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	))))))))	**EM-2007-0374**

APPLICATION FOR REHEARING BY
INDUSTRIAL INTERVENORS

COME NOW the SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION ("SIEUA"), AG PROCESSING INC A COOPERATIVE ("AGP") and PRAXAIR, INC ("Praxair") (collectively "Industrial Intervenors") and, pursuant to Section 386.500 RSMo submit their Application for Rehearing of the Report and Order issued herein on July 1, 2008 as follows:

1. The commission erred as a matter of law and fact by authorizing the operational combination of Aquila, Inc (Aquila) and Kansas City Power & Light Company (KCPL) without said public utilities having requested such combination and over the objection of these and other parties. Industrial Intervenors incorporate by reference their Motion in Limine and Second Motion in Limine filed on November 27, 2007 and March 13, 2008, respectively, as fully as though set forth herein.

2. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in failing to find that the Board of Directors of KCPL had failed to approve a business combination with the public utility Aquila.

3. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in finding on one hand that the "primary document controlling the Gregory/Aquila Merger is the Agreement and Plan of Merger dated February 6, 2007, which was executed by Aquila, Great Plains, Black Hills, and Gregory"[1/] and then purporting to authorize a transaction and business combination between operating utilities KCPL and Aquila which was not requested and not provided for in the "primary document" and which was objected to as beyond the scope of the proposed transaction laid before the commission.

4. The commission erred as a matter of law and fact in purporting to find that the "merger will expand Great Plains' electric utility service territory around the Kansas City metropolitan area by adding approximately 300,000 electric utility customers to the 500,000 customers Great Plains currently serves through KCPL"[2/] in that Great Plains has no electric utility service territory and is not regulated by the commission. Indeed, throughout its Report and Order, the commission repeatedly confuses or ignores the difference between Great Plains and

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[1/] Report and Order, p. 68.

[2/] Report and Order, p. 72.

KCPL purporting to treat a separate legal entity as though it did not exist.

5. The commission erred as a matter of law and fact in purporting to find an increase in customers for KCPL when such transaction was not requested by the application and further errs as a matter of fact and law by characterizing this result as the "newly merged company."[3/]

6. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in addressing claims of synergies in that all synergies discussed in the Report and Order, pp. 75-128, relate to a business combination of Aquila and KCPL rather than to a business combination of Great Plains and Aquila, *i.e.*, the transaction for which approval was sought. As a result, none of the purported findings of fact contained in those paragraphs are supported by competent and substantial evidence on the whole record making the Report and Order unlawful and unreasonable.

7. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in attempting to decide a matter of law in its interpretation of Section 393.190 to permit the joint applicants to effect a transaction for which they did not request approval and the testimony claimed to support said transaction was duly objected through motions in limine or objections at the time regarding such testimony. The commission is not entitled to deference in its construction of law and its

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[3/] Report and Order, p. 72.

attempt to do so, and doing so incorrectly, renders its Report and Order unlawful, unreasonable and void. Moreover, the proposed transaction, given that no lawful authority has been provided, is void and of no force or effect whatsoever. The commission's discussions turn nicely-crafted phrases which have no significance because they are beyond the commission's competence to determine or issue.

8. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in making a purported finding of fact that the joint applicants' application "incorporated by reference" the testimony and exhibits that joint applicants filed. There is no such incorporation by reference in that document. Accordingly the commission's determination that the application contained representations of the applicants' intent to conjoin the operations of Aquila and KCPL is without support in the record or pleadings of this case.

9. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in purporting to approve a transaction and business combination between two regulated utilities but purporting to rely on evidence and fact findings that are not supported by that combination, are not competent evidence, were inconsistent with the relief sought by the applicants and were repeatedly objected to by other parties. Moreover the commission continually confuses these transactions and variously discusses the acquisition by Great Plains of the public utility asses of Aquila with the business combination of public

utility operations between KCPL and Aquila, purporting to postpone consideration of that business combination and review of its potential detriment to the public until after approving this transaction. This renders the commission's Report and Order unlawful and unreasonable under governing law.

10. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in purporting to allow the combination of Aquila and KCPL without any supporting evidence, data or competent and substantial evidence regarding how these utilities combined operations would not be detrimental to the public interest, even acknowledging that no operational agreement has been submitted for commission review, approval or staff approval, and purporting to postpone this critical component of any operational combination of two operating utilities until some further proceedings or filings at the commission.[4/] This failure of the commission to perform its responsibilities to the public is in clear violation of the *AGP* case.[5/]

11. The commission erred as a matter of law and fact in concluding that "volumes of competent evidence" were appropriately offered into the record addressing the Applicants' financial ability to effectuate the proposed merger and that therefore other evidence that might well have contradicted these "volumes" and that had the advantage of coming from outside the usual

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[4/] Report and Order, p. 72.

