

**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)	

**JOINT RESPONSE OF GREAT PLAINS ENERGY INCORPORATED,
KANSAS CITY POWER & LIGHT COMPANY AND AQUILA, INC. IN OPPOSITION
TO MOTION FOR EXTENSION OF EFFECTIVE DATE**

Great Plains Energy Incorporated (“Great Plains Energy”), Kansas City Power & Light Company (“KCPL”) and Aquila, Inc. (“Aquila”) (collectively, the “Joint Applicants”) hereby provide their joint response in opposition to the motion of the Office of Public Counsel (“OPC”) and the Industrial Intervenors (“Industrials”) (collectively, the “Movants”) to extend the effective date of the Commission’s order and separately, certain of the specific authorizations granted therein. The Missouri Public Service Commission (“Commission”) should deny the Motion for Extension of Effective Date for the following reasons:

1. Although argued in terms of inadequate due process, the Movants position is that because they chose not to work on this matter over the intervening Fourth of July holiday weekend, they had “only six business days” to review the Commission’s Report and Order and prepare a response, and because the Report and Order is lengthy, six days is not sufficient. In response to the Commission’s reasonable exercise of its statutory authority under Section 386.490.3 of the Missouri Revised Statutes to apply its standard ten day effective date, this argument has little merit.

2. Section 386.490.3 authorizes the Commission to establish an effective date for its orders of less than thirty days. As the Movants correctly note, under *State ex rel. Office of the*

Public Counsel v PSC, 236 S.W. 3rd 632, 637 (Mo. 2007) (“*Public Counsel*”) the Commission has authority to set a shorter time as long as that time period is reasonable. The Commission has frequently and consistently determined that a ten day effective date is reasonable. Indeed, most Report and Orders issued by the Commission have a ten day effective date, and as specifically relevant here, the Commission has consistently applied a ten day effective date in its recent merger and asset transfer decisions.¹

3. A ten day effective date is reasonable for the Report and Order in this case despite Movants’ contentions concerning the intervening holiday. Ten days is the standard period used by the Commission when establishing the effective dates of its orders. Because a week is seven days long, a ten day effective date will always encompass a weekend and in certain cases, state holidays. Neither Section 386.490.3, nor the case law interpreting it makes a distinction among business days, calendar days or holidays. Absent such a distinction, the frequent and consistent practice of the Commission has been to use calendar days with no regard for weekends or holidays. In fact, 4 CSR 240-2.050(2), which applies to “computing the effective date of any order of the Commission,” expressly rejects the consideration of weekends or holidays. It states “the order is considered effective at 12:01 a.m. on the effective date designated on the order, whether or not the date is a Saturday, Sunday or legal holiday.” Significantly, application of that rule here does not shorten the Movants’ time to respond to the Report and Order, which bears an

¹ See Case No. EO-2004-0108, 2005 MoPSC LEXIS 190 (AmerenUE transfer of assets to AmerenCIPS, Order on Rehearing issued February 10, 2005, effective February 20, 2005); EO-2004-0108, 2004 MoPSC LEXIS 1516 (AmerenUE transfer of assets to AmerenCIPS, Order issued October 6, 2004, effective October 16, 2004); Case No. EM-2000-292, 2004 MoPSC LEXIS 233 (Utilicorp/St. Joseph Light & Power Company merger, Second Report and Order issued February 26, 2004, effective March 7, 2004); Case No. EM-2000-292; 9 Mo.P.S.C. 3d 454 (Utilicorp/St. Joseph Light & Power Company merger, Report and Order issued December 14, 2000, effective December 24, 2000); Case No. EM-2000-369, 2000 MoPSC LEXIS 1674 (Utilicorp/Empire merger, Order issued December 28, 2000, effective January 7, 2001); Case No. WM-2000-222, 9 Mo.P.S.C. 3d 56 (Missouri-American Water Co/United Water Missouri, Inc. merger, Order issued March 16, 2000, effective March 26, 2000); Case No. GM-2000-502, 2000 MoPSC LEXIS 999 (Southern Union Company acquisition of Valley Resources, Order issued June 27, 2000, effective July 7, 2000).

effective date of Friday, July 11, 2008. Movants therefore had a full ten days to review the Report and Order and prepare an application for rehearing. For these reasons, Movants incessant reference to having “only six business days” to respond to the Report and Order is a red herring that should be rejected. Movants had ten days. If they did not use all of them, that was their choice.

4. Movants reliance upon the *Public Counsel* case is misplaced. That case represents an extreme example whereby due to a culmination of circumstances, OPC was left with less than two hours to prepare an application for rehearing before the effective date of a Commission order. The Missouri Supreme Court concluded that shortening OPC’s time to review and respond to an order under those circumstances to less than two hours was unreasonable. In this case, as noted above, the July Fourth holiday and weekend fell in the middle of the ten day effective date period and therefore the holiday did not shorten the period for the Movants’ review of the Report and Order or move up the day when the application for rehearing was due.

