BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

STAFF RESPONSE IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER OF GREAT PLAINS ENERGY INC. AND KANSAS CITY POWER & LIGHT CO. TO QUASH DEPOSITION SUBPOENAS

Comes now the Staff of the Missouri Public Service Commission (Staff), by and through undersigned counsel of the General Counsel's Office, and in opposition to the Motion For Protective Order Of Great Plains Energy Inc. And Kansas City Power & Light Co. To Quash Deposition Subpoenas filed on Wednesday, March 12, 2008 (GPE / KCPL Motion For Protective Order To Quash Deposition Subpoenas) by Great Plains Energy Incorporated (GPE) / Kansas City Power & Light Company (KCPL).[1] The subpoenas duces tecum, as will be related

[1] On March 11, 2008, local Counsel for GPE/KCPL accepted service of subpoenas duces tecum obtained by Staff counsel from the Secretary of the Missouri Public Service Commission (Commission).

The Staff requested the issuance of the subpoenas duces tecum pursuant to Sections 386.040, 386.250(1) and (7), 386.320.3, 386.390.4, 386.420.2, 386.440(1) and (2), 393.140.8, 393.140.9, 393.140.10 and 4 CSR 240-2.100 to Michael Cline, Michael Chesser, William Downey, Stephen Easley, John Grimwade, Brent Davis, Terry Foster, Lori Cheatum, Steve Jones, Chris Giles and Terry Bassham in an effort to obtain information relevant to whether it is detrimental to the public interest for GPE to acquire Aquila.

The request stated that the documents sought and the purpose of questioning these individuals is to gain information about (1) the state of the financial health of GPE; (2) whether, under current circumstances, there will be negative financial consequences to GPE, KCPL and/or Aquila if GPE acquires Aquila; (3) the consequences of the payment of the cash value of Aquila's non-Missouri utility assets to Aquila's shareholders instead of using those funds to finance Aquila's current Missouri utility construction needs; (4) GPE's new position regarding the likelihood that GPE can produce enough synergies while avoiding service deterioration and past experience in achieving savings; (5) how well KCPL actual results compare to prior commitments it has made to this Commission, including

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herein, are designed to receive documents and testimony from certain GPE / KCPL individuals to discover information, as quickly as possible, that is relevant to:

(a) GPE / KCPL's financial condition and credit worthiness as a result of the proposed acquisition of Aquila by GPE and the construction of environmental enhancement of Iatan 1 and the construction of a second baseload coal-fired unit referred to as Iatan 2 and

(b) matters relating to items set forth in three anonymous letters filed in Case No. EM-2007-0374 respecting the proposed GPE acquisition of Aquila and these Iatan projects. The Staff will proceed as directed by the Commissioners.

In support of its response in opposition to the GPE / KCPL Motion For Protective Order To Quash Deposition Subpoenas, the Staff states as follows:

1. When the hearings were suspended in this case, of the eleven individuals that the Staff has subpoenaed, three had testified, Messrs. Michael Chesser, William Downey, and Chris Giles, and two of the three, Messrs. Chesser and Downey, were not scheduled to take the witness stand again. The only issue that had been completed was Overview / Policy of the Acquisition and the issue that was in the process of being heard was Merger Savings Sharing Proposal (Overview and Specific Areas of Impacts and Synergies).

2. Commencing at page 2 of its Motion For Protective Order To Quash Deposition Subpoenas, GPE/KCPL argues that on February 25, 2008 it narrowed the scope of these proceedings by removing various issues. As indicated in its filing on March 4, 2008, the Staff only agrees in part that the Joint Applicants have narrowed the issues in this case with the testimony they filed on February 25, 2008. Based on the testimony filed then, one issue that

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financial estimates made in those commitments; (6) how GPE and KCPL actually conduct business in comparison to their codes of conduct, ethics, integrity, transparency and how that compares to how Aquila conducts business, in particular respecting third party vendors; and (7) how construction at Iatan is affecting the financial health of GPE and KCPL as well as their ability to execute all the merger/consolidation commitments they claim they will perform without detrimental results.

On March 12, 2008, GPE / KCPL filed its Motion For Protective Order To Quash. On March 13, 2008, the Commission issued an Order Shortening Response Time in which it directed any responses to the GPE / KCPL Motion For Protective Order To Quash be filed no later than 12:00 p.m. March 17, 2008.

does appear to no longer be part of the instant case is GPE/KCPL seeking to charge KCPL's and Aquila's Missouri ratepayers the debt costs owing to UtiliCorp's/Aqiula's non-Missouri regulated acquisition and merger activities. GPE has apparently decided to honor UtiliCorp's/Aquila's commitments to prior Commissions to not charge Missouri ratepayers for UtiliCorp's/Aqiula's non-Missouri regulated acquisition and merger activities. Another issue that appears to no longer be part of the instant case based on the testimony filed on February 25, 2008, is merger savings sharing. Nonetheless, GPE's ability to meet its contentions that it can create significant cost reductions to offset detriments of the proposed transaction, for example, substantial transaction costs, is still a relevant issue in this case as GPE must show that its proposal is not detrimental to the public interest. A showing of net benefit by the Joint Applicants is essential to any determination by the Commission that the proposed transaction is not detrimental to the public interest.

