Purchase. In re Aquila, Inc., Docket No. SPU-07-12 (Iowa Util. Bd., Aug. 31, 2007); In re Aquila, Inc., Application No. NG-0044 (Neb. P.S.C., Oct. 16, 2007).

Since the hearings were adjourned in December, the transactions were also approved by both the Colorado Public Utilities Commission and the Kansas Corporation Commission. See In re Application of Aquila, Inc., Docket No. 07A-108EG (Colo. P.U.C., Feb. 14, 2008); In re Joint Application of Great Plains Energy Inc., Kansas City Power & Light Co. and Aquila, Inc., Docket No. 07-KCPE-1064-ACQ (Kan. Corp. Comm'n, March 7, 2008) (voice vote 3-0 in favor).

Only this Commission's approval is needed for the Merger to close.

II. Merger Synergy Savings

The Joint Applicants have withdrawn their request for a "sharing proposal" through which merger synergy savings would be allocated between customers and shareholders. Instead, they propose to rely upon the natural regulatory lag that occurs between rate cases to retain any portion of synergy savings. See Bassham Add'l Supp. Direct Testimony at 3-4.

The Commission has already heard evidence from two of the Joint Applicants' key witnesses providing synergy testimony: KCPL's John Marshall, who is the senior executive in charge of the integration planning process, and Black & Veatch's William J. Kemp, who provided an independent review of the estimates of merger savings. Therefore, this Updated Prehearing Brief will not repeat in detail the overview of their testimony that was provided in the Joint Applicants' Prehearing Brief filed on November 27, 2007.

Robert T. Zabors of Bridge Strategy Group LLC, the other major overview witness on synergy estimates and the integration process, will appear at the hearing. Nine other witnesses will also provide testimony on specific synergy issues, ranging from supply chain issues to matters involving generation, transmission and distribution operations.

A. Are the estimates of savings from synergies accurate?

Yes. Great Plains Energy's general approach to estimating synergies is consistent with industry practice, and is more detailed and better supported than most transactions. See Tr. 1062-65 (Kemp); Kemp. Supp. Direct at 12-14. In addition, the estimated synergies are modestly above the industry average, in light of the adjacent territories and historical relationship of KCPL and Aquila. They appear reasonable on a stand-alone basis and are in the range that would be expected on the basis of comparable transactions in the utility industry. See Kemp Supp. Dir. at 18-22.

Based upon evidence that has been filed, the Commission should find that KCPL's estimates of the synergies from the Merger are reasonable and afford substantial benefits to customers.

1. Could any of the synergy savings be achieved by KCPL or Aquila on a stand-alone basis absent the acquisition?

No. The Joint Applicants have taken care to separate synergies that may be achievable in their stand-alone capacities from the "created" and "enabled" synergy savings that are unlocked by the Merger. As both KCPL President William H. Downey and Bridge Group's Wallace Buran have testified, the synergies that result from the Merger are not related to savings from stand-alone operations, and are rather a direct result of the companies working together. See Downey Dep. at 111-21 (Nov. 28, 2007); Buran Supp. Direct at 10-11.

2. Are any of the identified synergy savings dependent on KCPL and Aquila integrating their operations?

Yes. Many of the benefits to KCPL and Aquila customers from this transaction come from integrating various KCPL and Aquila functions and activities. However, as a legal matter, Aquila will continue to own its own power plants, its transmission and distribution facilities, and utility plant. Aquila will continue to serve its customers under its separate electricity and steam tariffs. See Giles Surrebuttal at 3. The fact that KCPL and Aquila will integrate their operations does not require any regulatory approvals not already requested in this proceeding. See Giles Add'l Supp. Direct at 1-3. However, if the Commission ultimately determines that some additional authorization is required, the Joint Applicants requested such relief in their Joint Application. Specifically, in paragraph (k) of the Joint Application, Joint Applicants requested that the Commission issue an order "Granting such *other relief as may be necessary and appropriate to accomplish the purposes of the Merger* and this Joint Application, and to consummate the Merger and related transactions in accordance with the Agreement and Plan of

Merger and this Joint Application." (emphasis added) Realizing synergy savings is clearly a "purpose of the Merger" and integrated operations are clearly "necessary and appropriate to accomplish" that purpose.

B. Do the actual synergy savings exceed the sum of the transaction, transition and incremental interest costs that the Joint Applicants propose to recover over the first five (5) years following the merger?

Yes. The total operational synergies that will result from the proposed transaction are $305 million over the first 5-year period. However, the Merger is expected to produce substantially more savings to customers. The total synergies created would total $755 million through year 10. On a Missouri jurisdictional basis, the total synergies are equal to $549 million for 10 years, with $222 million expected during the first 5 years. See Bassham Add'l Supp. Direct at 3.

These actual synergy savings will substantially exceed $90 million, the sum of the $47.2 million in Missouri Transaction Costs and $42.8 million in Missouri Transition Costs. The Joint Applicants are no longer requesting to recover Aquila's incremental interest costs on outstanding debt.

C. The Estimated Savings and Merger Synergies Are Substantial, and Will Directly Benefit the Customers.

Aquila's utilities are not only adjacent to KCPL's service area, but they also fill in the gap that currently exists between KCPL's East District and the rest of its service territory. As a result, significant savings opportunities are available soon after the close of the Merger related to integrated operations under common management of many functions within KCPL and Aquila. In addition, Aquila's service areas have strong growth potential. See Downey Direct at 4.

KCPL's John Marshall and Bridge Group's Robert Zabors discuss the process used to identify and quantify the non-fuel synergy savings and costs to achieve in detail in their testimony. See Marshall Direct at 1-8; Marshall Supp. Direct at 1-22; Marshall Surrebuttal at 1-11; Zabors Direct at 2-15; Zabors Supp. Direct at 1-15.

More than 150 Aquila and KCPL employees have been extensively involved in integration planning teams and subteams. The various teams worked together to determine the incremental resources (expenses, capital, and employee positions) required to operate the companies after the Merger closes. See Zabors Supp. Direct at 5-6; Marshall Surrebuttal at 3-4.

The teams determined the synergies over a five-year period, beginning on January 1, 2008, although the expected closing will now be closer to the August 6, 2008 termination date. Since the majority of the synergies will continue beyond the first five-year period, the synergies were escalated by 3.1% which is the 3-year average of the CPI-U, the consumer price index.

The major components of the expected synergies are:

1. Reductions in operating forecasts of departments ($87 million).

The majority of these savings come from labor and non-labor cost reductions. Labor reductions are the result of actual reductions in payroll that are attributable to position reductions. The non-labor synergies result from economies of scale and the impacts of position reductions.

2. Reductions in major projects that reduce non-fuel operations and maintenance (O&M) expenses ($33 million).

Facilities consolidation, the sale of Aquila's headquarters building, and the implementation of automated meter reading ("AMR") infrastructure for Aquila customers make up this synergy estimate. KCPL will close overlapping service centers and centralize operations in a new facility and in KCPL's existing Northland facility. The net benefit of this opportunity will be $6.8 million. See Zabors Supp. Direct at p. 11. The efficiencies gained from consolidating into one headquarters building will create $5.8 million in value from reductions in operating costs and increased efficiencies at Great Plains Energy's headquarters. The value of selling the Aquila headquarters building will be $16.2 million over the four years following the sale at the end of 2008. KCPL also will leverage its experience with AMR and upgrade the Aquila customer base to this level of service with a savings of $4.7 million over five years.

3. Supply Chain Synergies ($131 million).

The total savings from the supply chain is $131 million, with strategic sourcing/procurement accounting for over half of the total savings. This consists of $97.7 million in O&M savings and $33.3 million in avoided costs of capital savings, which is generated from $95.5 million in avoided capital expenditures. See Buran Supp. Direct at 3. The integration will lead to procurement savings and more effective use of contracted services in operations. It will also enable cost-effective investments in centralization of physical storage and better management of inventory. These savings include opportunities to leverage increased purchasing scale, best practices, and increased scope, *i.e.*, sharing of material, equipment, and labor, where appropriate. See Buran Supp. Direct at 2-27.

4. Specific integration projects that reduce purchased power expense or increase revenue ($54 million over five years).

Optimizing the operation of Aquila's Sibley Unit 3 by utilizing KCPL's coal plant expertise and outage management experience is expected to deliver 30 MW of capacity that will reduce purchased power expenses by $17 million over five years. Utilizing the economies of scale in the gas fleet and Aquila expertise to improve combustion turbine operations will capture $3.1 million in synergies. KCPL will use its experience with boiler tube failure improvement to deliver improved performance resulting in $5.6 million in value. KCPL's experience and infrastructure in energy efficiency will add incremental value to the Aquila customer base returning $13 million over five years. Teams will leverage KCPL coal plant and outage experience to improve operations at Sibley Units 1 and 2, with a savings of $1.6 million. KCPL's experience, processes, and tools will also be used to improve heat rates, saving $0.6 million. Aquila's skills, intellectual property, and processes to enhance billing processes will capture $12.8 million. The net impact of these projects is to reduce purchased power or increase revenue by approximately $54 million over the first five years. See Zabors Supp. Direct at 9-12.

