

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Aquila, Inc. and Mid-Kansas Electric
Company, LLC

Docket Nos. EC06-46-000
EC06-46-001

Aquila, Inc.

Docket No. ER06-336-000
(Not consolidated)

ORDER CONDITIONALLY AUTHORIZING DISPOSITION OF JURISDICTIONAL
FACILITIES AND ACCEPTING RATE SCHEDULES FOR FILING

(Issued December 7, 2006)

1. On December 29, 2005, as supplemented on March 21, 2006 and August 31, 2006, Aquila, Inc. (Aquila) and Mid-Kansas Electric Company, LLC (Mid-Kansas) (collectively, Applicants) filed an application under section 203 of the Federal Power Act (FPA).¹ They request Commission authorization of the disposition and acquisition of certain jurisdictional facilities: Aquila's sale of its Aquila Networks-WPK assets to Mid-Kansas. The proposed sale involves jurisdictional transmission facilities, rate schedules, contracts, and certain generating facilities in Kansas. They also request, under FPA section 205,² approval of new and revised market-based and cost-based tariff sheets.

¹ 16 U.S.C. § 824b (2000) *amended by* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, (2005) (EPAct 2005). Applicants filed before the effective date of EPAct 2005.

² 16 U.S.C. § 824d (2000).

2. We have reviewed the application under section 203 of the FPA and the Merger Policy Statement.³ We will conditionally authorize the proposed transaction. Our authorization relies on Mid-Kansas and its affiliate Sunflower commitment to grant control of their transmission networks to an independent entity, such as the Southwest Power Pool Regional Transmission Organization (SPP RTO). We establish this condition in order to prevent the increase in vertical market power that would otherwise accompany this transaction. We find that, with this condition in place and the other mitigation described below, the transaction satisfies section 203 of the FPA because it will not have an adverse effect on competition, rates, or regulation and is thus consistent with the public interest. In addition, the proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.

3. We will also accept the proposed market-based rate⁴ and cost-based rate⁵ tariff sheets, to become effective on the date of the transfer of assets from Aquila to Mid-Kansas, as requested.

³ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (Dec. 30, 1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); *see also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (Nov. 28, 2000), FERC Stats. & Regs. ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (Mar. 23, 2001), 94 FERC ¶ 61,289 (2001) (Order No. 642); *also see Transactions Subject to FPA Section 203*, Order No. 669, 71 Fed. Reg. 1,348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2006), *order on reh'g*, Order No. 669-A, 71 Fed. Reg. 28,422 (May 16, 2006); *order on reh'g*, Order No. 669-B, 71 Fed. Reg. 42,579 (July 27, 2006). Order 669 *et seq.* are not applicable to this case because Applicants filed before February 8, 2006, the effective date of Order 669.

⁴ See Appendix A.

⁵ See Appendix B.

I. Background

A. Applicants

4. Aquila is a public utility and provides electric service to 446,000 retail customers in Colorado, Kansas, and Missouri. It has four separate operating divisions: Aquila Networks-L&P, Aquila Networks-WPK, Aquila Networks-MPS and Aquila Networks-WPC. Aquila owns a variety of electric generation, transmission and distribution assets, including an eight percent leasehold interest in the Jeffrey Energy Center (approximately 177 megawatts (MWs)), that it uses to provide wholesale and/or retail service in these three states. Aquila also owns or controls, through affiliates, 2,080 MWs of power generation in Mississippi and Illinois.⁶

5. Mid-Kansas is a Kansas limited liability company organized in 2005 to engage in this transaction. It is owned by five Kansas consumer-owned cooperatives (Lane-Scott Electric Cooperative, Inc., Prairie Land Electric Cooperative, Inc., Victory Electric Cooperative Association, Inc., Western Cooperative Electric Association, Inc., and Wheatland Electric Cooperative, Inc.), and by Southern Pioneer Electric Company, a wholly owned subsidiary of a sixth Kansas consumer-owned cooperative (Pioneer Electric Cooperative, Inc.).⁷ Mid-Kansas currently owns no assets subject to the Commission's jurisdiction and states that it will not be a public utility because of the exemption granted to corporations that are wholly owned, directly or indirectly, by electric cooperatives that receive financing under the Rural Electrification Act.⁸ The Mid-Kansas Members, in addition to owning Mid-Kansas, also directly (or indirectly through a parent in the case of Southern Pioneer Electric Company) own and control

⁶ As part of Aquila's strategic restructuring plan, of which this transaction is a part, Aquila is exiting the market-based-rate-regulated power generation segment of its business.

⁷ Collectively, Lane-Scott Electric Cooperative, Inc., Prairie Land Electric Cooperative, Inc., Victory Electric Cooperative Association, Inc., Western Cooperative Electric Association, Inc., Wheatland Electric Cooperative, Inc., and Pioneer Electric Cooperative, Inc. or its subsidiary, Southern Pioneer Electric Company make up the Mid-Kansas Members.

⁸ Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et. seq.*)

Sunflower Electric Power Corporation (Sunflower). Sunflower, a cooperative, has an electric generation fleet with a total generating capacity of 653 MWs. Sunflower's transmission system includes several hundred miles of transmission lines in its service territory in western Kansas.

B. The Section 203 Application

6. In their original application, Applicants proposed that Aquila transfer to Mid-Kansas all of its Aquila Networks-WPK assets under an Asset Purchase Agreement. The facilities to be transferred included: (1) 1,082 miles of high voltage transmission line and associated substations comprising the Kansas Electric Network; (2) Aquila's wholesale power sales agreements listed in Exhibit F; (3) Aquila's leasehold interest in an eight percent share of the Jeffrey Energy Center and the Jeffrey Transmission Agreement with Westar Energy used to deliver that output to Aquila at the East Manhattan interconnection with Westar Energy; and (4) an additional 381 MWs of generating capacity owned by Aquila.⁹

7. One of the conditions on Aquila transferring its leasehold interest in the Jeffrey Energy Center to Mid-Kansas in the Asset Purchase Agreement¹⁰ was that Aquila obtains Westar Energy, Inc.'s (Westar) consent before closing.¹¹ Applicants state that required waivers and consents under the original transaction structure could not be obtained on terms acceptable to all of the parties. As a result, on August 31, 2006, Applicants filed an Amendment to the Asset Purchase Agreement in Docket No. EC06-46-001. Under the Amendment, Mid-Kansas will acquire and assume all assets and obligations, other than Aquila's interest in the Jeffrey Energy Center, that were to be purchased and assumed by

⁹ Application at Exhibit H. Aquila uses these assets to serve approximately 68,000 residential, commercial and industrial customers and several wholesale customers in central and western Kansas.

