

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
vs.	)	<b><u>Case No. EC-2009-</u></b>
	)	
KCP&L Greater Missouri Operations Company and	)	
Kansas City Power & Light Company,	)	
	)	
Respondents.	)	

**COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff"), by and through the Commission's General Counsel, pursuant to §§ 386.071 and 386.390.1, RSMo 2000,<sup>1</sup> and Commission Rules 4 CSR 240-2.010(6), 4 CSR 240-2.040(1) and 4 CSR 240-2.070(1), and for its Complaint states as follows:

***Introduction***

1. This Complaint concerns Respondents' operation of KCP&L Greater Missouri Operations Company under an unauthorized name in violation of orders of the Commission and in derogation of the public interest.

***Complainant***

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Commission's General Counsel as authorized by Commission Rules 4 CSR 240-2.010(6), 4 CSR 240-2.040(1) and 4 CSR 240-

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<sup>1</sup> All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri ("RSMo"), revision of 2000.

2.070(1).

***Respondents***

3. Respondent Kansas City Power & Light Company (“KCPL”) is a Missouri general business corporation in good standing, formed on July 29, 1922, with its principal place of business located at 1201 Walnut Street, Kansas City, Missouri 64106. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. KCPL is an integrated electric utility that provides electricity to customers primarily in the states of Missouri and Kansas.

4. Respondent KCP&L Greater Missouri Operations Company (“GMO”) is a Delaware general business corporation in good standing, duly qualified to do business in Missouri since March 27, 1987, with its principal place of business located at 1201 Walnut Street, Kansas City, Missouri 64106. Its registered agent is CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105. GMO is an integrated, electric utility that primarily provides electricity to customers in the state of Missouri.

5. Both Respondent KCPL and Respondent GMO are wholly-owned subsidiaries of Great Plains Energy Incorporated (“GPE”), a publicly-traded Missouri general business corporation in good standing, formed on February 26, 2001, with its principal place of business located at 1201 Walnut Street, Kansas City, Missouri 64106. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City, Missouri 65101. In SEC filings<sup>2</sup> and on

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<sup>2</sup> The SEC is the United States Securities and Exchange Commission.

its corporate website, GPE represents that, through KCPL and GMO, it provides retail electric service to some 820,000 customers in Missouri and Kansas. GPE also represents that it controls generation assets rated at more than 6,000 MW.

6. GPE acquired Respondent GMO, then called "Aquila, Inc.," on July 14, 2008, pursuant to authority granted by the Commission in its Report & Order in Case No. EM-2007-0374, issued on July 1, 2008, and effective on July 11, 2008.<sup>3</sup>

7. Pursuant to the order of the Commission set out in the Report & Order referred to in Paragraph 6, above, Respondent KCPL and Respondent GMO on October 10, 2008, executed and filed their Joint Operating Agreement in Case No. EM-2007-0374, in which Respondent KCPL was designated as Respondent GMO's agent and operator of its business and properties and expressly accepted responsibility therefor.

### ***Jurisdiction***

8. Respondents KCPL and GMO are electrical corporations and public utilities within the intendments of Chapters 386 and 393, RSMo, and thus subject to the jurisdiction, regulation and control of this Commission.

9. Section 386.390.1 provides that "Complaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . . ."<sup>4</sup>

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<sup>3</sup> *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company and Aquila, Inc.*, Case No. EM-2007-0374 (Report & Order, issued July 1, 2008), p. 281 ff.

<sup>4</sup> Commission Rule 4 CSR 240-2.070(3) is substantially similar.

10. On April 6, 2009, as required by Commission Rule 4 CSR 240-2.070(5)(E), Staff contacted Respondents regarding the subject matter of this complaint and, to date, Respondents have failed and refused to cease the practices complained of herein.

***Allegations Common to All Counts***

11. In its Report & Order in Case No. EM-2007-0374 referred to in Paragraph 6, above, the Commission denied Respondents' request to change the name of "Aquila, Inc.," as Respondent GMO was then known. The Commission directed GMO to pursue a name change action under the Commission's practice rules:

As part of the Applicants' original request, they asked to the Commission to authorize a name change for Aquila, Inc., once a new name for the company had been chosen. At one point during the evidentiary hearing, there was mention of a possible new name for Aquila, i.e., KCPL Greater Missouri Operations. The Applicants' current request does not satisfy the Commission's rules governing name changes. The Commission shall deny this request and require a proper name change application prior to considering any name change for Aquila, Inc.<sup>5</sup>

12. Accordingly, on July 2, 2008, Respondent GMO filed tariff sheets and initiated a name change proceeding, docketed as Case No. EN-2009-0015, seeking authority for GMO, then still known as Aquila, Inc., and which had been operating as "Aquila Networks – L&P" and "Aquila Networks – MPS," to operate as "Aquila, Inc., doing business as KCP&L Greater Missouri Operations Company." Upon satisfactory proof that the new fictitious name had been duly

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<sup>5</sup> *Supra*, Note 3, at p. 278.

registered with the Missouri Secretary of State, the Commission granted the requested authority on August 7, 2008, effective August 8, 2008.

