

**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	)	Case No. EM-2007-0374
Great Plains Energy Incorporated and for Other	)	
Related Relief.	)	

**RESPONSE OF STAFF, PUBLIC COUNSEL, PRAXAIR, AGP AND SIEUA  
TO PROCEDURAL SCHEDULE PROPOSED BY JOINT APPLICANTS**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), the Office of the Public Counsel (Public Counsel), and Praxair, Inc. (Praxair), AG Processing, Inc. (AGP) and Sedalia Industrial Energy Users' Association (SIEUA) (Praxair, AGP and SIEUA collectively referred to as Industrial Intervenors) and jointly propose the following procedural schedule based on the filing of "additional supplemental surrebuttal testimony" made on February 25, 2008 by the Joint Applicants Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc. The Staff, Public Counsel, and Industrial Intervenors have a number of serious concerns regarding additional testimony that we believe the Joint Applicants will seek to file, and we will be very candid in discussing those concerns at this procedural stage. In support of the Staff's, Public Counsel's, and Industrial Intervenors' proposed procedural schedule, the Staff, Public Counsel, and Industrial Intervenors state as follows:

1. On February 28, 2008 a prehearing conference was held at which, among other things, procedural schedules for completing this case were discussed, all based on the procedural schedule proposed by the Joint Applicants on February 20, 2008, given certain assumptions respecting discovery.

2. At the February 28, 2008 prehearing conference, Regulatory Law Judge Nancy Dippell asked if there were any objections to the Joint Applicants' February 25, 2008 Motion For Leave To File Additional Supplemental Direct Testimony And Notice Of Withdrawal Of Certain Regulatory Plan Requests. No objections were raised although various parties sought to make it clear that they were only not objecting to the filing of the testimony. They were not waiving any objections they might have to the characterization of the testimony as additional supplemental direct testimony and they were not waiving any objections they might have to its being heard or received into evidence by the Commission.

3. On February 28, 2008, the Staff proposed the modifications to the procedural schedule recommended by the Joint Applicants, which are indicated below and shown in "Word – Track Changes," based on the Staff's review of the Joint Applicants' filing on February 25, 2008 of "additional supplemental surrebuttal testimony." Among other things, the Staff, Public Counsel and Industrial Intervenors contend that the testimony filed is not "additional supplemental direct testimony," but additional supplemental surrebuttal testimony.

4. At a February 26, 2008 GPE webcast and conference call to provide an update for investors on developments in the GPE acquisition of Aquila, the question was asked whether a new shareholder vote had to be taken respecting the testimony filed on February 25, 2008. Terry Bassham, GPE – Executive Vice President, Finance and Strategic Development and Chief Financial Officer, stated that no further shareholder approval was needed: "Our belief is that all we've done here is withdraw some of the requests that we made in the initial filing, but the basic context of the agreement remains whole."

5. For example, the principal portion of the February 25, 2008 testimony of Chris B. Giles,<sup>1</sup> pages 1 – 4, is an attempt by GPE to explain away one of the major legal failings of the Joint Application, the failure of the Joint Applicants to request a merger of KCPL and Aquila in addition to an acquisition of Aquila, Inc. by Great Plains Energy, Inc. This portion of Mr. Giles’ February 25, 2008 testimony contains nothing new respecting the elements of the Joint Applicants’ case. Mr. Giles’ testimony is not additional supplemental direct testimony. It is nothing more than an effort to bolster the Joint Applicants’ contention that they need not seek a merger of Aquila and KCPL in order to experience the purported savings which cause the merger to be not detrimental to the public interest.
6. Another demonstration that the February 25, 2008 testimony does not comprise a new proposal is Terry Bassham’s testimony at page 4 wherein he states that the Joint Applicants are no longer seeking an additional amortization plan for Aquila in this case but will do so post-acquisition of Aquila:

. . . The Joint Applicants continue to believe that an amortization provision for Aquila, similar to the provision contained in KCP&L’s 2005 Stipulation and Agreement approved by the Commission, is appropriate and helpful in the protection of customers. However, the Joint Applicants withdraw their request for consideration of an additional amortization provision and instead intend to initiate discussions, post-close of the transaction, with interested parties to develop a regulatory plan for Aquila that might include an amortization provision as part of that regulatory plan.

