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

RESPONSE TO REPLY OF [SOME] APPLICANTS IN OPPOSITION TO MOTION TO MAKE CERTAIN DOCUMENTS PUBLIC AND REQUEST FOR WAIVER

COMES NOW the Office of the Public Counsel and for its Response to Reply of [Some] Applicants in Opposition to Motion to Make Certain Documents Public and Request for Waiver states as follows:

1. On March 21, 2008 Public Counsel filed a request to make public portions of the February 25, 2008 testimony and schedules filed by KCPL/GPE. On March 28, KCPL/GPE responded in opposition (herein referred to as the "Reply in Opposition"). No other party, not even the third Joint Applicant, opposed Public Counsel's request. Pursuant to 4 CSR 240-2.080(15), Public Counsel timely files this response.[1]

2. The main point that KCPL/GPE raises in its Reply in Opposition is that Public Counsel's motion was untimely and no good cause exists to consider it out of time, and thus the

[1] Public Counsel propounded data requests concerning KCPL/GPE's March 28 reply, particularly concerning KCPL/GPE's assertion that ratings agencies serve as "outside consultants to GPE/KCPL in this proceeding." Public Counsel files this response on the last day allowable under the cited rule in the hope of being able to use the answers to those DRs in this response. Although those DR answers are due March 7, none had been received at the time of filing this response. While Public Counsel believes it would be a significant conflict of interest for rating agencies to be "outside consultants" to entities that they are supposed to objectively rate, Public Counsel cannot at this time refute KCPL/GPE's contention that the ratings agencies work for KCPL/GPE rather than for bondholders.

request should be ignored. In its request, Public Counsel suggested a number of factors that constitute good cause and will not repeat them here. But Public Counsel must respond to one false accusation in KCPL/GPE's Reply in Opposition. At page 2, KCPL/GPE accuses Public Counsel of making a "misleading" and "not accurate" statement. The statement in public Counsel's request was this: "First, although the testimony was received into EFIS on February 25, it was not filed pursuant to a Commission order. The Commission authorized its filing *post hoc*, on February 28." Nothing about this statement is misleading or inaccurate. KCPL/GPE may disagree that the stated facts contribute to a finding of good cause, but that does not make the statement misleading or inaccurate.

3. KCPL/GPE's second, fall-back argument is that some of the information really is Highly Confidential, although KCPL/GPE readily concedes that much should be public and some is only Proprietary. The Commission's rules necessarily presume that a party designating material as Highly Confidential has undertaken a good faith effort to review it. In fact, the rules explicitly state: "A claim that information is proprietary or highly confidential is a representation to the commission that the claiming party has a reasonable and good faith belief that the subject document or information is, in fact, proprietary or highly confidential." That good faith effort was not taken here; KCPL/GPE's after-the-fact review quickly disclosed that the entire first seven pages of two documents are indisputably public. Neither other parties nor the Commission should be required to sort through information that has been "over-designated," yet that is exactly what KCPL/GPE has done through-out this case.

4. This is not the first time in this case that KCPL/GPE has abused the designation process. At the very beginning of the hearing, all the Joint Applicants fought to keep exhibits to the depositions of Richard Green, Michael Chesser, and William Downey classified as Highly

Confidential. Ultimately the Commission agreed almost entirely with Public Counsel that the material should be de-classified, and opened up virtually all of the material that the Joint Applicants tried to keep from the public view. At that time, Regulatory Law Judge Dippell cautioned the Joint Applicants: "if there's information that is proprietary instead of highly confidential or that's your argument, then designate that as such." (Transcript, page 106). KCPL/GPE have not taken that cautionary note to heart.