3. Contrary to GPE/KCPL's contention that regulatory additional amortizations is no longer an issue, the February 25, 2008 testimony of Terry Bassham posits otherwise, where, at page 4, he states that the Joint Applicants are no longer seeking an additional amortization plan for Aquila in this case but will do so post-acquisition of Aquila:

> . . . The Joint Applicants continue to believe that an amortization provision for Aquila, similar to the provision contained in KCP&L's 2005 Stipulation and Agreement approved by the Commission, is appropriate and helpful in the protection of customers. However, the Joint Applicants withdraw their request for consideration of an additional amortization provision and instead intend to initiate discussions, post-close of the transaction, with interested parties to develop a regulatory plan for Aquila that might include an amortization provision as part of that regulatory plan.

Also Mr. Bassham's choice of words the very next day on February 26, 2008 in GPE's webcast and conference call to provide an update for investors on developments in the GPE acquisition of

Aquila leaves no question that GPE will seek additional amortizations after an acquisition of Aquila:

> . . . We have withdrawn our request for an Aquila amortization order in this case. Instead, we would initiate discussions with interested parties following the close of the transaction to develop a regulatory plan for Aquila similar to the KCP&L Comprehensive Energy Plan. An additional amortization mechanism would be one component of such a plan. If an agreement with the parties cannot be achieved, we will file our own proposal in the next rate case.

4. The Missouri Supreme Court in *State ex rel. A.G. Processing v. Public Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003) (*AG Processing*) held that it was unlawful for the Commission to refuse to determine whether the acquisition premium was reasonable when deciding whether a merger proposal was not detrimental to the public interest. In *AG Processing* the stated reason for not considering whether the acquisition premium was reasonable was that it was only appropriate to make this decision at the time UtiliCorp United, Inc. (Aquila) would seek to recover these costs in rates. Here, there is no question that in a future proceeding GPE/KCPL will seek in a future proceeding an additional amortization for Aquila which is part of the GPE acquisition of Aquila. The Missouri Supreme Court's *AG Processing* decision requires that the Commission decide in the pending case whether the Joint Applicants' future additional amortization proposal for Aquila is reasonable:

> . . . The PSC also maintains that considering recoupment of the $92,000,000 acquisition premium while considering approval of the merger amounts to prejudging a ratemaking factor outside a ratemaking case.
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> The fact that the acquisition premium recoupment issue could be addressed in a subsequent ratemaking case did not relieve the PSC of the duty of deciding it as a relevant and critical issue when ruling on the proposed merger. While PSC may be unable to speculate about future merger-related rate increases, it can determine whether the acquisition premium was reasonable, and it should have considered it as part of the cost analysis when evaluating whether the proposed merger would be detrimental to the public. The PSC's refusal to consider this issue in conjunction with the other issues raised by the PSC staff may have substantially impacted the weight of the evidence evaluated to approve the merger. The PSC

> erred when determining whether to approve the merger because it failed to consider and decide all the necessary and essential issues, primarily the issue of UtiliCorp's being allowed to recoup the acquisition premium.

120 S.W.3d at 735-36; footnotes omitted.

5. The *AG Processing* requirement that the Commission decide the Joint Applicants' additional amortizations proposal in this case means that AGP's pending December 5, 2007 Motion For Partial Summary Determination is still a live legal issue in this case.

6. GPE/KCPL asserts, in part, at page 3, paragraph 2 of its Motion For Protective Order To Quash Deposition Subpoenas that "[t]his effort by Staff to expand the scope of these proceedings appears to be a collateral attack on the 2005 decisions contained in Case No. EO-2005-0329. . . ." If any Signatory Party has overstepped the bounds of the Stipulation And Agreement in Case No. EO-2005-0329, it is GPE/KCPL. The regulatory additional amortization device was designed and agreed to in Case No. EO-2005-0329 so that GPE/KCPL could engage in the Regulatory Plan infrastructure projects and with reasonable and prudent conduct maintain the investment grade standing of its debt. It was not designed and agreed to in Case No. EO-2005-0329 so that GPE/KCPL could acquire Aquila and thereby distract itself from managing the Regulatory Plan infrastructure projects and from maintaining the investment grade standing of its debt. The proper forum for addressing GPE/KCPL's attempt to expand the use of the regulatory additional amortization device for an unintended purpose is this forum. The Staff stated, in part, in a December 27, 2007 filing in this proceeding entitled Staff Response To Public Counsel's Motion For Reconsideration, as follows:

> 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.