If Mr. Bassham’s testimony filed on February 25, 2008 is less than clear as to how GPE will have Aquila proceed after the merger respecting additional amortizations, Mr. Bassham’s words the very next day on February 26, 2008 in GPE’s webcast and conference call to provide an update

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<sup>1</sup> Chris B. Giles is an employee of KCPL, not GPE.

for investors on developments in the GPE acquisition of Aquila leaves no question that GPE will seek additional amortizations after an acquisition of Aquila:

. . . We have withdrawn our request for an Aquila amortization order in this case. Instead, we would initiate discussions with interested parties following the close of the transaction to develop a regulatory plan for Aquila similar to the KCP&L Comprehensive Energy Plan. An additional amortization mechanism would be one component of such a plan. If an agreement with the parties cannot be achieved, we will file our own proposal in the next rate case.

7. The Missouri Supreme Court in *State ex rel. A.G. Processing v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003) (*AG Processing*) held that it was unlawful for the Commission to refuse to determine whether the acquisition premium was reasonable when deciding whether the merger proposal was not detrimental to the public interest. In *AG Processing* the stated reason for not considering whether the acquisition premium was reasonable was that it was only appropriate to make this decision at the time UtiliCorp United, Inc. (Aquila) would seek to recover these costs in rates. Here, there is no question that in a future proceeding GPE/KCPL will seek in a future proceeding an additional amortization for Aquila which is part of the GPE acquisition of Aquila. The Missouri Supreme Court's *AG Processing* decision requires that the Commission decide in the pending case whether the Joint Applicants' future additional amortization proposal for Aquila is reasonable:

. . . The PSC also maintains that considering recoupment of the \$92,000,000 acquisition premium while considering approval of the merger amounts to prejudging a ratemaking factor outside a ratemaking case.

The fact that the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger. While PSC may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was reasonable, and it should have considered it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public. The PSC's refusal to consider this issue in conjunction with the other issues raised by the PSC staff may have substantially impacted the weight of the evidence evaluated to approve the merger. The PSC

erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp's being allowed to recoup the acquisition premium.

120 S.W.3d at 735-36; footnotes omitted.

8. The *AG Processing* requirement that the Commission decide the Joint Applicants' additional amortizations proposal in this case means that AGP's pending December 5, 2007 Motion For Partial Summary Determination is still a live legal issue in this case.

9. In part, the Staff, Public Counsel, and Industrial Intervenors believe that if they agree to the Joint Applicants' proposal that they file responsive testimony on March 24, 2008, the Joint Applicants will use their proposed March 31, 2008 filing date to file elements of a new proposal, which the Staff, Public Counsel, and Industrial Intervenors will not have an opportunity to respond to because evidentiary hearings will start again on April 21, 2008. Even if the Joint Applicants agree to, and the Commission adopts, the Staff's, Public Counsel's, and Industrial Intervenors' proposed modifications to the Joint Applicants' February 20, 2008 proposed procedural schedule, the Staff, Public Counsel, and Industrial Intervenors would not be surprised if the Joint Applicants seek to make fundamental changes to the terms of their proposal from the witness stand and try to engage the Commissioners in live negotiations.

<b>STAFF'S, PUBLIC COUNSEL'S, AND INDUSTRIAL INTERVNORS' PROPOSED PROCEDURAL SCHEDULE</b>	
<b><u>Date</u></b>	<b><u>Event</u></b>
February 25, 2008	Joint Applicants' Additional Supplemental <del>Direct Surrebuttal</del> Testimony
<del>March 24, 2008</del>	<del>Rebuttal Testimony</del>
<del>March 31, 2008</del>	<del>Surrebuttal Testimony of Joint Applicants and Cross-Surrebuttal of Other Parties</del>
April 15, 2008	List of Issues and Order of Witnesses
April 21 - May <del>72</del> , 2008	Evidentiary Hearings

<a href="#"><u>May ??, 2008 To be determined</u></a>	<a href="#"><u>Initial Briefs</u></a>
<a href="#"><u>June ??, 2008 To be determined</u></a>	<a href="#"><u>Reply Briefs</u></a>

10. Based on the testimony filed on February 25, 2008, one issue that does appear to no longer be part of the instant case is GPE/KCPL seeking to charge KCPL's and Aquila's Missouri ratepayers the debt costs owing to UtiliCorp's/Aquila's non-Missouri regulated acquisition and merger activities. GPE has apparently decided to honor UtiliCorp's/Aquila's commitments to prior Commissions to not charge Missouri ratepayers for UtiliCorp's/Aquila's non-Missouri regulated acquisition and merger activities.