D. Transition Cost Recovery.

Transition costs are now estimated to be $58.9 million ($42.8 million Missouri jurisdictional). See Bassham Add'l Supp. Direct at 5. These costs will be incurred to integrate Aquila and KCPL operations. Without incurring these costs, the companies could not achieve the estimated merger synergies, while maintaining or improving system reliability for Aquila's and KCPL's customers. See Bassham Surrebuttal at 3. These costs include third party expenses to support the integration from legal, human resources, information technology and process other perspectives.

E. Synergies Identified In Operating Functions.

1. Delivery.

Delivery functions consist of Distribution, Transmission, Energy Solutions, Customer Service and Information Technology. In these areas, the synergies come from (1) synergies in Distribution operating expenses generated from the economies of scale of combining two similar operations in adjacent service territories, and (2) synergies from integrating five existing service centers into two locations. See Marshall Supp. Direct at 12.

The greater Kansas City metropolitan area of the post-merged organization will be managed as a single district. The operations of the existing Aquila Liberty and Platte City service centers will be combined into KCPL's Northland facility. The existing service center operations in Lee's Summit, Blue Springs, and Dodson will be similarly integrated into a new facility to be built along the I-470 corridor near Lee's Summit. The necessary capital investments to achieve this result will be offset by the elimination and sale of replaced facilities. See Marshall Supp. Direct at 12. This effort over the 2008-2012 timeframe will deliver operating synergies of $6.8 million, 45% of which is generated from lower facility O&M costs. The remaining 55% is expected to accrue from a reduction in contractor needs on facilities being eliminated.

Transmission synergies will come from combining similar operations in adjacent service areas. Scale economies will allow the post-merged organizations to reduce one five-man contract service crew. In addition, subject to regulatory approvals, KCPL and Aquila may join the same regional transmission organization ("RTO") in the future. See Marshall Supp. Direct at 13.

Energy Solutions offers the potential for cost reductions, but more importantly will be the function leading key integration projects that expand KCPL's capabilities and practices in energy efficiency, eServices and other areas to Aquila's customers. These programs will improve customer interaction with Aquila and provide customers with ways to better manage and monitor their energy use. See Marshall Supp. Direct at 14. In addition, KCPL will leverage its existing AMR experience to develop an infrastructure with the Aquila service territory. KCPL will also use its eServices infrastructure to accelerate Aquila's move to a more accurate, more responsive customer experience. See Marshall Supp. Direct at 15; Bryant Supp. Direct at 1-9.

Customer service will also recognize synergies in the following areas: (1) As Aquila has more automation than KCPL, the merged organization will leverage Aquila's technology and expertise to increase call center automation and deliver productivity efficiencies; (2) The Energy Solutions eServices initiative will leverage existing KCPL technology and process expertise to general Non-Fuel O&M expense savings in the customer service area by decreasing call volumes and associated labor needs as Aquila customers migrate to more convenient electronic self-service alternatives via the Internet; (3) Labor efficiencies generated from economies of scale will be achieved by merging similar operations of the two companies. See Marshall Supp. Direct at 16.

Information technology ("IT") will achieve synergies in the following areas: (1) Application portfolio rationalization; (2) Integration of the telecom and data networks, and moving to KCPL's privately owned network model; (3) Centralization of the production and disaster recovery Data Center facilities of the combined companies, including service, disk storage and core networking infrastructure; (4) Combining the Aquila and KCPL Energy Management Systems ("EMS") into the new KCPL EMS that will be implemented in 2008; and (5) Combining the Aquila and KCPL IT organizations, resulting in a manpower reduction. See Marshall Supp. Direct at 16-17; Tickles Supp. Direct at 2-6.

2. Supply (Plant Operations and Energy Resource Management).

As discussed by KCPL Senior Vice President of Delivery John Marshall, Great Plains Energy will achieve new operational synergies by taking advantage of the expertise that KCPL and Aquila each have in such areas as coal plant operations, gas turbine operations, outage management, and reduced non-fuel O&M expenses. See Marshall Supp. Direct at 18.

3. Support (Facilities, Finance and Accounting, and Human Resources).

Integration of facilities will reduce costs as the companies will have a single headquarters building at 1201 Walnut, and Raytown will be the customer service campus with call center, billing and related functions. See Marshall Supp. Direct at 20.

In the Finance and Accounting functions, synergies will be achieved primarily from eliminating redundancies and duplicate functions and processes. External audit fees will be substantially reduced. It is anticipated that of the 113 accounting and finance positions currently at Aquila, 55 positions will be needed in 2009. Id. at 21.

In the Human Resources function, synergies will also come from eliminating redundancies and duplicate functions. Systems will be standardized with best practices and technologies adopted. It is anticipated that of the 32 Human Resources positions currently at Aquila, 10 positions will be needed in 2009. By 2012, however, it is anticipated that only 2 incremental positions will be part of the Human Resources organization. The decrease in personnel will be driven by migrating to a different operating model enabled by technology. Id. at 21.

4. Organizational and Management Benefits.

a. Administration and Staff.

Following the Merger, Great Plains Energy's footprint will be expanded into a larger contiguous service area covering over 18,000 square miles, serving nearly 800,000 customers.

Michael J. Chesser will remain Chairman of the Board of Great Plains Energy and KCPL, as well as Chief Executive Officer ("CEO") of Great Plains Energy. William Downey will remain the President of Great Plains Energy and KCPL, as well as the Chief Operating Officer of Great Plains Energy and CEO of KCPL. Following the Merger, Mr. Downey will become President and CEO of Aquila. The Merger will not alter the membership of the Boards of Directors of Great Plains Energy or KCPL. Great Plains Energy corporate headquarters will remain at 1201 Walnut. Once the Merger is finalized, Aquila corporate employees will relocate to Great Plains Energy's existing offices and facilities. See Downey Direct at 3-4.

Similarly, with the exception of two Aquila executives -- Jim Alberts and Scott Heidtbrink -- who have accepted offers of employment from Great Plains Energy and KCPL, there will be little to no change in the senior management team of Great Plains Energy and

KCPL as a result of the Merger. As discussed below, there are no planned reductions in current union employees at Aquila, but Great Plains Energy and KCPL anticipate eliminating approximately 355 overlapping corporate positions on Day 1. See Zabors Supp. Direct at p. 11.

Although Great Plains Energy and KCPL expect to retain the majority of the employees working in Aquila's Missouri operations, including all plant, transmission and distribution operations personnel, they plan to (i) eliminate duplicative or overlapping administrative positions, and (ii) convert the retained Aquila employees to either Great Plains Energy or KCPL employees. Great Plains Energy Services, Inc. ("GPES"), a wholly-owned subsidiary of Great Plains Energy, and KCPL will provide human resources, legal and accounting services to Aquila. See Bassham Direct at 7. Almost 900 Aquila positions will be included in the combined company. Over the first five years the number will drop to 843 positions, as transitional roles are not needed and integration projects yield results. See Marshall Supp. Direct at 9.

b. Labor.

KCPL intends to pursue negotiations that will result in the integration of the Aquila employees represented by IBEW 695 and 814 into KCPL's three existing bargaining units. KCPL is committed to working with the IBEW regarding Aquila's union employees, as well as with KCPL's bargaining units. Great Plains Energy believes that by combining staff and labor personnel it will have more flexibility in aligning employees with customers' needs and will provide better service. Union employees will also have expanded opportunities and options in their work locations and assignments.

F. Analysis of Synergies.

1. KCPL's Estimates and Treatment of Synergies from the Merger Are Reasonable And Consistent With Other Merger Transactions.

Without repeating the points made by Mr. Kemp in his prefiled and oral testimony, it is clear that even though the synergy estimates were conservative, the projected savings "were significantly higher" in customer service, distribution, and administrative and general ("A&G") functions. See Tr. 1064-65 (Kemp testimony of Dec. 6, 2007). See also Joint Applicant's Prehearing Brief (Nov. 27, 2007) at 19-21, citing Kemp Supp. Direct at 3-4, 8-9, 21-28; Kemp Surrebuttal at 15.

