

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS

7 In-Camera Proceedings

8 December 5, 2007
9 Jefferson City, Missouri
Volume 6

10 In the Matter of the Joint)
11 Application of Great Plains)
Energy Incorporated, Kansas)
12 City Power & Light Company,)
and Aquila, Inc., for Approval) Case No. EM-2007-0374
13 of the Merger of Aquila, Inc.,)
with a Subsidiary of Great)
14 Plains Energy Incorporated and)
for Other Related Relief.)

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16 NANCY M. DIPPELL, Presiding,
SENIOR REGULATORY LAW JUDGE.

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18 JEFF DAVIS, Chairman,
CONNIE MURRAY,
LINWARD "LIN" APPLING,
19 TERRY JARRETT,
COMMISSIONERS.

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REPORTED BY:

23

PAMELA FICK, RMR, RPR, CCR #447, CSR
24 MIDWEST LITIGATION SERVICES

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1 I N - C A M E R A P R O C E E D I N G S

2 JUDGE DIPPELL: It appears that the rush
3 is over and you may continue.

4 MR. CONRAD: This will probably be --
5 take less time than doing all that, but ...

6 CROSS-EXAMINATION (CONTINUED) BY MR. CONRAD:

7 Q. Mr. Fleener, you have before you a
8 document which now has been marked for purposes of
9 identification as Exhibit 301 in this proceeding --
10 301 HC. I should be correct. Is that -- do you have
11 that before you?

12 A. Yes.

13 Q. Have you ever seen that document before?

14 A. I have not.

15 Q. Do you know who Christopher Reitz or
16 Reitz is?

17 A. Chris Reitz is Aquila's general counsel.

18 Q. And you're generally familiar with --
19 with the people who are on the board? You may not
20 know them personally, but you know them by name, do
21 you not?

22 A. Yes.

23 Q. Would you agree with me that Irv
24 Hockaday is a member of the Aquila board?

25 A. He is.

1 Q. In the middle of the first page of this
2 exhibit, I won't ask you to go through the rest of
3 it, but I will ask you if you are aware of the coding
4 that was used for internal memoranda to describe
5 project 132 which is this acquisition? Are you aware
6 of the coding that was used?

7 A. Yes.

8 Q. So if we see the term Navy, that refers
9 to who?

10 A. That refers to Great Plains.

11 Q. And if we were to see -- just to get it
12 off the dime, if we were to see something like
13 National Guard, that would be?

14 A. That's Black Hills.

15 Q. Thank you. Would you also agree with me
16 by way of foundation that what this document appears
17 to be is a threaded e-mail that goes back to a
18 communication on November 30 at the top of the second
19 page from Rick Green -- you know who that is, don't
20 you?

21 A. Yes, I do.

22 Q. Directed to the Aquila directors, and
23 then a response there in the middle of the page --
24 actually, at the bottom of the page from Mr. Hockaday
25 and then a response back from Mr. Green to

1 Mr. Hockaday. So far, so good?

2 A. It appears there are a few more back and
3 forth.

4 Q. Right.

5 A. But yes, basically it's a thread.

6 Q. And in that portion that's in the middle
7 of page 1 where Mr. Green is sending an e-mail to
8 Mr. Hockaday on 30 November at 5:34:53 in the
9 afternoon, read with me here for -- and see if I do
10 it correctly. "Irv, there is no doubt that Navy's
11 actions are confusing. We talked this over with Will
12 Hiltz, and we believe there are a lot of options
13 beyond Navy." Do you see -- did I read that part
14 correctly?

15 A. Yes, you read it correctly.

16 Q. Would you be in a position to know what
17 the other options beyond Navy are to which Mr. Green
18 is referring?

19 A. I don't have any idea.

20 Q. How does that square with your statement
21 on page 6 of your testimony, at no point during the
22 process did you get any credible, unsolicited
23 expressions of interest?

24 A. I don't know what Mr. Green was thinking
25 about when he wrote that.

1 Q. Would you agree with me that those --
2 those two things don't -- when you put them --
3 juxtapose them together that they don't sit
4 comfortably?

5 MR. BOUDREAU: I think the question's
6 been asked and answered.

7 MR. CONRAD: Not that question, your
8 Honor.

9 THE WITNESS: I don't know what
10 Mr. Green was thinking when he wrote that.

11 JUDGE DIPPELL: I'll --

12 MR. CONRAD: Okay.

13 JUDGE DIPPELL: I'll overrule your
14 objection.

15 MR. CONRAD: Since he answered it
16 anyway.

17 JUDGE DIPPELL: Since he answered it,
18 correct.

19 BY MR. CONRAD:

20 Q. Now, I didn't mean to ask you to --
21 to -- to be omniscient and try to guess what
22 Mr. Green was thinking, but at least if I were to
23 read your testimony on its face on page 6, the
24 portion we quoted, is there anything in your
25 testimony, Exhibit 14, that suggests that there are a

1 lot of options beyond Navy?

2 A. The -- the testimony refers to
3 unsolicited bids.

4 Q. Right.

5 A. The point of that Q&A is that there was
6 some public disclosure via the media. However, you
7 know, it was denied by the company as we would in any
8 strategic transaction of that nature, particularly
9 with the significant financial implications. And
10 because we were not running a public process, we
11 would have denied the rumor.

12 But in that instance, anyone who is
13 reading the trade magazines and things like that
14 would have known or would have speculated or could
15 have at least called the investment bankers to say,
16 hey, we may be interested in participating in this
17 process. And there was no unsolicited interest
18 that -- that arose as a result of that public
19 disclosure.

20 And I believe the testimony talks about
21 the process that we went through and -- or actually,
22 that the bankers went through to gauge interest
23 amongst the whole universe, and I think Mr. Green
24 spoke about this yesterday as well. So there was a
25 universe of potential prospects that were culled and

1 on a privately approached basis, were solicited. So
2 the point of the testimony is just unsolicited.

3 Q. So if I understood that -- that
4 statement, then, you're attaching a lot of
5 significance to the word "unsolicited" on line 15 on
6 page 6; is that fair?

7 A. That's the -- that's the point of the
8 Q&A, yes.

9 MR. CONRAD: Thank you, sir. Your
10 Honor, I believe that's -- that's all I have unless
11 somebody else has something in HC. I do not. And we
12 don't have anything else for the witness.

13 JUDGE DIPPELL: That was the end of your
14 questions?

15 MR. CONRAD: Yes, ma'am.

16 JUDGE DIPPELL: Okay. Are there --

17 MR. CONRAD: I intend, I think, at a
18 later point, when we get somebody else back up, to
19 provide the rest of the foundation for 301, but --

20 JUDGE DIPPELL: Okay. Are there any
21 other in-camera questions for Mr. Fleener that we
22 could take up at this time? I'm just gonna --
23 does -- will Public Counsel have any?

24 MR. MILLS: No questions.

25 JUDGE DIPPELL: What about Staff, do

1 they have --

2 MR. DOTTHEIM: Staff has questions but
3 they're all public.

4 JUDGE DIPPELL: They're all public?

5 MR. DOTTHEIM: At least --

6 JUDGE DIPPELL: That's all right.

7 MR. DOTTHEIM: I think -- I think
8 they're -- possibly the last question or questions I
9 have are --

10 JUDGE DIPPELL: If we need to go back
11 in-camera, we'll go.

12 MR. DOTTHEIM: Yeah.

13 JUDGE DIPPELL: Okay. Then let's go
14 back on the public session.

15 (WHEREUPON, the in-camera portion of
16 Richard T. Fleener's testimony was concluded.)

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