13. On November 3, 2008, Respondent GMO filed tariff sheets and initiated a name change proceeding, docketed as Case No. EN-2009-0164, seeking authority for GMO to change its name from "Aquila, Inc., doing business as KCP&L Greater Missouri Operations Company," to "KCP&L Greater Missouri Operations Company." Upon satisfactory proof that the new name had been approved by the Delaware Secretary of State and duly registered with the Missouri Secretary of State, the Commission granted the requested authority on November 20, 2008, effective December 3, 2008.

14. Respondent GMO has not sought, and has not obtained, authority from either the Missouri Secretary of State or this Commission to operate under any name or fictitious name except as described in Paragraphs 11 through 13, above. In particular, Respondent GMO has not sought, and has not obtained, authority from either the Missouri Secretary of State or this Commission to operate under the name "KCP&L."

15. Respondent KCPL has not been authorized, by either the Missouri Secretary of State or this Commission, to operate under the fictitious name "KCP&L."

16. The name "KCP&L, Inc.," is that of a Missouri close corporation in good standing, formed on April 10, 2009, by Mark English, headquartered at 1201 Walnut Street, Kansas City, Missouri 64106. Its registered agent is National Registered Agents, Inc., 300-B East High Street, Jefferson City,

Missouri 65101. On information and belief, GPE intends at some future date to seek authorization to merge Respondents GMO and KCPL into KCP&L, Inc., with KCP&L, Inc., surviving. Staff herein expresses no position with respect to such a transaction.

***Count I***

***Customer Bills***

17. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 16, above.

18. By December 31, 2008, Respondent GMO, under the direction of Respondent KCPL, and as operated by Respondent KCPL, had issued approximately 1,350,828 bills to its customers in which it identified itself as "KCP&L."

19. By the conduct set out in Paragraph 18, above, Respondents violated the Commission's Order of November 20, 2008, in Case No. EN-2009-0164, which authorized Respondent GMO to operate as "KCP&L Greater Missouri Operations Company" and under no other name.

20. By the conduct set out in Paragraph 18, above, Respondents violated § 417.200 which provides:

That every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required.

21. Pursuant to § 417.230, a violation of § 417.200 is a misdemeanor.

**WHEREFORE,** Staff prays that the Commission will give notice to

Respondents as required by law and, after hearing, find that Respondents have violated the Commission's Order of November 20, 2008, in Case No. EN-2009-0164, which authorized Respondent GMO to operate as "KCP&L Greater Missouri Operations Company" and under no other name, and find that Respondents have violated § 417.200 by transacting business in this state under an unregistered fictitious name and, further, find that each customer bill rendered under the unauthorized name "KCP&L" constitutes a separate violation.

### ***Count II***

#### ***Signage***

22. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 21, above.

23. In response to Staff's Data Request No. 324 in Case No. ER-2009-0090, Respondent GMO admitted that it had, under the direction of Respondent KCPL, and as operated by Respondent KCPL, expended approximately \$56,605 during July and August 2008 to place signs at some 221 locations owned by Respondent GMO that identify the owner as "KCP&L."

24. By the conduct set out in Paragraph 23, above, Respondents violated the Commission's Order of November 20, 2008, in Case No. EN-2009-0164, which authorized Respondent GMO to operate as "KCP&L Greater Missouri Operations Company" and under no other name.

25. By the conduct set out in Paragraph 23, above, Respondents violated § 417.200.

26. Pursuant to § 417.230 a violation of § 417.200 is a misdemeanor.

**WHEREFORE,** Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, find that Respondents have violated the Commission's Order of November 20, 2008, in Case No. EN-2009-0164, which authorized Respondent GMO to operate as "KCP&L Greater Missouri Operations Company" and under no other name, and find that Respondents have violated § 417.200 by transacting business in this state under an unregistered fictitious name and, further, find that each day of operation under an unauthorized name constitutes a separate violation.