[5/] *State ex rel. AG Processing, Inc. v. PSC*, 120 S.W.3d 732 (Mo. 2003).

"loop" of administrative and managerial persons who had financial interests in consummating the merger that were in opposition and conflict to the interests of the ratepayers and the public generally. The commission simply refused to hear this evidence and cannot make any determination whether it would have been cumulative or would have substantially undercut the contentions of those financially interested in the completion of the proposed merger.

12. The commission erred as a matter of law and fact in refusing to even allow contradictory evidence into the record and thus has no basis in fact and law to make any conclusions about the content of this evidence because it refused either to hear this evidence or preserve it for later judicial evaluation.

13. The commission erred as a matter of law and fact in reaching conclusions the qualitative nature of such excluded evidence and contentions regarding an entitlement to an offer of proof to preserve this evidence for judicial review and, having refused to "hear" this evidence, this aspect of its decision cannot be supported by competent and substantial evidence on the whole record.

14. The commission erred as a matter of law and fact in finding that imposition of Great Plains and KCPL's Ethics Policy would not result in public detriment to the ratepayers of Aquila in that it refused to admit evidence that would have shown that KCPL either defines this policy differently in practice than the wording of such policy would suggest. The commission also

erred as a matter of law by refusing to preserve such evidence for judicial review through an offer of proof. The commission has repeatedly confused an investigation into the underlying circumstances that may have prompted an anonymous letter with an inquiry into certain anonymous letters.

15. The commission erred as a matter of law and fact in finding that testimony from live witnesses would be "hearsay" solely because such testimony touches on issues or assertions that may have been made in certain anonymous letters.

16. The commission erred as a matter of law and fact in finding that the anonymous letters triggered Staff's investigation of KCPL's ethics policies and then disregarding or excluding relevant evidence regarding those policies simply because these issues were mentioned in anonymous letters received by the commission and by other parties. Staff's investigation began before such letters were received.

17. The commission erred as a matter of law and fact in denying requesting parties an opportunity to submit evidence regarding materials as an offer of proof. Such practice is meant to preserve evidence for judicial review and the commission's arbitrary action is calculated and intended to frustrate that review and deny opposing parties due process.

18. The commission erred as a matter of law and fact in ruling that evidence was wholly irrelevant without even hearing such evidence. There is no basis in fact and law to make such a determination.

19. The commission erred as a matter of law and fact in attempting, after the fact, to revise its evidentiary ruling regarding offers of proof to attempt to mark out additional grounds for such ruling which were not presented at the time and to which the parties have had no opportunity to respond thereby denying them due process of law. Moreover, in attempting to find that such evidence would have been "repetitive," and "would have caused undue delay," the commission fails to specify what evidence the desired offer of proof would have repeated nor could it have done so absent hearing this evidence, nor is it reasonable in a case of this nature and facts to discuss delay as a basis to refuse an offer of proof. Such attempts to reform a ruling simply underscore the arbitrary and capricious nature of the Report and Order.

20. The commission erred as a matter of law and fact in treating any issue or evidence that happened to be mentioned in any anonymous letter as legally irrelevant without even taking that evidence into consideration. The Fourth Amendment doctrine prohibiting "fruit of the poisoned tree" does not apply in this case. Were the commission's view correct, law enforcement would never be able to support a conviction that was in any way aided by an anonymous "tip" line. This action by the commission is singularly arbitrary and capricious.

21. The commission erred as a matter of law and fact in mischaracterizing issues described on an issues list as

controlling when in other parts of its Report and Order the commission notes that such issue listing is non-binding.

22. The commission erred as a matter of law and fact in finding that imposition of Great Plains and KCPL's Code of Ethical Business Conduct and its gift and gratuity policy would result in public detriment to the ratepayers of Aquila and that consideration of evidence of the practical construction given to those policies by the administrators and managers thereof was wholly irrelevant to any question of public detriment before the commission.

23. The commission erred as a matter of law by promulgating a Report and Order that was adopted by only two eligible commissioners and over the dissent of one of the remaining three eligible commissioners. Such a vote is insufficient to support issuance of a Report and Order. The Report and Order is, accordingly, unlawful, and a legal nullity.

