

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

PRE-HEARING BRIEF OF THE CITY OF INDEPENDENCE, MISSOURI

THE CITY OF INDEPENDENCE, MISSOURI (“City”) respectfully submits this Prehearing Brief in accordance with the Commission’s Order Adopting Procedural Schedule issued June 19, 2007 in the captioned proceeding. This brief addresses the issues raised and supported by the testimony of the City. Although the City addresses only certain issues herein, it reserves the right to address other issues set out in the issues list. The City’s silence on a particular issue should not be necessarily construed as agreement with any particular party’s position.

I. ISSUE VIII: 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?

CITY POSITION: No. Applicants’ claim that the merger “will be consistent with and advance the public interest,” (Merger Application at 12), but Applicants failed to address or failed to sufficiently support their allegations related to several key effects of the proposed merger.

Applicants initially indicated that Aquila would join the SPP RTO. Aquila has since applied to this Commission for approval in Docket No. EO-2008-0046 to place the Aquila assets under the operational control of the Midwest ISO. Independence Witness Mark J. Volpe's testimony explains in detail the numerous differences between the two RTOs and the substantially different operational and cost impacts that flow from the Applicants' RTO selection. While Independence has not taken a position in this proceeding regarding whether Applicants should join an RTO, or which, the significance of the decision requires information which Applicants have failed to provide or evaluate in this proceeding -- information which is necessary for the Commission to determine whether the proposed transaction is not detrimental to the public interest. Because this decision will have a significant impact on costs and rates, the Commission should defer action on the merger until the RTO docket is complete.

The operations and resulting costs of the combined company differ greatly depending on whether they are participating in a single RTO or two RTOs. Independence recognizes that the optimal approach in part depends on the objectives to be achieved and is not at this stage opining on which approach should be pursued. But, there can be no doubt that the approaches substantially affect operations and costs, and the Commission should know what it is being asked to approve.

DISCUSSION:

A. The Applicants' RTO Selection must be Considered in Determining Whether the Application is not Detrimental to the Public Interest.

The merged Applicants' RTO strategy is of great importance to the Applicants' customers, both at wholesale and retail. It is too important a topic to be treated as if it

were not of consequence; it is too important to be decided by the merged company alone; and it is too important to not be considered until after this proceeding is completed, as the Applicants suggest in the Surrebuttal Testimony of KCPL Witness Spring. See Surrebuttal Testimony of Richard A. Spring at 2-3.

The Applicants have proffered varying positions about their RTO strategy, initially indicating that Aquila would join the Southwest Power Pool (SPP). In their Application, Applicants stated that KCP&L will evaluate “the strategy of RTO membership when the merger is completed.” Direct Testimony of Richard A. Spring at 9. Mr. Spring also testified that the plans for combining the Aquila transmission operations and facilities into KCPL once the merger is completed included incorporating the Aquila transmission planning functions into KCPL’s transmission planning functions. Direct Testimony of Richard A. Spring at 6. According to Mr. Spring, “merging these areas should provide coordinated transmission planning over the combined service territories for: improved synergies in system modeling capabilities; reductions in transmission facility additions; improved tie-line coordinate with the region; and a larger, more regional system planning scope. Id.

In August, 2007, months after they initiated this proceeding, Aquila initiated Case No. EO-2008-0046, in which it is seeking authorization to instead participate in the Midwest ISO. Unexplained is whether or how the synergies to which Mr. Spring testified will be achieved with each company in a different RTO.

While it is now the Applicants’ apparent intent to have KCP&L participate in SPP and Aquila in the Midwest ISO, the Applicants asserted in the Application that initiated this case that the merger will produce synergies, including potential benefits of single

RTO membership. Mr. Spring testified that the benefits of single RTO membership include: (1) avoiding transmission seams issues between KCPL and Aquila; (2) reducing costs related to support and participation in stakeholder activities such as governance, market development, transmission planning and expansion, reliability standards development and tariff administration; (3) producing savings by participating in one RTO by operating under a single regional transmission tariff, simplifying the administration and minimizing revenue recovery applications and tariff filings to FERC; (4) achieving efficiencies and consistencies between the Applicants through a single cost allocation method under a single regional tariff, rather than two; (5) achieving more effective transmission planning and expansion due to the inclusion of both Applicants' facilities in one RTO's planning process that develops regional solutions; and (6) providing single reliability coordination. Direct Testimony of Richard A. Spring at 10-11.

Mr. Spring similarly testified in his direct testimony that "KCPL and Aquila being in separate RTO transmission expansion plans could result in solutions that are not only inefficient and redundant for the company, but also possibly conflicting." Direct Testimony of Richard A. Spring at 11. The alteration of such fundamental assumptions of the Merger Application necessarily means that the Applicants have not presented the Commission with sufficient explanation or analysis of the Applicants' operations and resulting costs upon which a decision can be premised.