2. The Criticisms of Other Parties Regarding Estimates of Synergies Are Unsupported And Should Be Rejected.

Staff, Public Counsel and Praxair witnesses have criticized the estimates of synergies in several respects: (1) Operating costs of the merged utility companies should not be adjusted for inflation by applying the Consumer Price Index [Staff Report at 77-80]; (2) Uncollectible expense should not be excluded from the costs for the Customer Service function of the merged utilities [Staff Report at 79]; (3) KCPL's estimates of synergy savings from the proposed Merger are overstated or too aggressive [Dittmer Rebuttal at 36-39; Brubaker Rebuttal at 9-11]; and (4) Enabled synergies should be excluded from the total pool of synergy savings that the applicants propose for sharing between customers [Dittmer Rebuttal at 12-16].

None of these criticisms are valid or supported when evaluated in the light of the factual record and accepted regulatory policy principles. See Kemp Surrebuttal at 1-15. The use of the CPI to calculate real synergy savings is conservative because it understates the level of inflation in the non-labor portion of non-fuel O&M expense, and because it compares total costs, not unit costs. See Kemp Surrebuttal at 7.

With regard to Staff's criticism of the exclusion of uncollectible accounts from the Customer Service expense figures, Mr. Kemp testified that it is proper to exclude them from his analysis because they are more properly characterized as a contra-revenue item, not an expense item, and because they are more closely related to the level of fuel and purchased power costs than non-fuel O&M expenses. Id. at 9.

OPC's Mr. Dittmer makes little attempt to rebut the estimates of the synergy savings or the reasonableness of the methods for estimating synergies. Mr. Brubaker argues that the synergy estimates should be discarded merely because they are above the median of industry experience. As Mr. Kemp explains in his testimony, the synergies should be expected to be above the industry average since KCPL and Aquila are in close proximity and the potential for synergies is substantially greater than in other transactions. See Kemp Surrebuttal at 10-12.

Mr. Dittmer's assertion that the "enabled" synergy savings[1] should be removed from any analysis that attempts to evaluate the benefits of the Merger is also misplaced. As Mr. Kemp explains, both "created" and "enabled" synergy savings are unlocked by the Merger, and both require management initiative and action before they can be realized. Id. at 13. While the distinction between such synergies is not always clear-cut, all of these savings are a direct result of the Merger. On the other hand, Great Plains Energy did not seek to include in its estimates a third type of synergy identified in mergers known as "developed" synergies. "Developed" synergies are reductions in cost due to management decisions that could have been made on a stand-alone basis without regard to the Merger. Kemp Direct at 7; Marshall Surrebuttal at 4-5.

[1] Two primary types of synergies result from mergers. The first type of synergy occurs as a direct result of combining the entities. That is, "but for" the merger these synergies would not exist. These are commonly called "created" synergies. The second type of synergy is "enabled" by a merger. Here, the Merger enables the Joint Applicants to improve practices, processes and skills from both kinds of synergies . As explained by Mr. Zabors, both types of synergies are included in the estimates. See Zabors Supp. Direct at 6.

If the Commission accepted Mr. Dittmer's approach to synergy analysis, it would greatly reduce the incentive of any utility to pursue savings initiatives to benefit customers. See Kemp Surrebuttal at 14.

III. Transaction Cost Recovery

A. Should Transaction Costs be directly charged to ratepayers through cost of service amortizations? Would the proposed merger be detrimental to the public interest if the Commission did so?

Great Plains Energy requests that $64.9 million in Transaction Costs ($47.2 Missouri jurisdictional) be analyzed by the Commission as it reviews the costs and benefits of this transaction, and that recovery of these costs be permitted to be considered in a future rate case. See Bassham Add'l Supp. Direct at 5 and Supp. Direct at 8; Zabors Supp. Direct at 14-15. Great Plains Energy is not requesting recovery of any acquisition premium or adjustment.

Although state commissions have split on whether to allow the recovery of Transaction Costs in rate cases, the general rule is: "The costs occurred in effecting the purchase, if ordinary, necessary, and overall not in excess of book value of the assets, should be allowed as acquisition costs." See L.S. Goodman, The Process of Ratemaking at 783 (1998). The Transaction Costs of $64.9 million clearly do not exceed the book value of Aquila's assets. See Form S-4 (Unaudited Pro-Forma Condensed Combined Balance Sheet as of 12/31/06) filed by Great Plains Energy with the Securities and Exchange Commission at p. 171.

In the past Staff has concurred with the request of merging utilities to amortize Transaction and Transition Costs over time. In 1997 Staff agreed with Union Electric Co. in its Merger with Central Illinois Public Service Co. that "[a]ctual prudent and reasonable merger transaction and transition costs (estimated to be $71.5 million) shall be amortized over ten years beginning the date the merger closes." In re Union Elec. Co., 6 Mo. P.S.C. 3d 28, 176 P.U.R. 4th 201 (Mo. P.S.C., Feb. 21, 1997).

However, in this case Staff opposes any favorable consideration of Transaction Costs based upon a narrow application of accounting terminology to this case. KCPL witness Lori Wright testified that the Joint Applicants did not request authorization to recover the acquisition premium of approximately $135 million, which she viewed as a "component of goodwill associated with the Merger." See Wright Direct at 3. She went on to state that the applicants "are requesting recovery of the transaction costs component of goodwill over a five-year period ...." Id. As the comptroller of KCPL and Great Plains Energy, Ms. Wright made clear that Great Plains Energy is required to use purchase accounting methods to record the Merger. She stated: "The excess of the purchase price, including transaction costs, over the fair market value of the net identifiable assets is recorded as goodwill. Examples of the transaction costs include investment banker fees and legal fees." Id. at 4. See Zabors Direct at 14; Zabors Supp. Direct at 14-15.

However, this is not the kind of "goodwill" as has been defined by the courts in reviewing regulatory cases. The Supreme Court has defined goodwill as "that element of value which inheres in the fixed and favorable consideration of customers, arising from an established and well-known and well-conducted business." Los Angeles Gas & Elec. Corp. v. Railroad Comm'n, 289 U.S. 287, 313 (1933); Des Moines Gas Co. v. Des Moines, 238 U.S. 153, 165 (1919). As a leading commentator on regulatory principles has stated: "To include goodwill in the rate base would involve circular reasoning; its value depends on a utility's earnings, which, in turn, depend on the rates established by the Commission. Its inclusion, therefore, would permit the capitalization of expected future earnings. Goodwill has not been accepted for purposes of ratemaking." See Charles F. Phillips, Jr., The Regulation of Public Utilities, 351 (1993).

Regardless of the accounting protocols, the Transaction Costs incurred in this proceeding are best viewed as "costs to achieve" which were necessary to ensure that a merger process was effective, synergy savings are achieved, and that the Merger is completed. See Wright Direct at 3. These costs are discussed in detail in the Direct and Supplemental Direct testimony of Robert T. Zabors. See Zabors Direct at 12; Zabors Supp. Direct at 14-15 and Sched. RTZ-10. These costs are reasonable, and the Commission should give favorable consideration to their recovery in a future Aquila rate case.

Although Great Plains Energy is not requesting favorable consideration of any acquisition premium or adjustment in this case, the reasons most commonly cited for allowing rate base treatment of such elements should be noted. A leading public utility accounting treatise has stated that allowing rate-based treatment occurs "when acquisitions will present an essential or desirable part of an integration of facilities program devoted to serving the public better." See Hahne, Aliff and Deloitte & Touche, Accounting for Public Utilities, Section 4.04[2] (1998).

Favorable treatment is also considered when the acquisition is viewed as being in the public interest because operating efficiencies offset the excess price over net original costs, and where the acquisition was determined to have involved an arm's length transaction. Id. These factors are appropriate for consideration by the Commission as its takes up issues related to recovery of transaction costs in a rate case.

Therefore, while the Commission is not required to make determinations regarding transaction cost recovery in this case, it should indicate in its decision that it is willing to consider recovery of these and other ordinary and necessary merger-related costs in the future.

IV. Actual Debt Cost Recovery

The Joint Applicants have withdrawn their request that the Commission permit recovery of Aquila's actual debt interest costs in a future rate case. Instead, they propose to follow -- as recommended by Staff, OPC and other parties -- the debt cost recovery procedure that the Commission used in Aquila's recent Missouri rate cases. See Bassham Add'l Supp. Direct at 2.

For purposes of ratemaking, this means that any non-investment grade Aquila debt will be assigned an investment-grade interest rate for comparable debt. Id. at 2-3. Aquila will not request in any future rate case recovery of (a) the cost of refinancing any non-investment grade debt or (b) the additional interest cost above any investment-grade debt that is related to Aquila's non-regulated operations. Id. at 3.

