

**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) Case No. EM-2007-0374
Merger of Aquila, Inc. with a Subsidiary of Great)
Plains Energy Incorporated and for other related)
relief)

**REPLY OF APPLICANTS IN OPPOSITION TO MOTION TO
MAKE CERTAIN DOCUMENTS PUBLIC AND REQUEST FOR WAIVER**

Great Plains Energy Incorporated (“Great Plains Energy”) and Kansas City Power & Light Company (“KCPL”) (collectively, “Applicants”) state the following in response to the Motion To Make Certain Documents Public And Request For Waiver submitted on March 21, 2008 by the Office of the Public Counsel (“OPC”), and the Order Directing Response issued on March 25, 2008:

1. On March 21, 2008, OPC filed its Motion To Make Certain Documents Public And Request For Waiver (“Motion”) which requested “that the Commission open up to the public view all of the testimony and schedules of KCPL witnesses Cline and Bassham filed on February 5, 2008, and for good cause waive compliance with 4 CSR 240-2.135(11).” (Motion, p. 3) For the reasons stated herein, this Motion should be denied.

2. 4 CSR 240-2.135(11) states in part: “Not later than ten (10) days after testimony is filed that contains information designated as proprietary or highly confidential, any party that wishes to challenge the designation of the testimony may file an appropriate motion with the commission.” (*emphasis added*). Public Counsel did not file his motion to challenge the designation of the testimony as “highly confidential” until March 21, 2008, twenty-five (25) days after the testimony was filed with the Commission. Since Public Counsel did not file his objection to the classification within ten days as required by the rule, the Commission should

find that Public Counsel has waived his right to challenge the designation of the confidential materials at this late date.

3. While Public Counsel requests a waiver of the requirement of 4 CSR 240-2.135(11), Public Counsel has not stated sufficient reasons to justify his delay in filing his motion in the time required by the rule. Instead, Public Counsel cites four reasons alleged to be “good cause” for not complying with the rule. None of these stated reasons justify the late-filing, and the Commission should so find.

4. First, as grounds for a waiver of 4 CSR 240-2.135(11), Public Counsel suggests that the testimony “was not filed pursuant to a Commission order.” (Motion, p. 3) This statement is misleading since the Joint Applicants had made the parties aware of their intention to file the supplemental direct testimony in advance of the filing. In addition, the Regulatory Law Judge and the parties discussed the Joint Applicants’ motion to file supplemental testimony at the prehearing conference held on February 28, 2008, just three days after the testimony was filed. After inquiring among the parties in attendance at the prehearing conference whether anyone had an objection to the filing of the testimony, Deputy Chief Regulatory Law Judge Nancy Dippell granted the motion on the record when no party expressed an objection. (Tr. 1184). As a result, it is not accurate to suggest that the testimony “was not filed pursuant to a Commission order.” This is not sufficient reason to grant a waiver of 4 CSR 240-2.135(11).

5. Second, Public Counsel argues that this case “does not fit the normal mold that the Commission’s rules are designed to address.” (Motion, p. 3). While it is true that this case has become unusually contentious, and has included the filing of additional direct testimony, pursuant to orders of the Commission, 4 CSR 240-2.135(11) is applicable to all Commission cases, including this one. This is not a sufficient reason to grant a waiver of 4 CSR 240-2.135(11).

6. Third, Public Counsel argues that “the public interest is best served by having as much information in the public domain as possible.” (Motion, p. 3). While the Applicants do not disagree with this statement of general policy, it does not justify Public Counsel’s failure to follow the requirements of 4 CSR 240-2.135(11). Indeed, if this was an adequate reason to justify a waiver of the 10-day rule, then there would be no reason to have a time limit in the rule at all.

7. Fourth, Public Counsel argues because the exhibits “are so voluminous” and KCPL/GPE “made no effort to indicate what particular information might be sensitive,” Public Counsel had to analyze the harm that would accrue to the Joint Applicants if it was made public. (Motion, p. 3). This is also an insufficient reason to justify a waiver of 4 CSR 240-2.135(11). In fact, GPE/KCPL did designate the specific information it considered confidential in the testimony and exhibits. Schedule MWC-17 HC is only four pages long and contains the estimated impact of actual interest versus interest that has been allowed in Commission proceedings involving Aquila. Schedules MWC-18 HC and MWC-19 HC each contain virtually the same twenty-five pages of data that were presented by GPE to Standard & Poor’s and Moody’s for evaluation. While there is a substantial amount of information and data contained in Schedules MWC-18 HC and MWC-19 HC, the schedules are not so voluminous that Public Counsel could not have reviewed the material in sufficient time to comply with 4 CSR 240-2.135(11). This is not a sufficient reason to grant a waiver of 4 CSR 240-2.135(11).

8. Finally, Public Counsel argues that the fact that “the resumption of hearings are still a month away” justifies Public Counsel’s failure to comply with the requirements of 4 CSR 240-2.135(11). This is also an inadequate reason to grant a waiver of the PSC’s 10-day rule. If this were an adequate reason, there would be no need for the 10-day rule in 4 CSR 240-2.135(11) unless the hearings were imminent.