¹⁰ Sunflower and its six member distribution cooperatives are parties to the Asset Purchase Agreement for certain limited purposes.

¹¹ Westar Energy and its affiliate Kansas Gas and Electric Company hold the remaining ownership interests in the Jeffrey Energy Center (other than an additional eight percent interest held by Aquila for its Missouri operations, which interest is unaffected by the present transaction).

Mid-Kansas under the original proposal.¹² Aquila's interest in the Jeffrey Energy Center includes (subject to indemnification rights under the Asset Purchase Agreement) all rights, benefits, liabilities, and obligations associated with the Jeffrey Energy Center Lease and the related assets and agreements for the period before the closing of the transaction.¹³

8. Mid-Kansas will generate and market the electric energy through the Mid-Kansas Members to the former wholesale and retail customers of Aquila in Aquila Networks-WPK's service territory. These customers will be served under a Service and Operation Agreement between the Mid-Kansas Members and Sunflower, but will be customers of Mid-Kansas.¹⁴ Under the agreement, Sunflower will operate and maintain the generation and transmission assets acquired by Mid-Kansas. The Mid-Kansas Members will provide operations and maintenance and other customer services, but those retail customers will continue to be served under a separate retail tariff at the existing Aquila retail rates. Mid-Kansas has made an application to the Kansas Corporation Commission (Kansas Commission) to approve all of the Aquila Network-WPK rates and regulations, and the approval of a retail rate moratorium to freeze those rates, in large part, for five years.¹⁵ Existing wholesale customers will continue to be served under their existing contracts, and Mid-Kansas states that it will include transaction costs relating to the acquisition in Kansas Commission-jurisdictional rates under such wholesale contracts only to the extent that benefits of the transaction exceed its costs (a "hold-harmless commitment)."

¹² That is, the facilities (1), (2), and (4) listed in paragraph 6 above.

¹³ Supplemental Direct Testimony of Jon R. Empson, at 3-5.

¹⁴ The six Mid-Kansas Members also will provide certain operation and maintenance services for the distribution facilities transferred to Mid-Kansas via separate service contracts with Mid-Kansas.

¹⁵ Mid-Kansas has requested that the Kansas Commission adopt Aquila-WPK's current retail rates and freeze them for five years. The exception is that Mid-Kansas may seek to recover through rates costs related to changes in the law or occurrence of extraordinary events that are beyond the control of Mid-Kansas and costs related to investments in certain transmission facilities required by a government agency or a Regional Transmission Operator (RTO), or required to comply with North American Electric Reliability Council (NERC) criteria.

C. Proposed rate schedules

9. On December 16, 2005, Aquila, on behalf of itself and its operating divisions, filed proposed revisions to its market-based rate and cost-based rate tariffs to remove those sections of the tariffs that apply to Aquila Networks-WPK. It also filed new stand-alone market-based rate and cost-based rate tariffs for Aquila Networks-WPK. Aquila states that the proposed revisions are necessary to reflect the sale of its Aquila Networks-WPK generation assets to Mid-Kansas.

II. Notices and Responses

10. Notice of the proposed rate schedule filed in Docket No. ER06-336-000 was published in the *Federal Register*, 71 Fed. Reg. 110 (2006), with interventions and protests due on or before January 6, 2006.

11. Notices of the Application in Docket No. EC06-46-000, as amended, were published in the *Federal Register*, 71 Fed. Reg. 32,530 (2006) and 71 Fed. Reg. 59,768 (2006), with interventions and protests due on or before June 9, 2006 and October 16, 2006, respectively. Duke Energy Field Services, LP and National Helium, LLC filed a motion to intervene without substantive comment. Kansas Municipal Utilities (Kansas Municipal) and Kansas Electric Power Cooperative, Inc. (Kansas Coop) filed timely motions to intervene and protests. Golden Spread Electric Cooperative, Inc. filed a timely motion to intervene without substantive comment. Midwest Energy, Inc. (Midwest Energy) filed a motion to intervene with comments. Applicants filed an answer to the Kansas Municipal's comments and motion to consolidate. Kansas Municipal filed a protest under EC06-46-001. Applicants filed an answer to the Kansas Municipal protest. Applicants also filed an answer to Kansas Coop's protest. Kansas Coop filed an answer to the Applicants' answer. Kansas Coop later withdrew its protest.

III. Discussion

A. Procedural Issues

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁶ the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding in which the motion was filed.

¹⁶ 18 C.F.R. § 385.214 (2006).

13. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,¹⁷ answers to protests and replies to answers are not accepted unless otherwise ordered by the decisional authority. We will accept the parties' answers because they provided information that assisted in our decision-making process.

B. Substantive Issues – Section 203 Analysis

14. Section 203(a) of the FPA requires the Commission to approve a merger if the Commission makes two determinations. First, the Commission must determine that the merger or disposition will be consistent with the public interest.¹⁸ The Commission's analysis of whether a merger or disposition will be consistent with the public interest involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹⁹ Second, the Commission must determine that the transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."²⁰

1. Effect on Competition

a. Horizontal Competitive Issues

i. Applicants' Analysis

15. Applicants state that the proposed transaction will have no adverse effect on competition.²¹ They note that the generation owned by Aquila and used to serve its

¹⁷ 18 C.F.R. § 385.213(a)(2) (2006).

¹⁸ 16 U.S.C.A. § 824b(a)(4) (as amended by EAct 2005).

¹⁹ See Merger Policy Statement, 61 Fed. Reg. 68,595; Order No. 669, FERC Stats. & Regs. ¶ 31,200.

²⁰ 16 U.S.C. § 824(b)(a)(4) (as amended by EAct 2005).

²¹ In their August 31, 2006 supplement to the application, Applicants state that nothing with respect to the negotiated solution to the transfer of the Jeffrey Energy Center

(continued...)

wholesale and retail customers using the Aquila Networks-WPK in the West Plains Kansas control area (West Plains) will be transferred to Mid-Kansas, a newly created company owning no generation or transmission. As a result, Mid-Kansas will “stand in Aquila’s shoes” and control the same amount of generation that Aquila now controls. Thus, Mid-Kansas’ ownership of Aquila Networks-WPK’s generating assets will not increase horizontal generation market power as compared to Aquila’s current horizontal market power.