Great Plains Energy expects Aquila to receive an investment-grade credit rating after the Merger closes. See Bassham Add'l Supp. Direct at 3; Michael W. Cline Add'l Supp. Direct at 4. After Aquila receives such a credit rating, Great Plains Energy proposes that any new Aquila debt issued in the future would receive the same expense recovery as any other utility debt. See Bassham Add'l Supp. Direct at 3.

V. Additional Amortizations Mechanism

The Joint Applicants have withdrawn their request for consideration of a regulatory or "Additional Amortizations" mechanism in this case.

They continue to believe that an amortization provision similar to the provision contained in KCPL's 2005 Stipulation and Agreement, approved by the Commission in Case No. EO-2005-0329, would be appropriate and beneficial to Aquila's customers. However, Joint Applicants intend to initiate discussions after the closing of the Merger with interested parties in an effort to develop a regulatory plan for Aquila that might include such an amortization provision. See Bassham Add'l Supp. Direct at 4.

VI. Affiliate Transaction Rule Waiver/Variance

A. Should GPE/KCPL and Aquila be granted a waiver/variance from the provisions of the affiliate transactions rule under 4 CSR 240.015 as it might

pertain to transactions between Aquila and KCPL? Will the proposed Merger be not detrimental to the public interest if the Commission does so?

B. Have GPE/KCPL and Aquila complied with the Commission's rules regarding a request for a waiver or variance from the affiliate transactions rule, such as the requirement regarding making a showing of good cause?

C. Have GPE/KCPL and Aquila provided adequate details for there to be clarity respecting what provisions of the affiliate transactions rule that GPE/KCPL and Aquila are seeking relief from?

As discussed below, the Commission should answer each of these questions affirmatively.

The Affiliate Transaction Rule does not apply to transactions between KCPL and Aquila.

The Commission's Affiliate Transaction Rule, 4 CSR 240-20.015, was enacted in 2003 with a "purpose" section that states:

> **This rule is intended to prevent regulated utilities from subsidizing their non-regulated operations.** In order to accomplish this objective, the rule sets forth financial standards, evidentiary standards and record-keeping requirements applicable to any Missouri Public Service Commission (commission) regulated electrical corporation whenever such corporation participates in transactions with any affiliated entity (except with regard to HVAC services as defined in section 386.754, RSMo. Supp. 1998, by the General Assembly of Missouri). **The rule and its effective enforcement will provide the public the assurance that their rates are not adversely impacted by the utilities' nonregulated activities.** [emphasis added].

Despite the fact that 20.015(1)(A) broadly defines "affiliate" as an entity that controls or is controlled by, or is under common control with a regulated electrical corporation, the text of the rule shows that it is only applicable to transactions between a regulated electrical corporation and an unregulated affiliate. For example, Section 2.015(1)(H) defines "preferential service" as "information or treatment or actions by the regulated electrical corporation which places the affiliated entity at an unfair advantage over its competitors." Regulated electrical corporations do not have traditional competitors. Thus, the purpose of the Rule is to prevent a regulated electrical corporation from sharing information that would help an unregulated affiliate.

Similarly, Section 20.015(2)(E) and (F) both are premised on the concept that "information" and "marketing materials" are provided by a regulated electrical corporation to an affiliate that is not regulated by the Commission. Likewise, Sections 20.015(4) and (6) concerning records and access to records require that a regulated electrical corporation keep its records separate from those of its affiliates and make those records available to the Commission. Since both Aquila and KCPL will continue to be regulated electrical corporations after approval of the transaction, each will be subject to the Commission's recordkeeping requirements. The Commission will have, as it does today, full access to both entities' records. The rule was clearly designed to give the Commission access to the records of unregulated entities, just as the Commission now has full access to the records of regulated electrical corporations.

In keeping with the objective of the Rule, the Commission has stated that "[t]he purpose of the affiliate transaction rules is to prevent cross subsidization, in which a conglomerate including a regulated entity seeks to shift the costs of its unregulated activities to its regulated customers."[2] Because Aquila and KCPL will both be regulated electrical corporations after the transaction is completed, transactions between KCPL and Aquila do not involve cross-subsidization.

The Affiliate Transaction Rule, as explained in the surrebuttal testimony of KCPL witness Chris Giles, has asymmetrical pricing requirements which are designed to make a regulated utility indifferent to purchasing or selling goods to an unregulated affiliate. While this makes sense if a transaction involved KCPL and an unregulated affiliate, it does not make sense when both parties are regulated electrical corporations. See Giles Surrebuttal at 7. Since KCPL would be on one side of a transaction and Aquila on the other side, it would be impossible to

[2] In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 17, Report and Order on Rehearing at 38 (2005).

comply with the rule. Id. If Aquila sold KCPL an item with a fair market value of $15 and a fully distributed cost of $10, KCPL as the buyer would be required by Section 20.015(2)(A) to pay Aquila $10, the lower of the fair market value or the fully distributed cost. However, Aquila could only sell the item to KCPL at $15, the higher fair market value. Thus, the transaction could not occur under this interpretation of the Rule.

Since the synergies contemplated by Great Plains Energy are premised on the ability of KCPL and Aquila to exchange goods and services at cost, the Rule would actually prevent benefits from accruing to Missouri ratepayers. The literal application of the Rule in this case prevents synergies from occurring between KCPL and Aquila, and actually increases costs to ratepayers.

Waiver of Affiliate Transaction Rule.

Should the Commission determine that the Rule does apply to transactions between regulated affiliates, KCPL and Aquila request a waiver of the entire rule as it pertains to transactions between them. As shown above, the asymmetrical pricing requirements of the rule would prevent Aquila and KCPL from taking advantage of the synergies between the two companies. This constitutes "good cause" for the waiver. Thus, the "Standards" and "Evaluating Standards" in Sections 2 and 3 of the Rule should not apply. Moreover, since both KCPL and Aquila will continue to be subject to the Commission's recordkeeping requirements for regulated electrical corporations, Sections 4, 5, 6 and 7 of the Rule which relate to recordkeeping should not apply. The prevention of duplicative and unnecessary regulatory requirements constitutes "good cause" for the waiver of these sections of the rule.

VII. Service Quality

A. Can service quality problems resulting from an acquisition of a works or system necessary or useful in the performance of duties to the public preclude the acquisition from being not detrimental to the public interest?

B. Has GPE/KCPL taken adequate measures to ensure that its proposed post-acquisition operations will not be detrimental to the public interest by precluding service quality issues arising from the acquisition?

While issues of service quality can affect post-acquisition operations of a utility, the Joint Applicants have taken the necessary steps to assure customers and the Commission that service will not deteriorate. Staff's concerns arise from the 1994 acquisition of the Missouri gas assets of Western Resources, Inc. by Southern Union. Although an acquiring utility must be alert to potential service quality issues, the problems cited in Staff's report that followed a merger that occurred almost 15 years ago are not relevant to this case.

Moreover, the testimony of KCPL Vice President of Customer Operations William Herdegen explains the steps that will be taken to ensure that reliability will not be adversely affected by the Merger. KCPL and Aquila have reviewed both companies' management structure, practices, technology and the use of the field workforce to ensure that both companies can reach and maintain Tier 1 performance objectives. The strategy is to adopt the KCPL organization design to minimize change as much as possible for combining the two companies' customer service functions. Teams were formed using subject matter experts from each company based on the current KCPL functional areas in the customer service organization as the baseline. See Herdegen Supp. Direct at 17. In this way all work was accounted for at Aquila and properly mapped into the KCPL organization. As a result of this analysis, 124 incremental positions will be added to KCPL's customer service team after the transaction is complete. This number represents the sum of the allocation from Aquila's Central Service team to its Missouri electrical properties, plus the direct cost areas of meter reading, customer service personnel and the customer relations team. In addition, with the potential for additional customer questions for the nine months following the Merger, an additional 12 employees will be retained in the Care Center to respond to these expected inquiries. Id. at 18.

KCPL has reached an agreement with Aquila's Jim Alberts to lead Customer Service operations for both companies. Mr. Alberts is a key reason for Aquila's successful and award-winning customer service operations. KCPL expects that he will be able to use his experience to deliver high service levels. See Marshall Surrebuttal at 12.

To maintain the strong levels of performance historically demonstrated by both Aquila and KCPL, the Joint Applicants recommend review of customer service performance at regular intervals with the Staff, OPC and other interested parties to ensure that service will continue at current levels. See Herdegen Supp. Direct at 21.

VIII. Transmission and RTO Criteria

A. Have Applicants demonstrated that the proposed transaction is not detrimental to the public interest even though they have not addressed the rate and other impacts of their intent to have Aquila participate in the Midwest ISO rather than SPP?

