

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Joint Applica-)	
tion of Great Plains Energy Incor-)	
porated, Kansas City Power & Light)	
Company, and Aquila, Inc., for)	EM-2007-0374
Approval of the Merger of Aquila,)	
Inc., with a Subsidiary of Great)	
Plains Energy Incorporated and for)	
Other Related Relief)	

RESPONSE TO MOTION TO DISMISS BY
INDICATED INDUSTRIALS

COME NOW the SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIA-
TION ("SIEUA"), AG PROCESSING INC A COOPERATIVE ("AGP") and
PRAXAIR, INC ("Praxair") (collectively "Indicated Industrials")
and, respond to the Motion to Dismiss filed by the Office of
Public Counsel.

1. Not surprisingly, these parties support Public
Counsel's motion. It is regrettable that the Missouri Public
Service Commission finds itself in this situation. It is also a
disappointment that the commission has, in several recent in-
stances has been drawn into circumstances where the very integ-
rity of the commission falls into question. In choosing to step
aside from this situation, Chairman Davis stated that the public
is certainly entitled to have "absolute confidence" in the
process. The public is no less absolutely entitled to have
confidence in institutions that were established to protect the
consuming public from the excesses of unrestrained monopoly.

2. That said, Public Counsel's motion appears in this case to be well taken. A series of meetings, exposed by sworn testimony, were held between officials of Great Plains, KCPL and Aquila. Testimony during discovery depositions and the hearing itself disclosed and authenticated e-mails revealing the intended purpose of these meetings, one portion of which is quoted below. At the base, it appears that even as the proposed acquisition transaction was yet being assembled, the acceptability of several specific forms of "regulatory support" were tried out on the individual commissioners, using methods that appear designed to evade the obvious spirit of Missouri's Open Meetings Law. Only then was an acquisition package finalized.

3. Thus, perhaps unwittingly, the commissioners were drawn into and their silent acquiescence embodied in the very proposal package that they would later be called upon to consider, thereby tainting and prejudicing any commission action on the proposal. This action is well beyond the occasional "heads up" meetings that are tolled in justification.^{1/} Mr. Chesser testified:

4 The purpose of both of those meetings was
5 to make sure that they fully understood the rationale for
6 the merger, the benefits of the merger and the structure
7 that we were asking for. We -- in those meetings, we
8 asked for no commitments, we received no commitments, but
9 it was important that we -- that they understand the ask,

^{1/} Through the progress of this case, it is becoming apparent that the entire process whereby the regulated seek to secretly inform the regulators of future actions is problematic. Whether all such activities are objectionable is not the question, for certainly the actions here, unfortunately typical of efforts to "push the envelope," or to correct for perceived past errors, find no safe harbor here.

10 and it was also our assumption that if there were any
11 significant objections that we were not aware of,
12 significant problems, significant issues that would impede
13 the merger, that they would -- that they were aware of
14 they would share with us. We didn't hear that. We didn't
15 hear anything significant, significantly negative. But we
16 did not receive any, you know. The depth of discussion
17 did not go to asking or receiving commitments.^{2/}

4. What is missed in all this is that these meetings should never have occurred. By presenting "the structure we were asking for," and the "benefits," the Applicants made a presentation to the individual commissioners around and outside of the hearing process. It was, as Mr. Chesser stated, "Important that they fully understood . . . the benefits . . . [and] that [the commissioners] understand the ask[ing]." Having done that, Mr. Chesser states that there were no "significant objections" -- specifically "[w]e didn't hear [any significant objections]." This falls far short of an informational meeting -- while stating that no commitments were obtained, in the same breath Mr. Chesser states that the matter was obviously positioned to the commissioners so that they were obligated by mere silence -- or so it appears.

5. Public Counsel is also correct in noting that it is the appearance of impropriety that results in the damage and this is certainly the law.

6. The matter has moved beyond the stage of "damage control." It has now spread into the media and the political environment, and has resulted in one commissioner's recusal, an investigative request from the Governor, and an request for an

^{2/} Tr. Vol 2, p. 142, ll. 4-17.

investigation lodged in the Missouri State Senate. At this point the only realistic thing that the Commission can do is grant Public Counsel's request.

7. On what became the final day of the hearing, the Joint Applicants requested to "take a break" in the hearing so that they could continue "working on an alternative proposal that we would like to present [it] later in the hearing."^{3/} Although a premature "settlement conference" was ordered before this inchoate alternative proposal was even presented to the parties, we yet do not know the content of that alternative proposal or whether it will even be provided. Accordingly we cannot now tell whether the alternative proposal, if it surfaces, will seek to perpetuate this unfortunate contamination. It is or should be clear that the Joint Applicants should not be allowed to benefit from their efforts to pre-sell their original package. It may well be that their actions are like someone who dumps broken glass into a swimming hole and then complains that they cannot continue to swim there. Dismissal is the appropriate remedy.

^{3/}

Tr. Vol.7, p. 1154.

WHEREFORE, the Commission should grant the relief
sought by Public Counsel.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

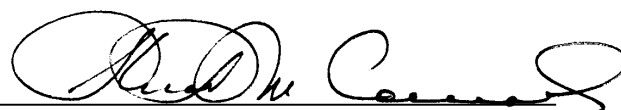


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ATTORNEYS FOR SEDALIA INDUSTRIAL
ENERGY USERS' ASSOCIATION, AG PRO-
CESSING INC A COOPERATIVE, AND
PRAXAIR, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing
Pleading by U.S. mail, postage prepaid or by electronic mail
addressed to all parties by their attorneys of record as provided
by the Secretary of the Commission.



Stuart W. Conrad

Dated: December 26, 2007