16. Applicants state that although Mid-Kansas owns no generation, its six member-owners (or their parents) also own Sunflower. Because Sunflower (which owns generation) and Mid-Kansas will be under the common control, directly or indirectly, of the Mid-Kansas Members, Applicants present a horizontal Competitive Screen Analysis and Delivered Price Test. This test reflects the combined generation market power of Mid-Kansas and Sunflower after the proposed transaction. Applicants use Economic Capacity (EC) and Available Economic Capacity (AEC), as defined in the Merger Policy Statement, to represent a supplier’s ability to participate in the market.²² They use the Delivered Price Test to evaluate the effect on competition in four markets (the Sunflower control area; West Plains; an intermediate market encompassing West Plains and its first-tier interconnected control area, or Expanded Kansas Electric Network; and SPP).²³ Applicants study those markets over 10 time periods (super peak, peak and off-peak periods for summer, winter and shoulder seasons, along with an extreme summer super peak). Applicants maintain that since SPP is expected to become a fully-functioning

output to Mid-Kansas changes the analysis of the factors being considered by the Commission in its review of the underlying application. Supplement at 4.

²² Each supplier’s “Economic Capacity” is the amount of capacity that could compete in the relevant market given market prices, running costs, and transmission availability. “Available Economic Capacity” is based on the same factors, but subtracts the supplier’s native load obligation from its capacity and adjusts transmission availability accordingly.

²³ Applicants maintain that West Plains and the Sunflower control area are separate markets because geographic markets must be held constant before and after a transaction. They say that treating the two as a single market would improperly assume that all of the capacity in one of those control areas can be delivered to the other control area. Application at 15.

regional transmission organization (RTO) with an independent market monitor and an energy imbalance market in 2006, SPP will become the relevant geographic market at that time.

17. Applicants use simultaneous import limits (SILs) for imports into the Sunflower control area and each of the first-tier control areas interconnected to Sunflower and West Plains that are based on SIL studies conducted by the SPP in the summer of 2004. Each geographic market is based on the SPP transmission studies. Applicants find that the SILs for Sunflower vary seasonally and range between 265 MWs and 455 MWs.²⁴

18. Applicants state that SPP was unable to find an SIL for the West Plains market for the spring and fall seasons. That is, import capacity into West Plains is greater than West Plains' spring and fall peak loads.²⁵ This indicates that there are no transmission limitations for reasonable values of power sinking into West Plains in two of the four seasons.²⁶

19. In the analyses for the West Plains and Sunflower markets, Applicants use a range of prices from \$30 per megawatt hour (MWh) in the Shoulder Off-Peak period to \$250 per MWh in the Summer Super Peak 1 period (extreme summer peak). They determined prices by reviewing historical bilateral prices in SPP North, as reported by Platts, and then escalating prices to 2006 based on forecast 2006 fuel input prices relative to 2005.²⁷

20. Applicants' analysis shows that the transaction causes no screen violations using the EC measure in the Sunflower control area, the SPP-wide market, or the Expanded

²⁴ Exhibit JSH-1 at 3.

²⁵ Applicants state that a transmission limitation did occur for the summer and winter seasons.

²⁶ In order to obtain Spring and Fall SIL values, Applicants had SPP study the West Plains SIL and examine import levels larger than the West Plains peak load by artificially increasing the West Plains internal load. Based on this analysis, Applicants report theoretical SILs for West Plains that range between 771 MWs (summer) and 2,697 (spring).

²⁷ Exhibit JSH-1 at 17.

Kansas Electric Network market. However, it does cause EC screen violations in the West Plains market. Applicants state that the transaction leads to screen failures in six of the ten seasonal/load periods and in two periods in which Applicants pass the screen. There are additionally two Herfindahl-Hirschman Index (HHI)²⁸ changes of between 50 and 100 points in highly concentrated markets.²⁹

21. Applicants argue that the screen failures in summer and winter exist not because of combining capacity they own in each control area, but because of combining a small amount of imports from one Applicant with the capacity the other owns. Specifically, Mid-Kansas's maximum imports under the EC measure into West Plains, as calculated on a *pro rata* basis as prescribed by Commission guidelines, are no more than 40 MWs in any of the six load periods having an EC violation. Applicants claim that these screen violations arise because Applicants are small power producers, as demonstrated earlier, in comparison with the utilities with which they are interconnected, Westar and Southwestern Public Service Company, and are located in small control areas.³⁰

22. Applicants add that if they are full members of the SPP RTO when the SPP imbalance market becomes operational, SPP will be the relevant geographic market.

²⁸ The Herfindahl-Hirschman Index (HHI) is a widely accepted measure of market concentration, calculated by squaring the market share of each firm competing in the market and summing the results. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is less than 1,000 points are considered unconcentrated; markets in which the HHI is greater than or equal to 1,000 but less than 1,800 points are considered moderately concentrated; and markets where the HHI is greater than or equal to 1,800 points are considered highly concentrated. The Commission has adopted the Federal Trade Commission/Department of Justice Horizontal Merger Guidelines, which state that in a horizontal merger, an increase of more than 50 HHI in a highly concentrated market or an increase of 100 HHI in a moderately concentrated market fails its screen and warrants further review. U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, 57 Fed. Reg. 41,552 (1992), *revised*, 4 Trade Reg. Rep (CCH) ¶ 13,104 (April 8, 1997).

²⁹ Exhibit JSH-1 at 19-20. Applicants assert that one of these HHI changes is invalid because it is in a Shoulder Period, which has no SIL.

³⁰ Exhibit JSH-1 at 20-21.

