

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 )

MOTION IN LIMINE OF  
INDICATED INDUSTRIALS

COMES NOW the SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIA-  
TION ("SIEUA"), AG PROCESSING INC A COOPERATIVE ("AGP") and  
PRAXAIR, INC ("Praxair") (collectively "Indicated Industrials")  
and, respectfully move that statements contained in prefiled  
testimony and associated exhibits be excluded from this proceed-  
ing as irrelevant and in support thereof further state:

1. This proceeding was commenced by and is limited by  
the Application submitted here by Great Plains Energy ("GPE") and  
Aquila Networks ("Aquila").

2. That Application plainly states that the authority  
that is sought is the acquisition of Aquila by GPE through the  
mechanism of a merger with a wholly-owned subsidiary of GPE. No  
request has been submitted to authorize a merger, combination,  
integration, either direct or indirect, between Kansas City Power  
& Light Company ("KCPL") and Aquila.

3. The controlling statute, in relevant part, provides:

393.190. 1. No . . . electrical corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, **direct or indirect**, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same **shall be void**. (Emphasis added)

Both KCPL and Aquila are "electrical corporations" within the scope of this statute. Accordingly, no action, business combination, operational integration, or other indirect or direct means of combination of KCPL and Aquila requires Commission approval which has not been sought.

4. Discussion of these activities is, therefore, beyond the scope of this proceeding as established by the Application. Absent emendation of that Application, testimony regarding these activities is irrelevant.

5. The scope of this proceeding is necessarily established by the Application and its requested relief. Other parties have understandably based their presentations on the scope established by the application. Permitting irrelevant evidence to come into the record will prejudice them and affect their rights to due process.

6. The Commission's June 19, 2007 Scheduling Order set November 28, 2007 for the parties to file "known objections" to the prefiled testimony. Given that an objection cannot be technically be made unless and until testimony is, in fact, offered into the record,<sup>1/</sup> the undersigned parties seek through this motion to exclude from the record and from consideration by the Commission all statements and exhibits that discuss or reference directly or indirectly combinations of operations of KCPL and Aquila for which Commission approval has **not** been requested.

7. Moreover, because several witnesses for the Applicants appear to be imprecise in their use of terminology, this request for exclusion must necessarily be limited to what is reasonably "known" at this point in time, based upon a reasonable reading of the prepared testimony.

8. Some appear to argue that this expansion should be permitted because other transactions have "slipped through." Whether or not true, this does not justify continued violations. It does not work to tell the Highway Patrolman that "officer, I've always driven that fast on this stretch of road."

9. Arguments that "merger" doesn't mean "integration" and that "combination" or "consolidation" are not the same as a "merger" are knocked askew by the "direct and indirect" language

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<sup>1/</sup> Not infrequently in Commission proceedings, testimony and/or exhibits are prefiled pursuant to rule. However, by the time the hearing has arrived, changes in issues, personnel or schedules result in that testimony never being offered into the record. Accordingly a premature "objection" is meaningless.

in the statue. Plainly achieving the result of combined operations by **any means**, direct or indirect, requires Commission authorization and are void -- not "voidable" -- in the absence of that approval. These arguments are sophistry and not evidentiary.

10. Additionally, testimony from other parties may reference or respond to the subject (and below-listed) prefiled testimony or exhibits. Granting this motion will obviate the need for some, possibly all, of that testimony and it is expected that those parties will withdraw those offerings. Hence, we have not included that responsive testimony in the following listing. In amplification of the foregoing, and not in limitation thereof, the following items have been identified at this time for exclusion from this proceeding as irrelevant:

a. Bassham Direct, p. 7, ll 1-15; p. 10, ll. 1, p. 11, l. 13; p. 12, ll. 3-13; p. 16, ll. 7-22;

b. Bryant Direct, p. 1, ll. 16-19; p. 2. l. - p. 3, l. 3; p. 5. l. 17 - p. 6, l. 2; p. 9, ll. 17 - p. 11, l. 13; p. 11, l. 20 - p. 12, l. 4;

c. Cline Direct, p. 2, l. 12 - p. 5, l. 18; p. 6, ll. 9-21; p. 7, ll. 13-23; p. 8, l 1 - p. 9, l. 15; p. 10, ll. 1-16;

d. Crawford Direct, p. 2, l. 7 - p. 3, l. 6; p. 5, l. 10 - p. 7, l. 3;

e. Downey Direct, p. 3, l. 11 - p. 4, l. 8; p. 4, l. 9 - p. 7, l. 3;

f. Herdeggen Direct, p. 2, ll. 10-14; p. 2, l. 19 - p. 12, l. 4;

g. Marshall Direct, p. 2, l. 13 - p. 10, l. 9;

h. Spring Direct, p. 2, ll. 17-22; p. 6, l. 1 - p. 7, l. 14; p. 9, ll. 13-15; p. 9, l. 20 - p. 11, l. 15;