In his Surrebuttal Testimony, Mr. Spring claims that the City's arguments about the significance of RTO selection have already been addressed and rejected by the Federal Energy Regulatory Commission. Surrebuttal Testimony of Richard A. Spring at 3-4. Mr. Spring reveals only part of the picture. It is correct that FERC issued an order

approving the Applicants' Merger Application from FERC's standpoint. But that order was premised in part upon Applicants' market power screening study, which assumed that Aquila would join SPP. Applicants are now proceeding not with a single RTO strategy, but a two-RTO strategy. They have not provided any explanation or analysis of the benefits and detriments of such an approach, or the cost or operational implications of such an approach. Instead, they urge the Commission to not worry about such matters here, either because they will be addressed in Case No. EO-2008-0046, or because FERC approved the merger and thus this Commission need not worry about such matters. These efforts to deflect attention from the cost and operational implications are no substitute for analysis and explanation of the Applicants' strategy and the resulting cost and rate implications.

The City is not here expressing an opinion about which is the better RTO choice. The City's point is that it is a significant matter, whichever RTO the Applicants choose, yet Applicants seek to avoid addressing it in this proceeding. It is the City's view that one cannot conduct an informed evaluation of the proposed merger without considering these matters.

B. The Applicants should Address Joint Dispatch of Generation before the Merger is Approved.

The Application states that the Applicants' generation, once merged, will not be jointly dispatched, but does not foreclose the possibility of joint generation dispatch in the future. See Direct Testimony of F. Dana Crawford at 5. Whether or not the generation is jointly dispatched would be expected to have cost and rate consequences. Similar to his response to the City's RTO concerns, Mr. Spring testifies that the

Commission need not deal with this issue and that it can be addressed in some future proceeding if and when the Applicants decide to engage in joint dispatch. Mr. Spring does not elaborate on what future regulatory requirements would be needed, or in what forum, but seems to imply that such a proceeding would be before FERC, and not this Commission, referring to the FERC order in which FERC states that joint dispatch would require an operations agreement that the Applicants would have to file with FERC.

This Commission should not be satisfied with such an explanation since the effects of joint dispatch have operational implications that could affect delivery within the state. Moreover, there are practical problems with the Applicants' approach.

First, the future proceeding to which Mr. Spring refers would be a FERC proceeding, not an MPSC proceeding, and thus beyond this Commission's authority. Second, one cannot know whether FERC would even initiate any investigation into such an agreement; FERC may simply accept the agreement for filing without inviting comments. Third, and perhaps most important, under the Applicants' approach, this Commission would already have approved the merger and thus it would be too late to consider the effects of joint dispatch on this proposed combination of the Applicants.

II. ISSUE IX: 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 APPLICANTS' GENERATION RESOURCES, INCLUDING THE IMPACTS ON TRANSMISSION AND INTERCONNECTION AVAILABILITY?

CITY POSITION: No. Among the factors the Commission should consider in determining whether the Merger Application is not detrimental to the public interest is

the impact the Merger may have on rates. Applicants have failed to provide sufficient information to demonstrate that there will not be an adverse impact on rates. In fact, the record shows that there may be significant cost impacts. Applicants' post-application plan to place the Aquila assets under the operational control of the Midwest ISO, as opposed to their assumption in this proceeding that Applicants would join the SPP, fundamentally alters the Applicants' conclusions regarding the benefits of the merger, but the Applicants nevertheless urge the Commission to move forward in this proceeding without considering the post-application developments. To the contrary, the Commission should defer action on the merger until the RTO docket is complete.

DISCUSSION:

A. The Applicants' RTO Selection will Affect Rates.

The Applicants claim to have made a showing that the Merger will not have an adverse impact on rates. However, this claim fails in light of the Applicants' complete failure to consider the cost and rate impacts of their RTO decision, the cost and rate impacts of joint dispatch, and the cost and rate impacts from the altered transmission needs and costs.

Applicant Witness Spring is the only Applicant witness to address the City's concerns. Mr. Spring claims that questions about the impacts and implications of participation in one RTO over another are not appropriately addressed in this proceeding. Rebuttal Testimony of Richard A. Spring at 2. Mr. Spring's response begs the issue. The City's witness, Mr. Mark Volpe, former Director of Regulatory Affairs for the Midwest ISO, explained in his rebuttal testimony that there are significant cost differences to the Applicants (and hence the Applicants' customers) depending whether KCP&L and

Aquila, once merged, place all of the merged entities' electric assets in the same RTO such as SPP, or if the merged entity splits its RTO membership between SPP and the Midwest ISO. Mr. Volpe outlined the key cost components of the two RTOs and explained the differing types of costs the Applicants' customers could potentially be exposed to, given the distinct differences between the SPP and the Midwest ISO. See, Rebuttal Testimony of Mark J. Volpe. His testimony explains, compares and contrasts the key differences between the two RTOs related to: 1) the basic functions of their energy markets (Id. at 7-13); 2) the mechanisms used to recover their respective RTO's administrative costs (Id. at 14-18); 3) the potential exposure to energy market charges that are uplifted to load such as Revenue Neutrality Uplift ("RNU") and Revenue Sufficiency Guarantee ("RSG") charges (Id. at 18-25); 4) the procurement of ancillary services (Id. at 26-30); 5) rate pancaking for transactions between the various RTOs (Id. at 30-33); 6) the RTO's plans for additional regional transmission infrastructure expansion and the associated cost allocation implications (Id. at 33-38); and 7) the economic and reliability benefits which can be obtained as a result of a single dispatch. (Id. at 38-39). Mr. Volpe concludes that the decision of RTO membership is not a trivial issue and would have an impact on the Applicants' costs on a going forward basis. Id. at 39-40.

