

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

**RESPONSE OF PUBLIC COUNSEL, THE STAFF OF THE COMMISSION, AND
SEDALIA INDUSTRIAL ENERGY USERS' ASSOCIATION, AG PROCESSING, INC.
AND PRAXAIR, INC. TO PROPOSED PROCEDURAL SCHEDULE**

COMES NOW the Office of the Public Counsel, Staff, and Sedalia Industrial Energy Users' Association, AG Processing, Inc. and Praxair, Inc. (herein referred to as "Respondents") and for their Response to Joint Applicants' Response To Order Directing Filing and Motion to Establish A Procedural Schedule states as follows:

1. On January 31, 2008, the Joint Applicants filed a proposed procedural schedule in response to a Commission order issued January 17. The proposed schedule was as follows:

Date for filing a settlement agreement, or alternatively, GPE-KCPL/Aquila's [second] supplemental direct testimony supporting their revised merger plan	February 11, 2008
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All other parties file supplemental rebuttal testimony responding to GPE-KCPL/Aquila's [second] supplemental direct testimony	March 5, 2008
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GPE-KCPL/Aquila file supplemental surrebuttal testimony, and all other parties file supplemental cross-surrebuttal testimony	March 12, 2008
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List of Issues and Order of Witnesses, Opening Statements and Cross	March 14, 2008
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Evidentiary Hearings	March 17-21 and March 24-28, 2008
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Transcripts due no later than	April 4, 2008
Post-hearing briefs	April 24, 2008
Proposed Findings of Fact and Conclusions of Law	April 24, 2008

2. On February 1, the Commission issued an order in which it directed that responses to the Joint Applicants' proposed schedule be filed by February 6.

3. The Joint Applicants have proposed to file a settlement agreement or their second supplemental direct testimony on February 11. Although settlement talks have been ongoing, no settlement agreement will be finalized by February 11, and so it appears that the Joint Applicants will be filing a revised merger plan supported by another round of supplemental testimony. Without knowing exactly what the Joint Applicants will file on February 11, it is very difficult to know how long it will take to respond. The Joint Applicants have confirmed for the Respondents that the results of the settlement discussions will not necessarily indicate what the Joint Applicants will file on February 11.

4. Because Respondents do not know what the Joint Applicants will file on February 11, they request that they be allowed until February 13 to respond to the Joint Applicants' proposed schedule.¹ The Joint Applicants have repeatedly requested delays in the processing of this case: the initial April 2007 filing was almost entirely replaced by a supplemental filing in August 2007, which may in turn be almost entirely replaced by a second supplemental filing in February 2008. Respondents have endeavored to timely respond to the Joint Applicants' changing positions, but without knowing the level of detail and the depth of support for Joint

¹ There has been some indication that the Joint Applicants will request delaying their filing until February 19. If they do so request, and the Commission allows this delay, Respondents request that they be allowed to respond on February 22.

Applicants' new proposal to be filed on February 11, it would simply be guesswork to suggest reasonable dates for responsive testimony and the remainder of a procedural schedule. It is not for the purpose of delaying the processing of this case that Respondents request time to evaluate the Joint Applicants' February 11 filing before responding to Joint Applicants' suggested procedural schedule, but rather to allow Respondents the opportunity to provide the Commission and the parties an informed response.

5. Notwithstanding the foregoing, Respondents note that the schedule suggested by the Joint Applicants is very aggressive and conflicts with The Empire District Electric Company Case No. ER-2008-0093 settlement conference scheduled for the week of March 17. With just four weeks after Joint Applicants file their second supplemental direct testimony for other parties to prepare supplemental rebuttal testimony, and less than three weeks after that to prepare for hearing, there will be little or no opportunity for the continuation of settlement discussions. Respondents do not have sufficient resources to pursue a settlement track and a litigation track at the same time; if Joint Applicants insist on moving this quickly to reconvene the evidentiary hearing, and the Commission concurs, Respondents will need to devote resources to preparing for hearing rather than to pursuing settlement.² Furthermore, the Joint Applicants suggest reconvening the evidentiary hearing only two business days after they file supplemental surrebuttal testimony. Given the fluid nature of Joint Applicants' merger proposals, it is quite possible that there will be significant new information in that surrebuttal testimony, and such a short time will be entirely inadequate for the parties and the Commission to prepare for hearing.

6. As mentioned above, any delays in this case have been a result of actions by the Joint Applicants. Neither the Commission nor the other parties should be compelled to rush to

² Respondents, in raising this point, do not mean to imply that the prospects of settlement are either likely or unlikely.

judgment on the Joint Applicants' third iteration of their Merger Proposal. On January 31, Great Plains Energy filed an 8-K Report with the federal Securities and Exchange Commission that noted the following:

On January 31, 2008, Great Plains Energy and Aquila provided written notice to each other that the Termination Date of the Merger Agreement is extended to May 1, 2008. Also on that date Aquila and Black Hills provided written notice to each other and to Great Plains Energy that the Termination Date of the Asset Sales Agreements is extended to May 1, 2008.

The 8-K filing also stated that "Each agreement further provides that if any party to the agreement determines that additional time is necessary to obtain any of the specified regulatory consents or approvals, the Termination Date may be extended from time to time by written notice, up to August 6, 2008." Even if the Commission were to approve the Joint Applicants' proposed schedule, the only way that the Joint Applicants could avoid a further extension of the termination date would be if: A) the Missouri Commission did not allow for any post-hearing briefing; B) the Missouri Commission issued its decision within about two weeks of the close of the evidentiary hearing; and C) the other regulatory jurisdictions issued their decisions with or before the Missouri Commission. In other words, it is virtually certain that the Joint Applicants will have to further extend the termination date. Again, Respondents do not suggest that the Commission unduly delay this proceeding, but there seems to be little need to impose the unrealistic time constraints that the Joint Applicants suggest.

WHEREFORE, the Office of the Public Counsel, Staff, and Sedalia Industrial Energy Users' Association, AG Processing, Inc. and Praxair, Inc. respectfully request that they be allowed until February 13, 2008 to respond to the proposed procedural schedule filed by Joint Applicants on January 31, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 6th day of February 2008.

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