

**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       )  
Great Plains Energy Incorporated and for Other       )  
Related Relief.    )

Case No. EM-2007-0374

**STAFF'S RESPONSE IN OPPOSITION TO GREAT PLAINS ENERGY'S AND KCPL'S  
MOTION TO LIMIT SCOPE OF THE PROCEEDING TO WHETHER EVIDENCE  
RELATING TO ISSUES II THROUGH IX OF THE SECOND LIST OF ISSUES IS NOT  
DETRIMENTAL TO THE PUBLIC INTEREST**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) In Opposition To Great Plains Energy Inc.'s (GPE's) And Kansas City Power & Light Company's (KCPL's) Motion To Limit Scope Of The Proceeding To Whether Evidence Relating To Issues II Through IX Of The Second List Of Issues Is Not Detrimental To The Public Interest. In opposition to GPE/KCPL's Motion, the Staff states as follows:

1. The Staff does not frivolously propose that the Commission take up issues X and XI in the Second List Of Issues And Order Of Opening Statements, Witnesses And Cross-Examination. These issues developed after the evidentiary hearings in this case were suspended on December 6, 2007.

2. The Staff notes that Aquila has not joined in the April 17, 2008 Motion To Limit Scope pleading of GPE/KCPL. Aquila is a part owner of the multibillion dollar Iatan 2 and Iatan 1 construction projects. Aquila's approach to cost overruns, schedule slippage, gifts and gratuities and allegations of wrongdoing are apparently not the same as GPE/KCPL's. The Commission should not assume that based on the present financial position of Aquila relative to GPE/KCPL that GPE/KCPL has the better practices. The applying of the GPE/KCPL practices

to the Aquila operations, should the Commission approve the acquisition, will be detrimental to the public interest. GPE/KCPL's ratepayers would benefit from the adoption of Aquila's practices to these matters. These issues and the testimony intended to be adduced by the Staff are relevant and appropriate in this proceeding, and the Commission should hear the testimony of the individuals that the Staff seeks to call. Contrary to GPE/KCPL's assertions, the Staff is not proposing that the Commission decide matters on the basis of the content of anonymous complaints. The Staff proposes that the Commission decide matters on the basis of sworn testimony of the individuals that the Staff seeks to call to the witness stand. The Commission has a long standing practice of having its Staff investigate allegations of questioned conduct at utilities under the Commission's jurisdiction. The Staff has a process in place to address each public comment filed in a case. The Staff has attempted to follow the customary process in an expeditious manner so as to not delay the processing of GPE's request to acquire Aquila.

3. The Joint Applicants have filed the testimony of only one Aquila employee in this case. In the December 2007 hearings, the Staff called, without objection from Aquila, Richard Green, Aquila's Chief Executive Officer, and Jon R. Empson, Aquila's Senior Vice President of Regulated Operations to testify as adverse Staff witnesses. The Staff has now called to testify as adverse Staff witnesses five individuals presently employed by Aquila:

**Max Sherman**, Vice President, Strategic Initiatives (Aquila's representative on Aquila's jointly owned coal projects in which Aquila has a minority interest, including the Iatan 2 and Iatan 1 projects)

**Darryl Uffelman**, Senior Corporate Counsel, Director of Labor and Employee Relations and Corporate Compliance Officer

**Lynn Fountain**, Vice President of Risk Assessment and Audit Services (internal audits Sarbanes-Oxley, enterprise risk management analysis)

**James Rose**, Senior Manager Risk Assessment Audit Services

Scott Heidtbrink, Vice President of Power Generation and Energy Resources

In the last day the Staff has advised Counsel for Aquila that the Staff has determined that Mr. Heidtbrink does not need to be called by the Staff and may be released. Also, the Staff can be more specific and identify that it requires these individuals for issues X and XI as follows:

**X. Additional Amortization / Credit Worthiness**

Is the credit worthiness of KCPL and Aquila as a result of the GPE acquisition of Aquila dependent on the expectation that GPE/KCPL will seek and the Commission will authorize a regulatory plan similar to that contained in the KCPL Stipulation and Agreement in Case No. EO-2005-0329 subsequent to Commission authorization of GPE's acquisition of KCPL?