24. The commission erred as a matter of law and fact by failing to dismiss the case upon Public Counsel's Motion to Dismiss of December 13, 2007.[6/] Given the disclosures that were placed on record during the initial portion of the hearing, affected commissioners should have recused themselves. Their failure to do so deprived these parties of due process.

25. The commission erred as a matter of law and fact in finding that "it is arguable as to whether the Judicial Canons

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[6/] *Order Denying Motion to Dismiss*, January 2, 2008.

apply to the commission of administrative agencies"[7] and in failing to comply therewith.

26. The commission erred as a matter of law and fact in concluding that Applicants had withdrawn their request and intention to consider a special amortization mechanism for Aquila in future cases and the commission erred as a matter of law and fact in concluding that such decision was not before them in that uncontradicted evidence, including but not limited to Exhibit 32, demonstrated that Applicants had not irrevocably abandoned such a plan. By failing to rule definitively on this issue and postpone ruling into some future case the commission violates *AGP*.[8]

27. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in considering its Staff's presentation to be of limited substance and credibility in that it, for its own convenience, had previously directed its own Staff to use the "report" approach so as to limit the number of staff witnesses appearing in a case. It is the height of administrative arbitrariness and capriciousness for the commission to direct its subordinate staff to employ a particular procedure in presenting its information and then criticize and demean its staff for following the commission's direction.

28. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in placing extreme impor-

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[7] *Id.* at 8.

[8] *State ex rel. AG Processing, Inc. v. PSC*, 120 S.W.3d 732 (Mo. 2003).

tance and credibility findings upon the prior appearance of a witness in the proceeding. The parties had agreed and the commission conducted the hearing on an "issue by issue" basis. Accordingly, the fact that a particular witness may have been previously given testimony in the proceeding on another issue or another aspect of an issue is legally and factually irrelevant and immaterial.

29. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in that it appears to base its findings on purported "expectations" of credit upgrades on which is then constructed an assumption that ratepayers will benefit from such upgrades and statements that "it is reasonable to assume" critical facts necessary to support its findings that ratepayers will not be detrimented. However, the commission conveniently dismisses all the evidence to the contrary by characterizing that evidence, even evidence from its own technical staff, as lacking in substance or credibility. The commission thus finds against the recommendations of its own staff when the commission’s claims of expertise in utility regulation is based on its staff’s experience and expertise.

30. The commission’s Report and Order is arbitrary and capricious in its assignment of credibility to certain witnesses. In its Order, the commission found virtually every witness, including its own staff, that opposed the merger was lacking in some way; either in expertise, the content of their testimony, or the method of presentation. Conveniently, however, the commis-

sion found that every Great Plains and KCPL witness was "composed, confident, sincere, and unwavering in their testimony"[9/] thereby overlooking the obvious personal bias and significant monetary gain that would result to applicants' witnesses from the success of the proposed transaction.

31. A well-recognized exception to the hearsay rule is that a witness has made a prior inconsistent statement about the same subject matter. The reason that this is regarded as an exception to the hearsay rule is because the prior inconsistent statement is not admissible for the true of what it says, rather, it is admissible to demonstrate that the witness speaks inconsistent about the matter at different times and thus has questionable veracity and has been impeached. In making its credibility evaluations, the commission wholly overlooks that Great Plains witnesses impeached themselves. In their Direct Testimony filed on April 2, 2007, Great Plains and KCPL witnesses advanced a number of regulatory conditions that were, repeated classified as "critical", "imperative", "key" and "necessary" to the success of the transaction. For instance, in regards to the Joint Applicants request for implementation of an Additional Amortization mechanism for Aquila, Great Plains / KCPL Witness Bassham classified this as "imperative."[10/] Great Plains / KCPL Witness

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[9/] Report and Order at page 48, paragraph 38. (emphasis added).

[10/] See, Bassham Direct, page 15 ("Thus, the use of Additional Amortizations to achieve these financial goals is imperative." (emphasis added). See also, Id. at pages 15-16 ("Also as (continued...)

Cline labeled this a "critical" aspect of the Merger.[11/] Pertaining to the Joint Applicants' initial request to receive assurances of recovery of Aquila's actual debt costs, Great Plains / KCPL Witness Cline noted that this was both a "key" and "necessary" regulatory element.[12/] Despite the "critical", "imperative", "key" and "necessary" nature of these regulatory conditions, the Joint Applicants voluntarily ***dropped*** these requests in their Revised Merger Proposal.

