

**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) Case No. EM-2007-0374
of Aquila, Inc. with a Subsidiary of Great Plains)
Energy Incorporated and for Other Related Relief)

STAFF RESPONSE TO PUBLIC COUNSEL’S MOTION FOR RECONSIDERATION

Comes now the Staff of the Missouri Public Service Commission (Staff) in response to the Office of the Public Counsel’s (Public Counsel) December 13, 2007 Motion For Reconsideration and states as follows:

INTRODUCTION

1. On December 5, 2007, AG Processing, Inc., Sedalia Industrial Energy Users’ Association and Praxair, Inc. (Industrial Intervenors) filed a Motion For Partial Summary Determination whereby the Industrial Intervenors requested that the Commission issue its Order finding that the proposed regulatory amortization mechanism, to the extent not agreed to by the parties to this proceeding, violates Section 393.135 and is therefore unjust, unreasonable and prohibited by law. On December 6, 2007, the presiding Regulatory Law Judge (RLJ) issued an Order Shortening Time To Respond To Motion setting a deadline of 5:00 p.m., December 11, 2008 for responses to the Industrial Intervenors’ Motion For Partial Summary Determination. On December 10, 2007, the RLJ issued an Order Regarding Responses To Motion For Partial Summary Determination postponing the December 11, 2007, 5:00 p.m. deadline for filing responses to the Industrial Intervenors’ Motion For Partial Summary Determination. On December 13, 2007, Public Counsel filed a Motion For Reconsideration respecting the December 10, 2007 Order Regarding Responses To Motion For Partial Summary Determination.

On December 14, 2007, the RLJ issued an Order Setting Response Time directing that responses to the Public Counsel's Motion For Reconsideration should be filed no later than December 26, 2007.

2. The Staff is a party to the Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement in Case No. EO-2005-0329 and the Iatan 2 / Empire District Electric Company (Empire) Regulatory Plan Stipulation And Agreement in Case No. EO-2005-0263. Both Stipulation And Agreements (KCPL at page 52 in Section III.B.10.b. and Empire at pages 30-31 in Section III.G.2.) clearly state that they are not to have precedential impact in any other Commission proceeding. The Staff is bound to defend the additional amortization in the context of those two Stipulation And Agreements (KCPL at page 53 in Section III.B.10.f. and Empire at page 31 in Section III.G.6.) and the Staff has done so on a number of occasions and will continue to do so in those contexts. The Staff did not agree to the additional amortization mechanism in a merger context, in general, and certainly not in the instant context of the proposed transaction of Great Plains Energy, Inc. and Aquila, Inc., a proposed transaction in which the additional amortization mechanism is a cornerstone to a proposal that is so egregiously detrimental to the public interest. The Staff will leave it to the Joint Applicants to defend the lawfulness of the additional amortization mechanism in this proceeding respecting Section 393.135. Regardless, the Staff believes it would be beneficial for the Commission for the Staff to attempt to provide a historical context of the additional amortization adjustment.

KCPL CASE NO. EO-94-199

3. The genesis of the "additional amortization" in the Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement in Case No. EO-2005-0329 and the Iatan 2 / Empire District Electric Company (Empire) Regulatory Plan Stipulation And Agreement in Case No. EO-2005-

0263 is an amortization approach the Staff used as part of a settlement of a Staff earnings/revenues investigation of KCPL in 1996 in Case No. EO-94-199. (In the matter of the Customer Class Cost of Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company). In addition to (i) a Phase I annual rate reduction of \$9.0 million for electric service provided on and after July 9, 1996, and (ii) a separate Phase II annual rate reduction of \$11.0 million for electric service which would take place no later than May 1, 1997, KCPL agreed to book an amortization totaling \$3.5 million annually upon approval of the Case No. EO-94-199 Stipulation And Agreement to be accumulated to reduce plant in service in the future. The amortization was agreed to in lieu of further rate reductions and the amortization was not specifically identified to particular assets. *Re Kansas City Power & Light Co.*, Case No. EO-94-199, Order Approving Stipulation And Agreement, 5 Mo.P.S.C.3d 76 (1996)(page 2 of Stipulation And Agreement, which is not published in 5 Mo.P.S.C.3d). This amortization was to continue until the Commission approved a change: either upon agreement of the parties made with due regard to KCPL's then existing earnings situation, or in the course of a general rate proceeding. The Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement provided for the conclusion of the Case No. EO-94-199 amortization upon the effective date of the tariff sheets resulting from KCPL's Rate Filing #1, which was Case No. ER-2006-0314. The Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement addresses "III.B.1.h. Current Amortizations" at pages 17-18 and states as follows regarding the Case No. EO-94-199 amortization:

III.B.1.h. CURRENT AMORTIZATIONS

KCPL will continue to include as a component of cost of service \$3.5 million in Missouri jurisdictional amortization expense, from the effective date of this Agreement until the effective date of the tariffs resulting from Rate Filing #1, per Paragraph III.B.3.a of this Agreement, to be filed in 2006, for rates effective in 2007. KCPL shall maintain adequate records that identify the \$3.5 million of annual amortization expense originally authorized in *Re Customer Class Cost of*

Service and Comprehensive Rate Design Investigation of Kansas City Power & Light Company, Order Approving Stipulation and Agreement, Case No. EO-94-199, 5 Mo.P.S.C.3d 76 (1996) on a state specific basis, by vintage year so that Missouri customers will receive recognition, of the amortization funds they have provided, in the determination of rate base for the Missouri jurisdiction, in future rate proceedings.

KCPL CASE NO. EO-2005-0329

4. On March 28, 2005, Kansas City Power & Light Company (KCPL) filed the Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement, which established Case No. EO-2005-0329 for the Commission's determination whether to approve the Iatan 2 / KCPL Regulatory Plan. Neither the Concerned Citizens of Platte County / Sierra Club (Concerned Citizens / Sierra Club) nor the U.S. Department of Energy (Department of Energy) was a signatory.

5. On April 7, 2005, Concerned Citizens / Sierra Club filed in the Iatan 2 / KCPL Regulatory Plan case, Case No. EO-2005-0329, Objections To Stipulation Filed By Kansas City Power & Light Company. In Paragraph 1, Concerned Citizens / Sierra Club argued as follows:

The stipulation violates the intent of Section 393.135, RSMo, in that it appears to allow KCPL several years of rate increases in anticipation of the building of a new coal-fired power plant. Section 393.135 was enacted after the people voted for Proposition One in 1976 and prohibits utilities from raising rates for the construction of a new plant before the new plant is fully operational. Although the stipulation contemplates that KCPL will file an application for a rate increase after the new plant is built, and therefore may not violate the exact words of the statute, all of the parties to the stipulation acknowledged that there would be no stipulation were there not a new coal-fired power plant in the plans. Therefore, the stipulation violates the intent of this statute.

6. On May 10, 2005, the Staff filed Suggestions In Support of the Stipulation And Agreement. At pages 12-19 and 22, the Staff argued that the additional amortizations facet of the KCPL Regulatory Plan is not contrary to Section 393.135.¹

7. On May 27, 2005, Concerned Citizens / Sierra Club filed Sierra Club And Concerned Citizens Of Platte County's Response To The Staff Suggestions In Support Of The

¹ Section 393.135 is also referred to as "Proposition 1."

Stipulation and Department Of Energy filed Response Of Intervenor Department Of Energy To Staff's Suggestions In Support Of Stipulation And Agreement. Neither Concerned Citizens / Sierra Club nor Department Of Energy argued that the additional amortizations or any other facet of the Iatan 2 / KCPL Regulatory Plan was a violation of Section 393.135.

8. On May 31, 2005, the List Of Issues, Order Of Witnesses To Be Heard Each Day, Order Of Cross-Examination And Request For Waiver Of Rule was filed in Case No. EO-2005-0329. Question No. 2 of Issue No. 8 appeared as follows:

Does Section 393.135 RSMo prohibit the additional amortizations to maintain financial ratios provided for in Section III B.1.[i], page 18 of the Stipulation and Agreement, which permits additional amortizations in the event of revenue short falls that would cause KCPL's bond rating to fall below investment grade?

9. On Question No. 2 of Issue No. 8, the Department of Energy filed on June 2, 2005 the following in its Statement Of Position Of Intervenor U.S. Department Of Energy:

It is DOE's position that since the amortization expense proposed in Section III B 1 (i) of the Stipulation and Agreement is not supported or related to the amortization of any cost, asset or liability such an amortization expense is prohibited by Section 393.135 RSMo.

10. On Question No. 2 of Issue No. 8, Concerned Citizens / Sierra Club filed on June 2, 2005 the following in the Sierra Club and Concerned Citizens Of Platte County's Statement Of Position On The Issues: "Yes."

11. On June 15, 2005, the Staff filed the Staff Prehearing Brief in which it defended, at pages 16-19 and 21-22, the Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement as not being in violation of Section 393.135. Concerned Citizens / Sierra Club and Department of Energy filed very short prehearing briefs and did not address Section 393.135.