It is unnecessary and premature to require the Joint Applicants to evaluate the potential impacts of Aquila's RTO status. Aquila has an application pending before the Commission in Case No. EO-2008-0046, regarding the transfer functional control of its transmission facilities to Midwest ISO or another RTO. The evidentiary hearing in that case concluded April 15, 2008. The Merger will have no direct impact on KCPL's or Aquila's RTO status. KCPL is a full member of the Southwest Power Pool ("SPP"). See Spring Surrebuttal at 1. KCPL's participation in the SPP has been approved by this Commission, the Kansas Corporation Commission ("KCC"), and FERC. Any change to KCPL's RTO status would require the approval of those commissions.

Because the Commission is currently considering Aquila's RTO status, it would be improper to require the applicants to address the potential impacts of Aquila's RTO status in this proceeding.

B. Have Applicants demonstrated that the proposed transaction is not detrimental to the public interest even though they have not addressed the rate and other impacts of potential joint dispatch of the combined companies' generation resources, including the impacts on transmission and interconnection availability?

It is also premature to require the Joint Applicants to evaluate the potential impacts of joint dispatch. Great Plains Energy is not proposing to dispatch jointly the combined Aquila and KCPL generation fleet, and will retain the utilities' respective control areas. See Dana Crawford Direct Testimony at 5. Any future decision to dispatch jointly would be subject to regulatory review, at which time a record would be fully developed concerning the impacts of such action.

In the federal merger proceeding, Docket Nos. EC07-99-000 and EL07-75-000, the City of Independence ("Independence") asked FERC to require KCPL and Aquila to quantify the impacts of joint dispatch before being permitted to merge. In its order approving the merger, FERC denied the request, reasoning:

> Independence's argument that the Commission cannot reasonably conclude that proposed transaction presents neither horizontal nor vertical market power issues without analyzing the possibility of joint dispatch of KCP&L's and Aquila's generation is misplaced. First, our analysis focuses on merger-related effects on competition, and there is no evidence in the record that KCP&L and Aquila plan to engage in joint economic dispatch following the merger.
>
> Second, even if KCP&L and Aquila do pursue a joint economic dispatch agreement, Applicants have shown that the merger will not adversely affect competition. Regarding horizontal market power, Applicants' analysis shows that the combination of KCP&L's and Aquila's generation will not materially increase market concentration using the AEC measure, indicating that the merger will not harm competition in the relevant market; thus, even if Applicants do engage in joint dispatch, the merger will not create or enhance the ability to exercise market power.
>
> Further, if KCP&L and Aquila do pursue a joint dispatch agreement, they will need to file an operating agreement with the Commission, at which time Independence will have the opportunity to participate in the proceeding and protect its interests. Therefore, we will not require a further analysis of the effect of joint dispatch or condition section 203 approval on Applicants not engaging in joint dispatch, as proposed by Independence.

Great Plains Energy Inc., 121 FERC ¶ 61,069 at Para. 36 (2007).

Independence's concerns regarding transmission and interconnection availability are similarly misplaced. KCPL and Aquila fulfill specific obligations set by FERC Orders 888 and 890 regarding open-access, non-discriminatory transmission service to customers. Following the Merger, KCPL and Aquila will continue to provide transmission service through an Open Access Transmission Tariff ("OATT").

Independence also raised this issue before FERC, arguing that KCPL and Aquila had not adequately evaluated the impact of the Merger on transmission availability as part of their market power analysis in support of their application. FERC held as follows:

> We find that the Applicants have shown that the proposed transaction will not adversely affect competition. Regarding the horizontal combination of generation capacity, Applicants' analysis shows that for all relevant geographic markets, there are no screen failures for AEC, the relevant measure in this case, indicating that it is unlikely that the transmission will harm competition. In addition, the Black Hills Acquisition will not result in the consolidation of generating assets in any relevant market. Given that the proposed transaction does not materially increase the merged firm's market share or market concentration, we conclude that it is not likely to create or enhance Applicants' ability to exercise market power in any wholesale electricity markets.
>
> Regarding the vertical combination of upstream transmission and natural gas assets with downstream generating capacity, Applicants have shown that the proposed transaction will not create or enhance the ability or incentive to use control of upstream assets to harm competition in downstream wholesale electricity markets. We reach this conclusion because: (1) Applicants' transmission facilities will be operated pursuant to an OATT, thus ensuring that they cannot be used to frustrate competition in wholesale electricity markets; and (2) there is no overlap between Applicants' natural gas transportation assets and downstream electric generation capacity in any relevant wholesale market. We discuss the specific issues raised by protestors below.
>
> Independence argues that Applicants fail to show that Independence will not be affected by decreased transmission availability. However, it does not offer any evidence that less transmission will be available to it. Applicants' transmission system is subject to a Commission-approved OATT, which ensures open access to the transmission system.
>
> Regarding merger-related increases in vertical market power, we are not persuaded by Independence's argument. Applicants' transmission facilities are currently and will continue to be operated pursuant to an OATT, thus ensuring that they cannot be used to frustrate competition in wholesale electricity markets.

Great Plains Energy Inc., 121 FERC ¶ 61,069 at Para. 34, 35 and 37 (2007) (footnotes omitted). FERC considered the same arguments Independence raises in this proceeding and correctly concluded that the Merger did not create any transmission availability concerns.

C. Should Commission approval of the Joint Application be conditioned upon Aquila being required to join and operate its generation and transmission

facilities under the auspices of the Southwest Power Pool (SPP) Regional Transmission Organization (RTO) with KCPL within four (4) months of approval of the merger.

No. The Commission should not condition its approval of the Merger on Aquila being required to join SPP, particularly in light of Aquila's Case No. EO-2008-0046. A full evidentiary record has been developed in that case concerning the benefits and costs associated with Aquila's RTO status. Such evidence is critical for the Commission's evaluation of which RTO, if any, would best serve Aquila and its customers. SPP and Midwest ISO are both active participants in the Aquila case, as are Independence and Dogwood Energy LLC. However, neither SPP nor Midwest ISO are parties to this case.

Moreover, in response to essentially identical arguments, FERC refused to condition its approval of the Merger on Aquila being required to join SPP. FERC found as follows:

> We will decline the protestors' request to condition our section 203 authorization on the Applicants joining a particular RTO. When necessary, the Commission conditions merger authorization in order to address specific, merger-related harm; but no such harm has been identified in this proceeding. Moreover, the Applicants' future RTO status is unclear at this time and therefore, there is no baseline against which to assess merger-related changes to rates.

Great Plains Energy Inc., 121 FERC ¶ 61,069 at P 50 (2007). FERC carefully considered Independence's assertions concerning the different cost structures of SPP and Midwest ISO, which are the same issues raised here by Independence and Dogwood Energy. Just as FERC declined to condition the Merger on a particular RTO status for KCPL or Aquila, so should this Commission.

D. Should Commission approval of the Joint Application be conditioned upon Aquila and KCPL being required to consolidate their balancing authority areas within six (6) months of approval of the Merger.

No. The Commission should not condition its approval of the Merger on KCPL and Aquila consolidating their balancing authority areas within a specific time. This Commission is presently evaluating Aquila's RTO status in a separate proceeding. Moreover, SPP is presently evaluating consolidating balancing authority operations within its footprint.

Until these matters are resolved, it would be premature and potentially redundant for KCPL and Aquila to pursue consolidation of their balancing authority operations.

IX. Municipal Franchise and Energy Audits

A. Should Commission approval of the Joint Application be conditioned upon the negotiation of a single, unitary franchise between KCPL/Aquila and the City of Kansas City within nine (9) months of the Commission's approval of the Merger?

In its Rebuttal Testimony the City of Kansas City ("Kansas City" or "City") has asked the Commission to abrogate its Franchise Agreement with KCPL as a condition of approving the Merger. The Commission not only lacks such authority under Missouri and federal law, but any such action would not be in the public interest.

1. Misuse of Regulatory Process.

Kansas City's request that the Commission condition approval of this proposed Merger on KCPL relinquishing its franchise in exchange for a franchise of a limited term is a classic case of using the regulatory process to infringe upon a counterparty's contractual rights.

In 1881 Kansas City and KCPL's predecessor-in-interest entered into a valid and binding Franchise Agreement that sets forth the respective parties' rights and obligations. For decades the City has urged KCPL to terminate the Franchise Agreement and negotiate an agreement of a limited term. Although it has considered these requests, KCPL has refused to alter its rights and obligations under the Franchise Agreement because its benefits and protections for KCPL customers and shareholders outweigh the inducements offered by Kansas City.

