

**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)	Case No. EM-2007-0374
the Merger of Aquila, Inc. with a Subsidiary of Great)	
Plains Energy Incorporated and for Other Related)	
Relief.)	

**MOTION FOR PROTECTIVE ORDER OF GREAT PLAINS ENERGY INC. AND
KANSAS CITY POWER & LIGHT CO. TO QUASH DEPOSITION SUBPOENAS**

Applicants Great Plains Energy Incorporated (“Great Plains Energy”) and Kansas City Power & Light Company (“KCPL”), pursuant to Missouri Rules of Civil Procedure 56.01(c) and 57.09(b)(1), move for a protective order to quash certain deposition subpoenas served by Staff or otherwise to limit the scope of examination in any deposition taken pursuant to the subpoenas.

Summary

Great Plains Energy and KCPL (“Applicants”) move that the Commission to quash the subpoenas that were served on March 11 upon eight¹ (Michael Chesser, William Downey, Stephen Easley, John Grimwade, Brent Davis, Terry Foster, Lora Cheatum, Steve Jones) KCPL employees that purport to direct these individuals to appear for depositions in this case.

The areas of examination that Staff seeks in these depositions are neither relevant nor reasonably calculated to lead to discovery of admissible evidence with respect to the sole issue in this proceeding: Whether the proposed acquisition of Aquila, Inc. (“Aquila”) by Great Plains Energy is detrimental to the public interest. If the deposition subpoenas are not quashed

¹ Staff has also served subpoenas on Terry Bassham, Chris Giles and Michael Cline. Applicants will produce these individuals for deposition as previously indicated. However, Applicants have the same objection to the documents requested by Staff from these three individuals as those detailed in this pleading and request that the scope of the questioning in those depositions be limited as outlined below.

altogether pursuant to a protective order that discovery not be had under Rule 56.01(c)(1), Applicants request that the Commission enter an order under Rule 56.01(c)(4) that limits the scope of any depositions to issues relevant to the proposed acquisition.

Background

1. On February 25 the Joint Applicants Great Plains Energy, KCPL and Aquila filed 18 pages of additional supplemental direct testimony, consisting primarily of concessions that resulted in the withdrawal of certain key requests that had earlier been presented to the Commission. Responding to issues and concerns raised by the other parties, as well as by Commissioners, the Joint Applicants' additional testimony narrowed the scope of this proceeding by removing the following issues from the case that had been in controversy.

a. Interest Expense: The Joint Applicants do not seek to recover in any future general ratemaking proceeding any interest expense in excess of equivalent investment-grade debt that is currently held by Aquila.

b. Merger Savings: Joint Applicants do not request a specific merger savings sharing mechanism, but rather will rely upon the traditional regulatory ratemaking process so that any merger savings will be passed through to Aquila and KCPL customers in future rate cases.

c. Regulatory Amortizations: Joint Applicants do not request authority in this proceeding for Aquila to use regulatory "Additional Amortizations" to maintain the investment-grade credit rating that Aquila anticipates receiving upon approval of its acquisition by Great Plains Energy.

d. Aquila Senior Executive Severance Costs: Joint Applicants do not request recovery of the severance costs related to departing Aquila senior executives.

2. In response to this effort by the Joint Applicants to narrow and simplify the issues, Staff now seeks to expand substantially the scope of these proceedings by subpoenaing eight witnesses for deposition. This effort by Staff to expand the scope of these proceedings appears to be a collateral attack on the 2005 decisions contained in Case No. EO-2005-0329 as well as a “fishing expedition” by Staff for information not related to the merger.

3. The Commission’s Report and Order in that case, as amended, approved a lengthy and detailed Stipulation and Agreement (“2005 Stipulation”) that established a formal Regulatory Plan to implement the CEP and that provides a process for the review of information and data related to the CEP. Great Plains Energy and KCPL are utilizing the existing procedures in the 2005 Stipulation, and are prepared to utilize other proper Commission procedures to respond to any of the issues related to the CEP.² This means that the Applicants intend to use the CEP process to allow access to certain of the KCPL employees that Staff has subpoenaed who have information about various projects at Iatan and elsewhere that should be useful and helpful to Staff, as well as other interested parties. In fact, four of the KCPL employees Staff seeks to depose met with Staff, Public Counsel and other Signatory Parties as a part of the CEP process on March 12 for the purpose of answering questions regarding the Iatan 1 and 2 construction projects.

