

**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 Merger of Aquila, Inc. with a subsidiary of)
Great Plains Energy Incorporated and for Other)
Related Relief.)

Case No. EM-2007-0374

MOTION TO COMPEL AND REQUEST FOR EXPEDITED TREATMENT

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and requests that the Missouri Public Service Commission (Commission) and/or the Discovery Dispute Judge issue an Order directing Great Plains Energy, Inc. (GPE) and Kansas City Power & Light Company (KCPL) to provide to the Staff a copy of the report prepared by Curtis Blanc regarding allegations contained in anonymous letters submitted to the Commission addressing matters relevant to the proposed acquisition of Aquila, Inc. (Aquila) by GPE. Pursuant to 4 CSR 240-2.080(16), the Staff requests expedited treatment. In support thereof, the Staff states as follows:

1. On December 6, 2007, the hearings in this case were suspended pursuant to a request of GPE/KCPL so that GPE/KCPL could present to the parties a new/revised proposal respecting GPE's acquisition of Aquila. During the suspension period, the Commission received several anonymous letters respecting GPE's proposed acquisition of Aquila that have been filed in Case No. EM-2007-0394. It is the standard practice of the Staff to investigate allegations made in such communications formally filed in cases or informally received. Also as a result of a January 23, 2008 "quarterly" meeting on the status of the Comprehensive Energy Plan (CEP), KCPL's decision not to construct in 2008 additional wind powered generation, and the testimony filed by GPE/KCPL on February 25, 2008, the Staff determined to depose certain GPE/KCPL and Aquila personnel. Aquila made the individuals that the Staff sought to depose available

without the necessity of the Staff having to obtain subpoenas duces tecum from the Commission. GPE/KCPL chose to force the Staff to pursue before the Commission subpoenas duces tecum for those GPE/KCPL personnel who did not file testimony on February 25, 2008, including one individual who had filed testimony in Case No. EM-2007-0374, but had not yet testified in Case No. EM-2007-0374. The Staff sought to depose these individuals for the following reasons:

The subpoenas duces tecum, as will be related herein, are designed to receive documents and testimony from certain GPE / KCPL individuals to discover information, as quickly as possible, that is relevant to:

(a) GPE / KCPL's financial condition and credit worthiness as a result of the proposed acquisition of Aquila by GPE and the construction of environmental enhancement of Iatan 1 and the construction of a second baseload coal-fired unit referred to as Iatan 2, and

(b) matters relating to items set forth in the anonymous letters filed on January 31, 2008, February 13, 2008, March 3, 2008, and March 17, 2008 in Case No. EM-2007-0374 respecting the proposed GPE acquisition of Aquila and these Iatan projects.

2. Staff deposed Mr. Michael J. Chesser, Chairman and Chief Executive Officer of GPE on April 2, 2008. Counsel for the Staff inquired of Mr. Chesser, as with the other GPE/KCPL deponents, the level of GPE/KCPL activity, if any, regarding investigation into the allegations contained in the filed anonymous letters. Mr. Chesser responded that he had asked that it be made certain that the proper control systems are in place to prevent the allegations that are contained in the anonymous letters from occurring. Mr. Chesser identified that he had made this request of Curtis Blanc in the KCPL Legal Department and that he received a written report on these matters, including why it is believed that proper controls are in place. Evidently, undersigned Staff counsel was neither competent nor artful in prior inquiries before being just plain lucky in the deposition of Mr. Chesser to discover the existence of the Blanc report.

2. On Thursday, April 3, 2008, the Staff issued Data Request No. 394 to GPE/KCPL requesting as follows:

Please provide a copy of the Curtis Blanc report given to Mike Chesser regarding investigation into allegations contained in Anonymous letters mentioned in Mike Chesser's deposition on April 2, 2008.

3. On April 3, 2008, GPE/KCPL objected to Staff Data Request No. 394 by the following response:

GPE and KCPL object to answering this Data Request on the grounds the requested report is a privileged attorney-client communication and otherwise subject to the attorney-work product doctrine, and therefore is not subject to discovery.

