

**BEFORE THE PUBLIC SERVICE COMMISSION
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

**STAFF’S RESPONSE TO PUBLIC COUNSEL’S
MOTION FOR RECONSIDERATION**

COMES NOW the Staff of the Missouri Public Service Commission (“PSC”), by and through the Commission’s General Counsel, and for its Response to Public Counsel’s Motion for Reconsideration, states as follows:

1. On January 11, 2008, the Public Counsel moved the Commission to reconsider its denial of his Motion to Dismiss, wherein he asserted that this matter must be dismissed because certain conduct by four of the five Commissioners has created an “appearance of impropriety” such that the Commissioners would each be required to recuse were they judicial officers.

2. The Commission should deny Public Counsel’s Motion because it is wrong on the law. Assuming *arguendo* that Public Counsel’s predicate is accurate, dismissal is not the result. Public Counsel has not produced even a single Missouri case wherein a cause was dismissed because of an appearance of impropriety on the part of the tribunal. Instead, under Missouri’s well-established Rule of Necessity, the adjudication must go forward and the decision will be subject to heightened scrutiny on judicial review. See *Weinstock v.*

Holden, 995 S.W.2d 408, 410 (Mo. banc 1999); *Rose v. State Board of Registration for the healing Arts*, 397 S.W.2d 570, 575 (Mo. 1965); *Stonecipher v. Poplar Bluff R1 School District*, 205 S.W.3d 326, 328 (Mo. App., S.D. 2006).

3. At Paragraph 3 of his Motion for Reconsideration, Public Counsel states, “Lest there be any doubt, Public Counsel did not and does not allege actual bias or unalterable prejudgment.” With this admission, Public Counsel defeats his own motion because it is only actual bias and unalterable prejudgment that requires recusal. Because the existence of bias and prejudgment must be determined objectively, the standard used is the one quoted by Mr. Mills: “whether ‘a reasonable person, giving due regard to that presumption [of impartiality], would find an appearance of impropriety **and doubt the impartiality of the Court.**’” *Public Counsel’s Motion*, ¶ 3, quoting *State v. Kinder*, 942 S.W.2d 313, 324 (Mo. banc 1996) (emphasis added). Public Counsel insists that he does *not* doubt the impartiality of the tribunal, thus, his motion must fail.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will deny Public Counsel’s Motion to Reconsider its denial of his Motion to Dismiss and proceed to determine the application herein on the merits as shown in the record of this matter; and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Kevin A. Thompson

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record on this **15th day of January, 2008.**

/s/ Kevin A. Thompson