

**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)	Case No. EM-2007-0374
the Merger of Aquila, Inc. with a Subsidiary of Great)	
Plains Energy Incorporated and for Other Related)	
Relief)	

**RESPONSE OF JOINT APPLICANTS
TO APPLICATIONS FOR REHEARING**

Great Plains Energy Incorporated (“Great Plains Energy”), Kansas City Power & Light Company (“KCPL”), and Aquila, Inc. (“Aquila”) hereby respond and oppose the Applications for Rehearing filed by the Office of Public Counsel (“OPC”), the Industrial Intervenors (“Industrials”), and Shirley and Allen Bockelman. The Missouri Public Service Commission (“Commission”) should deny the Applications for Rehearing for the following reasons:

1. The parties submitting applications for rehearing have failed to provide any sufficient reason for the Commission to grant rehearing. The Commission’s comprehensive and detailed July 1, 2008 Report and Order is based on competent and substantial evidence on the whole record. See State ex rel. Ag Processing, Inc. v. PSC, 120 S.W.3d 732, 734-35 (Mo. 2003); State ex rel. Midwest Gas Users’ Assoc. v. PSC, 976 S.W.2d 485, 491 (Mo. App. 1998). Witness credibility is solely within the discretion of the Commission, which is free to believe all, some or none of a witness’s testimony. State ex rel. Missouri Gas Energy v. PSC, 186 S.W.2d 376, 389 (Mo. App. 2005). All of the issues raised by the applications for rehearing (with the exception of the 2-1 vote of the Commission discussed below) were addressed extensively in the parties’ pleadings and oral argument during the course of the hearings conducted in December

2007 and in April and June 2008, as well as in the voluminous post-hearing briefs. There is no need to burden the record further with repetitive argument and citations of authority.

2. The applicants for rehearing additionally assert that because only two of the three Commissioners sitting on the case supported the Report and Order, the vote of the Commission was not sufficient and the merger was not lawfully approved. See ¶ 23, Application for Rehearing by Industrial Intervenors; ¶ 2(c), Application for Rehearing of Bockelmans; ¶ 15, OPC Application for Rehearing. The issue is whether a majority of a quorum of the Commission is empowered to act. Longstanding authority in both Missouri and in the federal courts holds that in the absence of a contrary statutory provision, a majority of a quorum -- that is, a simple majority of a quorum -- of an administrative agency is authorized to act for the body. Federal Trade Comm'n v. Flotill Products, Inc., 389 U.S. 179, 183-84, 189, 88 S. Ct. 401, 404, 407 (1967); State ex rel. Kiel v. Riechmann, 142 S.W. 304, 312 (Mo. 1911); Hardesty v. City of Buffalo, 155 S.W.3d 69, 74 (Mo. App. 2004). See 2 Am. Jur. 2d, Administrative Law § 82 (2004); General Counsel Opinion No. 97-1, Mo. P.S.C. (Feb. 18, 1997).

3. In its argument, OPC cites State ex rel. Phillip Transit Lines, Inc. v. PSC, 552 S.W.2d 696, 700-701 (Mo. 1977), which did not address the issue presented here. In Phillip Transit the Supreme Court invalidated the Commission's notational voting procedure and restated the general rule that the Commission was required to register its votes "as a body at a meeting attended by a quorum (emphasis added)," pursuant to Section 386.130, Mo. Rev. Stat. (2000). It based its finding on judicial decisions from New York, noting that Missouri's Public Service Commission Law was based on New York's utility regulation statutes. Id. at 698-700. Continuing its reliance on New York cases, the Court stated:

In order that there should have been a valid order, it was necessary that it should appear that it had been adopted by the Commission,

acting at least by a majority, and at a stated meeting, or a meeting possibly called and of which all the Commissioners had been notified and had an opportunity to be present.

Id. at 701 (emphasis added). Because a quorum of this Commission -- Commissioners Murray, Clayton and Jarrett -- acted on the Report and Order, and a majority of the quorum voted in favor, there is no requirement under Missouri law that they must be unanimous in their opinion. That is, the law does not mandate that a 3-member quorum of the 5-person Commission be present and concur in order to transact business.

