

STATE OF MISSOURI)
)
COUNTY OF BUCHANAN)

AFFIDAVIT

I, Lisa Robertson, being duly sworn upon my oath, depose and state the following:

1. I am the City Attorney of the City of St. Joseph, Missouri, a home-rule municipality. I have served as City Attorney since 1994.
2. Attached to this Affidavit is a true and accurate copy of correspondence, dated September 24, 2007, setting forth the position of the City of St. Joseph, Missouri, including the City's notice to Aquila that a franchise is required to do business within the City by use of its rights-of-way and that neither Aquila nor Great Plains Energy, Inc. has any current valid franchise from the City of St. Joseph that authorizes operation within the City or in the City's rights-of-way. Aquila is not in compliance with the lawful requirements for operating within the rights-of-way in the City of St. Joseph and has refused demands to obtain a franchise as required by law.
3. Also attached to this Affidavit is the City's Charter provision (St. Joseph Charter Section 13.2) setting forth the requirements for a franchise, setting a durational limit of twenty years on such a franchise, and further establishing the franchise requirements also as set forth in City Code requiring a franchise to operate within the City rights-of-way.



Lisa Robertson

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal at my offices in the state and county first above written, on the 23rd of April, 2008.



Notary Public

My Commission expires: 6-29-08

PAULA HEYDE
Notary Public - Notary Seal
STATE OF MISSOURI
Buchanan County
My Commission Expires June 29, 2008

57502 Exhibit No. 1200
Case No(s). EM-2007-0374
Date 4-28-08 Rptr. xf

CUNNINGHAM, VOGEL & ROST, P.C.
legal counselors to local government

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September 24, 2007

Ms. Renee Parsons
Attorney at Law
20 West Ninth Street
Kansas City, Missouri 64105

Re: Aquila Franchise

Dear Ms. Parsons:

In light of the pending sale of electric assets of Aquila, Inc. to Great Plains Energy, Inc., we are writing on behalf of the City of St. Joseph to restate the City's position that neither Aquila nor Great Plains Energy, Inc. has any current franchise with the City that authorizes operation within the City or in the City's rights-of-way. While the City is prepared to discuss terms for granting such a franchise to Aquila and/or to any successor of the operations, we request that Aquila and Great Plains Energy, Inc. provide us with information as to their intent to seek such a franchise before or as a condition of closing on any such transfer.

In a letter dated December 15, 2006, you refer to Special Ordinances No. 951 and No. 566 granting a predecessor corporation, St. Joseph Electric Light and Power Company, a franchise to operate electric works within the City. You further state that such franchise was a perpetual franchise and, therefore, you imply that this franchise grants Aquila perpetual authority as well. As previously expressed to you, the City does not agree that Aquila has any franchise authority with the City.

First, your claim that the franchise granted by Ordinances Nos. 951 and 566 are perpetual because they have no duration is simply not accurate. Ordinance No. 951 granting the franchise specifically was limited by the qualification that the grant was "subject to future action by the Mayor and City Council." Ordinance No. 566 amended that franchise, and substituted a limitation that the grant of the Franchise was "during the life of said corporation." Accordingly, the original franchise is subject to Council action and the amended franchise is further limited in duration to the life of the original corporation. Both or either provisions prevent the franchise from being considered "perpetual" as asserted in your letter.

Further, there is no dispute that the "predecessor" corporation, St. Joseph Electric Light and Power Company, was merged out of existence and no longer exists as a valid corporation. Therefore, even if the prior franchise had continued, it ceased upon the expiration of that corporate life. According to the Missouri Secretary of State records, on December 31, 2000, St.

Ms. Renee Parsons
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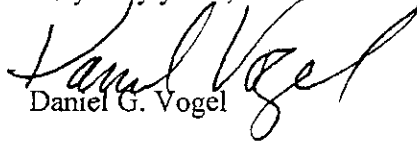
Joseph Light & Power Company, a Missouri corporation, was merged into Utilicorp United, Inc., with only Utilicorp United, Inc remaining as the "surviving corporation." The corporate life of St. Joseph Electric Light and Power Company is expired and the new corporation did not obtain a new franchise relative to the new corporation. For this reason, we need not even rely on the further qualification granting complete Council discretion, which was replaced by Ordinance No. 566, but for which the Council would still have authority to repeal.

In addition, the City is a home rule municipality and its charter expressly prohibits franchises in excess of twenty years in duration. *See St. Joseph Charter §13.2*. To the extent that the franchise amendment was a unilateral change, the Charter amendment clearly supersedes such unilateral amendment and would further result in expiration of the original franchise even if the corporation had not expired.