32. What became apparent by the Joint Applicants' revised merger proposal is that these regulatory concessions were

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[10/](...continued)
I explained above, because it is imperative that Aquila maintain its expected investment-grade credit rating, the Joint Applicants request that the commission approve the use of the Additional Amortizations mechanism by Aquila as a reasonable and appropriate regulatory policy.") (emphasis added).

[11/] Cline Direct, page 7 ("The availability of the Additional Amortizations mechanism to Aquila following the Merger is a critical regulatory assumption that S&P made in determining not to immediately change the current investment-grade ratings at Great Plains Energy and KCPL.") (emphasis added). See also, Id. at page 9 ("Like S&P, Moody's viewed the availability of the Additional Amortizations mechanism to Aquila following the Merger as a critical regulatory assumption in determining not to immediately change the current investment-grade ratings at Great Plains Energy and KCPL.") (emphasis added).

[12/] Cline Supplemental Direct Testimony, page 11 ("There are three items Great Plains Energy views as key regulatory elements of our debt reduction strategy in order to achieve our credit objectives (1) Recovery in rates of actual interest costs on any Aquila debt remaining after execution of the strategy.") (emphasis added). Id. at page 12 ("The recovery of actual interest costs is ***necessary*** to achieving Great Plains Energy's credit objectives in the merger transaction. Both the S&P RES analysis and Moody's RAS analysis emphasized the importance of Great Plains Energy's ability to recover actual interest costs as a key consideration in the investment-grade outcomes indicated by both agencies.") (emphasis added).

never "critical", "imperative", "key" or "necessary." Rather, based at least in part on a series of *ex parte* meetings with the individual commissioners at which these regulatory proposals were initially presented and never objected to, the Joint Applicants advanced these proposals with the intention of shifting risk and costs to the captive ratepayers. Despite the Joint Applicants' obvious prior inconsistent statements that these cost shifting proposals were "critical", "imperative", "key" and "necessary," the commission blindly finds that each of these witnesses were, nonetheless, "sincere" and "unwavering." American Heritage Dictionary defines sincere as "true, not hypocritical, genuine, honest." At least in regard to these prior inconsistent statements that these measures were "critical", "imperative", "key" and "necessary" regulatory proposals, the Joint Applicants were not "sincere" and serious questions ought to be raised regarding at which time they were being truthful. Based upon the competent and substantial evidence in the whole of the record, the commission was arbitrary and capricious in its assignment of credibility.

33. The Report and Order is arbitrary and capricious in its failure to hold the Joint Applicants' evidence to the same standard as it holds its own Staff's evidence. In its Report and Order, the commission found that "Staff's Report, attached to Mr. Schallenberg's testimony, is deserving of only limited weight and credibility related to the defects noted in Findings of Fact Numbers 70-91." In those Findings of Fact, the commission criti-

cized the Staff's Report because: (1) it did not bear an author(s) identification; and (2) other individuals who were not called as witnesses played a role in its preparation and nothing prevented Joint Applicants from calling these witnesses.

34. As a result of cross-examination by Public Counsel and the Industrial Intervenors, it became apparent that certain portions of the Joint Applicants' schedules had been prepared by other individuals who were not witnesses in this case. For instance, when questioned about Schedule MWC-18 attached to his Additional Supplemental Direct Testimony, Mr. Cline noted that the Schedule had been prepared by Todd Kobyashi.[13/] Like Staff's Report, this Schedule did not bear any identification of the author. Nor, was this other author ever presented by the Joint Applicants as a witness. As a result, Mr. Cline was repeatedly unable to answer questions as to this Schedule. When counsel raised objections similar to those raised by KCPL in regards to Staff's Report, the commission nevertheless accepted the testimony, but ruled that "Mr. Cline's ability to answer questions with regard to certain items will certainly be - go to its weight and credibility of the testimony." That said, and despite holding Staff to a strict standard in this regard, the commission never made a finding regarding the diminished weight of Mr. Cline's testimony resulting from his use of information from Mr. Kobayashi who was not presented to testify. Rather, the commission asserts that the testimony was "substantial and

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[13/] Tr. 2548.

credible." Of course, there is one basis upon which the commission could distinguish Mr. Schallenberg and Mr. Cline; unlike Mr. Cline, Mr. Schallenberg was able to answer every question that was lodged to him by the commission or counsel.

