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Witness: Wayne Cauthen
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Sponsoring Party: City of Kansas City, Missouri
Case No.: EM-2007-0374
Date Testimony: October 12, 2007
Prepared:

MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: EM-2007-0374

REBUTTAL TESTIMONY

OF

WAYNE A. CAUTHEN

ON BEHALF OF

CITY OF KANSAS CITY, MISSOURI

**Kansas City, Missouri
October 2007**

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)
Requester Relief)


Case No. EM-2007-0374

AFFIDAVIT OF WAYNE A. CAUTHEN

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

Wayne A. Cauthen, being first duly sworn on his oath, states:


1. My name is Wayne A. Cauthen. I work in Kansas City, Missouri, and I am employed by the City of Kansas City, Missouri as City Manager.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony on behalf of City of Kansas City, Missouri consisting of eleven (11) pages, having been prepared in written form for introduction into evidence in the above-captioned docket.
3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.


Wayne A. Cauthen

Subscribed and sworn before me this 12th day of October 2007.



LINDA C. KNEIB
My Commission Expires
September 22, 2011
Jackson County
Commission #07988908


Notary Public

My commission expires: _____

REBUTTAL TESTIMONY

OF

WAYNE A. CAUTHEN

Case No. EM-2007-0374

GENERAL BACKGROUND OF WITNESS

What is your name and business address?

Wayne A. Cauthen, City Hall, 414 East 12th Street, 29th Floor, Kansas City, Missouri 64106.

By whom and in what capacity are you employed?

I am the City Manager for the City of Kansas City ("City"). I was appointed by the City in this capacity in April of 2003.

Please describe your employment responsibilities.

I am the City's chief administrator and my overall responsibility is to ensure that the City government runs efficiently and economically. In general, I advise the Mayor and the City Council and I appoint all department directors except the Director of Parks and Recreation, who is appointed by the Board of Parks and Recreation Commissioners. I prepare a proposed annual budget for Council's consideration. My work also includes enforcing municipal laws and ordinances and coordinating City operations and programs. Additionally, my office provides staff support services to the City Council and its committee meetings, and coordinates the development and analyses of policy recommendations presented to the Mayor and the City Council. As provided by the Kansas City Charter, Section 220, I am responsible for the administration of City government in Kansas City. The work of each department and office,

1 except Parks and Recreation, is my responsibility. My immediate office, the Office of the City
2 Manager, also has a number of administrative duties. For example, my immediate office includes
3 Contract Compliance Administration, Emergency Management Office, Office of Environmental
4 Quality, Office of Management and Budget, and Efficiency Strategies and Capital Improvements
5 Management Office. On a daily basis, I interact with the Mayor, members of the City Council,
6 department directors and other employees and officials of the City.

7 **Please describe your education, experience and employment history.**

8 I have over 25 years of professional experience in the public and private sectors. I graduated
9 from Central State University in Wilberforce, Ohio with a degree in political science and also
10 completed graduate studies in political science at the University of Colorado. Prior to my
11 employment as City Manager for Kansas City, I worked as Chief of Staff for Denver Mayor
12 Wellington Webb from 2000 to 2003. I served as Webb's deputy Chief of Staff from 1997 to
13 2000 and the director of the Mayor's Office of Contract Compliance from 1993 to 1997. During
14 my tenure in Denver, I managed nine cabinet-level departments and eleven agencies and I served
15 on several boards including the Denver Housing Authority Board of Directors, the Stapleton
16 Redevelopment Board, and the Denver International Airport Business Partnership Board. I also
17 worked for the State of Colorado Capital Complex Divisions and the Colorado Minority
18 Business Development Agency. Prior to my work for the City and County of Denver, I was an
19 administrator for the Space Launch Systems at Martin Marietta, which is now Lockheed Martin
20 located in Littleton, Colorado.