Finally, note that the franchise to St. Joseph Electric Power and Light Company did not authorize a grant to its successors or assigns and, as noted above, was expressly limited to the life of the "said corporation."

For these and other reasons, the City continues to assert that no lawfully required franchise exists, and under any view, Aquila proceeds at significant risk in continuing to refuse to obtain a current franchise authorizing it to do business within the city. In light of the court's ruling in *StopAquila.Org v. Aquila, Inc. 180 S.W.3d 24 (Mo. Ct. App., 2005)*, Aquila is certainly on notice of the significance of the franchise authority in conducting business within a jurisdiction. By this letter, we also advise Great Plains Energy, Inc., if it becomes a successor, that it would remain subject to the legal requirement to obtain a franchise in order to lawfully operate within the City. We hope that this letter will facilitate the prompt resolution of obtaining a franchise for Aquila, regardless of any change in ownership that may be contemplated. We look forward to your response.

Very truly yours,


Daniel G. Vogel

cc: Lisa Robertson, City Attorney
Mark English, Great Plains Energy, Inc.

STATE OF MISSOURI }
County of Buchanan } ss.
City of St. Joseph }

I, Paula Heyde, City Clerk of the City of St. Joseph, County and State aforesaid, do hereby certify that the foregoing and annexed instrument of writing is a true and correct copy of the original, on file in the office of the City Clerk of Section 13.2 "Granting of franchises" of the
Charter of the City of St. Joseph, Missouri.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Saint Joseph, aforesaid.

Done at the City Clerk's office in the City of St. Joseph, this
23rd day of April 20 08

Paula Heyde

City Clerk

By _____

Deputy

§12.5.

(c) *Withdrawal of petitions.* A recall petition may be withdrawn at any time prior to the forty-fifth (45th) day preceding the day scheduled for a vote of the City by filing with the City Clerk a request for withdrawal signed by at least twenty (20) members of the Petitioners' Committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings thereon shall be terminated.

(d) *Vacancy.* If any such office becomes vacant by resignation or otherwise prior to the election, the question of recall shall not be submitted, and unless there are other matters to be voted upon, the election, if a special election, shall be cancelled.

Sec. 12.6. Effect of recall.

If a majority of the qualified voters voting on the question of recall shall vote in favor of the recall, then a vacancy in that office shall exist, regardless of any defect in the recall petition. If a majority of the qualified voters shall vote against the recall, the official shall continue in office. Any official who has been recalled shall be ineligible to hold any other elective or appointive office during the remainder of the term for which he/she was originally elected. Any official who is retained in office by a recall election shall not again be subject to recall for a period of six (6) months after certification of the results of the election.

Sec. 12.7. Conduct of recall elections.

Notice of recall elections shall be given and publicized and such elections shall be conducted, the returns canvassed, and the results thereof declared in all respects as in other City elections.

ARTICLE XIII. FRANCHISES**Sec. 13.1. Definitions.**

The term "public utilities," for purposes of this article, shall be defined to include, but not limited to, any person or entity engaged in the business of supplying light, water, power, heat, transportation or public communications systems, together with all plants, apparatus, equipment, and distribution facilities necessary to such business, as well as any other service or facility so declared to be by any statute or ordinance.

Sec. 13.2. Granting of franchises.

Prior to the establishment, acquisition, or operation of a public utility within the City, any individual, agent, partnership, trust, estate, joint venture, corporation, or other business entity desiring to establish, acquire, or operate a public utility within the City shall make application to the City Council for a non-exclusive franchise.

All public utility franchises and all renewals, extensions and amendments thereof shall be granted only by ordinance. No such ordinance shall be adopted within less than one hundred twenty (120) days after application therefor has been filed with the Council, nor until a full public hearing has been held thereon. No exclusive franchises shall ever be granted, and no franchise shall be granted for a longer term than twenty (20) years. No franchise shall be transferable directly or indirectly, except with the approval of the Council expressed by ordinance, after a full public hearing.

Sec. 13.3. Right of regulation.

All public utility franchises, whether it be so provided in the ordinance or not, shall be subject to the right of the Council to:

(a) Repeal the same for misuse or nonuse, or failure to comply therewith.

(b) Require proper and adequate extension of plant and service, and the maintenance thereof, at the highest practicable standards of efficiency.

(c) Establish reasonable standards of service and quality of products, and prevent unjust discrimination in service or rates.

(d) Make an independent audit and examination of accounts at any time, and require reports annually.

(e) Require continuous and uninterrupted service to the public, in accordance with the terms of the franchise, throughout the entire period thereof.

(f) Control and regulate the use of the City streets, alleys, bridges, and public places, and the space above and beneath them.