5. At page 4 of the Reply in Opposition, KCPL/GPE states that "All of the information that is being sought to be protected from public disclosure by the Applicants [*sic*] would fall within the protected 'Proprietary' category or the 'Highly Confidential' category." But KCPL/GPE did not designate any of the contested material as Proprietary, and indeed still has not explained exactly which of the designated material it now considers merely Proprietary. 4 CSR 240-2.135(1)(A) defines material that can be designated Proprietary; 4 CSR 240-2.135(1)(B) defines material that can be designated Highly Confidential. The Commission, in the recent rulemaking in which 4 CSR 240-2.135 was adopted, made an explicit and conscious decision to treat them differently. KCPL/GPE ignores the distinction throughout its Reply in Opposition (*e.g.*, paragraphs 10, 11, 12, 13, and 14). Just because KCPL/GPE cannot be bothered to specify which portions it believes to be Proprietary and which portions it believes to be Highly Confidential does not meant the Commission itself should do it[2], or allow merely Proprietary information to remain Highly Confidential.

6. In addition to its attempt to ignore the clear distinction between Highly Confidential and Proprietary information, KCPL/GPE regularly retreats to the circular argument

[2] Chairman Davis recognized that this is not the Commission's role or the Commission's burden: "I would just open up everything because it's extremely tedious to have to go back and do this for the parties when they didn't do a good job the first time. And that's -- you know, I think they should bear their own risks for -- for engaging in conduct of that nature." (Transcript, page 689).

that information should be designated as Highly Confidential pursuant to the Commission's rules because KCPL/GPE considers it to be "confidential." For example, at paragraph 11, KCPL/GPE states that some information should be designated Highly Confidential because it is "confidential, financial and business information that has not previously been disclosed[3]" and "would be considered forward-looking, confidential projections." And in paragraph 12, KCPL/GPE claims that other information should be kept Highly Confidential in part because it contains "very sensitive, forward-looking information that should remain confidential." Information is not to be treated as Highly Confidential just because it is forward-looking, or because it has not previously been released, or because a company considers it confidential or sensitive. None of these are justifications under the Commission's rules to keep information out of the public record.

7. Several of the specific arguments that KCPL/GPE makes do not hold up under scrutiny. At paragraph 11, argues that Schedule MWC-17 should remain Highly Confidential because it contains "rate base growth projections." But KCPL/GPE has no problem releasing rate base growth projections when it is in KCPL/GPE's interest to do so. Exhibit 202 in this case, offered and admitted without objection, is a completely public document. The second-to-last page of that document shows rate base growth projections. This is exactly the same type of information that KCPL/GPE now claims to make MWC-17 Highly Confidential. It makes no sense to treat as Highly Confidential the type of information that a utility makes public in other venues.

8. Similarly, at paragraph 12, KCPL/GPE claims that parts (although it does not specify exactly which parts) of MWC-18 and MWC-19 contain "earnings per share projections"

[3] The claims that it has not previously been disclosed, and that "forward-looking" information should be protected are discussed in more detail in paragraphs 7 and 8, *infra*.

and "projected synergies by year." Both of these have already been disclosed in this proceeding, and KCPL/GPE has routinely in the past issued earnings guidance. For example, Exhibit 202 – a public exhibit – illustrates detailed earnings per share projections on the last page. Companies, including KCPL/GPE, release forward-looking information all the time, albeit sometimes with a caveat highlighting that it is forward-looking. Indeed, GPE's annual report, publicly available on its website, is chock-full of forward-looking information.

9. It is possible, within the dozens of pages and thousands of words and numbers that KCPL/GPE seeks to keep out of the public record, that there are a few isolated numbers, phrases or dates that could legitimately be treated as Highly Confidential or Proprietary.[4] But KCPL/GPE should have identified those specific items in the first instance when it filed the testimony rather than designating entire documents Highly Confidential. And certainly KCPL/GPE should have identified those specific numbers, words or phrases in response to Public Counsel's challenge. KCPL/GPE has now had two chances to identify specific information that should be protected and it has not done so. The Commission should grant Public Counsel's request and open up to the public view all of the testimony and schedules of KCPL witnesses Cline and Bassham filed on February 25, 2008.

WHEREFORE Public Counsel respectfully offers this response and requests that the Commission open up to the public view all of the testimony and schedules of KCPL witnesses Cline and Bassham filed on February 25, 2008.

[4] Items that **might** legitimately be Highly Confidential or Proprietary are specific work product prepared by Credit Suisse or specific dates for equity or debt issuances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 7th day of April 2008.

/s/ Lewis R. Mills, Jr.
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