### ***Count III***

#### ***Customer Confusion***

27. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 26, above.

28. More than 30 public comments were submitted to the Commission with respect to Respondents' pending rate increase cases, Case Nos. ER-2009-0089 and ER-2009-0090, in which customers of Respondent GMO indicated their belief that they are customers of "KCP&L."

29. By the conduct set out in Paragraphs 18, 23 and 28, above, Respondents have caused customer confusion in that customers of Respondent GMO do not know the true identity of the electric utility that is serving them.

30. The conduct set out in Paragraphs 18, 23 and 28, above, having caused customer confusion, is therefore unjust and unreasonable in violation of § 393.130(5) which provides:

[The commission shall] Examine all persons and corporations under its supervision and keep informed as to the

methods, practices, regulations and property employed by them in the transaction of their business. Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed; and whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaints, that the property, equipment or appliances of any such person or corporation are unsafe, insufficient or inadequate, the commission shall determine and prescribe the safe, efficient and adequate property, equipment and appliances thereafter to be used, maintained and operated for the security and accommodation of the public and in compliance with the provisions of law and of their franchises and charters.

**WHEREFORE,** Staff prays that the Commission will give notice to Respondents as required by law and, after hearing, order that Respondent GMO operate henceforward as “KCP&L Greater Missouri Operations Company,” and that Respondent KCPL henceforward operate GMO as “KCP&L Greater Missouri Operations Company,” unless lawful authority is duly sought and obtained to operate under some other name.

#### ***Count IV***

##### ***Tariffs Available for Public Inspection***

31. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 30, above.

32. Section 393.140(11) provides in pertinent part:

[The commission shall] Have power to require every . . . electrical corporation . . . to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or

enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such . . . electrical corporation . . . ; but this subdivision shall not apply to state, municipal or federal contracts. \* \* \*

33. Commission Rule 4 CSR 240-3.145 requires every electrical corporation, including Respondents GMO and KCPL, to maintain an accurate schedule of its rates on file with this Commission and at each of its offices and to produce said schedules for public inspection upon request.

34. Pursuant to § 393.140(11) and Commission Rule 4 CSR 240-3.145, the schedule of rates for Respondent GMO are maintained on the Commission's EFIS system under the name "KCP&L Greater Missouri Operations Company," which name is also displayed on the title page of said schedule of rates.

35. The schedule of rates of Respondent GMO is not maintained under the name "KCP&L"; nor are any rates maintained under that name.

36. By the conduct set out in Paragraphs 18, 23 and 28, above, Respondents have caused customer confusion in that customers of Respondent GMO do not know the true identity of the electric utility that is serving them and therefore their ability to inspect Respondent GMO's schedule of rates is impeded.

37. By operating under an unauthorized fictitious name, Respondents have violated § 393.140(11) and Commission Rule 4 CSR 240-3.145.

**WHEREFORE,** Staff prays that the Commission will give such notice to the Respondents as is required by law and, after hearing, find that Respondents have violated § 393.140(11) and Commission Rule 4 CSR 240-3.145 and, further, find that each day of operation under an unauthorized name constitutes a

separate violation.

### ***Count V***

#### ***Authority to Seek Penalties***

38. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 37, above.

39. Section 386.570 provides:

1. Any corporation, person or public utility which violates or fails to comply with any provision of the constitution of this state or of this or any other law, or which fails, omits or neglects to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such corporation, person or public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

2. Every violation of the provisions of this or any other law or of any order, decision, decree, rule, direction, demand or requirement of the commission, or any part or portion thereof, by any corporation or person or public utility is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

3. In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

40. Section 386.600 provides:

An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission. No filing or docket fee shall be required of the general counsel. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover

a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is sought to recover penalties or forfeitures for a violation of an order or decision of the commission the defendant was actually and in good faith prosecuting a suit to review such order or decision in the manner as provided in this chapter, the court shall remit the penalties or forfeitures incurred during the pendency of such proceeding. All moneys recovered as a penalty or forfeiture shall be paid to the public school fund of the state. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

**WHEREFORE,** Staff prays that the Commission will give such notice to the Respondents as is required by law and, after hearing, in the event that any of the conduct herein described is determined to be a violation of any law of the State of Missouri or of any order, decision, or rule of the Commission, deem each day that such violation existed to be a separate offense and authorize its General Counsel to proceed in Circuit Court to seek such penalties as are authorized by law.

Respectfully Submitted,

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