

City of Independence

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April 27, 2007

FILED²

APR 30 2007

Mr. Kevin Thompson
Public Counsel
Missouri Public Service Commission Counsel
Governor Office Building
200 Madison Street, First Floor
Jefferson City, MO 65102-2230

Missouri Public
Service Commission

Dear Mr. Thompson:

Please find enclosed an original plus eight copies of an Application to Intervene and Comments of the City of Independence along with an original and eight copies of a Motion for Leave to Appear Pro Hac Vice. A check for \$200 has been enclosed to cover filing fees. Should you have any questions please contact Dayla Bishop-Schwartz in my office at 816-325-7217.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Garner", is written over a horizontal line.

Allen Garner
City Counselor

BAG/rr

Enclosures

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²

APR 30 2007

Missouri Public
Service Commission

In the Matter of the Joint Application)
of Great Plains Energy Inc., 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 Inc. and for Other)
Related Relief)

**APPLICATION TO INTERVENE AND COMMENTS
OF THE CITY OF INDEPENDENCE**

THE CITY OF INDEPENDENCE, MISSOURI ("City"), pursuant to 4 C.S.R. 240-2.075, respectfully applies to intervene herein and become a party hereto for all purposes with respect to the joint filing by Aquila, Inc. ("Aquila"), Great Plains Energy Incorporated ("Great Plains"), and Kansas City Power & Light Company ("KCPL") (together, "Joint Applicants") on April 4, 2007. The City also provides the Commission with its preliminary comments regarding central matters that the Applications would have the Commission put off to another, post-merger day. It is not possible to conduct an informed evaluation of the proposed merger based on the limited and non-definitive information supplied by the Applicants.

I. APPLICATION TO INTERVENE

In support of its Application to Intervene herein, the City states as follows:

1. The City owns and operates a municipal electric utility which was established in 1901 to provide the residents and businesses of Independence, Missouri with safe, reliable and affordable electric service.

2. The City serves more than 55,000 customers. The City maintains and operates 12 generating units, 13 major substations, and more than 650 miles of power lines. Some of the electricity required to meet customer demand is generated by the City, but the City acquires much of the power and energy needed to meet its customers' demand from resources and suppliers that are outside of the City.

3. The City has direct physical interconnections with both KCPL and Aquila, and one interconnection with Associated Electric Cooperative, Inc. The City also has existing agreements with both KCPL and Aquila pursuant to which the City purchases power and energy from each of the companies. These arrangements include purchases of a portion of the capacity and energy from Montrose, a large, base load, coal-fired unit owned by KCPL. KCPL and Aquila, along with certain other participants, are currently developing Iatan 2. The Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), of which the City is a member, is among the parties that have an ownership interest in Iatan 2, and the City has contracted with MJMEUC to acquire approximately 50 MW of the Iatan 2 capacity and associated energy.

4. The City is also a retail customer of KCPL. KCPL provides retail electric service to the City's water treatment plant, which is located outside of the City's corporate limits. KCPL also provides electric service to one large retail customer located within the City (the Lake City Army Ammunitions Plant). KCPL has a franchise from the City allowing and governing KCPL's service to this large customer.

5. The City has direct and immediate interests in this proceeding that cannot be adequately represented by any other party. As is evident from the foregoing summary of arrangements, the City has power purchase agreements with the merging companies, is a

retail customer of KCPL in connection with the City's water treatment plant, has physical interconnections with the merging companies, interests in Montrose and Iatan 2 units owned in part by one or both of the merging companies, and is dependent on the transmission systems of the merging companies for transmission service from the described sources and to access other third party wholesale suppliers and other generating resources. The City's primary electrical access to the outside world is by way of its interconnections with the two merging companies.

II. COMMUNICATIONS

Correspondence and communications regarding this application, including service of all notices and orders of this Commission, and pleadings in this proceeding, should be addressed to:

- a. B. Allen Garner, Esq., City Counselor
Dayla Bishop Schwartz, Esq. Assistant City Counselor
Law Department
City of Independence
111 East Maple Street
Independence, MO 64050
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The City respectfully advises the Commission that neither Mr. Robbins nor Ms. Roby are admitted to practice in the State of Missouri. Simultaneously with the filing of this Application to Intervene, the City is submitting a Petition sponsored by Ms. Dayla Bishop Schwartz requesting that the Commission permit them to appear *pro hoc vice* as co-counsel to Mr. Garner and Ms. Schwartz on behalf of the City.

III. COMMENTS

THE CITY respectfully suggests that the Applicants have not provided the Commission or affected customers with sufficient information to allow for an informed evaluation of the proposed transaction or the potential effects on customers. The Application is candidly vague and open-ended on some very core aspects of the merged companies operations, with the result that the thrust of the Application is to ask that the Commission approve the merger today and worry about core issues and impacts *after* the merger is approved, not now as part of determining whether or under what conditions the merger should be approved. Central matters that Applicants would put off to another, post-approval day include the following:

Joint Dispatch of Generation -- The Application states that the two companies' generation will not be jointly dispatched, but does not foreclose the possibility of joint generation dispatch in the future. See Testimony of F. Dana Crawford at 5. Whether or not the generation is jointly dispatched would be expected to have cost and rate consequences.