4 CSR 240-2.090(1) provides as follows: "Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure." Missouri Supreme Court Rule of Civil Procedure 58.01(c)(3) Objections and Privileges provides as follows:

If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for the objection, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

GPE/KCPL has not complied with Missouri Supreme Court Rule of Civil Procedure 58.01(c)(3) in its objection to Staff Data Request No. 394. In order to maintain its claim of attorney/client communication, GPE/KCPL needs to provide both the initial distribution list for the Blanc report and also all people who have subsequently reviewed the Blanc report, in addition to the date of the report. Any portions of the Blanc report not truly covered by the attorney-client privilege and/or the attorney work product immunity should be required to be provided to the Staff in response to Staff Data Request No. 394. In other documents in which GPE/KCPL has asserted

the attorney-client privilege, GPE/KCPL has provided copies of the documents with the purported attorney-client privileged material redacted and the nonprivileged material not redacted. GPE/KCPL should be required to do no less in regards to the Blanc report.

4. The Staff is requesting expedited treatment. On Thursday, April 3, 2008, GPE/KCPL counsel James M. Fischer promptly sent GPE/KCPL's objection to Staff Data Request No. 394 in an e-mail to Bob Schallenberg, the author of the Staff data request, and to Suzie Mankin, Mr. Schallenberg's Designated Principal Assistant. Unfortunately on April 3, 2008, Mr. Schallenberg was in Kansas City attending the Staff's depositions of GPE/KCPL personnel and he did not realize that GPE/KCPL had objected to Staff Data Request No. 394 until Monday, April 7, 2008. Mr. Schallenberg advised undersigned Staff counsel by e-mail on Monday, April 7, 2008 that GPE/KCPL had objected to Staff Data Request No. 394. The Staff received an electronic transcript of the deposition of Mr. Chesser on Tuesday, April 8, 2008, and the Staff's recollection of the colloquy concerning the Blanc report was thereby verified.

5. On March 20, 2008, the Commission issued an Order Appointing Discovery Dispute Judge And Waiving 4 CSR 240-2.090(8)(B). In said Order the Commission directed that the parties need not arrange a discovery conference prior to filing a motion to compel discovery (4 CSR 240-2.090(8)(B)); however, the parties must still comply with subsection (A) of the Commission's rule on discovery, which provides that, the Commission will not entertain any discovery motions, until the following requirement has been satisfied:

(A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion

6. Based upon GPE/KCPL's imposition of its own form of protection of certain documents and information that it has asserted are highly sensitive, the Staff held no hope that a good faith telephone call to counsel for GPE/KCPL, pursuant to 4 CSR 240-2.090(8)(A), concerning the above matter prior to the filing of this motion would produce a resolution of this matter. Undersigned Staff counsel's phone call to Mr. Fischer on April 10, 2008, meeting the requirement of 4 CSR 240-2.090(8)(A), did not produce a resolution of this matter.

7. Due to the demands of other Commission business, including other matters in this case, undersigned Staff counsel was not able to file the instant pleading earlier than this date. Granting expedited treatment causes no harm to GPE/KCPL. Surely GPE/KCPL must be able to articulate now why it is asserting that the Blanc report in entirety is a privileged attorney-client communication and otherwise subject to the attorney-work product doctrine, and identify the date of the document and who has reviewed it so that GPE/KCPL can assert that the document has retained its purported attorney-client status. The Staff does not seek to delay the hearings that are scheduled to restart on Monday, April 21, 2008. The time for GPE/KCPL to respond to the Staff's Motion To Compel should be shortened.

8. On March 12, 2008 GPE/KCPL filed its Motion For Protective Order Of Great Plains Energy Inc. And Kansas City Power & Light Co. To Quash Deposition Subpoenas (GPE / KCPL Motion For Protective Order To Quash Deposition Subpoenas). GPE/KCPL attached to its pleading a copy of the Michael Chesser Subpoena Duces Tecum including Attachment A, which for item 16 requests: "Each and every document Schiff Hardin, LLP, Thomas J. Maiman, J. Wilson and Associates, Inc and/or Meyer Construction Consulting, Inc. provided to Kansas City Power & Light Company during the period June 1 2005 through June 1, 2008." GPE/KCPL has retained Schiff Hardin, LLP to provide assistance on the construction projects of the KCPL

Comprehensive Energy Plan (CEP). Schiff Hardin, LLP is a law firm, which has construction law as one of its areas of expertise.