Now that the Applicants have explicitly chosen a dual RTO approach, these differences become central to the proceeding. There can be no question that an RTO selection is significant, or that an RTO selection will have some affect on the Applicants. The question is simply, to what extent will the decision affect the Applicants costs, rates and operations. Yet, no analyses whatsoever have been performed or proffered by the

Applicants that would permit the Commission or any party to determine the extent of the affects of this decision in this proceeding.

The fact that Applicants have an application pending in another docket before this Commission bifurcates directly related and relevant matters. If the merger is approved as the Applicants urge without any consideration of the RTO selection, the MPSC may be left powerless on a post-merger basis to address these key impacts.

B. Estimated Savings are Based on Outdated and Incomplete Data.

The Application alleges a combination of status quo or substantial savings (\$500 million over five years), but the City questions how Applicants, the Commission or customers can undertake an informed evaluation when such key matters as joint generation dispatch and RTO participation have yet to be evaluated by the Applicants. The projected savings are, necessarily, incomplete projections, half of which are proposed to inure to the benefit of the Applicants' shareholders. E.g., Application at 21. Whether and to what extent these savings are either reduced or enlarged now that the Applicants have announced Aquila's intent to join the Midwest ISO is a relevant inquiry. The Applicants should be directed to provide a detailed analysis of the effect of the RTO selection on the estimated savings.

C. Joint Dispatch of Generation.

The Application states that the two Applicants' generation will not be jointly dispatched, but does not foreclose the possibility of joint generation dispatch in the future. See Testimony of F. Dana Crawford at 5. Whether or not the generation is jointly dispatched would be expected to have cost and rate consequences. To the extent that

joint dispatch would be beneficial to the Applicants and their customers, then evaluation should be undertaken to determine whether the Commission should require joint dispatch. But that analysis must also consider the Applicants' RTO selections. Joint dispatch under a single RTO and joint dispatch under two separate RTOs are very different operationally with very different cost impacts.

D. Transmission and Interconnection Matters.

The City is largely dependent on the interconnections with and transmission service across the transmission systems of KCPL and Aquila. Rebuttal Testimony of Paul N. Mahlberg at 2-4. Yet, one cannot begin to evaluate whether or how the combined Applicants' operations will affect the available transmission capacity for others, which RTO will be responsible for transmission planning or tariff administration, or the like. The City could find no commitment in the Application to ensure that it will not be adversely affected, will not have import capability restricted, and will not be made captive to the merged company. Applicants offer no assurance that they will undertake transmission improvements if and as necessary to avoid such adverse impacts, much less to remedy already existing constraints, and they most certainly offer no indication that they will do so at their cost as part of the cost of merging.

On rebuttal, Applicant Witness Spring states that these arguments have already been addressed by FERC. Spring Surrebuttal Testimony at 6-7. However, like Applicants did here initially, the Applicants advised FERC that both KCPL and Aquila provide transmission service through a single RTO - the SPP. What we now know is that the Applicants are considering operating not under a single RTO, but two RTOs. Mr. Spring's rebuttal testimony fails to account for this key fact.

The City understands that, generally, the FERC has jurisdiction over transmission matters. However, that jurisdiction over transmission matters lies with FERC does not mean that this Commission does not and should not have any interest in the impacts of such matters on customers and rates.

Because there is now an open docket on the Applicants' RTO selection, the Commission should delay a decision on the Merger Application until the issues in the RTO docket are resolved. This will inform the Commission and interested parties of key matters that bear directly on the determination of whether this merger is not adverse to the public interest. Once the RTO selection is approved or not approved, parties will have a more definitive direction of the company, and can explore the costs and operational impacts of that direction.

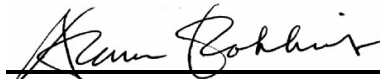
III. CONCLUSIONS

WHEREFORE, for the foregoing reasons, the City respectfully requests that the Commission adopt the positions set forth herein.

Dated this 27th day of November, 2007.

Respectfully submitted,

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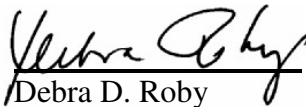
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Prehearing Brief of the City of Independence, Missouri was served electronically to all parties on the service list compiled by the Secretary of the Commission for this proceeding.

Dated at Washington, D. C., November 27, 2007

A handwritten signature in black ink, appearing to read "Debra D. Roby", is written over a horizontal line.

Debra D. Roby
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