5. OPC’s arguments in the *Public Counsel* case emphasize the extremeness of the circumstances in that case as compared to the Commission’s reasonable use of its standard ten day effective date here. In its petition for a writ of mandamus in the *Public Counsel* case OPC argued that the time provided by the Commission to respond was too brief and asked the Missouri Supreme Court to direct the Commission to provide **at least ten days** to prepare and file an application for rehearing for any subsequent approval. *Id.*, at 635. Indeed, OPC’s mandamus petition requested that the Supreme Court direct the Commission that decisions be effective not less than **ten calendar days** and did not ask for any additional time due to future intervening

holidays and weekends. See Section IV of Attached Exhibit 1 (OPC's writ summary in the *Public Counsel* case).

6. Movants' arguments concerning the length of the Commission's order should similarly be given little weight. All parties to this case were put on notice several weeks ago during a public agenda meeting of the Commission that the Report and Order would be approximately 300 pages in length. Counsel for Movants were present at that agenda meeting, which means (i) they had time to allocate resources in preparation for reviewing and responding to the Report and Order and (ii) they could have sought an extension of time much earlier than six days into the ten day effective date period. The Commission's standard effective date is ten days and there were no reasonable grounds for the Movants to believe that the effective date in this case would be any different.

7. The Movants also suggest that it is unfair for the Commission to use its standard ten day effective date because the Joint Applicants asked to recess the evidentiary hearings in this case in December of 2007. Procedural delays in this case are irrelevant at this point. Truth be told delays can be attributable to Movants as well as the Joint Applicants. For example, the Industrials successful request to reopen the record to hear evidence regarding the Iatan crane incident and the refusal of the Movants, as well as other parties, to move up the date of the post hearing briefs after an earlier than anticipated conclusion of live testimony all contributed to the timing of the Commission's issuance of its Report and Order. However, none of these delays matter at this point. The sole issue before the Commission is whether it was reasonable for it to apply its standard ten day effective date to the Report and Order in this case. It was, and Movants' have not presented a compelling case to the contrary.

8. Movants also suggest that because the agreements underlying the merger would permit the Joint Applicants to close the merger as late as August 6, 2008, there is little harm in

delaying the effective date of the Commission's order. This is simply not true. The Joint Applicants, their employees, and most importantly their customers would be severely and adversely impacted by delaying the effective date of the Report and Order. Joint Applicants have reasonably relied upon the stated effective date and have taken steps to close the transaction on July 14, 2008, the first business day following the effective date of the Commission's order. The impact of stopping or delaying that process would be considerable.

9. Since the Commission issued the Report and Order on July 1, 2008, the Joint Applicants have made significant commitments and committed considerable resources to ensure that on July 14, 2008 they can begin operating as contemplated in the Joint Application and authorized by the Commission. Many of these commitments are complex and cannot be easily or quickly modified. For example, the Joint Applicants have worked with an outside vendor to change the customer service telephone numbers that will appear on the bills of Aquila's customers after July 14, 2008. The Joint Applicants' plans to efficiently handle customer calls following the merger is premised in part on a certain volume of those calls flowing to the new telephone numbers. It is unclear at this late stage whether there is sufficient time to modify the bills to reflect Aquila's old customer service telephone numbers. Although those numbers will remain effective for some period of time, calls to those numbers will need to be re-routed to the integrated customer operations center. This process is less efficient than simply directing the customers to use the new telephone numbers, which is what the Joint Applicants have made plans to do. This is but one example of a very complex and elaborate integration process. Similar processes are in place across virtually all business units of the companies.

10. Steps have been taken to integrate information technology systems and telephone systems, to modify meter reading and billing schedules, to implement the new accounting practices that will need to be in place, to alter employee benefits to ensure that medical, dental,

and pharmacy providers draft claims against the appropriate accounts, to name but a few. It is precisely these types of integration activities that the Joint Applicants have been working together for more than a year to develop to ensure a smooth integration. Since July 1, 2008, all of these efforts have been premised upon a closing date of July 14, 2008. It is also relevant that the first day of integrated operations is a Monday, which gives Joint Applicants the opportunity to finalize modifications to systems over the weekend when there are fewer users. Attempting to close the transaction and integrate operations in the middle of the week would be more complex and could increase the likelihood of integration issues arising.