35. The Report and Order is arbitrary and capricious in its application of credibility as pertains to a witness' expertise. In its Report and Order, the commission went to great lengths to criticize Staff Witness Schallenberg because he was not an "engineer, economist, lawyer, computer specialist in information technology or information systems, management systems, management consulting, human resources, investment banking, mergers and acquisitions specialist, generating plants, transmission and distribution systems of electrical corporations operating as regulated utility, consumer services, or management services."[14/] The commission never provides any explanation as to why a witness would have to be an expert in each of these specialties in order to proffer an opinion in this case. Rather, the commission merely notes that Mr. Schallenberg is only an expert in "auditing and accounting."

36. In contrast, when reviewing the testimony of Joint Applicant witnesses, the commission did not hold those witnesses to the same strict standard of expertise. The commission did not conduct a review of each of the Joint Applicant witnesses to determine whether they similarly are experts in "engineer, economist, lawyer, computer specialist in information technology

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[14/] Report and Order at page 60.

or information systems, management systems, management consulting, human resources, investment banking, mergers and acquisitions specialist, generating plants, transmission and distribution systems of electrical corporations operating as regulated utility, consumer services, or management services."[15/]

37. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in its purported findings of fact concerning post merger credit quality in that it relies upon hearsay evidence from persons not in attendance and which could not be produced as witnesses by KCPL. Moreover, the commission's analysis of this evidence is markedly deficient in that it wholly failed to consider discrepancies between what information had been provided to the purported credit rating agencies by Great Plains, what information was being provided to the commission in this proceeding, and what information was provided to opposing parties through discovery in this proceeding. Further, the commission wholly failed to analyze the interest that the credit rating agencies had in protection of the creditors of Great Plains and equating that position with impact on the ratepayers of either utility. Finally, the commission again failed to find credible, competent or substantial evidence that supports its decision that claims of benefits reported to the credit rating agencies by Great Plains related to a business combination between KCPL and Aquila and were legally irrelevant to the transaction that was proposed.

[15/] Report and Order at page 60.

38. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in purporting to find that opposing arguments regarding potential detrimental impact on Great Plains credit rating resulting from the merger are "totally speculative in nature" while simultaneously purporting to find that Great Plains' estimates were something other than totally speculative in nature. The commission attempts to achieve this discrimination by repeatedly using favorable terms to describe the Great Plains' testimony while repeatedly using derogatory terms to describe competent, and in many cases, unchallenged evidence from competent and experienced witnesses that do not support the commissions' preordained conclusion. Such glowing descriptives pervade the Report and Order and reveal far more about the commission than they do about Great Plains' witnesses or the quality of its evidence.

39. The commission erred as a matter of law and fact in failing to assess the risk of a credit downgrade even though several witnesses including Joint Applicants' witnesses testified or acknowledged that such downgrade was possible and was not speculative.[16/]

40. The commission erred as a matter of law and fact in deciding to exclude evidence regarding the status of KPCL's LaCygne projects in that both are indisputably parts of the regulatory plan approved by the commission in Case No. EO-2005-0329 and there is no basis to take evidence regarding one and not

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[16/] Report and Order, p. 246.

the other in that the LaCygne projects have no less bearing on the financial condition of KCPL as do the Iatan projects.

41. The commission erred as a matter of law and fact in finding that a partial waiver of the affiliated entities rule was appropriate without requiring submission of an operating agreement from the utilities and thereby postponing a decision on this critical part of the case in violation of the *AGP* decision.[17/]

42. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in addressing waivers of the affiliated entity rule in that the proposed transaction on which waiver was requested is wholly outside the scope of the proposed merger in this case in that no plan or operating agreement was submitted by the applicants, nor was any such operating plan or agreement submitted for examination by the parties or by the commission. The commission errs by shifting the burden from the applicants to prove that the proposed transaction is not detrimental to those parties including the commission's own staff who opposed the transaction by attempting to find that there is no evidence to show detriment when that is not the standard which is required of the commission. Moreover, the failure of the joint applicants to provide operating agreements for review by any party, and the commission's suggestion that such operating agreements may be submitted at a later date shifts the determina-

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[17/] *State ex rel. AG Processing, Inc. v. PSC*, 120 S.W.3d 732 (Mo. 2003).

tion of a critical element of the commission's task of identifying detriment to a later date in violation of the requirements of *AGP*.[18/]

43. The commission erred as a matter of law and fact and acted arbitrarily and capriciously by on one hand asserting that the joint applicants have the burden of proving no detriment yet sifting that burden to those parties that were opposed to the proposed merger that they affirmatively must show that the transaction has detriment.