21 **Have you previously testified before the Missouri Public Service Commission or other**
22 **utility regulatory agency?**

1 No.

2 **What is the purpose of your testimony?**

3 As I mentioned above, my main responsibility as City Manager is to ensure that the City
4 government is run efficiently and economically. In the past, Kansas City Power and Light
5 (“KCP&L”) and Aquila, Inc. (“Aquila”) have provided the City with electric service as separate
6 entities operating under separate electric franchise agreements with the City. Because the
7 proposed merger will unite the two entities, the City would like to deal with the single utility
8 under a single franchise agreement. Further, as one of the utilities’ largest customers, the City
9 would like to avail itself of the potential savings and efficiencies that will result from the merger.
10 KCP&L has stated that its vision is “to create one company and one experience for all
11 customers,” and I believe that this is possible and will be extremely beneficial to the City, so
12 long as the merger is properly conditioned by this Commission. KCP&L has also stated,
13 however, that “the closing of the merger will have no immediate impact on the franchise
14 relationships between Aquila and the City or KCP&L and the City.” I believe that the franchise
15 relationships between the utilities must change in order to achieve KCP&L’s vision of a single
16 company and a single experience for all customers. Accordingly, the purpose of my testimony is
17 to demonstrate the City’s need for a new, unified, term-limited franchise which will replace the
18 expired Aquila franchise and the existing KCP&L franchise agreements.

19 **What conditions do you propose for this merger?**

20 I urge the Commission to condition its approval of this merger on the merged KCP&L entity
21 negotiating a single, unitary franchise with the City within nine months of the Commission’s
22 approval of the merger. A nine-month window to negotiate a new franchise with the single

1 utility is a sensible condition that will allow both the City and merged utility to work together
2 going forward with a common understanding about their respective rights and obligations.

3 **DESCRIPTION OF AQUILA AND KCP&L FRANCHISE AGREEMENTS**

4 **Please describe the City's electric franchise agreement with Aquila.**

5 The City's electric franchise agreement with Aquila expired on December 31, 2006. Although
6 we began the process to commence negotiations for a new franchise with Aquila, once the
7 merger between Aquila and Great Plains Energy was announced, it was not clear with which
8 entity we should be negotiating. It also seemed counterproductive to negotiate a new franchise
9 with an entity that was being merged into KCP&L. At this time, Aquila and the City are
10 operating under the terms and obligations of the expired franchise agreement.

11 **What has been the City's working relationship with Aquila?**

12 Our working relationship with Aquila has been difficult at times. In particular, operational issues
13 such as relocations, communications with personnel, and obtaining service extensions from
14 Aquila have not gone as smoothly as we would have liked. City Planning and Development
15 Services, Public Works, and the Parks and Recreation Departments all have experienced
16 significant problems working with Aquila. By way of example, my Public Works Department
17 informs me that it has monthly meetings scheduled with a representative from Aquila to discuss
18 relocations. Oftentimes, the designated person from Aquila does not attend these meetings. As
19 noted further in my testimony, the subject of relocations is extremely important to the City. The
20 failure of the monthly meetings is symptomatic of the strained and difficult relationship between
21 the City and Aquila. It will be necessary for the City and the merged utility mutually to achieve
22 more modern mechanisms for documenting and tracking relocations. It has become clear that not

1 only must a new franchise be negotiated, but operational guidelines will be an important aspect
2 of negotiation as well.

3 In addition, the relationship between the City and Aquila has also been made more difficult due
4 to Aquila's failure to extend its service to unserved areas within the City. The Aviation
5 Department informs me of attempts to bring valuable commerce to the City and Missouri
6 through a large commercial development, which is proposed for construction adjacent to the
7 Kansas City International Airport. This project will likely generate substantial revenues for the
8 City and state, not to mention numerous jobs for Missouri citizens. The airport is presently
9 served by Aquila and accordingly, the Aviation Department has requested that Aquila extend
10 service to this new development area. Aquila has not wanted to do this. Discussions about
11 extending service have ceased since the announcement of the merger. As a result, the City is
12 unable to provide electric service to this area and large developers such as Opus Development
13 and Wilson Motor Sports and others have come and gone once realizing that there will be no
14 power to this area for quite some time. The City considers Aquila's failure to extend its service
15 as a significant loss of opportunity and revenue to both the City and the state.

16 **Please describe the City's electric franchise agreement with KCP&L.**

17 The City's electric franchise agreement with KCP&L was granted in 1881 and does not provide
18 a term limit. The document itself is only two pages long and contains almost no information on
19 how the parties intend to operate. As you can imagine, this franchise agreement is truly
20 antiquated and does not accurately reflect how modern day electricity is provided or consumed,
21 and due to this, we have differences with KCP&L in approaching matters that would ordinarily
22 be within a franchise agreement, such as relocation of facilities and payment for relocation.