RTO Participation -- The Application states that KCPL will evaluate "the strategy of RTO membership when the merger is completed." Testimony of Richard A. Spring at 9. Currently, KCPL is a member of SPP, and Aquila is a "conditional"

member of the Midwest ISO. The Application identifies certain potential benefits of single RTO membership, but does not elaborate, does not similarly attempt to identify benefits of continuing with dual RTO membership, and simply puts this central decision off to another (post-merger) day.

The merged companies' RTO strategy is of great importance to the companies' customers, both at wholesale and retail. It is too important a topic to be treated as if it were not of consequence, and it is too important to be decided by the merged company alone. The City, for example, sees potential benefits that could favor dual RTO participation, rather than combining both companies into SPP as Mr. Spring's testimony seems to imply may be the direction towards which they are leaning. The City is not at this time expressing a view as to whether single or dual RTO membership is the favored direction. The fundamental point is that this is a significant decision with potentially significant impacts and thus warrants full and complete evaluation that cannot be conducted based on the limited information that the Application supplies.

The City urges the Commission to have this key matter addressed as part of this proceeding. At the very least, if the Commission for some reason approves the merger without closure on the companies' RTO participation, then the Commission should make clear that this case is not in any way biasing or prejudging any future docket addressing the companies' RTO participation.

Rate Impacts – The Application alleges a combination of status quo or substantial savings (\$500 million over five years), but the City questions how Applicants, the Commission or customers can undertake an informed evaluation

when such key matters as joint generation dispatch and RTO participation are left open-ended. The projected savings are, necessarily, only projections, half of which are proposed to inure to the benefit of the shareholders. E.g., Application at 21. The Applicants seek approval of a regulatory asset for merger cost amortization. Id. at 18. They also seek approval of an Additional Amortizations mechanism to maintain investment-grade financial metrics, which mechanism would be used in the next rate case. E.g., id. at 16. And, they propose to keep the merging companies' rate structures separate "until the Commission approves the integration of KCPL's and Aquila's service territories into one unified territory."¹ Id. Thus, also put off for another day very significant rate matters, rendering it impossible to undertake any meaningful or reliable evaluation of such impacts today.

Customer Protection – The Application includes no customer protection mechanisms to avoid or even mitigate any adverse impacts of the proposed merger on customers. The City is unable to discern from the Application any basis that would enable the Commission or customers to be assured that adverse impacts will not be experienced by customers.

Transmission and Interconnection Matters – The City's primary access to the outside electrical world is by way of interconnections with and transmission service across the transmission systems of KCPL and Aquila. Yet, one cannot begin to evaluate whether or how the combined companies' operations will affect the available transmission capacity for others, which RTO will be responsible for transmission planning or tariff administration or the like. The City could find in the Application no

¹ This implies that Applicants contemplate seeking Commission approval of a single rate structure at some point, which makes even more curious Applicants' vagueness on whether the merged companies will remain split between two RTOs or combined into one RTO.

commitment to ensure that it will not be adversely affected, will not have import capability restricted, and not be made captive to the merged company. Applicants offer no assurance that they will undertake transmission improvements if and as necessary to avoid such adverse impacts, much less to remedy already existing constraints, and they most certainly offer no indication that they will do so at their cost as part of the cost of merging.

The City understands that Applicants will need to seek FERC approval and that FERC may well be the forum in which such matters are addressed, but the instant Application does not even say that, except to mention FERC as one of the regulatory agencies from which the companies will need to obtain merger approval. That jurisdiction over transmission matters lies with FERC is not and should not be to say that this Commission does not and should not have any interest in such matters or in the resulting impacts on customers.

The City accordingly urges the Commission to conduct a full investigation and hearing on the proposed transaction. The City suggests that it may be most efficient and expedient to begin with an order requiring the Applicants to supplement there filing in order more fully, specifically and currently address the kinds of matters summarized herein rather than permit such key topics to be put off to some post-merger day.

IV. CONCLUSIONS

WHEREFORE, for the foregoing reasons, the City respectfully requests that the Commission accept this Application to Intervene, and order such investigation, hearing and related procedures as are necessary and appropriate to allow the Commission and

affected parties the opportunity to engage in a meaningful and informed evaluation of the proposed merger *before* it is approved, not after the merger is a "done deal" as Applicants essentially are proposing.

Dated this 30th day of April, 2007.

Respectfully submitted

A handwritten signature in black ink, appearing to read "B. Allen Garner", is written over a horizontal line.

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Dayla Bishop Schwartz, Esq., Missouri Bar #31399
Assistant City Counselor
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