2. Kansas City Cannot Use Contracts to Abridge the State's Police Power.

In its Rebuttal Testimony the City sets forth its reasons why it believes it is desirable to extinguish the Franchise Agreement and negotiate a franchise agreement that has a term limit. Kansas City suggests that it lacks adequate guidance in determining who pays the costs associated with relocations, line extensions and under-groundings. These issues are addressed by KCPL's Commission-approved tariffs. For example, if Kansas City or any other municipality asks KCPL to relocate its facilities that are located in a private easement, the city pays the relocation costs. If the facilities are located on public rights of way, any changes are done at KCPL's expense. See Section 15.08, Changes and Removal, Municipal Lighting Service, KCPL General Rules and Regulations, P.S.C. Mo. No. 2 (Tariff Sheets 1.51-52) (1989). See also id., Section 10.03(e)(v), Underground Distribution System in Residential Subdivisions.

Within the context of the City's laudable efforts to encourage existing businesses to expand their operations and to attract other businesses, the primary purpose of these tariffs is to ensure that KCPL's customers do not subsidize the development costs of private entities and that existing rates and service levels are maintained. See May Dep't Stores Co. v. Union Elec. Light & Power Co., 107 S.W.2d 41, 49 (Mo. 1937)("May Dep't Stores").

The Missouri Supreme Court has held that establishing reasonable rates for public service falls within the police power of the state. May Dep't Stores, 107 S.W.2d at 49; State ex rel. City of Sedalia v. PSC, 204 S.W. 497, 498-99 (Mo. 1918)("Sedalia"). The Missouri Constitution commands that "[t]the exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individual or the general well-being of the state." See Missouri Const., § 5, art. 12; Sedalia at 498. This prohibition is not limited to private corporations. The Supreme Court also has concluded that the legislature cannot "authorize a municipal corporation to make a contract abridging or limiting ... the police power." See State ex rel. Kansas City v. PSC, 524

S.W.2d 855, 859 (Mo. 1975)(police power cannot be hindered or frustrated by contracts between individuals, companies or governmental subdivisions); State ex rel. Kansas City Pub. Serv. Co. v. Latshaw, 30 S.W.2d 105, 108 (Mo. 1930)(Legislature cannot authorize municipal corporations to make contracts with utilities regarding rates that prevent the state from establishing reasonable rates); Sedalia at 497.

It appears that the City hopes to shift some of the costs of its redevelopment efforts to KCPL's customers. By asking the Commission to condition the approval of the proposed Merger on KCPL's "willingness" to negotiate contractual terms regarding who pays relocation, line extension and under-grounding costs, Kansas City is seeking to abridge the state's police powers in connection with the establishment of just and reasonable rates for KCPL's customers in contravention of the Missouri Constitution. Missouri law requires that the Commission reject the City's request as both unlawful and contrary to the public interest.

3. The Franchise Agreement is Protected from Impairment by the Missouri and Federal Constitutions.

The Franchise Agreement does not contain a limitation on its duration. Under Missouri law, a franchise agreement that does not specify a period of duration is a grant in perpetuity. Missouri Pub. Serv. Co. v. Platte-Clay Elec. Cooperative, 407 S.W.2d 883, 889 (1966); State ex rel. McKittrick v. Missouri Pub. Serv. Corp., 174 S.W.2d 871, 879 (Mo. 1943); State ex rel. Chaney v. West Missouri Power Co., 281 S.W. 709, 714 (Mo. 1926). Perpetual franchise agreements are grants of property rights protected from impairment by the Contract Clauses of the United States and Missouri Constitutions. See U.S. Const., art. I, § 10; Missouri Const., art. I, § 13.

While it desires new terms and conditions under a franchise of a limited term, the City is well aware that it is bound by the Franchise Agreement. Provided KCPL does not forfeit the

Franchise Agreement, the only way for the City to lawfully abrogate the Franchise Agreement is to demonstrate that the Franchise Agreement frustrates or hinders the City's proper exercise of its police powers. If this were the case, the City would not use this Merger proceeding to achieve its goal. It would have the authority to accomplish its goal without involving the Commission. However, the facts show the contrary. In describing the City's experience with KCPL, the City Manager himself noted that "on the whole it has been good." See Cauthen Rebuttal at 7. He commended KCPL for having "contributed significantly to the demand-side management programs and weatherization programs of the Neighborhood and Community Services Department." Id.

Despite this, the City hopes to manipulate this proceeding to achieve a result that it cannot accomplish on its own through lawful means. In the absence of a finding by the Commission that the Franchise Agreement frustrates or hinders the proper exercise of its police power, the Commission cannot grant the City's requested relief without impairing KCPL's contractual rights. XO Missouri, Inc. v. Maryland Heights, 256 F. Supp. 2d 966, 974 (E.D. Mo. 2002)("XO Missouri").

The continued operation of the Franchise Agreement in no way frustrates or hinders the Commission's ability to exercise the State's police power. In addition, the City has failed to introduce any credible evidence into the record upon which the Commission could base a decision to abrogate the Franchise Agreement, or condition the proposed Merger on KCPL's "willingness" to relinquish its rights under the Franchise Agreement. The City has merely argued that it wants a better deal. The City has failed to introduce into the record any credible evidence that the Franchise Agreement, after governing the relationship between the City and KCPL for 126 years, now threatens the Commission's ability to protect the health, safety and general welfare of the citizens of Missouri.

> Legislatures and municipalities cannot, in the exercise of assumed police powers, violate [franchise agreements], and overthrow vested rights . . . . The limit to the exercise of police power in these cases must be this: The regulations must have reference to the comfort, safety or welfare of society; they must not be in conflict with any of the provisions of the [franchise agreement]; and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the [franchise agreement] confers. In short, they must be police regulations in fact, and not amendments of the [franchise agreement] in curtailment of the corporate franchise. [XO Missouri, 256 F. Supp. 2d at 974, quoting State ex rel. City of St. Louis v. Laclede Gaslight Co., 14 S.W. 974, 980 (1890).]

Kansas City is attempting to enlist the Commission to help it avoid its contractual obligations. An order conditioning approval of the proposed Merger on KCPL's "willingness" to replace its Franchise Agreement with an agreement that provides less protection to KCPL's customers would unlawfully impair KCPL's rights and be contrary to the public interest. Accordingly, the Commission should reject the City's request.

B. Should Commission approval of the Joint Application be conditioned upon requiring KCPL/Aquila to fund a comprehensive energy audit by a third party to evaluate the City of Kansas City's opportunities for lower costs, increased efficiency, consolidated purchasing and cooperative sitting or cogeneration with the utility?

This issue was withdrawn by its sponsor, the City of Kansas City. See Letter of Mark W. Comley to Commission Secretary Dale (April 8, 2008).

X. Quality of Service Plan and Earnings Sharing Mechanism

A. Should Commission approval of the Joint Application be conditioned upon requiring KCPL/Aquila to file an application for a Quality of Service Plan within 90 days of the Commission's final decision in this proceeding?

No. The Commission should not condition its approval of the Merger on KCPL/Aquila filing a Quality of Service Plan. First, there is no evidence that such a plan is warranted. Second, the Commission already receives and reviews much of the information the City would have KCPL and Aquila provide. The Staff already reviews the very performance measures mentioned by it witness, Mr. Hix, as part of the Staff's Cost of Service report when a utility files a rate case. In KCPL's last rate case (ER-2007-0291), the Staff reviewed five years of data for System Average Interruption Frequency Index ("SAIFI"), System Average Interruption Duration Index ("SAIDI"), Customer Average Interruption Duration Index ("CAIDI"), and Momentary Average Interruption Frequency Index ("MAIFI"). It found no evidence of long-term trends that should be cause for concern by the Commission. Because the Staff regularly reviews reliability data and can take action should the data indicate a problem, Mr. Hix's proposal is not relevant to the Commission's decision to approve the Merger.

B. Should Commission approval of the Joint Application be conditioned upon establishment of an Earnings Sharing Mechanism that returns to customers excess earnings of KCPL/Aquila above an authorized level.

No. The Commission should not condition its approval of the Merger on KCPL/Aquila establishing an Earnings Sharing Mechanism. It would be inappropriate to condition approval on such a mechanism. KCPL and Aquila are currently engaged in major generation construction programs. Both companies also have the continued need to raise additional capital, beyond the current construction of facilities, to meet environmental regulations. See Giles Surrebuttal at 13.

These infrastructure programs will require both Aquila and KCPL to file rate cases with the Commission requesting revenue increases in the year after the transaction closes, regardless of how the synergies are ultimately shared between customers and shareholders. See Giles Surrebuttal at 13-14. These rate increases will be needed to recover the costs of new facilities as they are placed into service, combined with increasing fuel costs and other increasing operations and maintenance expenses. Such costs will exceed the total estimated synergies of the acquisition during the next several years. Id. at 14. However, it must be recognized that the synergies resulting from the Merger will require a smaller increase in rates than would have been required absent the transaction. In other words, contrary to the premise underlying Mr. Hix's proposal, there will be no excess earnings to share. Id. The Commission will have the opportunity to consider that assertion in future rate cases. For the foregoing reasons, the Commission should reject the City's request for an Earnings Sharing Mechanism.