Under those circumstances, the transaction will decrease market concentration, because Aquila owns capacity in the Aquila Networks-MPS and Aquila Networks-L&P service territories, as well as in West Plains. Because the only Aquila assets being sold in the transaction are those in West Plains, the transaction transfers some generation assets from a relatively large market participant to a relatively small one, resulting in a decrease in market concentration in the SPP market.³¹

23. Applicants state that the transaction does not violate the Commission's screens using AEC in any market in any time period analyzed. They assert that since electricity markets in this region of the country have not been restructured and remain subject to traditional regulatory oversight, the AEC measure should have greater weight than the EC measure, because AEC accounts for native load obligations, while EC does not. Applicants further state that the Commission has found an absence of market power in other recent cases in which the Delivered Price Test found an increase in market concentration using EC, but no increase in market concentration using AEC.³²

24. Applicants state that the Department of Justice/Federal Trade Commission Guidelines (DOJ/FTC Guidelines)³³ indicate that a change in market concentration, particularly any grey area findings under the EC measure, should be assessed along with certain additional considerations.³⁴ Applicants present as additional considerations that:

³¹ *Id.* at 21.

³² Application at 16 fn 28, citing *Acadia Power Partners, LLC, et al.*, 113 FERC ¶ 61,703 at P 40-43 (2005) and *Kansas City Power & Light Company, et al.*, 113 FERC ¶ 61,074 at P 30-35 (2005).

³³ The Merger Policy Statement adopted the DOJ/FTC Guidelines for analyzing the effect on competition of a proposed merger. Merger Policy Statement at p. 30,117-18.

³⁴ The Guidelines set forth the following additional factors: whether the merger would increase the likelihood of coordinated interaction; whether unilateral market power would be enhanced; whether entry into the market by competitors would defeat an attempt to maintain prices above a competitive level; whether the merger provides efficiencies; and whether the merger would prevent the failure of one of the firms and its exit from the market.

(1) the transaction is unlikely to enhance the potential for coordinated interaction because Mid-Kansas and Sunflower are relatively small market participants; (2) because Applicants have less than a 10 percent AEC market share in West Plains, the merger is not likely to enhance unilateral market power under the DOJ/FTC guidelines; (3) entry by other competitors is not an important consideration in assessing the competitive effect of the transaction; and (4) the transaction may provide significant efficiencies for the load that is served by Mid-Kansas and Sunflower. Applicants claim that these additional considerations suggest that the limited screen violations under the EC measure do not indicate any competitive concerns.

ii. Protests

25. Midwest Energy argues that Applicants should have analyzed concentration in the combined Aquila and Sunflower areas. It asks that the Commission reject Applicants' sensitivity analysis³⁵ based on the SPP as a whole. Midwest Energy argues that Applicants' reasoning for an SPP-wide geographic market is inconsistent with their rationale for not combining the Sunflower and West Plains control areas within the SPP.³⁶

26. Protestors argue that the proposed transaction raises horizontal competitive concerns, given Aquila's failure of its market-based rate test in the West Plains market. Kansas Municipal argues that the same market power concerns that exist in West Plains now will exist post-transaction. It concludes that the Commission's ceding regulatory oversight, by allowing transfer of Aquila's Kansas Network to an entity over which the Commission lacks jurisdiction, is therefore a concern. Kansas Municipal asks whether Mid-Kansas will be required to submit an updated market power analysis, and if so,

³⁵ A sensitivity analysis is an analysis in which Applicants vary input assumptions to demonstrate the robustness of their results to different market conditions. In this case, Applicants perform a sensitivity analysis using the SPP as a whole to show that, once Mid-Kansas' and Sunflower's transmission systems are under control of the SPP, the transaction will have a minimal impact on competition.

³⁶ Midwest Energy Protest at 4-5.

which regulatory body will evaluate the analysis.³⁷ Midwest Energy adds that while Aquila has filed a market-based rate tariff with cost-based mitigation in Docket No. ER06-336-000, and those tariffs would be transferred to Mid-Kansas with the transaction, Applicants do not address whether the mitigation the Commission found necessary to mitigate Aquila's market power, or some other mitigation, will be provided by Mid-Kansas.³⁸

iii. Applicants' Answer

27. Applicants contest Midwest Energy's argument that the failures of the Delivered Price Test for EC show that the transaction is inconsistent with the public interest. They again argue that the Commission should evaluate the effect of the proposed transaction based on AEC rather than EC because AEC takes into consideration native load obligations that are not considered under EC. Utilities with small control area markets and large native load obligations routinely fail the EC market screen, yet often do not possess any market power, and that the Commission has recognized this.³⁹

28. In response to Midwest Energy's assertion that Applicants should have analyzed the West Plains and Sunflower markets as a single control area, Applicants state that one must either analyze them as a single control area or as separate control areas on both a pre- and post-transaction basis. Applicants argue that it is appropriate to analyze the two as separate control areas because there is little to no transmission available to allow Aquila and Sunflower to transact in each other's control areas, and these two markets are operated separately.⁴⁰

³⁷ Kansas Municipal Protest at 19-20 citing *Aquila, Inc.*, 111 FERC ¶ 61,030 (2005) (Order on Updated Market Power Analysis) and *Aquila, Inc.*, 112 FERC ¶ 61,307 (2005) (Order on Proposed Mitigation Measures and Compliance Filings).

³⁸ Midwest Energy Protest at 3-4.

³⁹ Applicants' Answer at 39, fn 58, citing *Acadia Power Partners, LLC*, 113 FERC ¶ 61,073 at P 40-43 (2005) and *Kansas City Power & Light Company*, 113 FERC ¶ 61,074 at P 30-35 (2005).

⁴⁰ *Id.* at 44-45.

29. Applicants state that they did not attempt to precisely quantify transmission limitations between the two control areas because this would have required running a new transmission flow study, for which data would be difficult to compile, and because such a study would have no material effect on their competitive analysis. They acknowledge that a new analysis of the transmission limitations might allow more precise quantification of these limits, but the result would simply be to substantiate the transmission limitation known to exist between the two control areas. Further, given that both Aquila and Sunflower are interconnected with numerous other larger entities, and because SIL into the two control areas is limited, imports into the two areas would be subject to considerable competition. Thus, neither Applicant would be able to participate to any large degree in the other Applicant's control area. Accordingly, Applicants argue that they should not be required to perform a new joint control area analysis.⁴¹

30. Applicants also defend their SPP analysis. They agree with Midwest Energy that it would be inappropriate to rely on an SPP region-wide market now as the sole basis for supporting Applicants' conclusion that there is no increase in market concentration as a result of the transaction. However, their analysis of the future SPP situation is intended only as supporting evidence.