If yes, will KCPL's credit worthiness, and thereby the purpose of the KCPL Regulatory Plan, be negatively affected if Aquila is unable to obtain such a Regulatory Plan?

Is the current expected cost and schedule outcome relating to KCPL's infrastructure commitments from the Case No. EO-2007-0329 Regulatory Plan an indication of GPE and KCPL's ability to complete the acquisition transaction in a manner that is not detrimental to the public interest?

Is KCPL's creditworthiness affected by GPE's decision not to seek recovery from Missouri ratepayers of any of the debt repurchase costs of Aquila's existing debt that GPE will refinance post-closing?

**Max Sherman**

**XI. Anonymous Public Allegations/Comments Related to Proposed Acquisition**

(a) Would the adoption of GPE/KCPL's gift and gratuity practice for Aquila be detrimental to the public interest?

(b) Does KCPL have adequate control of the Iatan projects to be able to operate the nondispatch functions of Aquila in addition to those of KCPL in a manner not detrimental to the public interest?

(c) Does the Commission have adequate information to determine whether the public allegations/comments it has received regarding GPE/KCPL are accurate and such conduct in the operation of the non-dispatch functions of Aquila would be detrimental to the public interest?

**Darryl Uffelman**

**Lynn Fountain**

**James Rose**

4. As previously noted, there is a long standing practice of investigating allegations and complaints, anonymous or otherwise, received by the Staff or the Commission respecting a utility company in the Commission's jurisdiction. This can be seen in Attachment 1 to Staff Exhibit 100 in this case, which is Staff's Report Of Staff's Evaluation And Recommendations Regarding GPE's Proposed Acquisition Of Aquila. Part of the Staff Report is the Staff's Management Audit of Aquila, Inc. prepared in response to the Commission Order issued on June 13, 2006, in Case No. EO-2006-0356. Forty-four (44) pages of the 166 page Staff Management Audit Report addresses a Staff investigation into \*\* \_\_\_\_\_

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\_\_\_\_\_ \*\* These 44 pages are the last 44 pages of the Staff Management Audit Report in this proceeding. Aquila's response to that Staff investigation is found on page "Attachment 1-13" and states as follows:

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The difference between GPE/KCPL's approach and Aquila's approach to these matters is significant.

5. An argument raised by KCPL in another context has caused undersigned counsel to recall another relevant Missouri Supreme Court decision apparently not previously cited to the

Commission in this proceeding: *Love 1979 Partners v. Public Serv. Comm'n*, 715 S.W.2d 482 (Mo. banc 1986); Commission Case No. HM-84-38, Report And Order, 26 Mo.P.S.C.(N.S.) 616 (1984).<sup>1</sup> Union Electric Company (UE) applied to the Commission for approval to sell its Ashley generating plant to Thermal Resources of St. Louis, Inc. and its downtown St. Louis steam loop to Bi-State Development Agency, and for authority to discontinue its operations as a regulated heating company. Among other things, Thermal proposed to build a refuse to steam plant in the future. A group of steam customers intervened and opposed the application of UE. The Commission rejected the steam users' arguments and granted the approval sought by UE. The steam users challenged the Commission's Report And Order in Cole County Circuit Court, which set aside the Report And Order and remanded the case for further proceedings. The Commission and UE appealed directly to the Missouri Supreme Court, which reversed the decree of the Cole County Circuit Court and sustained the Report And Order of the Commission. More specifically, the Missouri Supreme Court stated that "[t]he Commission is justified in looking at the broad picture." 715 S.W.2d at 490. That is what the Staff is asking that the Commission do at this stage of the proceedings. The Commission will need to eventually reconcile *Love 1979 Partners* with *State ex rel. A.G. Processing v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003), but the Commission should not impermissibly limit its analysis in doing so and certainly not at this stage. There is no testimony that Aquila will go under or will not be able to provide safe and adequate service at just and reasonable rates if the Commission does not approve the