11. In addition, hundreds of employees are preparing to move worksite locations based upon a closing date of July 14, 2008. Modifying that date will impact both the Aquila employees who will be joining Great Plains Energy or KCPL and those who will not. Many of the Aquila employees that will be coming over are in the process of moving to 1201 Walnut and other Great Plains Energy or KCPL locations. Many of the Aquila employees who will not be joining Great Plains Energy or KCPL have made commitments to their future employers concerning their start date. Those commitments are premised upon the closing date of the transaction, which in turn is premised upon the effective date of the Report and Order. It would be patently unfair to put those people and to a certain extent the integration process itself in jeopardy because Movants chose not to work on this matter over the Fourth of July holiday and weekend.

12. Movants also argue that the Commission should grant their request to effectively delay approval of the merger because the transaction would be “messy to undo.” Movants made this same argument concerning this merger before both the Missouri Court of Appeals and the Supreme Court of Missouri. Both courts rejected Movants efforts to delay this transaction on the basis that it could not easily be undone. The Commission should do likewise. Movants have not

presented a compelling case for delaying the Commission's approval of the merger, particularly in light of the significant adverse consequences outlined above.

13. Movants also request that the Commission delay the effective date of certain ordered paragraph approvals until after the Report and Order's effective date to allow the Commission to consider any applications for rehearing before the Joint Applicants consummate the merger. As with the Movants' request to deviate from the standard ten day effective date, Movants are requesting that the Commission change its standard operating procedure without providing a sound basis for doing so. As a practical matter, the Movants' request makes no sense. Once an order becomes effective, the entire order is effective. The Commission's ability to consider any applications for rehearing is in no way limited by the Joint Applicants actions after the effective date of the Report and Order. Whatever the Commission decides with respect to any applications for rehearing will have to be recognized by all parties. Therefore, the Movants' request regarding delaying the effective date of the approvals serves no purpose and should be denied.

WHEREFORE, Great Plains Energy, KCPL, and Aquila request that the Commission deny the Movants' Motion. The Commission has already concluded that there are significant customer benefits to be realized as a result of the transaction. The sooner the transaction closes, the sooner customers can begin realizing those benefits.

Respectfully submitted,

/s/ Karl Zobrist

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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 8th day of July, 2008, to all counsel of record.

/s/ Karl Zobrist

Karl Zobrist

IN THE SUPREME COURT OF MISSOURI

State of Missouri ex rel,
Office of the Public Counsel,

Relator,

vs.

Case No. _____

Public Service Commission of the
State of Missouri, a state agency, and
its members Jeff Davis, Steve Gaw,
Connie Murray, Robert Clayton III, and
Lin Appling in their official capacity,

Respondents.

WRIT SUMMARY

I. Parties

Relator Office of the Public Counsel, Lewis R. Mills, Jr., Michael F. Dandino,
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Respondents Missouri Public Service Commission, Dennis Frey, PO Box 360,
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Intervenors

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Explorer Pipeline, David Woodsmall, 428 E. Capitol Ave., Suite 300, Jefferson City, MO, 65102, Phone: 573-635-5270.

Explorer Pipeline, Stuart Conrad, 3100 Broadway, Suite 1209, Kansas City, MO, 64111, Phone: 816-753-3112.

Kansas City Power & Light Company, James M. Fischer, 101 Madison, Suite 400, Jefferson City, MO, 65101, Phone: 573-636-6675.

Kansas City Power & Light Company, Curtis D. Blanc, William G. Riggins, 1201 Walnut, 20th Floor, Kansas City, MO, 64106, Phone: 816-556-6248.

Missouri Department of Natural Resources, Shelley Woods, PO Box 899, Jefferson City, MO, 65102-0899, Phone: 573-751-1879.

Praxair, Inc., David Woodsmall, 428 E. Capitol Ave., Suite 300, Jefferson City, MO, 65102, Phone: 573-635-5270.

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II. Nature of Underlying Action

Public Counsel was deprived of its right to appeal PSC decisions under Sec. 386.710 (2) and Sec. 386.500, RSMo 2000 and has no other avenue to appeal an order.

III. Action of Respondent Being Challenged

The Commission issued an order approving Empire's tariffs, effective on January 1, 2007, less than 2 hours before the close of the Commission's filing office on December 29, the last business day before the tariffs became effective and thereby deprived Public Counsel of a reasonable opportunity to file for a rehearing and appeal under Sec. 386.450 and 386.500, RSMo.

IV. Relief Sought by Relator

Public Counsel asks the Court issue its preliminary writ of mandamus to the Commission, direct it to rescind the order approving tariffs, and direct that decisions be effective not less than ten calendar days later or at least be effective not less than a reasonable time to file for rehearing.

V. Date Set for Trial


Not applicable for this petition.

VI. Previous Writ Proceedings

Public Counsel filed a Petition for Writ of Mandamus with the Missouri Court of Appeals, Western District, on January 4, 2007 (Case Number WD67857). On March 9, 2007, the Court denied Public Counsel's Petition for Writ of Mandamus without opinion, disposing of the proceeding before that Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 19th day of March 2007.

By: 