

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)
Related Relief.)

Case No. EM-2007-0374

Notice of Recusal

On April 21, 2008, immediately after officially assuming the duties of Commissioner on the Missouri Public Service Commission, I filed a Notice to the Parties explaining my past employment with a law firm that currently represents a party in the above-captioned matter. The notice requested the parties to file any and all objections to my participation in the case as well as supporting reasons for the objection. This was done in the interest of full-disclosure and transparency in the above referenced contested case.

On April 23, 2008, the Office of Public Counsel as well as the Industrial Intervenors, ("Responding Parties") filed a Joint Response to the Notice. In sum, the Response stated that the Notice was inconsistent with the Judicial Canons as the Canons, specifically Canon 3.E (1)(b), set forth a mandatory requirement that this Commissioner disqualify himself from this case.

This Commissioner believes that the Responding Parties analysis of the Judicial Canons is fundamentally flawed. They cite no authority, nor can they, that the Judicial Canons apply to members of the Missouri Public Service Commission, in

toto, as quasi-judicial officials. The Code of State Regulations that set forth the standard of conduct for Public Service Commissioners contains no mention of the Judicial Canons. Missouri Case Law is unclear at best, as to whether the Judicial Canons apply to Public Service Commissioners and there is a substantial argument that the separation of powers doctrine may specifically prohibit Commissioners as members of the Executive Branch from being regulated by rules promulgated by the Judicial Branch.¹

Despite having the opportunity to raise factually substantive objections to my participation in the above-captioned proceeding, the Responding Parties rely solely on flawed procedural mandates.

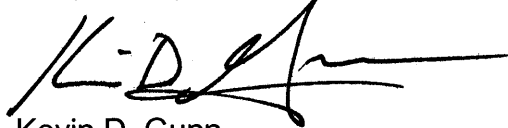
However, while this Commissioner believes that the Judicial Canons do not apply in toto to the quasi-judicial activities of the Commission, they are useful in determining when voluntary recusal by a Commissioner is appropriate.

Canon 3E(1)(b) does provide that recusal is appropriate when..."a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter." This Commissioner will take the Responding Parties' citation of this section as a factual objection that the prior employment with a firm that currently represents a party calls into question the bias or prejudice of the Commissioner. Further, this Commissioner agrees that the aforementioned prior employment may raise a reasonable concern regarding the Commissioner's ability to remain impartial. This Commissioner also acknowledges that the current matter has already been burdened with far too many ancillary issues and that there is no need to add an additional burden to the case.

¹ *Weinstock V. Holden*, 995 S.W.2d 408 (Mo. Banc 1999)

Therefore, this Commissioner will voluntarily recuse himself and will not participate in any process or proceeding that involves in any way from the above-captioned matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'K. D. Gunn', with a long horizontal flourish extending to the right.

Kevin D. Gunn
Commissioner

Dated at Jefferson City, Missouri,
on this 24th day of April, 2008.