Argument

4. The issue before the Commission in this case is whether the proposed acquisition is detrimental to the public interest. See 4 CSR 240-3.125. The depositions sought by Staff are not reasonably relevant to that issue as they seek to expand the scope of this merger case by

² This would include any pertinent provisions of the Aquila Stipulation and Agreement approved by the Commission on August 9, 2005 in Case No. EO-2005-0293 where Aquila’s participation in the Iatan 2 project was approved.

deposing, among other individuals, several KCPL employees based solely upon their current or former responsibilities related to the Iatan construction project.

5. Generally, courts will enforce an administrative agency subpoena if: (1) the inquiry is within the authority of the agency; (2) the demand is not too indefinite; and (3) the information sought is reasonably relevant. Jackson v. Mills, 142 S.W.3d 237, 240 (Mo. App. W.D. 2004) (enforcement of administrative subpoena denied). However, agencies do not have “unfettered discretion” in determining relevancy. Jackson v. Mills, 142 S.W.3d at 240. See Mo. R. Civ. P. 56.01(b)(1) (limiting scope of discovery to matters “relevant to the subject matter in the pending action” and “reasonably calculated to lead to the discovery of admissible evidence”); Mo. R. Civ. P. 56.01(c); Mo. R. Civ. P. 57.09 (courts may enter protective orders to preventing or limiting discovery and to quash subpoenas).

6. In Jackson the Court of Appeals concluded that a subpoena issued by the Director of the Department of Public Safety to obtain the file of an internal affairs investigation conducted by the Independence Police Department was not “reasonably relevant” to a disciplinary proceeding involving an officer. 253 S.W.3d at 240-42. See State ex rel. Chaney v. Franklin, 941 S.W.2d 790, 792-94 (Mo. App. 1997) (barring depositions relating only to collateral issue). Likewise, the depositions sought from Great Plains Energy and KCPL employees are unrelated to the proposed acquisition of Aquila and not “reasonably relevant” to the issues before the Commission.

7. Here the Commission must approve the application if the acquisition is not detrimental to the public interest. State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980). The transaction that must be examined by the Commission is the acquisition of Aquila by a subsidiary of Great Plains Energy, and the integration of Aquila and KCPL personnel and operations. Questions related to CEP issues such as the cost of and

schedule relating to the environmental upgrades at Iatan 1 and the construction of Iatan 2 are outside the scope of the transaction. Aquila and KCPL are currently partners, along with other utilities, at both Iatan 1 and 2, and the proposed acquisition of Aquila does not change this relationship.

8. The most blatant example of Staff's overreaching is found in the list of documents (see Attachment A) that it requests KCPL witnesses to produce. For example, Staff production requests number 4, 5, 7, 8, 10 have no relevance to the proposed merger and instead ask for GPE/KCPL policies and procedures relating to employee complaints concerning any aspect of both companies. Many of the document requests (5, 7, 8, 10) have no time limit and are thus overbroad and unduly burdensome. These requests are vague and ambiguous and deposition questions in these areas are in no way related to whether GPE's acquisition of Aquila is detrimental to the public interest. In addition, production requests 6 and 9 are overly broad and burdensome as they would require Applicants to search extensive employee records for an unspecified period of time.

9. Likewise, Staff production requests numbers 11 (copy of current Code of Conduct); 21 (documents that describe every course available at GPE University); 25 (documents provided to the Comprehensive Energy Oversight Committee); and 26 (identification of the members of the Comprehensive Energy Oversight Committee) have no relevance to the merger and can only be seen as overreaching by Staff.