44. The commission errs by shifting the burden from the applicants to prove that the proposed transaction is not detrimental to opposing parties including the commission's own technical staff who opposed the transaction by attempting to find that there is no evidence to show detriment when that is not the standard which is required of the commission. Moreover, the failure of the joint applicants to provide operating agreements for review by any party, and the commission's suggestion that such operating agreements may be submitted at a later date shifts the determination of a critical element of the commission's task of identifying detriment to a later date in violation of the requirements of the *AGP* case.[19/]

45. The commission erred as a matter of law and fact in repeatedly confusing the evidentiary concepts and rules

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[18/] *State ex rel. AG Processing, Inc. v. PSC*, 120 S.W.3d 732 (Mo. 2003).

[19/] *State ex rel. AG Processing, Inc. v. PSC*, 120 S.W.3d 732 (Mo. 2003).

regarding what constitutes relevant evidence apparently believing that simply constructing a long order would deflect judicial review and analysis of the evidence underlying that order. Evidence is not irrelevant because it does not, standing alone, prove some particular proposition. Rather, relevance is properly judged by whether the evidence advances the inquiry toward a material issue. "Evidence is considered relevant if it tends to prove or disprove a fact in issue or corroborates other relevant evidence."[20/] The commission has repeatedly confused these critical evidentiary concepts and, indeed, attempts to rule evidence as irrelevant that it has not even considered or heard. Such evaluation is not possible and underscores the very arbitrary nature of such rulings.

46. The commission erred as a matter of law and fact in finding that there is no "conclusive, competent evidence that there would be either an upgrade or downgrade in the current credit ratings of Great Plains . . . ." The Joint Applicants had the burden of satisfying the applicable standard, but the commission shifts that burden from the Joint Applicants to those opposing the merger and appears to require an additional evidentiary standard that such evidence be "conclusive" while at the same time not requiring that Joint Applicants demonstrate by "conclusive" evidence that such downgrade would not occur.

[20/] *Cohen v. Cohen*, 178 S.W.3d 656, 664 (Mo. Ct. App. 2005).

47. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in its determination of what constitutes the public interest to be considered in that it mischaracterizes and misidentifies the public interest that is subject to protection and fails to separately analyze the impacts upon present Aquila ratepayers, claimed future Aquila ratepayers, KCPL ratepayers and claimed future KCPL ratepayers.

48. The commission erred as a matter of law and fact in finding that public interest included the interests of the investing public in that under Missouri law such interest is only incidental.

49. The commission erred as a matter of law and fact in applying a standard for an application for a certificate of public convenience and necessity to this case.

50. The commission erred as a matter of law and fact and acted arbitrarily and capriciously in its determination of what constitutes the public interest to be considered in that it mischaracterizes and misidentifies the public interest that is subject to protection and fails to separately analyze the impacts upon present Aquila ratepayers, claimed future Aquila ratepayers, KCPL ratepayers and claimed future KCPL ratepayers.

51. The commission erred as a matter of law and fact in making its Report and Order effective ten days after its issue date, and only provided one additional business day in its July 9 Order. The Joint Applicants have stated that they intend to make to make potentially irreversible changes to the two operating

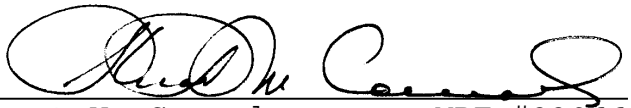
utilities beginning on July 14, 2008. In doing so the commission erroneously granted them authority to close their merger and make potentially irreversible changes, but failed to allow for the opportunity to consider applications for rehearing thereby attempting to nullify and render ineffective the process of judicial review of the Report and Order under the Missouri Constitution.

52. Industrial Intervenors hereby incorporate by reference as though fully set forth herein the provisions and issues that are identified by the Office of Public Counsel in its Application to Intervene.

WHEREFORE Industrial Intervenors pray that this Application for Rehearing be granted.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.



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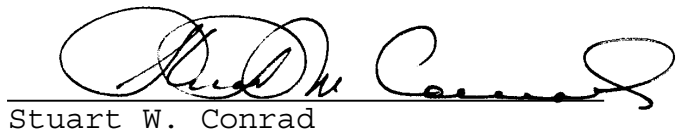
ATTORNEYS FOR SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION, AG PROCESSING INC A COOPERATIVE, AND PRAXAIR, INC.

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: July 12, 2008