1 Modern franchises are no longer executed for extended periods and these contracts focus a great
2 deal on the rights and requirements of both parties. Specifically, typical modern franchise
3 agreements include terms and conditions outlining the expiration of the agreement, the status of
4 the parties following expiration, and the manner in which the parties will reach a resolution if the
5 parties are at an impasse in negotiations. Also included in these agreements are terms and
6 conditions that provide opportunities to modify rate structures and for municipalities to gain
7 more favorable rates and more balanced load management. Further, modern franchise
8 agreements allow the parties to improve customer service through simplified billing, prompt
9 outage restoration, and special programs for low income customers. Finally, a modern franchise
10 agreement will typically incorporate requirements for municipalities and utilities to implement
11 renewable energy programs, establish basic commitments to community involvement and
12 charitable contributions and other related issues that reflect issues important to utilities and local
13 governments.

14 In 1996 KCP&L and the City negotiated an ordinance that would function as an operational
15 agreement between the parties, however, KCP&L decided not to go through with executing that
16 document, so the problems that agreement would have addressed have continued. It is difficult
17 for the City to act as proper steward of its rights-of-way when the document authorizing KCP&L
18 to utilize those streets is so vague. In short, basic operational guidelines are simply not spelled
19 out for either party to know its obligations. The outdated franchise agreement creates more
20 disputes than it resolves. Modern cities have innumerable issues with regard to rights-of-way,
21 facilities relocation, undergrounding and the like. The 1881 franchise agreement addresses none
22 of these issues, thus leaving the City without adequate protection of its prerogatives.

What are the operational hardships the City has endured by operating under two franchises?

The City expends additional resources and money in order to operate under two franchises. City departments and personnel must work to meet two separate sets of differing obligations and responsibilities and must also duplicate efforts to monitor and manage two entities providing the exact same type of service within the City's rights-of-way. As a result, the City's administrative and franchise costs are increased, and the lack of uniformity causes confusion among staff. A unitary franchise will solve this issue for the City and for the merged utility.

Please describe the City's working relationship with KCP&L.

The relationship varies from department to department, but on the whole it has been good. For example, KCP&L has contributed significantly to the demand-side management programs and weatherization programs of the Neighborhood and Community Services Department. The City anticipates that these positive working relationships with KCP&L will continue. In addition, the City also is openly willing to work on improving these low income assistance policies as well as engaging in a dialogue with the merged utility to implement green energy programs that will benefit the City, the ratepayers and the environment. As I mentioned, however, there are issues which remain unresolved simply due to the lack of clear guidance provided in the franchise agreement and due to KCP&L's decision not to execute the operational agreement with the City. One of the recurring problems with both Aquila and KCP&L is their respective failure to enter into the City's subordination agreements for certain projects. When developers are required to dedicate to the City property to be used as a public right-of-way, City Code Section 66-44(b)(14) requires that the right-of-way be unencumbered. Where KCP&L owns an easement that crosses

1 property that a developer wants to include in a right-of-way dedication, the City requires the
2 developer to obtain a subordination agreement from KCP&L. The subordination agreement
3 essentially states that the utility agrees to subordinate its interest to the right-of-way. This is
4 necessary in order to comply with Section 66-44(b)(14) and to properly protect the City's
5 interests in regulating its streets. As a practical matter, it allows the roads to be constructed and
6 maintained without interference from the utility company. Both Aquila and KCP&L fail to
7 execute the subordination agreements and instead require that if future improvements to the
8 dedicated road require adjustments to their facilities, the City will pay for those adjustments or
9 relocations. The City is left with those costs since the developer no longer has any involvement
10 with the property. However, as a matter of policy, where a utility is required to relocate due to an
11 improvement in a right-of-way, the developer or the utility must pay for the cost. The City is
12 unable to accept the burden of paying for these relocation costs. This scenario is a frequent
13 occurrence and has resulted in significant delays for developers and hinders the growth of the
14 City because the City is unable to approve development plans which are encumbered by utility
15 facilities.

16 Another recurring issue with KCP&L is that with regard to facility relocation, KCP&L
17 consistently resists paying the expense of relocation for public projects or, alternatively, KCP&L
18 delays the relocation process for several months. The timely relocation of these facilities is a
19 critical issue for the City because delays result in substantial costs to the City, both in time and
20 money, exposing the City to liability to its contractors which cannot perform contracted work
21 due to KCP&L's delays.