10. Staff has asserted that the above depositions are necessary because of (1) "developments regarding the cost and schedule of Iatan 1 and Iatan 2"; (2) "the interrelationship between Iatan 1 and Iatan 2 and GPE's acquisition of Aquila"; (3) "questions respecting KCPL's procurement function and asserted merger savings estimates"; and (4) "questions respecting debt rating information and related debt ratings." See Response of Staff, et al. to Procedural Schedule

Proposed by Joint Applicants at 10 (filed Mar. 4, 2008) (“Staff Response”). KCPL will address each of Staff’s reasons below.

11. The cost or the timing of the projects at the Iatan Generating Station are not reasonably relevant to the Aquila acquisition. All of these projects are being undertaken pursuant to the CEP and the 2005 Stipulation. The projects are independent of the merger, and any modifications, delays, or cost increases will occur regardless of whether the merger takes place. Although the Commission has authority over the costs and construction activities at the Iatan Station, these matters are not a part of the Aquila acquisition and not relevant to the issues for decision in this case. While the 2005 Stipulation’s process for addressing issues raised by the signatory parties may well involve discussions with Iatan project directors, procurement managers, and other personnel, depositions of these individuals in a merger case exceeds the bounds of relevance.

12. Staff asserts that there is an “interrelationship between Iatan 1 and Iatan 2 and GPE’s acquisition of Aquila” that justifies their deposition subpoenas, without any indication of what “interrelationship” is to be explored. As Joint Applicants have advised the Commission, there has been no change in the structure of the acquisition. There has been no change with regard to the utilities that are partners at these units. With the exception of the withdrawal of certain requests noted in Paragraph 1, the Joint Applicants continue to request that the acquisition be approved. While Iatan 1 today and both units in the future will provide power for KCPL and Aquila customers (as well as customers of other utilities), this will occur whether or not the acquisition is consummated. Staff has already deposed four senior executives of the Joint Applicants,³ and had an opportunity with each of them to explore such “interrelationship.” The

³ Staff deposed Aquila’s Richard C. Green and Jon R. Empson on November 27, 2007, and Great Plains Energy’s Michael J. Chesser and William H. Downey on November 28, 2007.

passage of a little more three months has not changed the “interrelationship,” and any further depositions on this topic would constitute an annoyance and undue burden.

13. For example, Staff production requests 15, 16, 17, 18, 19, 22, 24, 27, 28, 29 and 30 all request information concerning construction activities at Iatan or the CEP. As explained above, inquiry into these matters is outside the scope of this proceeding and are properly addressed in the context of the CEP.

14. Staff claims that it has questions concerning “KCPL’s procurement function and asserted merger savings estimates.” While the topic of merger savings as related to procurement or purchasing is relevant to this case, these subjects have already been covered in depth in the depositions of Mr. Chesser and Mr. Downey. Any additional depositions on this issue should begin with the witnesses whose testimony has been filed with the Commission who have not yet been deposed. Additionally, Mr. Downey was asked a number of questions during his deposition relating to purchasing and supply-related cost savings, in connection with documents that KCPL produced to Staff in 2007. See Downey Dep. at 95-112. Staff should not now be permitted to re-plow ground that has already been covered.

15. In addition to relevancy objections, KCPL objects to Staff production request 12, 13, as overbroad in that they contain no timeframe. It is unduly burdensome for the company to provide the information requested by Staff or for witnesses to answer such questions. KCPL also objects to production request 20 as it requests 10 years of documents showing the highest level of procurement or supply chain savings information that is not relevant to the case and is burdensome to produce.

16. In many instances, the Staff requests documents that don’t yet exist because the overbroad requests ask for documents through June 2008. KCPL objects to these requests.

17. Finally, Staff wishes to inquire into credit and debt rating information. The Applicants are willing to produce for depositions in this case the three witnesses who filed supplemental testimony on February 25: Terry Bassham, Michael W. Cline, and Chris B. Giles. To the extent that Staff has questions regarding the expected credit quality of the Joint Applicants post-acquisition of Aquila, including projected operating and capital expenditures, Mr. Bassham and Mr. Cline are the appropriate witnesses to depose. However, any further inquiry into the CEP and matters of pure infrastructure goes beyond potential impacts on credit quality and should not be permitted in this case. Rather, Staff and other parties to the 2005 Stipulation should address these CEP issues pursuant to the process that the parties agreed to and the Commission approved in 2005.