11. Another issue that appears to no longer be part of the instant case based on the testimony filed on February 25, 2008, is merger savings sharing. Mr. Bassham states at page 3 of his testimony filed on February 25, 2008 that "[t]he Joint Applicants withdraw their request for specific energy savings adder and instead propose to utilize the natural regulatory lag that occurs between rate cases to retain any portion of synergy savings." Mr. Bassham's February 25, 2008 testimony at page 3 also states, in part, as follows:

Q. Has the amount of synergies or benefits contained in the **original request filed on August 8, 2007** changed?

A. No, synergies were estimated based on a detailed evaluation by the transaction integration teams, including members of Aquila and KCPL&L management and individuals responsible to achieve the synergies. . . .

(Emphasis supplied). The Staff, Public Counsel, and Industrial Intervenors have emphasized a portion of the excerpt above because it is noteworthy that the original GPE Application and testimony in Case No. EM-2007-0374 were filed on April 4, 2007, not August 8, 2007. GPE filed a new case on August 8, 2007. The Staff, Public Counsel and Industrial Intervenors are concerned that GPE will file yet another new case before these proceedings have concluded. Also, GPE's ability to meet its contentions that it can create significant cost reductions to offset

detriments, for example, transaction costs, resulting from the proposed acquisition, is still a relevant issue in this case.

12. Since the suspension of the hearings in this case, the Staff, Public Counsel and Industrial Intervenors have become aware of a material development respecting KCPL's ability to be associated with GPE's acquisition of Aquila. This material development involves the costs and schedule of the KCPL Experimental Regulatory Plan (Regulatory Plan) / Comprehensive Energy Plan (CEP), which of course significantly affect KCPL's credit ratings as does the proposed acquisition of Aquila by GPE. The first paragraph of Section III.B1.i. Additional Amortizations To Maintain Financial Ratios, at pages 18-19 of the Stipulation And Agreement in Case No. EO-2005-0329, states as follows:

I. ADDITIONAL AMORTIZATIONS TO MAINTAIN FINANCIAL RATIOS

*In Re Application of Kansas City Power & Light Company For An Order Authorizing Its Plan to Reorganize Itself Into a Holding Company Structure*, Case No. EM-2001-0464, 10 Mo.P.S.C.3d 394 (2001), KCPL agreed to maintain its debt at investment grade. The Signatory Parties agree that it is desirable to maintain KCPL's debt at investment grade rating during the period of the construction expenditures contained in this Agreement. **KCPL understands it has the responsibility to take prudent and reasonable actions in an effort to achieve the goal of maintaining its debt at investment grade levels. KCPL understands that it is incumbent upon it to take prudent and reasonable actions that do not place its investment grade debt rating at risk. KCPL further agrees that any negative impact from its failure to be adequately insulated from the Great Plains Energy, Inc. ("GPE") business risks as perceived by the debt rating agencies will not be supported by its Missouri jurisdictional customers.** KCPL recognizes its obligation to continue to prudently manage costs, continuously improve productivity, and maintain service quality during the Regulatory Plan. KCPL further recognizes that any finding by the Commission that KCPL has failed to prudently manage its costs, continuously improve productivity, and maintain service quality during the Regulatory Plan will negate the obligation of the Signatory Parties contained in this section.

(Bold font emphasis supplied). GPE presently does not know the construction budget and schedule for significant elements, Iatan 1 and Iatan 2, of its Regulatory Plan / CEP, and KCPL is

not adequately insulated from GPE's business risks as perceived by at least one of the debt rating agencies respecting the proposed acquisition of Aquila by GPE.

13. On Friday, February 29, 2008, Thomson Financial News (Thomson) reported that Moody's Investors Service (Moody's) changed the outlook for GPE and KCPL to negative from stable citing its concern that GPE's credit metrics and financial flexibility may be weakened more than anticipated after it acquires Aquila, although the existing ratings for GPE and KCPL were affirmed. An agreement in principle before the Kansas Corporation Commission respecting the GPE acquisition of Aquila was reported, as was the filing of a revised proposal in Missouri. Thomson related that Moody's thinks the revised proposal filed with this Commission may lead to lower than anticipated cost recovery going forward. Thomson reported that Moody's believes that GPE, at a minimum, will recover lower than actual interest costs related to Aquila's existing debt and will experience delayed realization of retained synergy benefits, and that Aquila will not be able to avail itself of accelerated amortization in future rates.