12. The Commission directed that the parties file proposed Report And Orders. On July 19, 2005, KCPL filed the Signatory Parties' Suggested Report And Order, which stated at

pages 58-59 that the Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement did not violate Section 393.135. The Sierra Club's And Concerned Citizens Of Platte County's Proposed Findings Of Fact And Conclusions Of Law And Proposed Order filed on July 19, 2005 did not address Section 393.135.

13. On July 21, 2005, the Department of Energy filed a Posthearing Brief that contained the following Conclusion, in part, at pages 6-7:

It is clear from the testimony of Mr. Giles, Mr. Trippensee and Mr. Schallenberg that the increased amortization expenses provided by KCPL's ratepayers will be identified to specific assets being amortized, that this increased amortization will reduce KCPL's ratebase and that this reduction in ratebase will reduce KCPL's cost of service, revenue requirements and rates KCPL's customers must pay.

At the commencement of this case USDOE was concerned that the Stipulation and Agreement did not adequately address how ratepayers would benefit from the increased amortization expense, what assets were having their amortization rates increased and how the funds ratepayers supplied through increased amortization expenses to keep KCPL financially healthy would be returned to them. USDOE believes that the testimony elicited at the hearing fully satisfies USDOE's concerns. Therefore, USDOE submits that the Commission can find that the Additional Amortizations proposed in the Stipulation and Agreement are reasonable.

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USDOE believes that the Stipulation and Agreement can be found by the Commission to be supported by competent and substantial evidence upon the whole record in this case and to be in the public interest.

14. On July 21, 2005, the Staff filed a Posthearing Brief in which it argued at pages 5-6 that the additional amortization is not a violation of Section 393.135.

15. On August 5, 2005 the Sierra Club And Concerned Citizens Of Platte County's Motion For Rehearing was filed which stated, in part, as follows at pages 8-9:

25. The Order of the Commission is unlawful, unjust and unreasonable in that the AFUDC rate violates the applicable statutes and regulations. . . . The fact that KCPL shall use the basis point reduction from the effective date of the Order, and not from the date that after Iatan 2 is fully operational, violates Missouri statute and regulation and is not in the public interest. . . .

26. The Order of the Commission is unlawful, unjust and unreasonable in that KCPL failed to show that by substantial and competent evidence that the AFUDC formula does not violate § 393.135, RSMo and that it is prudent and in the public interest.

27. The Order of the Commission is unlawful, unjust and unreasonable in that it is unlawful for the Commission to allow an increase in KCPL revenue requirements based on an amortization expense that is unsupported or unrelated to the amortization of any cost, asset or liability. . . .

16. Section III.B.6. at page 50 of the Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement states, in part: “If the terms of the Regulatory Plan agreed upon in Kansas and/or required by the KCC are not comparable to the terms agreed to in Missouri and required by this Commission, KCPL agrees that it will offer to the other Signatory Parties in Missouri and accept comparable terms to those terms agree upon in Kansas and/or required by the KCC.” On August 12, 2005 Staff’s, Public Counsel’s, Missouri Department Of Natural Resources’ And Praxair’s Proposed Amendment Of The KCPL Experimental Regulatory Plan was filed with the Commission to reflect certain terms in the KCPL Regulatory Plan authorized by the Kansas Corporation Commission (KCC). On August 19, 2005, Sierra Club And Concerned Citizens Of Platte County’s Response To Staff’s, Public Counsel’s, Missouri Department Of Natural Resources’ And Praxair’s Proposed Amendment Of The KCPL Experimental Regulatory Plan was filed with the Commission in which Concerned Citizens / Sierra Club stated at page 2, Paragraph 5 as follows:

The Order of the Commission adopting the Stipulation is unlawful, unjust and unreasonable, in that KCPL and the Staff have not shown how Amendments C and D, if incorporated into the Stipulation, do not violate § 393.135, RSMo. These provisions are comparable to the CIAC which is apparently being allowed in Kansas but which would be blatantly illegal in Missouri.

On August 23, 2005, the Commission issued Order Approving Amendments to Experimental Regulatory Plan.

17. Concerned Citizens / Sierra Club filed a Petition For Writ Of Review in Cole County Circuit Court. The Concerned Citizens / Sierra Club did not raise as an issue in its writ of review proceeding in Cole County Circuit Court the additional amortization facet of the Iatan 2 / KCPL Regulatory Plan and Section 393.135. The Commissioners will recall that (i) the Circuit Court affirmed the Commission, (ii) the Western District Court of Appeals reversed the Commission, (iii) Concerned Citizens / Sierra Club and KCPL entered into a settlement, (iv) the Missouri Supreme Court took transfer and (v) the Missouri Supreme Court granted a Motion To Dismiss the case as requested by Concerned Citizens / Sierra Club, KCPL and the Commission.