31. In response to intervenors' request that the Commission take Aquila's December 21, 2004 updated market power analysis into consideration when examining this transaction, Applicants argue that the tests involved under sections 203 and 205 are different and are used for different purposes and that Applicants' analysis in this application is dispositive. Further, Applicants state that mitigation of potential market power in the Aquila Kansas control area similar to that in the Commission's "Order on Proposed Mitigation Measures and Compliance Filings"⁴² will be carried forward as part of the hold harmless commitments made by Mid-Kansas.⁴³

⁴¹ *Id.* at 45-46.

⁴² 112 FERC ¶ 61,307 (September, 2005).

⁴³ *Id.* at 42-43. At 4, the Application states that "The former Aquila electric wholesale and retail customers will be served under a Service and Operation Agreement between the Mid-Kansas Members and Sunflower, but will be the customers of Mid-Kansas. Each Kansas Electric Network retail and wholesale customer will be served by Mid-Kansas, with the Mid-Kansas Members providing operations and maintenance and other customer services, but such retail customers will continue to be served under a

(continued...)

iv. Commission Determination

32. The Commission finds that Applicants have demonstrated that the proposed acquisition will not have an adverse effect on competition. We note that the small effect of the proposed transaction when using AEC makes it unnecessary to analyze a single combined West Plains and Sunflower control area. Given that, Aquila has no AEC in the Sunflower market and only 12 MWs of AEC in the West Plains market (and only during Winter Super Peak); including this combined control area market in the sensitivity analysis is unnecessary. Further, given the extent of transmission constraints in western Kansas, it does not appear that the two areas are a single market. We also note that because of our findings herein, we need not address Applicants' analysis of the SPP and Expanded Kansas Electric Network markets.

33. With respect to Aquila's failure of the screens for West Plains in its market-based rate case, we note that the separate standalone rates that Mid-Kansas will be charging include the mitigation of market-based rates and that Mid-Kansas commits to carry forward this mitigation. Additionally, Mid-Kansas' wholesale sales will be subject to the jurisdiction of the Kansas Commission, which will be a further check on any market power.

b. Vertical Market Power Issues

i. Applicants' Analysis

34. Applicants argue that the proposed merger raises no material vertical market power issues. They state that neither Mid-Kansas, the Mid-Kansas Members (or their parents), nor Sunflower own or control any fuel or other inputs to electric power generation, such as sites for generating capacity.

separate retail tariff at the existing Aquila retail rates which Mid-Kansas has requested of the Kansas Commission be largely frozen for a period of five years. Existing wholesale customers will continue to be served under their existing contracts, and Mid-Kansas commits that it will include transaction costs relating to the acquisition in Kansas Commission jurisdictional rates under such wholesale contracts only if, and to the limited extent that, benefits of the transaction exceed such costs.”

35. However, Mid-Kansas will obtain control over electric transmission assets currently owned by Aquila, and Sunflower already owns and operates electric transmission facilities, so there will be a combination of transmission facilities because of this transaction. At present, Aquila Networks-WPK's transmission facilities are available under the SPP tariff, and Mid-Kansas has applied to the Kansas Commission for approval to transfer control over the transmission assets that it acquires as a result of the proposed transaction to the SPP.⁴⁴ Mid-Kansas commits to participate in the SPP RTO after the proposed transaction, thereby providing third parties access to excess capacity on those facilities under a tariff of general applicability. Upon participation in the SPP RTO, market monitoring, independent control, and market power mitigation will be in effect, so neither Mid-Kansas nor Sunflower will be able to exert an anticompetitive effect on generation markets through their ownership of transmission. Accordingly, because all of the jurisdictional transmission facilities that are to be owned or controlled directly or indirectly by Mid-Kansas and the six Mid-Kansas Members are or will be subject to the operation and control of an independent third party, with access to those facilities granted subject to an open access transmission tariff (OATT) of general applicability, Applicants argue that any concerns regarding vertical competitive effects of the transaction are mitigated.⁴⁵

ii. Protests

36. Kansas Municipal questions whether Sunflower and Mid-Kansas will actually join SPP. It notes that the Rural Utilities Services (RUS), an agency of the U.S. Department of Agriculture, has approved Sunflower's request to do so subject to SPP meeting certain conditions, but says that SPP has not yet responded to the RUS conditions. It questions

⁴⁴ Applicants state that Sunflower has committed to join SPP (Application at 17). Applicants infer that Sunflower will transfer functional control of its transmission facilities to the SPP when they state that "all of the jurisdictional transmission facilities that are to be owned or controlled directly or indirectly by Mid-Kansas and the six Mid-Kansas Members (*i.e.* the members of Sunflower) are or *will be subject to the operation and control of an independent third party.*" (Emphasis added, Application at 19).

⁴⁵ Application at 18-19.

whether Sunflower will be committed to join the SPP even if the SPP accept the RUS conditions. Further, it asks what Mid-Kansas' intentions regarding its transmission facilities are if Sunflower does not join SPP.⁴⁶

iii. Applicants' Answer

37. Applicants state that Mid-Kansas is committed to keeping the Mid-Kansas transmission assets in SPP. They state that Sunflower has applied to join SPP and expects its membership to be granted by April 1, 2006,⁴⁷ so it will be able to provide Kansas Coop with network service in the Sunflower control area under the SPP OATT.

iv. Commission Determination

38. We find that without mitigation, the combination of Aquila's generation in the Sunflower market and Sunflower's control of its own transmission system could have a negative effect on vertical competition. The Sunflower market will be highly concentrated after the merger, and Sunflower will control transmission lines in its home control area. Further, under the Service and Operation Agreement between the Mid-Kansas Members and Sunflower, Sunflower will have operational control over the transferred generation facilities. The transfer of control of generation facilities between Aquila and Sunflower therefore raises vertical market power concerns.

39. As we found in *American Electric Power Company*,⁴⁸ transfer of functional control of Sunflower's and Mid-Kansas' transmission facilities to an independent entity

⁴⁶ Kansas Municipal Protest at 18.

⁴⁷ On May 19, 2006, the Commission accepted for filing revisions to the SPP OATT in Docket No. ER06-793. These tariff revisions became effective April 1, 2006. They facilitate the incorporation of Sunflower's transmission system into SPP's transmission system as a single zone. Sunflower is now a pricing zone under SPP's RTO OATT. However, full transfer of control of jurisdictional facilities to the RTO has not yet occurred. Sunflower has not received KCC approval to transfer control of its existing facilities or those to be acquired from Aquila-Networks-WPK.

