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 Inc. and for Other Related Relief	))))))	**Case No. EM-2007-0374**

PREHEARING BRIEF OF CITY OF ST. JOSEPH

COMES NOW the City of St. Joseph, Missouri (hereinafter referred to as "St. Joseph"), by and through counsel, and submits its prehearing brief in this matter.

St. Joseph supports the condition for merger approval proposed by the City of Kansas City concerning municipal franchises. *See*, *Issue VII – Municipal Franchise.*[1] Kansas City requests that Commission approval of the Joint Application be conditioned upon the negotiation of a single, unitary franchise between KCPL/Aquila and the City of Kansas City within nine (9) months of the Commission's approval of the merger.

St. Joseph requests that the Commission impose the condition requested by Kansas City, and broaden such a condition to clearly require that the merged entity negotiate and obtain new municipal franchises in the name of the merged entity in each municipality in which it provides service, including St. Joseph. It is St. Joseph's position that Aquila does not have a valid franchise with the City of St. Joseph and that Aquila has never had a franchise in St. Joseph applicable to it, or in its name, approved by the City. The franchise agreement under which Aquila claims to have the legal right to provide electric utility service within the

[1] **SECOND LIST OF ISSUES AND ORDER OF OPENING STATEMENTS, WITNESSES AND CROSS-EXAMINATION,** filed April 16, 2008.

City of St. Joseph was enacted in 1883 and amended in 1889.[2] Like the franchise granted by Kansas City to KCP&L in 1881, the St. Joseph franchise did not contain a term of years, but did contain durational limits including future action by the Council and the life of the corporation – which has since expired. Similar to the 1881 Kansas City-KCP&L franchise, the 1883 St. Joseph franchise agreement is short, handwritten, contains almost no information on how the parties intend to operate and is truly antiquated. It fails to address critical, modern issues regarding, for example, right-of-way use and relocation costs. The issues raised in the testimony filed on behalf of Kansas City in this case as to its dealings with both Aquila and KCP&L are applicable to the issues experienced repeatedly by St. Joseph in dealing with Aquila.

Further (and apparently unlike the Kansas City-KCP&L franchise), the St. Joseph franchise ordinance ceased to be effective in 2000, when St. Joseph Light & Power Company ceased to exist as a corporate entity by being merged into UtiliCorp United, Inc. (now Aquila). Thus, as has been communicated to Aquila by outside franchise counsel for St. Joseph, "neither Aquila nor Great Plains Energy, Inc. has any current franchise with the City that authorizes operation within the City or in the City's rights-of-way." A letter from Dan Vogel, outside counsel for St. Joseph, to Ms. Renee Parsons of Aquila, dated September 24, 2007, is attached to this prehearing brief.

At the very least, the experience of the City of St. Joseph corroborates the testimony and argument of the City of Kansas City as to the importance of the proposed merger being conditioned on KCP&L and Aquila negotiating new municipal franchises in the merged entity's name within nine (9) months of the

[2] 'An Ordinance establishing Electric Works, and granting right-of-way to the St. Joseph Electric Light and Power Company,' *approved June 25, 1883,*" amended by Special Ordinance No. 566 (dated February 12, 1889).

Commission's approval of the merger. St. Joseph supports Kansas City's proposal in that regard, as per *Issue VII – Municipal Franchise* of the Second List of Issues being filed in this case.

St. Joseph further requests that the Commission impose a broader condition on approval of the merger. St. Joseph requests that merger approval be conditioned on Aquila or the merged entity negotiating a new municipal franchise with the City of St. Joseph, specifically, within nine (9) months of the Commission's approval of the instant merger.

At the very least, the Commission should condition merger approval upon a demonstration to the Commission by Great Plains/KCP&L/Aquila, within three (3) months after Commission approval of the merger, that it holds valid municipal franchises to provide service in each municipality in which the company or companies provide electric utility service. Section 393.170, RSMo, provides that before a certificate of convenience and authority shall be issued to an electrical corporation by the Commission, a verified statement of the president and secretary of the corporation shall be filed with the Commission "showing that it has received the required consent of the proper municipal authorities."

It cannot reasonably be argued that, once an electric utility is serving in a municipality, it is entitled to continue to do so even if its municipal franchise ceases to exist. As stated in Mr. Vogel's letter to counsel for Aquila: "In light of the court's ruling in *StopAquila.Org v. Aquila, Inc.,* 180 S.W.3d 24 (Mo. Ct.App. 2005), Aquila is certainly on notice of the significance of the franchise authority in conducting business within a jurisdiction." The failure of Aquila to address the problem, despite years of notice, underscores the need for PSC action to insist that franchise consent of the City required by Chapter 393 is mandated as a condition of the merger.