XI. Future Rate Case

A. Should Commission approval of the Joint Application be conditioned upon requiring KCPL and Aquila to file a comprehensive rate case with respect to the merged operations within three years of the Commission's approval of the Merger?

No. The Commission should not condition its approval of the Merger on KCPL and Aquila filing a consolidated rate case within a specified timeframe. Kansas City's request would require the merger or consolidation of KCPL and Aquila, something that is not contemplated here. Great Plains Energy, the parent company of KCPL, is requesting approval to acquire Aquila and merge it into a subsidiary of Great Plains Energy. Aquila will retain and continue to operate under its Commission-approved tariffs. KCPL and Aquila will maintain separate generation, transmission, and distribution systems. Id. at 15. It is premature at this time to set a date when it might become appropriate to merge or consolidate KCPL or Aquila. As such, the Commission should reject the City's request.

XII. Additional Amortization/Credit Worthiness

A. Is the credit worthiness of KCPL and Aquila as a result of the Great Plains Energy acquisition of Aquila dependent on the expectation that the Commission will authorize a regulatory plan similar to that contained in the KCPL Stipulation and Agreement in Case No. EO-2005-0329 subsequent to Commission authorization of Great Plains Energy's acquisition of Aquila?

If yes, will KCPL's credit worthiness be negatively affected if Aquila is unable to obtain such a regulatory plan?

The answer to the first question is "No." The Joint Applicants have no request pending before the Commission with regard to a future Aquila regulatory plan. As Mr. Bassham has testified, if the acquisition of Aquila is approved, the Joint Applicants intend to initiate discussions with interested parties to develop a regulatory plan for Aquila that might include a regulatory amortization provision as part of that regulatory plan. See Bassham Add'l Supp. Direct at 4.

However, there is no request in this proceeding for an Aquila regulatory plan. There is no "expectation" regarding what any future regulatory plan for Aquila, if agreed upon and approved by this Commission, would contain. Inquiry into such matters would constitute pure speculation. As a result, there is no need to answer Staff's second question posed above.

B. Is the current expected cost and schedule outcome related to KCPL's Comprehensive Energy Plan infrastructure commitments in Case NO. EO-2007-0329 an indication of Great Plains Energy's and KCPL's ability to complete the acquisition of Aquila in a manner that is not detrimental to the pubic interest?

Although the Joint Applicants do not understand this question, Great Plains Energy can state that any cost and schedule issues related to CEP construction projects will not have an adverse affect on its ability to acquire Aquila. Mr. Downey, Mr. Bassham and Mr. Cline will testify that any issues arising from the current reforecast being conducted regarding Iatan Units 1 and 2 will not negatively affect the ability of Great Plains Energy to acquire Aquila.

Based upon recent analysis and projections conducted by Great Plains Energy financial consultants pursuant to Data Requests of the Industrial Intervenors, the Joint Applicants believe that a post-merger Great Plains Energy will be in a better position to complete all of the KCPL projects at the Iatan Generating Station, as well as the other CEP projects and Aquila projects currently in process.

While the Joint Applicants do not object to providing evidence relating to the relationship of the CEP projects to the acquisition of Aquila, they do object to a detailed analysis of the pace of construction, the current reforecast effort, previous costs and scheduling estimates, relations with vendors and consultants, and other issues that are more properly examined in the Regulatory Plan docket, Case No. EO-2007-0329.

C. Is KCPL's credit worthiness affected by Great Plains Energy's decision not to seek recovery from Missouri ratepayers of any of the debt repurchase costs of Aquila's existing debt that Great Plains Energy will refinance post-closing?

As set forth in the Additional Supplement Direct Testimony of Terry Bassham and Michael Cline, the Joint Applicants' withdrawal of their request to recover all of Aquila's actual debt costs will not have an adverse affect upon KCPL's credit worthiness. See Issue IV, supra.

XIII. Anonymous Allegations Related to the Proposed Acquisition of Aquila.

(a) Would the adoption of GPE/KCPL's gift and gratuity practice for Aquila be detrimental to the public interest?

(b) Does KCPL have adequate control of the Iatan projects to be able to operate the non-dispatch functions of Aquila in addition to those of KCPL in a manner not detrimental to the public interest?

(c) Does the Commission have adequate information to determine whether the public allegations/comments it has received regarding GPE/KCPL are accurate and such conduct in the operation of the non-dispatch functions of Aquila would be detrimental to the public interest?

The Joint Applicants understand that Staff intends to raise certain issues at the hearing as a result of several anonymous letters that were submitted to the Commission in this case. One particular area of interest for Staff appears to be Great Plains Energy's Code of Ethical Business Conduct and its policy regarding gifts and gratuities.

Issues related to corporate codes of conduct and the policies currently employed by Great Plains Energy are irrelevant to whether the acquisition of Aquila is not detrimental to the public interest. Staff appears to want to rewrite the corporate policies of Great Plains Energy, and is using the anonymous letters as a reason to inject itself into the management of Great Plains Energy and its utility KCPL. The Commission has already determined that the anonymous letters are not credible evidence to be considered in their determination of a contested case. In a recent financing application by KCPL, Case No. EF-2008-0214, an intervenor argued that the anonymous letters were cause for additional scrutiny by the Commission as it considered KCPL's application. The Commission rejected that argument finding that "[a]n anonymous letter not supported by a sworn witness who is subjected to cross-examination constitutes mere hearsay and should not be considered by the Commission in reaching a decision in a contested case." *Kansas City Power & Light Co.*, Order Approving Financing, Case No. EF-2008-0214 (Feb. 24, 2008). That logic should apply here as well. Staff should not be permitted to use such letters to bootstrap issues into this case that are not relevant to the Merger. Moreover, any attempt by Staff attempt to inject itself into the management of Great Plains Energy is inappropriate. Because the Commission is not permitted "to dictate the manner in which the Company shall conduct its business," inquiry into such issues, particularly in a merger case, is inappropriate and should not be permitted by the Commission. See State ex rel. Kansas City Transit, Inc. v. PSC, 406 S.W.2d 5, 11 (Mo. 1966); State ex rel. PSC v. Bonacker, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995).

KCPL does not believe that issues (b) and (c), based upon anonymous allegations, can be addressed by the commission in this case as they are based upon hearsay and they have nothing to do with the acquisition of Aquila by GPE or the integration of the operations of Aquila and KCPL. Should the Commission allow these issues to proceed, the evidence will show that the Iatan projects are well managed by KCPL.

XIV. Miscellaneous Legal Issues

A. Have the Joint Applicants obtained from their boards of directors the authorizations necessary to effectuate actions required to merge, consolidate, combine, or integrate the systems, works and operations of KCPL and Aquila?

B. Have the Joint Applicants applied to the Missouri Commission for the authorizations necessary to effectuate the merger, consolidation, combination or integration of the systems, works and operations of KCPL and Aquila?

C. What is the legal effect for future Commission cases of the present Commission adopting the proposals contained in the Joint Application filed on April 4, 2007, as modified by the subsequently filed testimony?

D. Is the "net detriment" test utilized by the Joint Applicants the criteria required by law for determining whether the proposed acquisition and related transactions are not detrimental to the public interest?

Will the proposed Merger cause a net detriment to the public interest because the cost of service on which rates for Missouri ratepayers of Aquila and KCPL will be established will be higher as a direct result of the Merger than the cost of service would be for Aquila and KCPL absent the proposed transaction?

E. Does the Affiliate transactions Rule, 4 CSR 240-20.015, apply to transactions between regulated electrical corporations that are wholly owned by the same parent company?

Issues A-D are addressed below. Issue E is addressed in Section VI, above.

Applicable Legal Standard: Balancing of Benefits and Detriments.

Great Plains Energy, the parent company of KCPL, is requesting approval under Section 393.190 to acquire Aquila and merge it into a subsidiary of Great Plains Energy. Such approval must be granted unless the Merger would be detrimental to the public interest. See 4 CSR 240-3.115(1)(D). Missouri courts have recognized that "the obvious purpose of Section 393.190 is to ensure the continuation of adequate service to the public served by the utility." State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980). "The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest." Id. See State ex rel. City of St. Louis v. PSC, 73 S.W.2d 393, 400 (Mo. 1934).