⁴⁸ *American Electric Power Company*, Opinion No. 442, 90 FERC ¶ 61,242, *order on reh'g*, Opinion No. 442-A, 91 FERC ¶ 61,129 (2005).

will mitigate our vertical market power concerns. Applicants' commitment to cede control of their transmission facilities to an independent entity will ensure that they will not be able to use control over their transmission assets to harm competition in wholesale electricity markets. Therefore, we condition authorization of this transaction on Sunflower and Mid-Kansas transferring control of their transmission network to the SPP, or another independent entity. We find that Mid-Kansas' adoption of the current OATT of Aquila (filed as a reciprocity tariff)⁴⁹ is acceptable short-term mitigation for the interim period between the consummation of the transaction and the transfer of control of Mid-Kansas' and Sunflower's transmission facilities to an independent entity.

c. Effect on Rates

i. Applicants' Analysis

40. Applicants assert that the proposed transaction will have no effect on the rates charged to Aquila's wholesale electric customers. Mid-Kansas asked the Kansas Commission to approve the existing Aquila Network-WPK rates and a five-year retail rate moratorium. Applicants point out that Kansas law requires that they file with the Kansas Commission the Aquila service contracts that Mid-Kansas proposes to assume. Thus, the Kansas Commission will have jurisdiction over wholesale contracts following the closing of the transaction and can ensure that wholesale customers will be adequately protected.⁵⁰ In addition, Mid-Kansas commits to submit for Kansas Commission approval the inclusion of acquisition-related costs in rates under wholesale contracts only to the extent that the benefits of the transaction exceed its costs. Any issues regarding the effect on retail rates can be addressed by the Kansas Commission in its review of the transaction.⁵¹

⁴⁹ See P 45 *infra*.

⁵⁰ Applicants assert that the Commission's decision not to exercise its full Part II jurisdiction over RUS-funded cooperatives (now codified and expanded under EPAct 2005) allows states to exercise jurisdiction over these entities. They state that Kansas has the jurisdiction to "supervise and control electric public utilities" and has done so frequently and stringently. Applicants' Answer at 26-30.

⁵¹ Application at 19-20.

ii. **Protests**

41. Kansas Municipal argues that Applicants have not explained how wholesale sales will be made to former customers of Aquila who are not members of Sunflower and do not have existing contracts or whose contracts are about to expire.⁵² Additionally, Applicants have not identified what rates will govern wholesale transmission and wholesale energy sales.⁵³ Finally, it questions how tariffs that are not filed with the Kansas Commission can be enforced by that commission.⁵⁴

42. Kansas Municipal says that Applicants' hold harmless ratepayer protection proposal is too vague to assure that wholesale customers will not be adversely affected by the transaction. Applicants do not discuss quantifiable benefits resulting from the transaction.⁵⁵ The application does not explain whether customers seeking new contracts would be held harmless and does not describe the terms of service to wholesale customers that are not under contract. Further, Kansas Municipal asserts that Applicants did not specify how savings will be apportioned between retail and wholesale customers or the mechanism by which Mid-Kansas will pass on savings to wholesale customers.⁵⁶ It argues that Mid-Kansas' proposed reduction in its budget for transmission-related projects should not count as a benefit of the transaction because Western Kansas does not have enough transmission.⁵⁷

43. Kansas Municipal cites Applicants' testimony before the Kansas Commission that Mid-Kansas plans to merge its transmission assets into Sunflower's, after which Mid-Kansas would cease to exist. If these assets are merged, the result may be cost shifts

⁵² Kansas Municipal Protest at 6.

⁵³ *Id.* at 7.

⁵⁴ *Id.* at 8.

⁵⁵ *Id.* at 9. Kansas Municipal states that in testimony before the Kansas Commission, Mid-Kansas attempted to quantify such benefits.

⁵⁶ Kansas Municipal Protest at 10.

⁵⁷ *Id.* at 11.

from Sunflower's six member cooperatives to the existing wholesale customers of Aquila, or vice versa. Both Kansas Municipal and Midwest cite marked differences between the rates currently paid by Sunflower and West Plains customers. Kansas Municipal says that Sunflower could dispatch lower-cost generation to Sunflower customers and higher-cost generation to Mid-Kansas customers.⁵⁸

iii. Applicants' Answer

44. Applicants assert that the transaction will not have an adverse effect on rates because operational savings and efficiencies resulting from the transaction will benefit former Aquila customers, who will become Mid-Kansas customers.⁵⁹ Applicants answer Kansas Municipal's various tariff questions by stating that Mid-Kansas will assume all of the contractual obligations and liabilities of Aquila with respect to the Aquila Networks-WPK assets, as assured by Section 2.3 of the Asset Purchase Agreement.⁶⁰ As required by state law, Mid-Kansas intends to timely submit to the Kansas Commission the wholesale contracts and service agreements that it assumes from Aquila.⁶¹

45. Applicants maintain that the existing Aquila OATT rate zone⁶² will remain intact as the Mid-Kansas rate zone under the SPP OATT. Mid-Kansas does not anticipate blending the Applicants' transmission rates with those of Sunflower when the two control areas are combined into a single control area or during the five-year rate freeze period proposed in its Application.

⁵⁸ *Id.* at 21.

⁵⁹ Applicants' Answer at 14.

⁶⁰ *Id.* at 31. Applicants assert that because this contractual arrangement is described in their application before the Kansas Commission, they expect that the Kansas Commission's review of this transaction will take into account this consideration. The Kansas Commission's approval, unless otherwise conditioned, will acknowledge Mid-Kansas' assumption of the Aquila wholesale obligations.

⁶¹ Applicants' Answer at 32.

⁶² A rate zone is a geographic area in which the facilities of a transmission owner or a specific combination of transmission owners are located.

