

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) EM-2007-0374
Approval of the Merger of Aquila,)
Inc., with a Subsidiary of Great)
Plains Energy Incorporated and for)
Other Related Relief)

SECOND MOTION IN LIMINE OF
INDICATED INDUSTRIALS

COME NOW the SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIA-
TION ("SIEUA"), AG PROCESSING INC A COOPERATIVE ("AGP") and
PRAXAIR, INC ("Praxair") (collectively "Indicated Industrials")
and respectfully move that statements contained in prefiled
testimony and associated exhibits be excluded from this proceed-
ing as irrelevant and out of sequence and in support thereof
further state:

1. This proceeding was commenced by and is limited by
the Application submitted here by Great Plains Energy ("GPE") and
Aquila Networks ("Aquila").

2. That Application plainly states that the authority
that is sought is the acquisition of Aquila by GPE through the
mechanism of a merger with a wholly-owned subsidiary of GPE. No
request has been submitted to authorize a merger, consolidation,

combination, integration, either direct or indirect, between Kansas City Power & Light Company ("KCPL") and Aquila.

3. The controlling statute, in relevant part, provides:

393.190. 1. No . . . electrical corporation . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, **direct or indirect**, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same **shall be void**. (Emphasis added)

Both KCPL and Aquila are "electrical corporations" within the scope of this statute. No action, business combination, operational integration, or other indirect or direct means of combination, consolidation or integration of KCPL and Aquila or their respective operations has been sought.

4. Discussion of such activities is, therefore, beyond the scope of this proceeding as established by the Application. Absent emendation of that Application, testimony regarding these activities is irrelevant.

5. The scope of this proceeding is necessarily established by the Application and its requested relief. Other parties have understandably based their presentations on the scope established by the application. Permitting irrelevant

evidence to come into the record will prejudice them and affect their rights to due process.

6. The Commission's June 19, 2007 Scheduling Order set November 28, 2007 for the parties to file "known objections" to the prefiled testimony. Given that the testimony objected to in this motion was not filed until February 25, 2008, no earlier motion could have been filed. Moreover, an objection cannot be technically be made unless and until testimony is, in fact, offered into the record,^{1/} the undersigned parties seek through this motion to exclude from the record and from consideration by the Commission all statements and any exhibits that discuss or reference directly or indirectly combinations, consolidations or integrations of operations of KCPL and Aquila for which Commission approval has **not** been requested.

7. Moreover, because several witnesses for the Applicants appear to be imprecise in their use of terminology, this request for exclusion must necessarily be limited to what is reasonably "known" at this point in time, based upon a reasonable reading of the subject testimony.

8. This Second Motion in Limine is directed specifically to certain testimony that was filed on behalf of the Joint Applicants, primarily by representatives of Great Plains and/or KCPL on February 25, 2008 and incorrectly labelled as "Supplemen-

^{1/} Not infrequently in Commission proceedings, testimony and/or exhibits are prefiled pursuant to rule. However, by the time the hearing has arrived, changes in issues, personnel or schedules result in that testimony never being offered into the record. Accordingly a premature "objection" is meaningless.

tal Direct Testimony." Portions of this filing should also be excluded and not considered by the Commission in this matter because in particular, the February 25, 2008 testimony of Chris Giles is not "supplemental direct" but, rather, is surrebuttal testimony in that it purports to respond to assertions or contentions of other parties to this proceeding. It is therefore out of proper sequence and in violation of the Commission's procedural order and schedule.

9. Some appear to argue that this expansion should be permitted because other transactions have "slipped through." Whether or not true, this does not justify continued violations. It does not work to tell the Highway Patrolman that "officer, I've always driven that fast on this stretch of road."

10. Arguments that "merger" doesn't mean "integration" and that "combination" or "consolidation" are not the same as a "merger" are knocked askew by the "direct and indirect" language in the statute. Plainly achieving the result of combined operations by **any means**, direct or indirect, requires Commission authorization and are void -- not "voidable" -- in the absence of that approval. These arguments are sophistry and not evidentiary.

11. Additionally, testimony from other parties may reference or respond to the subject (and below-listed) prefiled testimony or exhibits. Granting this motion will obviate the need for some, possibly all, of that testimony and it is expected that those parties will withdraw those offerings if this and

these movants' earlier Motion in Limine are sustained. Hence, we have not included that responsive testimony in the following listing. In amplification of the foregoing, and not in limitation thereof, the following items have been identified at this time for exclusion from this proceeding as irrelevant:

a. Bassham February 25, 2008 testimony, p. 3, ll. 11-15; p. 5, ll. 12-16;

b. Giles February 25, 2008 testimony, p. 1, ll. 4-6; p. 1, ll. 9-16; p. 2, ll. 1-23; p. 3, ll. 1-23; p. 4, ll. 1-23; p. 5, ll. 1-18.

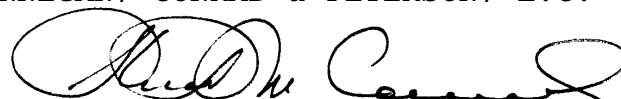
12. Other areas of testimony, both live and prefiled, may be identified as this proceeding moves forward and these parties respectfully reserve the right to make timely objections in addition to the specific items listed above, as being properly subject to this motion.

WHEREFORE, the Commission should reject and not consider, at a minimum, the above-identified items of testimony for the reasons stated and generally should not take into consideration

testimony that is not relevant to the scope of the transaction for which approval is requested by the Application or testimony that is not properly presented to the Commission in accord with the procedural orders previously issued.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

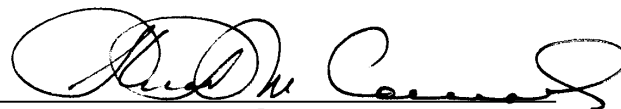


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ATTORNEYS FOR SEDALIA INDUSTRIAL
ENERGY USERS' ASSOCIATION, AG PRO-
CESSING INC A COOPERATIVE, AND
PRAXAIR, INC.

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: March 13, 2008