

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)
Approval of the Merger of Aquila,)
Inc., with a Subsidiary of Great)
Plains Energy Incorporated and for)
Other Related Relief)

EM-2007-0374

STATEMENT OF POSITION AND PREHEARING BRIEF
OF INDUSTRIALS

COMES NOW the SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIA-
TION ("SIEUA"), AG PROCESSING INC A COOPERATIVE ("AGP") and
PRAXAIR, INC ("Praxair") and, pursuant to prior orders respect-
fully submit their Statement of Position/Prehearing Brief in this
matter. In this pleading, Industrials have sought to follow the
designation and wording of the list of issues submitted earlier
by Staff. As with the Staff pleading, this may not prove to a
complete list of issues that develop in the case and Industrials
respectfully reserve the right to submit their final briefs on
these or additional issues that may arise during the hearing.

II. Merger Synergy Savings Sharing Proposal

1. Are the estimates of savings from synergies accurate?

- A. Could any of the synergy savings be achieved by KCPL or Aquila on a stand-alone basis absent the acquisition/consolidation/integration?**
- B. Are any of the identified synergy savings dependent on KCPL and Aquila consolidating/integrating/merging their operations?**

Position: Industrials have not made an intensive investigation of the accuracy of Applicants' claims of "synergies." Industrials have, however, reviewed the Applicants' claims of synergies and their own claims of the costs of the transaction as proposed. That investigation has revealed that the transaction as proposed is seriously detrimental to the public interest and should not be approved.

As regards the accuracy of the Applicants' claims of synergies, for the purpose of our analysis, we have ASSUMED for purposes of evaluation only and without conceding their validity, that Applicants' claims regarding synergies. However, that assumption should not be taken to validate Applicants' claims, rather, we have depended upon the Commission Staff (Staff) to make that investigation. Because of Staff's position on the scope of the Applicants' request for approval, there does not appear to be convincing evidence that the claims of synergies are accurate and

therefore such claims must be viewed with considerable skepticism as self-motivated and developed.

Further this statement of position is without prejudice to Industrial's position in alignment with Staff that the Applicants have not sought legal authority to integrate operations between KCPL and Aquila. Because of their failure to seek such authority, questions concerning the calculations of these "synergies" that are dependent upon such integration is not relevant to the decision that the Commission is requested to make.

2. Do the actual synergy savings exceed the sum of the transaction, transition and incremental interest costs that the Joint Applicants propose to recover over the first five (5) years following the acquisition/merger/consolidation? If not, is the proposed merger not detrimental to the public interest?

Response: Based on our analysis and evaluation, they do not. First, see the above discussion. As noted there, solely for the purpose of evaluating Applicants' synergy claims, Industrials ASSUMED without conceding the Applicants' claims. Second, and given that assumption, our evaluation and analysis indicates that the detriment for the first 5 years averages \$19.1 million per year or over \$95 million total (based on public information) and averages greater than that if information identified as HIGHLY

CONFIDENTIAL is considered. Therefore, we have concluded that the proposed transaction is significantly detrimental to the public and should not be approved. However, we have not addressed the question of what constitutes the "actual synergy savings."

Further this statement of position is without prejudice to Industrial's position in alignment with Staff that the Applicants have not sought legal authority to integrate operations between KCPL and Aquila. Because of their failure to seek such authority, questions concerning the calculations of these "synergies" that are dependent upon such integration is not relevant to the decision that the Commission is requested to make.

III. Transaction Cost Recovery

- 1. Should transaction costs be directly charged to ratepayers through cost of service amortizations? Would the proposed merger be detrimental to the public interest if the Commission did so?**

Response: No. Transaction costs such as those identified by the Applicants are entirely the responsibility of the shareholders of the respective companies. These shareholders, through their elected boards of directors, have incurred (or will) these expenses. Ratepayers are customers and were not asked for their

approval before the Applicants moved forward to incur these expenses.

IV. Actual Debt Cost Recovery

1. Should the Commission require GPE/KCPL to continue protecting ratepayers from the activities and results of Aquila's non-regulated businesses by setting rates based on a "regulatory cost of debt" rather than Aquila's actual cost of debt? Would the proposed merger be not detrimental to the public interest if the Commission did not do so?

Response: The Commission should require the Applicants to continue all existing commitments to protect ratepayers from the adverse effects of Aquila's improvident unregulated investments. The ratepayers did not approve these escapades and were not asked to approve them. As captive customers, these costs should be absorbed entirely by the shareholders of Aquila, whomever they may be.