18. Based upon what has been served, the Commission should quash the depositions altogether. However, if the Commission sees fit to permit any of the depositions, they should be governed by a protective order limiting Staff's inquiries to relevant issues relating to the benefits and detriments of the acquisition of Aquila. Under Rule 56.01(c), persons from whom discovery is sought are entitled to an order protecting them from "annoyance, embarrassment, oppression, or undue burden or expense." The protective order "may provide that the discovery not be had or may be had only as to certain matters or on specified terms and conditions." State ex rel. Pooker v. Kramer, 216 S.W.3d 670, 672 (Mo. 2007). Allowing Staff to proceed with a "fishing expedition" into construction projects, complaint procedures, codes of conduct, training courses, procurement policies, ethics, integrity and transparency issues that are independent of the acquisition will unduly burden the witnesses, and result in significant needless expense to Great Plains Energy and KCPL, as well as to the Commission.

WHEREFORE, Great Plains Energy Incorporated and Kansas City Power & Light Company respectfully request that a protective order be issued that quashes the subpoenas dated

March 11, 2008 for the depositions of Michael Chesser, William Downey, Stephen Easley, John Grimwade, Brent Davis, Terry Foster, Lora Cheatum, Steve Jones. In the alternative, they move the Commission for a protective order that limits questioning at the depositions to matters relating to the proposed merger and not to the Comprehensive Energy Plan, including issues related to the Iatan Generating Station and its Units 1 and 2, GPE/KCPL internal complaint procedures, codes of conduct, training courses, and procurement policies.

Respectfully submitted,

/s/ Karl Zobrist

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document have been mailed, hand delivered, transmitted by facsimile or emailed this 12th day of March, 2008, to all counsel of record.

/s/ Karl Zobrist

Karl Zobrist

Attachment A

SUBPOENA DUCES TECUM



THE STATE OF MISSOURI: To Michael Chesser

You are hereby commanded, pursuant to Sections 386.040, 386.250(1) and (7), 386.390.4, 386.420.2, 386.440(1) and (2), 386.460, and 393.140 RSMo., to be and appear personally to testify under oath before a notary public or other person authorized to give oaths on Friday, March 21, 2008, at 1:30 p.m. of that day, at 1201 Walnut, Kansas City, in the County of Jackson, in the State of Missouri or at such other time, date and place as the Staff of the Missouri Public Service Commission may agree, at a deposition taken on behalf of the Staff of the Missouri Public Service Commission in Case No. EM-2007-0374, 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 Related Relief which is pending before the Missouri Public Service Commission.

And that you bring with you and produce at said deposition a copy of the items described on Attachment A. And hereof fail not at your peril.

The person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon its return.

Given under my hand, this 17th day of March, 2008
[Signature] Secretary
[Name] [Title]

RETURN

I HEREBY CERTIFY that I have served the within writ by reading the same in the presence and hearing of the within named _____ on the _____ day of _____, _____, in _____ County, in the State of Missouri.

[Name]

[Title]