In Ag Processing, Inc. v. PSC, 120 S.W.3d 732 (Mo. 2003), the Supreme Court reversed a Commission decision under Section 393.190 where the acquisition of St. Joseph Light &

Power Co. by UtiliCorp United Inc. involved an acquisition premium. Although the Commission authorized the merger, it rejected UtiliCorp's proposed regulatory plan under which a portion of the acquisition premium would be recovered in rates, but refused to consider the premium issue in evaluating the merger because it believed this was an issue to be decided in a future rate case. Id. at 735-36. The Supreme Court reversed, finding that the Commission must "consider and decide all necessary and essential issues" such as the acquisition premium "as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public." Id. at 736.

As this Commission recognized in AmerenUE's application seeking approval for the transfer of assets to AmerenCIPS, Ag Processing did not announce a new standard for asset transfers. In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 20, Report and Order on Rehearing at 41 (2005). The Supreme Court restated the long-standing "not detrimental to the public" standard, and required a cost/benefit analysis in which all the benefits and detriments are considered. The Commission also properly noted that Ag Processing did not require it to deny approval simply because there was a risk of future rate increases. Such risk must be considered together with other benefits and detriments to "determine whether the proposed transaction is likely to be a net benefit or a net detriment to the public." Id.

> In considering whether or not the proposed transaction is likely to be detrimental to the public interest, the Commission notes that its duty is to ensure that UE provides safe and adequate service to its customers at just and reasonable rates. A detriment, then, is any direct or indirect effect of the transaction that tends to make the power supply less safe or less adequate, or which tends to make rates less just or less reasonable.
>
> The presence of detriments, thus defined, is not conclusive to the Commission's ultimate decision because detriments can be offset by attendant benefits. The mere fact that a proposed transaction is not the least cost alternative or will cause rates to increase is not detrimental to the public interest where the transaction will confer a benefit of equal or greater value or remedy a deficiency that threatens the

> safety or adequacy of the service. [In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 20, Report and Order on Rehearing at 49.]

Applying this analysis, the Commission must look at the potential benefits and detriments, and then determine if the transaction results in a net detriment to the public.

This net detriment test clearly permits the Commission to weigh costs and benefits, and to make judgments on the extent to which they offset each other. It is consistent with the Supreme Court's directive that the Commission "consider and decide all the necessary and essential issues," and not defer issues with ratemaking impact to a future rate case. Ag Processing, 120 S.W.3d at 736.

Given the withdrawal of certain elements of the Joint Applicants' original regulatory plan, the cost of service for both Aquila and KCPL ratepayers will clearly not be higher as a result of this Merger. By removing the requests for (a) a synergy sharing plan, (b) recovery of Aquila's actual debt costs, (c) regulatory amortizations, and (d) full recovery of Transaction Costs, there is no credible evidence in this case that the Merger will cause rates to rise.

It is Appropriate to Analyze Expected Synergies regarding the Merger of Aquila into a Subsidiary of Great Plains Energy.

The Joint Applicants have been clear that the expected synergies and cost savings described in their testimony will result from the integration of the Aquila and KCPL operations. OPC and certain intervenors have presented their opinions on this issue in their testimony. Staff, on the other hand, believes that it need not review the expected synergies because it believes that synergies can only occur if a formal merger or consolidation occurs, which is something that the Joint Applicants have not asked to do under Section 393.190. Although it is not entirely clear, Staff also appears to argue that because its views the Joint Application as effectively seeking the merger or consolidation of Aquila and KCPL without requesting approval under the statute, any claimed synergies may be disregarded by the Commission without further analysis. See Staff Report at 11-12, 43-44.

Staff's position is contrary to law and should be rejected. In order for a merger or consolidation to occur under Missouri corporate law, two entities must combine to form one entity. KCPL and Aquila are not merging or consolidating. Both will remain separate entities with separate tariffs, separate rates, and separate generation and distribution systems. "Merge" and "consolidate" are not defined in the Chapter 393, so the Commission must look to other sources for guidance. Under Missouri law any two "domestic corporations may merge into one of the corporations ...." See § 351.410 (emphasis added). Similarly, any two "domestic corporations may consolidate in a new domestic corporation ...." See § 351.415 (emphasis added). Thus, Missouri corporation law does not support Staff's view that KCPL and Aquila are merging or consolidating.

The Commission's rules also contemplate that a merger or consolidation involves two companies becoming one entity. 4 CSR 240-3.115, which lists the filing requirements for merger or consolidation applications, requires in subsection (1)(c) that the application contain the balance sheet and income statement of each applicant and a balance sheet and income statement of the surviving corporation. Since KCPL and Aquila will both continue to exist, there is no merger or consolidation before the Commission as contemplated by the Commission's rules.

Finally, the Staff's interpretation does not square with the purpose of Section 393.190 which the courts have recognized is "to ensure the continuation of adequate service to the public served by the utility." State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980). If a utility is to be purchased or merged with an entity, the Commission needs to be assured that the new owner continues to provide adequate service, and that the Commission has access to the new owner's books and records.[3] In this case, both Aquila and KCPL will remain separate entities and will continue to provide service to their respective customers. Both companies are well known to the Commission. While KCPL and Aquila will integrate and coordinate their operations in order to achieve synergies, both utilities will be fully subject to Commission regulation.

Requested Authorization from Boards of Directors.

The Staff argues that KCPL and Aquila have failed to file a certified copy of resolutions of their respective boards of directors authorizing the proposed merger or consolidation of KCPL and Aquila as required under 4 CSR 240-3.115. See Staff Report at 4. As explained earlier, KCPL and Aquila are not merging or consolidating. The utilities will remain in existence and continue serving their customers under separate tariffs. In addition, the rule cited by Staff contemplates that only one entity will exist at the end of the merger or consolidation, which is not the case here.

Legal Effect upon future Commission Cases.

While the Commission is not able to speculate about future rate increases, it must under the Ag Processing decision determine the reasonableness of the risk of future rate increases as it assesses the costs and benefits of the Merger. 120 S.W.3d at 736. However, as a matter of law, even if the Commission concurs with the Joint Applicants' position that the prospect of future recovery of Transaction Costs is outweighed by the benefits of the Merger, it is clear that a future

[3] This Commission has applied the following factors when considering whether a Section 393.190.1 transaction meets the "not detrimental" standard: (1) the applicant's experience in the utility industry; (2) the applicant's history of service difficulties; (3) the applicant's general financial health and ability to absorb the proposed transaction; and (4) the applicant's ability to operate the assets safely and efficiently. In re Union Elec. Co., Case No. EO-2004-0108, 2005 Mo. PSC LEXIS 190 at 20 (2005); In re Missouri Gas Co., 3 Mo. P.S.C.3rd 216, 220 (1994).

Commission must address in an appropriate rate case whether and in what amount the recovery of such costs may actually occur.

While the reasoning and analysis of the Commission's decision in this proceeding will undoubtedly weigh heavily in the minds of commissioners sitting on future rate cases, Section 386.490.3 provides that every order or decision of the Commission "shall continue in force ... until changed or abrogated." Thus, Commission orders are always subject to change to meet new and different conditions, as dictated by the public interest. See State ex rel. Jackson County v. PSC, 532 S.W.2d 20, 29 (Mo. 1975).

Respectfully submitted,

/s/ Karl Zobrist
Karl Zobrist, MBN 28325
Roger W. Steiner, MBN 39586
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: (816) 460-2545
Facsimile: (816) 531-7545
email: kzobrist@sonnenschein.com
email: rsteiner@sonnenschein.com

James M. Fischer, MBN 27543
Fischer & Dority P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383
email: jfischerpc@aol.com

Mark G. English, MBN 31068
General Counsel
Great Plains Energy Incorporated
1201 Walnut
Kansas City MO 64106
Telephone: (816) 556-2608
Email: Mark.English@kcpl.com

William G. Riggins, MBN 42501
Vice President and General Counsel
Curtis D. Blanc, MBN 58052
Managing Attorney - Regulatory
Kansas City Power & Light Company
1201 Walnut
Kansas City MO 64106
Telephone: (816) 556-2785
Email: Bill.Riggins@kcpl.com
Email: Curtis.Blanc@kcpl.com

Attorneys for Great Plains Energy Incorporated and Kansas City Power & Light Company

James C. Swearengen, MBN 21510
Paul A. Boudreau, MBN 33155
Brydon, Swearengen & England P.C.
312 East Capitol
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone (573) 635-7166
Facsimile: (573) 635-0427
email: paulb@brydonlaw.com

Renee Parsons, MBN 48935
Senior Attorney
Aquila, Inc.
20 W. Ninth Street
Kansas City, MO 64105
Telephone: (816) 467-3297
Facsimile: (816) 467-9297
Email: renee.parsons@aquila.com

Attorneys for Aquila, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 16th day of April, 2008, to all counsel of record.

/s/ Karl Zobrist
Karl Zobrist