46. In response to Kansas Municipal's criticism that they failed to quantify alleged benefits from the proposed transaction, Applicants state that no such quantification is required under section 203 of the FPA. Thus, Kansas Municipal's references to the sharing of Mid-Kansas' projected \$27.2 million of transaction savings are irrelevant.⁶³

iv. Commission Determination

47. We find that the proposed transaction will not have a negative effect on rates. We are satisfied with Applicants' answers to the various questions raised by intervenors, and we note that Applicants are not obligated to show that there will be net benefits from the transaction.⁶⁴ Further, we note that Supreme Court precedent permits states to regulate the wholesale rates of entities such as cooperatives in the absence of other federal regulation of those rates.⁶⁵ Upon completion of the transaction, the Kansas Commission will have oversight over Mid-Kansas' rates. Therefore, we conclude that the Commission's loss of jurisdiction after the transaction will not adversely affect rates. We also rely on Applicants' hold harmless commitment in finding that wholesale customers' rates will not be adversely affected by the transaction.

d. Effect on Regulation

i. Applicants' Analysis

48. Applicants acknowledge that the transaction will remove facilities from Commission jurisdiction. However, they argue that this is not an adverse effect on regulation. They state that cooperatives play an important role in the nation's electric system, and that it is in the public interest to permit jurisdictional assets to be transferred to cooperatives when they can use them to the greatest effect, even where the result is to remove the assets from Commission oversight. Applicants say that the Commission has long recognized that it is not necessary for it to exert its full level of jurisdiction over assets controlled, directly or indirectly, by entities that are regulated by the RUS and by

⁶³ *Id.* at 37.

⁶⁴ Merger Policy Statement (*supra*, at fn. 3).

⁶⁵ *Arkansas Electric Cooperative Corp. v. Pub. Serv. Comm'n*, 461 U.S. 375. (1983).

the states.⁶⁶ The Kansas Commission will retain authority over the Mid-Kansas rates charged to the transferred Kansas Electric Network Customers. Moreover, Mid-Kansas commits to offer transmission service over the transferred facilities under the SPP RTO tariff, so the Commission's open access policies will not be thwarted by the change in jurisdiction.⁶⁷

ii. Protests

49. Kansas Municipal questions Applicants' assertion that Mid-Kansas will be regulated by the Kansas Commission. It asserts that Applicants did not state whether Mid-Kansas will be regulated by the Kansas Commission, so the theory upon which Kansas Commission jurisdiction is premised is not entirely clear. The Kansas Commission does not regulate some member cooperatives. Kansas Municipal also asserts that the SPP tariff and the reciprocity provision⁶⁸ therein bring into question the

⁶⁶ *Dairyland Power Cooperative*, 37 FPC 12 (1967), *aff'd sub nom. Salt River Project Agricultural District v. Federal Power Commission*, 391 F.2d 470 (D.C. Cir), *cert. denied*, 393 U.S. 857 (1968).

⁶⁷ Application at 20-21.

⁶⁸ The reciprocity provision in the SPP tariff states that, "A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to all the Transmission Owners on similar terms and conditions over facilities used for the transmission of electric energy in interstate commerce owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy in interstate commerce owned, controlled or operated by the Transmission Customer's corporate affiliates. A Transmission Customer that is a member of a power pool or Regional Transmission Group also agrees to provide comparable transmission service to the members of such power pool and Regional Transmission Group on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate affiliates.

This reciprocity requirement applies not only to the Transmission Customer that obtains transmission service under the Tariff, but also to all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller,

(continued...)

correctness of Applicants' assertions that Applicants' transmission assets will not be subject to Commission regulation. That assertion is also questionable because of the Commission's reach under section 211 of the FPA, as well as the Commission's jurisdiction over transmission in interstate commerce under the FPA.

50. Kansas Municipal questions what tariffs will govern wholesale power sales. It argues that the existing West Plains tariffs are based on the Commission's rules and asks whether the Kansas Commission would have authority to enforce the tariffs under the FPA. It is not clear that the West Plains generation facilities will continue to be subject to cost-based rates under new ownership, since the new owners will not be subject to Commission regulation. The Commission needs to consider whether there are other means of achieving the transaction without depriving the Commission of its jurisdiction.⁶⁹ Kansas Municipal argues that loss of Commission jurisdiction over the West Plains assets will expose non-member wholesale customers to uncertainty and unknown avenues for recourse.⁷⁰

51. Midwest Energy argues that Mid-Kansas' assertion that the latter is exempt from Commission jurisdiction because it will sell less than 4,000,000 megawatt hours (MWh) per year is directly related to the effect of the transfer on regulation. Midwest Energy argues that if Mid-Kansas' sales exceed 4,000,000 MWh per year, then, the separate corporate structure created for this transaction could have a direct effect on regulation.⁷¹

buyer and any intermediary, such as a power marketer. This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision." SPP FERC Electric Tariff Fourth Revised Volume No. 1 at 23-24.

⁶⁹ Kansas Municipal protest at 14-15.

⁷⁰ *Id.* at 3.

⁷¹ Midwest Energy protest at 5.

iii. Applicants' Answer

52. Applicants reply to Kansas Municipal's concerns regarding Mid-Kansas' structure by stating that the RUS devised this structural model to enable the Mid-Kansas members to submit a bid within the time constraints that Aquila set. RUS itself acknowledged that it would not have been able to react quickly enough to provide the necessary approvals for the six RUS borrowers (the Mid-Kansas members) to respond to the bid. Therefore, RUS suggested that the borrowers create a separate legal entity to purchase the assets and operate them under service contracts with the members. Applicants assert that, contrary to the implications of the intervenors, the structure chosen for Mid-Kansas was simply designed to let them participate in the bidding process. Moreover, Mid-Kansas' structure is legal under Kansas law, and its activities (including transmission and wholesale activities) are under the jurisdiction of the Kansas Commission. Applicants conclude that there is nothing about the structure that is intended to disadvantage any customer of Mid-Kansas and, given the Kansas Commission's clear jurisdiction, any attempt to use the structure in such a way would be scrutinized.⁷²

53. Applicants answer Kansas Municipal's question regarding regulation by the Kansas Commission. They say that Mid-Kansas is a public utility under Kansas law and that the Kansas Commission has jurisdiction over electric public utilities doing business in Kansas.⁷³ The Kansas Commission has not only asserted its jurisdiction over contractual matters involving electric utilities as granted by Kansas statutes on numerous occasions, but has implemented this authority thoroughly.

54. Applicants grant that the EPA changes to the FPA give this Commission some jurisdiction over *transmission* because EPA section 1231 created a new section 211A. The revised language is clear that this authority is *discretionary* – the Commission *may* require an *unregulated transmitting utility* (which includes entities under the revised section 201(f)) to provide service comparable to what it charges itself. However, the Commission has not implemented this authority, Applicants say. There is currently no need for the Commission to use its discretionary authority, as Mid-Kansas intends to

⁷² Applicants' Answer at 14-15.