14. Regarding its Regulatory Plan construction budget and schedule, on February 6, 2008, GPE issued a news release announcing its full-year and fourth quarter results for 2007 in which it stated, among other things, that GPE did not know the present status of costs and construction schedule of Iatan 2:

Despite the substantial progress in 2007, the construction environment entering 2008 for the Iatan 1 and Iatan 2 projects remains challenging, particularly the tight market conditions for skilled labor and the lengthening lead times for deliveries of materials. KCP&L has now completed approximately 75 percent of the engineering for Iatan 2 and is conducting an updated assessment of the projects' cost and schedule. The results of the assessment are expected to be available in the second quarter of 2008.

15. On the next day, February 7, 2008, GPE held a fourth quarter and full-year 2007 earnings conference call at which various GPE and KCPL executives confirmed that the present status of the costs and construction schedule of Iatan 2 is not known:

**Michael J. Chesser – Chairman and Chief Executive Officer, GPE:**

Finally, as Bill will discuss, an updated assessment of cost and schedule is underway on the environment project at our Iatan 1 plant and the construction of our new Iatan 2. The timing of this update has two key drivers. First the recent addition of Kiewit Industrial as our balance of plant contractor at Iatan 2, and second our attainment of a key milestone of having 70% of engineering completed at Iatan 2.

Naturally as progress is made on design maturity, we're able to better understand and project the final cost for the completion of the project. We expect to complete the updated assessment in the second quarter, you will hear from Bill later in the call. The construction environment as we enter 2008 is challenging.

**Terry Bassham – Executive Vice President, Finance and Strategic Development and Chief Financial Officer, GPE:**

Finally, I have a couple of comments on earnings guidance. So as you all know, we have typically given guidance at our year-end call, as Mike mentioned earlier at this time we do not feel it prudent to give or confirm guidance. . . . Given where we are on the Aquila transaction and on the Strategic Energy assessment, we cannot put a meaningful guidance range at this point.

In addition there are other considerations that on their own would not have caused us to delay issuing guidance, but that we will be considering as we prepare our guidance for 2008. These factors include the timing of the cost and schedule update on the Iatan projects that Bill will discuss in a moment, the effects of the economic downturn we've discussed, as well as the continued difficulties in the financial markets.

**William H. Downey – President and Chief Operating Officer, GPE  
President and Chief Executive Officer, KCPL:**

As Mike mentioned earlier, now that we have Kiewit on board for the balance of plant work and are approximately 70 to 75% engineered for Iatan 2 unit, we have initiated a thorough reassessment of the project cost and schedule. As Mike and Terry mentioned earlier, the results of this reassessment are expected to be available in the second quarter of 2008. We continue to make good progress on the Iatan 1 and 2 work. However, construction environment as we entered 2008 is challenging, in particular market conditions for skilled labor are tight, and we are

seeing escalating costs and longer lead times for deliveries of materials, especially from foreign sources.

These matters have now been the subject of three anonymous letters mailed to Commissioners.

16. At the prehearing conference on February 28, 2008, the Staff advised the Joint Applicants that because of the developments regarding the costs and schedule of Iatan 1 and Iatan 2, the interrelationship between Iatan 1 and Iatan 2 and GPE's acquisition of Aquila, questions respecting KCPL's procurement function and asserted merger savings estimates, and questions respecting debt rating information and related debt ratings, the Staff wants to depose and call as witnesses the following individuals:

Michael Cline – Treasurer and Chief Risk Officer, GPE

Michael Chesser – Chairman & Chief Executive Officer, GPE

William Downey – President & Chief Operating Officer, GPE  
President & Chief Executive Officer, KCPL

Stephen Easley – Senior Vice Pres., Supply, KCPL

David Price – Former Vice Pres. Construction

Brent Davis – Former Project Director, Iatan

Terry Foster – Project Controls Manager, Iatan

John Grimwade – Former Project Director, Iatan – Senior Director Construction, KCPL

Jeff Fleenor – Asst. Project Director, Iatan – Manager, Iatan 2 Engineering

Terry Murphy – Former Project Director, Iatan – Director of Construction, Iatan 2

Lori Cheatum – Vice Pres., Administrative Services, KCPL

Chris Giles – Vice Pres., Regulatory Affairs, KCPL

Terry Bassham – Exec. Vice Pres., Finance and Strategic Development & CFO, GPE

The Industrial Intervenors indicated that, in addition to participating in the foregoing depositions, they want to depose the appropriate Aquila person who, as Aquila's representative, was charged with being knowledgeable about developments respecting the Iatan 1 and Iatan 2 projects. Two Aquila individuals were identified on Friday, February 29, 2008 respecting these matters:

Scott Heidtbrink – Aquila

Max Sherman – Aquila

The Staff also identified one additional KCPL person that it wanted to depose:

Steve Jones – Procurement Manager – Iatan 1

At the prehearing conference on February 28, 2008, the Joint Applicants indicated interest in knowing what order would the Staff want to depose these individuals. Although the Staff knew that the first business day that parties would see the order of deponents desired by Staff would be Monday, March 3, 2008, the Staff e-mailed to the Joint Applicants and the other parties on Saturday March 1, 2008 the order in which it wanted to depose the identified individuals. The Staff believes that all of this can be accomplished within the dates proposed by the Joint Applicants (assuming their respective reasonable cooperation and limited discovery disputes), including the hearing dates proposed on February 20, 2008 by the Joint Applicants, that is, April 21 – May 2, plus three days the following week, May 5 – 7. (GPE has advised the Staff and Public Counsel that there are no workpapers to Mr. Cline's February 25, 2008 testimony. The Staff and Public Counsel do not consider GPE's response to be reasonable cooperation, and GPE's response will likely require the Staff and Public Counsel to take further action.)

17. In a conference call on Monday, March 3, 2008, Counsel for GPE/KCPL made it clear that GPE/KCPL would only provide for depositions the three individuals whose testimony was filed on February 25, 2008 and would move to quash subpoenas/oppose the deposition of the

other GPE/KCPL individuals for purposes of the GPE – Aquila acquisition case. In the same conference call, Aquila indicated that it would make available for depositions and testimony before the Commission the two individuals identified above. Counsel for GPE/KCPL indicated the GPE/KCPL individuals who would not be provided for purposes of the GPE – Aquila acquisition case would be provided for depositions for purposes covered in the KCPL Regulatory Plan / CEP. The scope of the Staff’s depositions of these GPE/KCPL individuals in Case No. EM-2007-0374 and calling them as witnesses in Case No. EM-2007-0374 is much more limited than would be the scope of depositions of these same individuals for purposes of proceedings relating to the KCPL Regulatory Plan / CEP.

18. Finally, the Staff, Public Counsel, and Industrial Intervenors would note that the matter of timing available for completing the proposed transaction arose in GPE’s February 26, 2008 webcast and conference call to provide an update for investors on developments in the GPE acquisition of Aquila:

**Doug Fischer – Wachovia Securities:**

And then just in the event that this drags out, remind us of the restraints of the merger agreement in terms of a timeline. There is an August date, I believe –

**Michael Chesser:**

Right, that’s the day.

. . . . .

**Michael Chesser:**

Well, there is the August date, which we expect this process will allow us to not bump up against. . . .

. . . . .

**Michael Chesser:**

One thing I will say is that our integration teams are continuing to work full bore. They are bringing the IT systems together, bringing the distribution generation

staffs together, dealing with rationalizing the overhead parts of the organization. They are all ready to go, and so there should be no delay there. As soon as we get the approval, we should be able to move very quickly.

WHEREFORE the Staff, Public Counsel and Industrial Intervenors propose the procedural schedule set out above in paragraph 9, on page 5 for the reasons discussed in the paragraphs above.

Respectfully submitted,

/s/ Steven Dottheim  
STEVEN DOTTHEIM  
Chief Deputy General Counsel  
Mo. Bar No. 29149  
573-751-7489 (Voice)  
573-751-9285 (Fax)  
steve.dottheim@psc.mo.gov

Attorney for the Staff of the  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

/s/ Lewis R. Mills, Jr.  
LEWIS R. MILLS, JR.  
Public Counsel  
Mo. Bar No. 35275  
573-751-1304 (Voice)  
573-751-5562 (Fax)  
lewis.mills@ded.mo.gov

Office of the Public Counsel  
P.O. Box 2230  
Jefferson City, Missouri 65102

/s/ Stuart W. Conrad  
STUART W. CONRAD  
Mo. Bar No. 23966  
3100 Broadway, Suite 1209  
Kansas City, Missouri 64111

816-753-1122 (Voice)  
816-756-0373 (Fax)  
stucon@fcplaw.com

Counsel for  
Sedalia Energy Users' Association  
AG Processing, Inc.  
Praxair, Inc.

**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 4th day of March, 2008.

/s/ Steven Dottheim