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<sup>1</sup> In *Re Kansas City Power & Light Co.*, Case No. HO-86-139, 29 Mo.P.S.C.(N.S.) 232 (1987), the Commission concluded that the public convenience and necessity no longer required that KCPL continue the provision of central steam distribution service in downtown Kansas City. The Commission further found that KCPL's proposal to convert steam customers to electric heating equipment should be rejected as it violates 4 CSR 240-14.020(5) and (6). The Commission ordered KCPL to make a good faith effort to sell its central distribution steam system and it should prepare a request for proposals as set out in the Report And Order. KCPL was directed to report to the Commission on or before January 1, 1989 as to the results of its efforts to sell the system. KCPL was also directed to offer to customers which had test boilers installed on their premises the option to purchase boilers or be reconnected to the steam system.

Joint Applicants' proposal. In fact, the record in this case reveals that Aquila does perform certain activities better than GPE/KCPL.

6. It appears that GPE/KCPL is more willing to recognize the relevance of the Comprehensive Energy Plan (CEP) to the ultimate issue pending before the Commission. None of the individuals that GPE/KCPL is willing to provide for the evidentiary hearings are assigned full time to the CEP infrastructure construction projects or to the Iatan construction site. GPE/KCPL requests in its Motion To Limit Scope pleading that the Commission not require that GPE/KCPL produce the following individuals for the evidentiary hearings:

Brent Davis, KCPL Iatan Unit 1 Project Director

Stephen Easley, KCPL Senior Vice President Supply (functioning as interim Vice President Construction Iatan Unit 2 and Iatan Unit 1 Projects)

Steven Jones, KCPL Comprehensive Energy Plan Procurement Director

Terry Foster, KCPL Director Project Controls for Comprehensive Energy Plan Projects

John R. Grimwade, KCPL Senior Director of Strategic Planning and Development (formerly Senior Director Construction for Comprehensive Energy Plan)

Michael Chesser, GPE Chairman and Chief Executive Officer

Mr. Chesser of course is the individual ultimately in charge for GPE and has information that is not available from the other GPE/KCPL individuals.

7. GPE/KCPL at paragraph 2, on page 4 of its Motion To Limit Scope pleading, suggests that the Staff designate pages and line numbers from the depositions of the above witnesses that GPE/KCPL proposes not to produce and offer such portions of the depositions into evidence so that parties may have the opportunity to raise objections. GPE/KCPL makes this offer fully knowing that even if GPE/KCPL does not object, several of the parties opposed to

GPE/KCPL/Aquila's Joint Application are also strongly opposed to receiving into evidence depositions when the deponents are available to testify.

8. The Staff has not raised issues X and XI, conducted depositions, and sought to call deponents as adverse witnesses so as to delay these proceedings. The Staff at all times has placed itself under a very demanding schedule and work load and not sought to delay these proceedings. GPE/KCPL cannot claim that the Staff has not been diligent in addressing these matters. The Staff did not seek to extend the date for filing its rebuttal case when the Joint Applicants filed a new direct case on August 8, 2007 after originally filing their direct case on April 4, 2007. The Staff did not seek to delay these proceedings when the Joint Applicants filed a new proposed schedule on February 25, 2008.

WHEREFORE the Staff files this Staff Response In Opposition To Great Plains Energy Inc.'s (GPE's) And Kansas City Power & Light Company's (KCPL's) Motion To Limit Scope Of The Proceeding To Whether Evidence Relating To Issues II Through IX Of The Second List Of Issues Is Not Detrimental To The Public Interest.

Respectfully submitted,

**/s/ Steven Dottheim**

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**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 24th day of April, 2008.

/s/ Steven Dottheim