9. Without waiving GPE/KCPL's stated objections to the grant of a waiver of 4 CSR 240-2.135(11), as requested by Public Counsel, GPE/KCPL has reviewed the supplemental direct testimony of its witnesses Michael W. Cline and Terry Bassham to determine if there is any additional information that could be made public at this time. After this review, GPE/KCPL has determined that the first seven pages of Schedules MWC-18 and MWC-19 may be classified as "non-proprietary". These pages contain the Background, Recent Transaction Developments, the Alternative Proposal contained in the Joint Applicants' supplement direct testimony, Credit Considerations, and Conclusions related to the requests for analysis made to Standard & Poor's and Moody's. For the reasons stated below, the remainder of the testimony and exhibits should remain confidential to protect the sensitive nature of this information, and avoid the resulting harm that would occur if the information was disclosed to the public.

10: The Commission's rule on Confidential Information (4 CSR 240-2.135(1)(A)) recognizes that certain information, including confidential, or private technical, financial, and business information should not be made public and should be classified as "Proprietary" information. Highly confidential information includes, among other things, information concerning: "5. Reports, work papers, or other documentation related to work produced by internal or external auditors or consultants..." and "6. Strategies employed, to be employed or under consideration in contract negotiations." (4 CSR 240-2.135(1)(B)). All of the information that is being sought to be protected from public disclosure by the Applicants would fall within the protected "Proprietary" category or the "Highly Confidential" category.

11. Schedule MWC-17 calculates the difference between actual and regulatory interest costs on the Aquila debt.¹ In order to make this calculation, the various Aquila debt issues have to be allocated to their capital structure as their respective rate base increases. The rate base assumptions shown on the schedule are confidential, financial and business information that has not been previously disclosed. The schedule also includes rate base growth projections which are large determinants of future earnings, and would be considered forward-looking, confidential projections. This information should not be disclosed publicly.

12. The Appendices in Schedules MWC-18 HC and MWC-19 HC contain combined company financial metrics and projections prepared by an outside consultant, Credit Suisse. As a result, they would be considered “reports . . . or other documentation related to work produced by . . . consultants” and properly classified as Highly Confidential information under 4 CSR 240-2.135(5). In addition, the Appendices in Schedules MWC-18 HC and MWC-19 HC contain standalone GPE / KCPL financial projections which were provided to the rating agencies, and contain very sensitive, forward-looking information that should remain confidential. Some of this sensitive information includes projected common stock issuances, earnings per share projections, future rate case assumptions, preliminary earnings impact analysis, preliminary pro forma credit impact projections, projected synergies by year, and projected pro forma income statements, balance sheets, cash flow statements for GPE and Aquila. This information relates to strategies to be employed in operating the business in the future (4 CSR 240-2.135(B)(6), as well as confidential, or private technical, financial and business information (4 CSR 240-2.135(A)).

13. The testimony of Terry Bassham on page 5, line 22 through page 6 lines 1-2, and the testimony of Michael W. Cline on page 4, lines 20-23, discuss confidential reports and

¹ Summary information concerning Aquila debt costs is also contained on page 3, lines 14 and 15 of Mr. Cline’s Supplemental Direct Testimony and should be kept confidential.

evaluations from the rating agencies which are outside consultants to GPE/KCPL in this proceeding. These evaluations are directly based upon the confidential information provided to these outside consultants and contained in Schedules MWC-18 HC and MWC-19 HC. As a result, these discussions should be considered as "Highly Confidential" as: "reports . . . or other documentation related to work produced by . . . consultants." 4 CSR 240-2.135(B)(5). These discussions also contain confidential, financial and business information under 4 CSR 240-2.135(A), which should not be made public.

14. Pursuant to 4 CSR 240-2.135(11)(A), the Applicants state that public disclosure of the confidential information discussed herein may harm the financial interests of GPE and KCPL. GPE and KCPL believe that disclosure of this information would put it at a competitive disadvantage in the capital markets. Access to capital at reasonable cost is essential, and is even more critical in the next several years to support the capital needs of the comprehensive energy plan. Disclosure of this information would give capital market providers and competitors insight into the timing and amount of projected securities issuances, which would put GPE and KCPL at a pricing and availability disadvantage. GPE and KCPL do not disclose the specifics of their financing plans (such as amounts and timing), and have no plans to do so in the future. The insight into future results and plans by visibility into this information could have a significant impact on GPE's share price, as well as GPE's and KCPL's ability to complete security offerings on attractive terms.

WHEREFORE, for the reasons stated herein, the Applicants respectfully request that the Commission deny Public Counsel's Motion To Make Certain Documents Public And Request For Waiver filed on March 21, 2008, and otherwise adopt the position of the Applicants stated herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing has hand-delivered, emailed or mailed postage prepaid, first class, this 28th day of March, 2008, to all counsel of record.

/s/ James M. Fischer

Attorney