V. Additional Amortization Mechanism

1. Should the Commission allow Aquila to implement "Additional Amortization to Maintain Financial Ratios" similar to those negotiated by KCPL with stakeholders in Case No. EO-2005-

0329? If not, is the proposed merger detrimental to the public interest? If yes:

Response: No. The Additional Amortization mechanism was specifically designed to allow KCPL to preserve its investment grade credit metrics from any downgrade that might be caused by KCPL's Iatan 2 Construction Program and other limited items described in the Regulatory Plan. It was not designed for Aquila and, even for KCPL, does not encompass downgrades that may result from activities other than the construction expenditures associated with the projects specified in the plan. This was an extraordinary measure, obtained through extended negotiation for which value was asked and given and has been approved by the Commission as a stand alone plan and might be in violation of Missouri law but for the agreement of the signatory parties not to pursue legal challenges to the plan. Its terms disclaim precedential value and also deny the Commission the authority to modify the terms and conditions of the Regulatory Plan, which restriction the Commission accepted by approving the Plan.

A. Has Aquila proposed a plan in which the additional amortizations are balanced by provisions favorable to ratepayers and other stakeholders? If not, is the proposed additional amortization device detrimental to the public interest?

Response: Inapplicable because of above response.

- B. Will the additional amortizations shift the risks of the costs of Aquila's unregulated activities from Aquila to its ratepayers? If yes, is the proposed merger detrimental to the public interest?**

Response: Inapplicable because of above response.

- C. Is the additional amortization device proposed by the Joint Applicants set out in a sufficient level of detail to be able to be understood and effectively administered?**

Response: Inapplicable because of above response.

VI. Affiliate Transactions Rule Waiver/Variance

- 1. Should GPE/KCPL and Aquila be granted a waiver/variance from the provisions of the affiliate transactions rule under 4 CSR 240-20.015 as it might pertain to transactions between Aquila and KCPL? Will the proposed merger be not detrimental to the public interest if the Commission does so?**

Response: No. The purpose of the affiliate rule is to protect against transactions that are not arms' length and based in an

unregulated model of arms' length transactions. Permitting these costs to be directly charged to captive customers significantly distorts the nature of the transactions and also creates the opportunity for "gaming" of the system wherein significantly more effort is directed to the concealment or justification for the affiliate transaction and deflected from the effort needed to identify and negotiate the best price.

2. **Have GPE/KCPL and Aquila complied with the Commission's rules regarding a request for a waiver or variance from the affiliate transactions rule, such as the requirement regarding making a showing of good cause?**

Response: Industrials have taken no testimonial position on this issue and reserve our position depending on the evidence that is adduced in the hearing.

3. **Have GPE/KCPL and Aquila provided adequate details for there to be clarity respecting what provisions of the affiliate transactions rule that GPE/KCPL and Aquila are seeking relief from?**

Response: Industrials have taken no testimonial position on this issue and reserve our position depending on the evidence that is adduced in the hearing.

VII. Service Quality

1. Can service quality problems resulting from a merger/consolidation/acquisition of a works or system necessary or useful in the performance of duties to the public preclude the merger/consolidation/acquisition from being not detrimental to the public interest?

2. Has GPE/KCPL taken adequate measures to ensure that its proposed post-consolidation/post-merger/post-acquisition operations will not be detrimental to the public interest by precluding service quality issues arising from the consolidation/merger/acquisition?

Response: While Industrials have not taken a direct testimonial position on service quality issues, it is clear that the proposed transaction is significantly detrimental to the public interest. Given that, the Applicants will be under great financial pressure to reduce the costs associated with maintenance of service quality and will do so based on historic evidence. At the same time, they can be expected to claim that there will be no degradation in service quality. This should be included as a detriment in the analysis and should prevent approval of the proposed business transaction.

VIII. Transmission and RTO/ISO Criteria

1. 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?
2. 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 companies' generation resources, including the impacts on transmission and interconnection availability?
3. Should Commission approval of the Joint Application be conditioned upon Aquila being required to join and operate its generation and transmission facilities under the auspices of the Southwest Power Pool (SPP) Regional Transmission Organization (RTO) with KCPL within four (4) months of approval of the merger.
4. Should Commission approval of the Joint Application be conditioned upon Aquila and KCPL being required to consolidate their balancing authority areas within six (6) months of approval of the merger.

Response: Industrials have not taken a direct testimonial position on this group of issues, but nevertheless believe that access to the grid should be preserved and that the failure to do so adequately constitutes a detriment to the public that should result in the disapproval of the proposed transaction. Some of these issues impinge upon the claims of "synergies" by the Applicants, but those synergies cannot result without a combination or integration of operations between KCPL and Aquila. Applicants have not sought to obtain the required authorization for such integration of operations.

IX. Municipal Franchise and Energy Audit

1. Should 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?

2. Should Commission approval of the Joint Application be conditioned upon requiring KCPL/Aquila to fund a comprehensive energy audit by a third party to evaluate the City of Kansas City's opportunities for lower costs, increased efficiency, consolidated purchasing and cooperative siting or cogeneration with the utility?