⁷³ *Id.* at 26.

honor the existing wholesale arrangements, including transmission service agreements. Should the Commission become aware of a situation that warrants applying section 211A, it will have authority to do so.⁷⁴

55. Applicants challenge Midwest Energy's claim that the Commission will not have jurisdiction based solely on the 4,000,000 MWh exemption provided in FPA section 201(f), as amended by section 1291(c) of EPAct. Applicants assert that this provision exempts Mid-Kansas from the definition of "public utility" under the FPA because Mid-Kansas is wholly owned by RUS-financed cooperatives. Applicants assert that, as a non-jurisdictional entity, Mid-Kansas would not be subject to automatic or mandatory Commission jurisdiction over "public utilities," such as under section 205 of the FPA.⁷⁵

iv. Commission Determination

56. We are satisfied with Applicants' description of the Kansas Commission's jurisdiction over Mid-Kansas. We note that the Kansas Commission has not filed a protest in this proceeding. If the Kansas Commission had doubts about its authority to regulate Mid-Kansas, it could have shared this concern with us. We therefore conclude that the Kansas Commission will look after the interests of all customers affected by this transaction. Thus, we do not view the relinquishment of Commission jurisdiction over the assets in question as undermining effective regulation. We further agree with Applicants that Mid-Kansas' exemption from Commission jurisdiction as a RUS-funded, non-public utility is independent of the requirement that it produce less than 4,000,000 MWh of energy per year.

e. Cross-Subsidization

i. Applicants' Analysis

57. Applicants claim that the transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Applicants verify that the proposed transaction will not result in, at the time of the transaction or in the future: (1) transfers of facilities between a

⁷⁴ Applicants' Answer at 30.

⁷⁵ *Id.* at 29-30.

traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company, (2) new issuances of securities by a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company; (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company, or (4) new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.

ii. **Commission Determination**

58. Applicants have demonstrated that the proposed transaction does not raise any concerns with respect to cross-subsidization. We are further satisfied that Applicants' adoption of a five-year retail rate moratorium protects the interests of Mid-Kansas' retail customers, and that after that period expires, the Kansas Commission will guard against cross-subsidization by Mid-Kansas.

C. **Docket No. ER06-336-000 – Revised Tariff Sheets**

59. Midwest Energy points out that the Commission has found that Aquila failed the market power screens in the Aquila Network-MPS and Kansas Electric Network control areas and instituted a section 206 proceeding.⁷⁶ It states that Aquila filed notice with the Commission that it would adopt the default cost-based rates in those control areas. It states that this section 206 proceeding is still open and that Aquila's filing in Docket No. ER06-336-000 does not mention the pending section 206 proceeding. Midwest Energy requests that the Commission make the approval of Aquila's rate filing contingent on the outcome of the related section 203 proceeding in Docket No. EC06-46-000.

60. We note that the section 206 proceeding was terminated on March 17, 2006 and the proposed tariff revisions implementing Aquila's cost-based mitigation for the mitigated control areas were accepted.⁷⁷ Thus, Midwest Energy's concerns have been addressed.

⁷⁶ *Aquila, Inc.*, 111 FERC ¶ 61,030 (2006).

⁷⁷ *Aquila, Inc.*, 114 FERC ¶ 61,281 (2006).

61. The tariff sheets filed by Aquila are hereby accepted, effective on the date of the transfer of assets from Kansas Electric Network to Mid-Kansas. Aquila is directed to advise the Commission as to the date of the transfer of assets and to resubmit all tariff sheets to reflect the correct effective date within 15 days of the date of the transfer.

The Commission orders:

(A) The proposed section 203 transaction is authorized upon the terms and conditions and for the purposes set forth in the application.

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) The Commission retains authority under sections 203(b) and 309⁷⁸ of the FPA to issue supplemental orders as appropriate.

(E) Applicants must submit their proposed final accounting within six months of the consummation of the transaction. The accounting submission must provide all transaction-related accounting entries made to the books and records of Aquila along with appropriate narrative explanations describing the basis for the entries.

(F) Applicants shall notify the Commission within 10 days of the date that the transaction has consummated.

(G) Aquila's tariff revisions are accepted, effective on the date of transfer of assets, as discussed in the body of this order.

⁷⁸ 16 U.S.C. § 825h (2000).

(H) Aquila is directed to resubmit all tariff sheets to reflect the correct effective date within 15 days of the date of transfer of assets, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A**PROPOSED NEW AND REVISED MARKET-BASED RATE TARIFF SHEETS**

Aquila, Inc., FERC Electric Tariff, Third Revised Volume No. 28, First Revised Sheet No. 26 (superseding Original Sheet No. 26), Second Revised Sheet No. 27 (superseding Substitute First Revised Sheet No. 27), First Revised Sheet No. 27A (superseding Original Sheet No. 27A), Second Revised Sheet No. 28 (superseding First Revised Sheet No. 28), First Revised Sheet No. 29 (superseding Original Sheet No. 29), First Revised Sheet No. 30 (superseding Original Sheet No. 30), Second Revised Sheet No. 31 (superseding First Revised Sheet No. 31), First Revised Sheet No. 31A (superseding Substitute Original Sheet No. 31A), First Revised Sheet No. 32 (superseding Original Sheet No. 32), First Revised Sheet No. 33 (superseding Original Sheet No. 33), First Revised Sheet No. 34 (superseding Original Sheet No. 34), First Revised Sheet No. 35 (superseding Original Sheet No. 35), First Revised Sheet No. 36 (superseding Original Sheet No. 36), First Revised Sheet No. 37 (superseding Original Sheet No. 37), First Revised Sheet No. 37A (superseding Original Sheet No. 37A), First Revised Sheet No. 38 (superseding Original Sheet No. 38); Aquila, Inc., FERC Electric Tariff, Original Volume No. 32, Original Sheet Nos. 1-16.

APPENDIX B

PROPOSED NEW AND REVISED COST-BASED RATE TARIFF SHEETS

Aquila, Inc., FERC Electric Tariff, Original Volume No. 30, First Revised Sheet Nos. 13-24 (superseding Original Sheet Nos. 13-24); Aquila, Inc., FERC Electric Tariff, Original Volume No. 31, Original Sheet Nos. 1-12.