i. Wright Direct, p. 2, ll. 9-13; p. 3, ll. 11-16; p. 4, ll. 10-16; p. 4, l. 21 - p. 5, l. 9; p. 6, l. 8 - p. 8, l. 4;

j. Zabors Direct, p. 2, ll. 11-17; p. 3, ll. 3-9; p. 3, l. 20 - p. 6, l. 10; p. 8, l. 3 - p. 9, l. 2; p. 9, l. 7 - p. 11, l. 10; p. 11, l. 16 - p. 12, l. 5; and exhibits RTZ-1 and RTZ-2 to the extent they discuss or reference combined or integrated operation of KCPL and Aquila;

k. Bassham Supplemental Direct (HC) [and corresponding pages/lines in NP version], p. 6, l. 16; p. 8, l. 12 - p. 9, l. 11;

l. Bryant Supplemental Direct, p. 1, l. 9 - p. 7, l. 16; p. 8, ll. 11-18;

m. Buran Supplemental Direct, p. 2, l. 21 - p. 12, l. 2; p. 13, l. 14 - p. 16, l. 19; p. 17, l. 3 - p. 27, l. 17;

n. Cline Supplemental Direct (HC) [and corresponding pages in NP version], p. 13, ll. 5-10;

o. Crawford Supplemental Direct (HC) [and corresponding pages in NP version], p. 1, l. 9 - p. 2, l. 2; p. 2, l. 8 - p. 9, l. 3;

p. Herdegen Supplemental Direct, p. 1, l. 4 - p. 22, l. 13;

q. Kemp Supplemental Direct, p. 6, l. 5; p. 8, l. 21 - p. 17, l. 15; p. 18, l. 11 - p. 23, l. 6; p. 24, ll. 10-18; p. 25, ll. 6-10; p. 26, l. 5 - p. 28, l. 2; WJK-3; WJK-4, WJK-5;

r. Marshall Supplemental Direct (HC) [and corresponding pages in NP version], p. 1, l. 3 - p. 2, l. 2; p. 2, ll. 14-18; p. 3, l. 2 - p. 7, l. 16; p. 8, l. 4 - p. 22, l. 4

s. Rush Supplemental Direct, p. 3, ll. 1-16; p. 4, l. 18 - p. 9, 13;

t. Steinke Supplemental Direct, p. 2, ll. 10-13; p. 2, l. 16 - p. 8, l. 16;

u. Tickles Supplemental Direct, p. 2, l. 10 - p. 3, l. 19; p. 4, l. 7 - p. 6, l. 3;

v. Van Dyne Supplemental Direct, p. 2, l. 9 - p. 5, l. 10;

w. Zabors Supplemental Direct, p. 2, l. 17 - p. 15, l. 14; RTZ-3; RTZ-5; RTZ-6; RTZ-7; RTZ-8; RTZ-9; RTZ-10; RTZ-11; RTZ-12;

x. Bassham Surrebuttal, p. 6, l. 3 - p. 8, l. 15; p. 9, l. 15 - p. 10, l. 5;

y. Giles Surrebuttal (HC) [and corresponding pages of NP version], p. 3, l. 9 - p. 7, l. 3;

z. Kemp Surrebuttal, p. 2, l. 1 - p. 4, l. 15;  
p. 7, l. 5 - p. 9, l. 13; p. 10, l. 9 - p. 15, l. 15;

aa. Marshall Surrebuttal, p. 1, ll. 4-17; p. 2,  
l. 3 - p. 4, l. 18; p. 5, l. 3 - p. 6, l. 15; p. 7, l. 1 - p. 9,  
l. 5; p. 10, ll. 6-20; p. 11, l. 5 - p. 13, l. 16; p. 16, ll. 13-  
23;

ab. Spring Surrebuttal, p. 1, ll. 4-12; p. 4, ll.  
9-21; p. 7, ll. 16-21.

11. Other areas of testimony, both live and prefiled,  
may be identified as this proceeding moves forward and these  
parties respectfully reserve the right to make timely objections  
in addition to the specific items listed above, as being properly  
subject to this motion.

WHEREFORE, the Commission should reject and not consid-  
er, at a minimum, the above-identified items of testimony and  
generally should not take into consideration testimony that is



not relevant to the scope of the transaction for which approval is requested by the Application.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

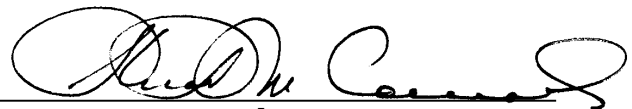


Stuart W. Conrad MBE #23966  
David L. Woodsmall MBE #40747  
3100 Broadway, Suite 1209  
Kansas City, Missouri 64111  
(816) 753-1122  
Facsimile (816) 756-0373  
Internet: stucon@fcplaw.com

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: November 28, 2007