Response: Industrials have taken no testimonial position on this group of issues and reserve our position depending on the evidence that is adduced in the hearing.

X. Quality of Service Plan and Earnings Sharing Mechanism

1. Should Commission approval of the Joint Application be conditioned upon requiring KCPL/Aquila to file an application for a Quality of Service Plan within 90 days of the Commission's final decision in this proceeding?
2. Should Commission approval of the Joint Application be conditioned upon establishment of an Earnings Sharing Mechanism that returns to customers excess earnings of KCPL/Aquila above an authorized level.

Response: Industrials have taken no testimonial position on this group of issues and reserve our position depending on the evidence that is adduced in the hearing.

XI. Future Rate Case

1. Should Commission approval of the Joint Application be conditioned upon requiring KCPL/Aquila to file a comprehensive rate case with respect to the merged operations within three (3) years of the Commission's approval of the merger?

Response: Industrials have taken no testimonial position on this group of issues and reserve our position depending on the evidence that is adduced in the hearing.

XII. Legal Issues

The Staff chose to raise in its Report, which is appended to the Rebuttal Testimony of Staff witness Robert E. Schallenberg, certain legal issues, which GPE/KCPL has responded to in the Surrebuttal Testimony of Chris B. Giles. It is anticipated that these issues also will be addressed in briefs and/or other pleadings. Other parties may have chosen, or may choose, to raise legal issues solely through pleadings. The Staff also asks below whether the net detriment test being used by the Joint Applicants is the actual legal standard that is applicable in Missouri. Finally, KCPL has raised the legal issue that appears last in the list that follows:

1. Have the Joint Applicants, Great Plains Energy, Incorporated, Kansas City Power & Light Company and Aquila, Inc. obtained from their Boards of Directors the authorizations necessary to effectuate actions required to merge, consolidate, combine, or integrate the systems, works and operations of KCPL and Aquila Networks - MPS and Aquila Networks - L&P proposed in the instant case?

Response: Based on the responses to data requests that we have reviewed, it does not appear that the respective Boards have been requested for approval to combine, integrate or otherwise share their operations. Moreover, inspection of the Application does not reveal that such required authority has been requested.

2. Have the Joint Applicants, Great Plains Energy, Incorporated, Kansas City Power & Light Company and Aquila, Inc., applied to the Missouri Commission for the authorizations necessary to effectuate the merger, consolidation, combination, or integration of the systems, works and operations of KCPL and Aquila Networks - MPS and Aquila Networks - L&P proposed in the instant case?

Response: No.

3. What is the legal effect for future Commission cases of the present Commission adopting the GPE/KCPL/Aquila proposals contained in their Joint Application filed on April 4, 2007

Response: While the Commission could approve the acquisition of Aquila by GPE, it should not do so because the transaction is clearly detrimental to the public interest. Moreover, the claims of "synergies" for the most part result from proposals the required legal authority to do has not been requested by the Applicants and, therefore, such claims of synergies are irrele-

vant to the transaction for which approval has been requested. Moreover, the Commission may not under Missouri law attempt an "end run" or "punt" around the statute by statements that it will "protect ratepayers" in "future cases." If the transaction is detrimental, it should be rejected.

4. **Is the net detriment test utilized by the Joint Applicants as the not detrimental to the public interest standard, the criteria required by law for determining whether the proposed acquisition and related transactions are not detrimental to the public interest? Will the proposed merger cause a net detriment to the public interest because the cost of service on which rates for Missouri ratepayers of Aquila and KCPL will be established will be higher as a direct result of the merger than the cost of service would be for Aquila and KCPL absent the proposed transaction?**

Response: Yes, this appears to be the proper standard. That test shows a net detriment to the public interest from the proposed transaction and, therefore, it should not be approved. Indeed, the Commission cannot under the law reach forward and approve a transaction that is shown to be detrimental to the public on the representation that future commissions will "protect" the public from such adverse effects.

5. Does the Affiliate Transactions Rule, 4 CSR 240-20.015, apply to transactions between regulated electrical corporations that are wholly owned by the same parent company?

Response: Yes. Please see the discussion above.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

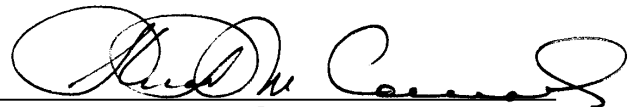


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ATTORNEYS FOR SEDALIA INDUSTRIAL
ENERGY USERS' ASSOCIATION, AG PRO-
CESSING INC A COOPERATIVE, AND
PRAXAIR, INC.

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 27, 2007