In response to item 16 of the aforementioned subpoena duces tecum, twenty-six (26) Schiff Hardin LLP status reports regarding CEP projects, including the Iatan 2 and Iatan 1 projects, were provided to the Staff for review but not possession. The dates of the Schiff Hardin LLP status reports are from February 22, 2006 to November 14, 2007. The first Schiff Hardin LLP status report, showing the date February 22, 2006, bears the words "attorney/client work product" on the cover page, and each subsequent report bears the words "attorney/client privilege" on the cover page. Each status report is multiple pages in length. Nine (9) of the twenty-six (26) Schiff Hardin LLP status reports have information redacted on the basis that the redacted information is "privileged attorney-client communications."¹ Thus, there are eighteen (18) Schiff Hardin LLP status reports that have the words "attorney/client privilege" on their cover page and one (1) Schiff Hardin LLP status report that has the words "attorney/client work product" on its cover page for which GPE/KCPL redacted no material. Two of the Schiff Hardin LLP status reports are in a format which show memoranda from Kenneth M. Roberts of Schiff Hardin, LLP. Mr. Roberts is a Schiff Hardin LLP attorney. Nothing in these documents is redacted. The Staff notes all of this because it evidences that GPE/KCPL can redact portions of a document as purportedly covered by the attorney-client privilege when it is moved to do so.

9. In appointing a Discovery Dispute Judge by its March 20, 2008 Order Appointing Discovery Dispute Judge And Waiving 4 CSR 240-2.090(8)(B), the Commission has in essence appointed a Special Master to hear and address discovery issues. The Staff requests that GPE/KCPL be directed to comply with Missouri Supreme Court Rule of Civil Procedure 58.01(c)(3) and state information that will permit the Discovery Dispute Judge, the Staff and

¹ Due to the need to prioritize, the Staff has not determined whether to seek at some later date this information.

other parties to assess the applicability of the attorney-client privilege or attorney work product doctrine, including what portions of the document are covered by the privilege and/or immunity, the date of the document and who has reviewed it. The Staff further requests that GPE/KCPL be directed to produce the Blanc report so that the Discovery Dispute Judge can review the Blanc report and rule on whether it can properly be withheld, in part or in entirety, as nondiscoverable pursuant to the attorney-client privilege and/or attorney work product immunity. The Staff notes that during the KCPL Wolf Creek case, Case Nos. ER-85-128, EO-85-185, and EO-85-224, the Commission appointed a Commission Hearing Examiner as a Special Master to hear and decide discovery disputes, including KCPL claims of attorney-client privilege and attorney work product immunity.

WHEREFORE the Staff respectfully requests expedited treatment, pursuant to 4 CSR 240-2.080(16), that (1) GPE/KCPL be directed to: (a) comply with Missouri Supreme Court Rule of Civil Procedure 58.01(c)(3) as related in paragraph 19 above; and (b) produce the Blanc report so that the Discovery Dispute Judge can review the Blanc report and rule on whether it can properly be withheld from the Staff, in part or in entirety, as nondiscoverable pursuant to attorney-client privilege and/or attorney work product immunity; and (2) the Commission rule on this matter after the Discovery Dispute Judge, if it would be appropriate and/or necessary for the Commission to do so.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing has been mailed, hand-delivered, transmitted by facsimile or electronically served to all counsel of record this 11th day of April, 2008.

Steven J. Holt

Certificate Of Compliance With 4 CSR 240-2.090(8)(A)

I hereby certify that I have in good faith conferred by telephone with opposing counsel concerning the above matter prior to the filing of this motion.

Steven J. Holt

Subscribed and sworn to before me this 11th day of April 2008.

Rosemary R. Robinson
Notary Public

My commission expires: 9-23-2008