WHEREFORE, the City of St. Joseph submits its Prehearing Brief in this case.

Respectfully submitted,

/s/ William D. Steinmeier

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COUNSEL FOR THE CITY OF ST. JOSEPH, MISSOURI

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at gencounsel@psc.mo.gov) and the Office of Public Counsel (at opcservice@ded.mo.gov), and to be served electronically or by U.S. Mail on counsel of record, on this 16th day of April 2008.

/s/ William D. Steinmeier
William D. Steinmeier

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September 24, 2007

Ms. Renee Parsons
Attorney at Law
20 West Ninth Street
Kansas City, Missouri 64105

Re: Aquila Franchise

Dear Ms. Parsons:

In light of the pending sale of electric assets of Aquila, Inc. to Great Plains Energy, Inc., we are writing on behalf of the City of St. Joseph to restate the City's position that neither Aquila nor Great Plains Energy, Inc. has any current franchise with the City that authorizes operation within the City or in the City's rights-of-way. While the City is prepared to discuss terms for granting such a franchise to Aquila and/or to any successor of the operations, we request that Aquila and Great Plains Energy, Inc. provide us with information as to their intent to seek such a franchise before or as a condition of closing on any such transfer.

In a letter dated December 15, 2006, you refer to Special Ordinances No. 951 and No. 566 granting a predecessor corporation, St. Joseph Electric Light and Power Company, a franchise to operate electric works within the City. You further state that such franchise was a perpetual franchise and, therefore, you imply that this franchise grants Aquila perpetual authority as well. As previously expressed to you, the City does not agree that Aquila has any franchise authority with the City.

First, your claim that the franchise granted by Ordinances Nos. 951 and 566 are perpetual because they have no duration is simply not accurate. Ordinance No. 951 granting the franchise specifically was limited by the qualification that the grant was "subject to future action by the Mayor and City Council." Ordinance No. 566 amended that franchise, and substituted a limitation that the grant of the Franchise was "during the life of said corporation." Accordingly, the original franchise is subject to Council action and the amended franchise is further limited in duration to the life of the original corporation. Both or either provisions prevent the franchise from being considered "perpetual" as asserted in your letter.

Further, there is no dispute that the "predecessor" corporation, St. Joseph Electric Light and Power Company, was merged out of existence and no longer exists as a valid corporation. Therefore, even if the prior franchise had continued, it ceased upon the expiration of that corporate life. According to the Missouri Secretary of State records, on December 31, 2000, St.

Joseph Light & Power Company, a Missouri corporation, was merged into Utilicorp United, Inc., with only Utilicorp United, Inc remaining as the "surviving corporation." The corporate life of St. Joseph Electric Light and Power Company is expired and the new corporation did not obtain a new franchise relative to the new corporation. For this reason, we need not even rely on the further qualification granting complete Council discretion, which was replaced by Ordinance No. 566, but for which the Council would still have authority to repeal.

In addition, the City is a home rule municipality and its charter expressly prohibits franchises in excess of twenty years in duration. ***See St. Joseph Charter §13.2.*** To the extent that the franchise amendment was a unilateral change, the Charter amendment clearly supersedes such unilateral amendment and would further result in expiration of the original franchise even if the corporation had not expired.

Finally, note that the franchise to St. Joseph Electric Power and Light Company did not authorize a grant to its successors or assigns and, as noted above, was expressly limited to the life of the "said corporation."

For these and other reasons, the City continues to assert that no lawfully required franchise exists, and under any view, Aquila proceeds at significant risk in continuing to refuse to obtain a current franchise authorizing it to do business within the city. In light of the court's ruling in ***StopAquila.Org v. Aquila, Inc. 180 S.W.3d 24 (Mo. Ct. App., 2005),*** Aquila is certainly on notice of the significance of the franchise authority in conducting business within a jurisdiction. By this letter, we also advise Great Plains Energy, Inc., if it becomes a successor, that it would remain subject to the legal requirement to obtain a franchise in order to lawfully operate within the City. We hope that this letter will facilitate the prompt resolution of obtaining a franchise for Aquila, regardless of any change in ownership that may be contemplated. We look forward to your response.

Very truly yours,

Daniel G. Vogel

cc: Lisa Robertson, City Attorney
Mark English, Great Plains Energy, Inc.