Michael Chesser Attachment A

1. Each and every Proxy Statement filed with SEC and provided to shareholders regarding Great Plains Energy's proposed acquisition of Aquila.
2. Each and every document created since June 1, 2007 that shows the status at any time of the potential Great Plains Energy sale of Strategic Energy.
3. For each opinion given to Great Plains Energy or Kansas City Power & Light Company by a consultant after January 1, 2008 on the impact on the debt ratings of Kansas City Power & Light Company and/or Aquila if Great Plains Energy acquires Aquila, each and every document provided to or received from the consultant.
4. A copy of each and every policy and each and every procedure currently available to an employee of Great Plains Energy or Kansas City Power & Light Company to report concerns regarding any aspect of the operations of Great Plains Energy or Kansas City Power & Light Company.
5. A copy of each and every policy and procedure for the processing of a formally expressed concern of a Great Plains Energy or Kansas City Power & Light Company employee regarding any aspect of the operations of Great Plains Energy or Kansas City Power & Light Company.
6. Each and every document where an employee of Great Plains Energy or Kansas City Power & Light Company expresses any concern about Great Plains Energy's pending acquisition of Aquila.
7. Each and every document where an employee of Great Plains Energy or Kansas City Power & Light Company expresses any concern about the progress of construction and/or the costs of the Iatan 1 and/or Iatan 2 Kansas City Power & Light Company Regulatory Plan activities
8. Each and every document where an employee of Great Plains Energy or Kansas City Power & Light Company expresses any concern about the potential sale of Strategic Energy, including but not limited to the anticipated sale price.
9. Each and every document where an employee of Great Plains Energy or Kansas City Power & Light Company expresses any concern about information provided to debt rating agencies or to consultants evaluating potential future debt rating(s).

10. A copy of each and every policy and each and every procedure of the process(es) at Great Plains Energy and at Kansas City Power & Light Company to address employee grievances whistle blowers, and retaliation against employees.
11. A copy of the current Code(s) or Standard(s) of Conduct at Great Plains Energy and at Kansas City Power & Light Company.
12. A copy of each and every procurement policy and procedure at Great Plains Energy and at Kansas City Power & Light Company.
13. A copy of each and every policy and procedure requiring that particular provisions must be in each contract for goods or services made between Great Plains Energy or Kansas City Power & Light Company and third parties.
14. Each and every Great Plains Energy Report on Operating and Capital Budgets/Plans made for the period 2008-2012.
15. The most current Iatan Construction Project Execution Plan (PEP), with all appendices and attachments.
16. Each and every document Schiff Hardin, LLP, Thomas J. Maiman, J. Wilson and Associates, Inc. and/or Meyer Construction Consulting, Inc. provided to Kansas City Power & Light Company during the period June 1, 2005 through June 1, 2008.
17. Each and every Iatan 2 Project Definition Report.
18. Each and every appendix and each and every attachment to the June, 2007 Iatan Construction Project Execution Plan.
19. The "Cost Portfolio" for the Iatan projects from June 1, 2005 through June 30, 2008.
20. Each and every document showing the highest level of procurement or supply chain savings Great Plains Energy and Kansas City Power & Light Company have achieved on an annual basis during the last ten years.
21. Document(s) that list and describe each and every course available at GPE University.
22. Each and every e-mail to or from any or all of the following—Chris Giles, Bill Downey, Dave Price, the accounting team and other Kansas City Power & Light Company or Great Plains Energy senior management—regarding the Comprehensive Energy Plan sent at any time during the period June 1, 2005 through June 1, 2008.
23. Document(s) that identify (1) all of the members of Kansas City Power & Light Company's accounting team, (2) Kansas City Power & Light Company's senior management and (3) Great Plains Energy's senior management.

24. Each and every presentation and document provided to the Board of Directors of Great Plains Energy and/or the Board of Directors of Kansas Power & Light Company during the period from June 1, 2005 through June 1, 2008 regarding construction of Iatan 2 or construction activities on Iatan 1.
25. Each and every document provided to the Comprehensive Energy Plan Oversight Committee by anyone during the period June 1, 2005 through June 1, 2008.
26. A document that identifies the current members of the Comprehensive Energy Plan Oversight Committee.
27. Each and every Iatan "Daily Communication Meeting Minutes" for meetings during the period June 1, 2005 through June 1, 2008.
28. Each and every "Iatan Status Report" made during the period June 1, 2005 through June 1, 2008.
29. Each and every Iatan "Baseline Schedule" created during the period June 1, 2005 through June 1, 2008.
30. Each and every document Ernst and Young or GPE Audit Services received regarding Iatan 1 & 2 construction activities during the period June 1, 2005 through June 1, 2008.