KCPL CASE NO. ER-2006-0314

18. In Case No. ER-2006-0314, the Staff, KCPL, Public Counsel and Praxair entered into a Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Additional Amortizations, filed on December 4, 2006, regarding: (i) the additional amortization tax gross-up issue and (ii) a matter which the Staff characterized as recognizing for purposes of the two credit metrics regulatory plan additional amortization calculation, the additional net balance sheet investment not in KCPL's rate base, and the Public Counsel characterized as synchronizing for purposes of the two credit metrics regulatory plan additional amortization calculation, capital structure with investment in Missouri jurisdictional retail electric operations. The Staff filed on December 11, 2006 Staff Suggestions In Support Of Nonunanimous Stipulation And Agreement Regarding KCPL's Regulatory Plan Additional Amortizations, which among other things contained the Staff's standard defense of the regulatory plan additional amortizations. No party objected to the nonunanimous stipulation and agreement, therefore, as permitted by Commission Rule 4 CSR 240-2.115, the Commission treated the Nonunanimous Stipulation And Agreement

Regarding Regulatory Plan Additional Amortizations as if it were unanimous, and approved it in its Report And Order issued on December 21, 2006.

19. The County of Jackson, Missouri (Jackson County) intervened in Case No. ER-2006-0314 and filed an Application For Rehearing respecting the Commission's Report And Order. Among the reasons it raised in its Application For Rehearing was the additional amortization and Section 393.135:

The Order is unlawful, unjust and unreasonable, is not based on competent and substantial evidence, is not based upon adequate findings of fact, is an abuse of discretion and is arbitrary and capricious in that it grants an increase of millions of dollars in rates based on the costs of construction in progress of an electric plant before it is fully operational and used for service in direct contravention of Section 393.135 RSMo . . . It is quite apparent that charging current customers millions of dollars in rates in excess of what the Commission determined KCPL's revenue requirement to be is a charge for service which is based on "the costs of construction in progress upon any existing or new facility" and/or "the cost associated with owning, operating, maintaining, or financing any property before it is fully operational and used for service" and, therefore, "is unjust and unreasonable, and is prohibited" as provided in Section 393.135.

Jackson County did not file a Petition For Writ Of Review. Only Public Counsel, Praxair and Trigen-Kansas City Energy Corporation filed Petitions For Writs Of Review and none of the three raised the Section 393.135 issue. The issues raised by Public Counsel, Praxair and Trigen-Kansas City Energy Corporation in their writs of review proceedings have been fully briefed and argued before Judge Jon Beetem and the parties are awaiting his decisions.

EMPIRE CASE NO. ER-2006-0315

20. In Case No. ER-2006-0315, the Staff, Empire, and Public Counsel entered into a Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations, filed on October 27, 2006, regarding, in particular: (i) the additional amortization tax gross-up issue and

(ii) the additional amortization capital structure issue.² On November 3, 2006, Praxair and Explorer Pipeline Company filed their Objection To Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations And Request For Hearing. The Commission in its Report And Order issued December 21, 2006 at pages 4 and 56 notes that since the Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations was objected to, it became, by operation of Commission Rule 4 CSR 240-2.115(2)(D), a non-binding statement of position by the signatory parties.

KCPL CASE NO. ER-2007-0291

21. In KCPL's most recent rate case, the Pershing Road Development Company, LLC (Pershing Road Development) was granted intervention by the Commission. Pershing Road Development was not a signatory to the Iatan 2 / KCPL Regulatory Plan Stipulation And Agreement. On August 17, 2007, Pershing Road Development filed a Motion To Reject Tariffs And Motion For Expedited Treatment. Pershing Road Development stated that: (i) page 7 of the direct testimony of KCPL witness Michael Cline indicates that included in KCPL's tariffs filed February 1, 2007 to implement a rate increase of \$45.4 million was additional amortization revenue in the amount of approximately \$31.0 million; (ii) quantification of the additional amortization revenues is largely based on KCPL's total capitalization and total debt; and (iii) included in this total capitalization and total debt are components to support KCPL's investment

² Regarding the additional amortization capital structure issue, the Staff proposed that Empire's Regulatory Plan additional amortization capital structure should be calculated as the Staff's recommended rate base plus any net assets (assets minus liabilities) on Empire's financial statement balance sheet as of the true-up period that are not otherwise reflected in the Staff's rate base for ratemaking purposes. The amount added to Empire's rate base would include construction work in progress (CWIP) and net regulatory assets. The Public Counsel proposed that Empire's Regulatory Plan additional amortization capital structure should be calculated as the amount of Public counsel's recommended rate base plus the balance of Empire's CWIP account, offset by Empire's balance of short-term debt, all as of the end of the true-up period. Rather than reach agreement on a methodology, the Staff, Empire and Public Counsel reached agreement on a number to be added to Empire's rate base as of the end of the true-up period for settlement purposes. See Nonunanimous Stipulation And Agreement Regarding Regulatory Plan Amortizations filed October 27, 2006.