4. As noted above, federal case law also supports the Commission's decision. In Federal Trade Comm'n v. Flotill Products, Inc., 389 U.S. 179, 88 S. Ct. 401 (1967), the FTC had entered a cease and desist order in a matter in which only three of the Commission's five members participated. In one portion of the order, only two Commissioners supported the decision, with the third Commissioner dissenting. The subject of the order challenged its validity, claiming that a majority of the entire 5-member Commission must concur for the order to be effective. Although the Federal Trade Commission Act did not specify the number of commissioners needed for a quorum, the FTC's Procedures and Rules of Practice stated: "A majority of the members of the Commission constitutes a quorum for the transaction of business." Id. at 181, n. 4, 88 S. Ct. at 403, n. 4. The U.S. Court of Appeals for the Ninth Circuit held that the FTC action was invalid because it believed that the FTC could only act on a concurrence of a majority of the full Commission.

5. In a unanimous opinion the Supreme Court reversed, finding that the long-established rule that a majority of a quorum of a body could act in the absence of a specific statute to the contrary applied. Id. at 183, 189-190, 88 S. Ct. at 404, 407. Justice Brennan stated: "The almost universally accepted common-law rule" is that "in the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body

is empowered to act for the body.” Id. at 183-84, 88 S. Ct. at 404. The Supreme Court noted that the vast majority of federal agencies act on a majority vote of a quorum, and that the practice had been judicially approved with regard to the Federal Communications Commission, the Securities and Exchange Commission, and the Civil Aeronautics Board. Only the Federal Maritime Commission required a unanimous vote of a quorum. Id.

6. This Commission’s procedure is governed by Section 386.130, which states: “A majority of the commissioners shall constitute a quorum for the transaction of any business” Since that section’s predecessor was enacted by the Missouri General Assembly as Section 10421 in 1913, the legislature has expressed no intention to require the Commission to act by anything other than the majority of a quorum. Although other provisions of Missouri law have imposed requirements beyond the “majority of a quorum” rule on other administrative bodies of the state,¹ no changes have been made to the Public Service Commission Law by either the legislature or the courts. Therefore, the Commission’s approval of Great Plains Energy’s acquisition of Aquila by a 2-to-1 vote is valid.

WHEREFORE, Great Plains Energy, Aquila and KCPL request that the Commission deny the Applications for Rehearing.

¹ See, e.g., § 79.240 (elected officers of fourth class city may be removed only by two-thirds vote of all members of board of aldermen); § 86.520 (vote by majority of entire board of trustees required to change contribution rate to police officer pension fund); §162.795.4 (Quorum of boards of school for the deaf and school for the blind is three members, but official action requires majority of 5-member board); § 329.220 (Quorum of board of cosmetology is two board members, but official action requires majority of 7-member board).

Respectfully submitted,

/s/ Karl Zobrist

Karl Zobrist, MBN 28325
Roger W. Steiner, MBN 39586
Sonnenschein Nath & Rosenthal LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111
Telephone: (816) 460-2545
Facsimile: (816) 531-7545
email: kzobrist@sonnenschein.com
email: rsteiner@sonnenschein.com

James M. Fischer, MBN 27543
Fischer & Dority P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383
email: jfischerpc@aol.com

Mark G. English, MBN 31068
General Counsel
Great Plains Energy Incorporated
1201 Walnut
Kansas City MO 64106
Telephone: (816) 556-2608
Email: Mark.English@kcpl.com

William G. Riggins, MBN 42501
Vice President and General Counsel
Curtis D. Blanc, MBN 58052
Managing Attorney - Regulatory
Kansas City Power & Light Company
1201 Walnut
Kansas City MO 64106
Telephone: (816) 556-2785
Email: Bill.Riggins@kcpl.com
Email: Curtis.Blanc@kcpl.com

Attorneys for Great Plains Energy Incorporated, Aquila, Inc. and Kansas City Power & Light Company

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 21st day of July, 2008, to all counsel of record.

/s/ Karl Zobrist

Karl Zobrist