1 Further, I believe that a certain level of transparency should be expected from KCP&L and must
2 be established going-forward. KCP&L has in the past charged the City for the cost of
3 undergrounding but will not provide information or documentation relating to the costs
4 associated with undergrounding projects or the selected contracts for such projects. All of these
5 issues and inefficiencies result in raising costs to the City. In one situation involving street
6 lighting projects for two of the City's parkways, we solicited input from KCP&L prior to
7 completing bid documents from consultants to determine the power fee locations. KCP&L's
8 information was incorporated into the bid documents. KCP&L provided the locations for the
9 transformers and the consultants were told that KCP&L would set the transformers and bring
10 power to them. Once we had the projects under contract, KCP&L changed the locations of
11 several controllers, causing us to revise our plans and issue a change order to the contractor. This
12 took several months and a considerable amount of effort to obtain an easement for KCP&L so
13 we could get power to one of the controllers. After KCP&L submitted plans to us and we paid
14 them for the service connections on the parkway, KCP&L changed its mind on what part of the
15 work it agreed to complete. This forced the City to pay our contractor \$108,386 to complete the
16 project. All of these changes cost us close to \$150,000, and delayed the installation of the
17 streetlights by over one year.

18 Finally, KCP&L does not provide maps or as-built drawings to the City's Public Works
19 Department. As a matter of public safety, the City should have access to information regarding
20 the location of utility facilities, including abandoned lines, within the City's rights-of-way.

21 **What do you want from the Commission then?**

1 Because the merger for the first time creates a single electric utility serving the City, I believe it
2 presents a unique opportunity to clarify and “re-set” the relationship between the City and its
3 utility. This opportunity will allow for efficiency and predictability in the relationship between
4 the City and the merged entity, benefiting the citizens of the City and state with increased
5 opportunities for economic development. The Commission, then, must condition the merger on
6 the negotiation of a new, unitary franchise. The antiquated nature of the KCP&L franchise and
7 the intransigence of Aquila can be addressed here so that both the City and the merged utility can
8 function more smoothly in a modern electric franchisor/franchisee relationship.

9 **CITY’S CONCERNS REGARDING THE MERGER**

10 **Please comment further on your concerns about the merger.**

11 As I described above, the City is currently provided electric service from two separate utilities.
12 The City believes that the merger needs to be properly conditioned to remain in the public
13 interest. KCP&L has stated that it does not anticipate any impact of the merger on this franchise
14 relationship, yet, in another statement, KCP&L states that it anticipates working as a united
15 entity. Thus far in the merger proceedings we have not been able to obtain information from
16 either utility regarding the impacts to our citizen ratepayers, the new designation of service areas,
17 or obtain a quality of service plan. As City Manager, these issues are of concern to me as I work
18 to ensure that the City receives fair and reasonable rates and that service from the utilities is
19 provided in an economic and cost efficient manner. In sum, neither utility truly functions as a
20 modern utility giving great service to one of their largest customers and the City’s relationship
21 with Aquila and KCP&L could be substantially improved. As the City Manager, I am concerned

1 that our citizens and the City are hampered by an 1881 document that is not suited for modern
2 needs.

3 **Please describe how the merger can be structured or conditioned so as to address the City's**
4 **concerns.**

5 In my opinion, given that there are currently two utility entities serving the City and following
6 the merger, there will be a single entity serving the City; particularly in light of KCP&L's vision
7 to create one company and one experience for all customers, it only makes sense that the City
8 should have a unified franchise agreement with that single entity. I would recommend that the
9 Commission condition approval of the merger by stating in its order a requirement that the City
10 and the merged entity negotiate a new, unified, term-limited franchise agreement to replace the
11 existing Aquila and KCP&L franchise agreements within nine months of the closing of these
12 proceedings.

13 **How will this condition serve the public interest?**

14 In KCP&L and Aquila's filed case, they give little detail about the integration of the two entities.
15 The claimed efficiencies they propose to realize from the merger largely occur because of
16 integration of the two systems and two companies into one. That only makes sense, however, if
17 the merged utility is not able to pick and choose where it integrates and where it does not – that
18 is why this Commission regulates under the public interest standard. The Commission,
19 therefore, should condition this merger on the negotiation of a single franchise.

20 **Does this conclude your testimony?**

21 Yes, it does.