in Iatan 2 and other construction projects that are “costs of construction in progress” and are not “fully operational and used for service.” Pershing Road Development asserted that, as a result of Section 393.135, KCPL’s “proposed tariffs are *de facto* unjust and unreasonable, and are prohibited,” and “[i]n such case, the proper remedy is not to suspend such tariffs . . . Rather, the appropriate remedy is to immediately reject those tariffs as the Commission cannot lawfully approve them.” (Pershing Road Development Motion To Reject Tariffs And Motion For Expedited Treatment, pp. 2-3, August 17, 2007).

22. Pershing Road Development noted certain language in a December 22, 2006 Empire Press Release entitled “The Empire District Electric Company Announces New Missouri Electric Rates,” regarding the Commission’s Report And Order issued December 21, 2006 in Empire’s 2006 rate increase case, Case No. ER-2006-0315. Pershing Road Development quoted the following paragraph, added the indicated emphasis and stated the Empire Press Release “reflects the fact that these additional amortization revenues support construction work in progress:”

The order issued by the Commission contains two components. The first component provides an addition to base rates, which the Commission has reported is approximately \$20 million. The second component is an amortization that provides Empire additional cash through rates, which allows Empire to begin recovery of costs associated with its current generation expansion. This expansion, which is a part of the Company’s long-range plan to ensure future reliability, includes the facilities at the Riverton Power Plant and Iatan 2 Power Plant, as well as environmental improvements at the Asbury Power Plant and at Iatan 1.

23. On August 21, 2007, Pershing Road Development filed a Notice Of Withdrawal Of Motion.

24. An issue did arise in Case No. ER-2007-0291 between KCPL and Public Counsel, with the Staff concurring with KCPL, respecting whether short-term debt should be reflected in

the additional amortization calculation. Public Counsel witness Russell W. Trippensee stated in part in his true-up rebuttal testimony, Exhibit 212, pages 6-7, as follows:

Q. DOES KCPL HAVE SHORT-TERM DEBT AS OF SEPTEMBER 30, 2007?

A. Yes. According to Mr. Cline's testimony and schedules, KCPL has approximately \$259 M. of short-term debt. It [sic] my understanding that the balance of CWIP as of September 30, 2007 is in excess of \$380 M. Thus all short-term debt is needed to support CWIP and will be included in the calculation of AFUDC. Therefore it is not appropriate to include any short-term debt in the capital structure used to determine the revenue requirement in this case.

Q. DO UTILITIES NORMALLY USE LONG-TERM DEBT OR EQUITY CAPITAL TO FINANCE CWIP?

A. No, not as a general proposition. Over the term of a long-term construction project, a utility may take advantage of market conditions to secure favorable long-term debt or make equity issuances that replace short-term debt issues supporting CWIP and these possibilities are addressed in the AFUDC rules. However, the very nature of construction projects with their on-going monthly need for new monies require the ready access to funds provided by the short-term debt market whereas the long-term debt market or equity markets are designed for infrequent one time accesses to funds.

Q. WHY ISN'T THE INTEREST EXPENSE ASSOCIATED WITH SHORT-TERM DEBT INCLUDED IN THE JURISDICTIONAL REVENUE REQUIREMENT?

A. Interest on short-term debt is normally associated with debt that supports Construction Work in Progress (CWIP). **As this Commission is well aware, the statutes of this state do not allow CWIP to be used in the determination of the jurisdictional revenue requirement.** In this case, it is Public Counsel's understanding the amount of short-term debt currently held by KCPL is less than the level of CWIP on the balance sheet. Thus the entire balance of short-term debt is being used to support the CWIP investment. Therefore it is inappropriate to include short-term debt in the jurisdictional revenue requirement or to include it in the determination of FFO available from those jurisdictional revenues.

(Emphasis supplied). The Staff filed on November 16, 2007 in its Post-Hearing Reply And True-Up Brief its defense of including short-term debt in the additional amortization calculation

as being lawful and not contrary to Section 393.135, in addition to its standard defense of the additional amortization as being lawful and not contrary to Section 393.135.

Wherefore the Staff responds to Public Counsel's December 13, 2007 Motion For Reconsideration.

Respectfully submitted,

/s/ Steven Dottheim

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 27th day of December 2007.

/s/ Steven Dottheim