The Staff agreed to the regulatory additional amortization mechanism solely for purposes of KCPL (and Empire) engaging in the infrastructure enhancements set out in Case No. EO-2005-0329 (and Case No. EO-2005-0263) at a reasonable and prudent cost and schedule, not for purposes of GPE utilizing the regulatory additional amortization mechanism to acquire Aquila and place GPE/KCPL in jeopardy of not being able to engage in those infrastructure enhancements agreed to in Case No. EO-2005-0329 at a reasonable and prudent cost and schedule.

7. The Staff is concerned that GPE's ill-conceived acquisition of Aquila and fatally structured effort to combine KCPL and Aquila will draw GPE and KCPL from addressing problems involving the Regulatory Plan / CEP. The Staff is concerned that the GPE/KCPL construction cost and schedule controls regarding Iatan 1 and Iatan 2 activities have proven ineffective and GPE/KCPL no longer has reliable estimates and will not have reliable estimates for months. GPE/KCPL has taken the novel and alarming approach that because this information is relevant for another case, it cannot also be relevant for the instant case.

8. At page 3, paragraph 3 of its Motion For Protective Order To Quash Deposition Subpoenas, GPE/KCPL shows how even at this very time when GPE/KCPL views Case No. EO-

2005-0329 as the proper forum, not the instant acquisition case,[2] for concerns respecting Regulatory Plan infrastructure projects, it is GPE/KCPL that will make the determination who will be made available to the Signatory Parties in Case No. EO-2005-0329:

> . . . the Applicants [GPE/KCPL] intend to use the CEP process to **allow access to certain of the KCPL employees that Staff has subpoenaed who have information** about various projects at Iatan and elsewhere that should be useful and helpful to Staff, as well as other interested parties. In fact, four of the KCPL employees Staff seeks to depose met with Staff, Public Counsel and other Signatory Parties as a part of the CEP process on March 12 for the purpose of answering questions regarding the Iatan 1 and 2 construction projects.

(Emphasis supplied). The Staff had to ask for the meeting in Case No. EO-2005-0329 because KCPL had not provided the notice and information required by the Stipulation And Agreement in Case No. EO-2005-0329. For purposes of that meeting, the Staff did not specify the individuals that KCPL should have in attendance. Those GPE/KCPL individuals who were in attendance were not under oath, and no transcript was taken. (GPE/KCPL also brought Mr. Kenneth M. Roberts of Schiff Hardin LLP, Chicago, Illinois and Mr. Daniel F. Meyer, President, Meyer Construction Consulting, Inc., Lake Forest, Illinois, who have been engaged for the Iatan 1 and Iatan 2 projects.) The Staff had not asked for this meeting for any purpose relating to GPE's proposed acquisition of Aquila.

9. GPE/KCPL asserts, in part, at page 3, paragraph 4 of its Motion For Protective Order To Quash Deposition Subpoenas that "[t]he depositions sought by Staff are not reasonably relevant to that issue [whether the proposed acquisition is detrimental to the public interest] as they seek to expand the scope of this merger case by deposing, among other individuals, several KCPL employees based solely upon their current or former responsibilities related to the Iatan construction project." The GPE/KCPL's assertion is misleading and false. Although a thorough

[2] Nonetheless, the Joint Applicants' Application filed on April 4, 2007 cites the Iatan 1 and Iatan 2 projects in paragraphs 4 and 39 in support of GPE's proposed acquisition of Aquila.

investigation of the Regulatory Plan and the CEP may be called for in a different case, such an expansion was not the intent of the Staff. It was not clear that the cost and schedule of the Iatan 1 and Iatan 2 projects were undergoing a major reassessment by GPE/KCPL until after the proceedings in the instant case were suspended in December 2007.

10. In this case, the Staff seeks merely to verify that the assurances of the ratings agencies (referenced in the most recent testimony of Michael Cline and Terry Bassham) were based on accurate, up-to-date information from the Joint Applicants.

11. If the credit ratings agencies have been given the most accurate, most up-to-date information about projects under the CEP[3], then it may be possible that GPE/KCPL can avoid a downgrade due to the merger. Similarly, it may be possible that Aquila may be upgraded due to the merger. But as the recent negative outlook announcement from Moody's demonstrates, the Joint Applicants may be skating very close to the edge. If GPE/KCPL has been optimistic rather than realistic in the information it provided to credit rating agencies about the costs and progress of the CEP projects, especially Iatan II, then a GPE/KCPL downgrade as a result of the merger is more likely. The parties and the Commission need to know how the current and realistic information on the CEP projects, especially Iatan II, stacks up against the information provided to credit rating agencies in order to be able to determine whether the merger is not detrimental to the public interest. As the Joint Applicants have stressed throughout this proceeding, maintaining GPE/KCPL's investment grade credit rating after the merger is critical to a finding of no detriment.

[3] As well as other important factors that may affect GPE/KCPL's credit metrics and credit ratings, including but not limited to the assumptions underlying the proposed inclusion of the Crossroads plant – located in Mississippi – in Aquila's Missouri ratebase, assumptions underlying the timing of and profit from the sale of GPE's Strategic Energy subsidiary, and assumptions underlying the Joint Applicants' recovery of Transaction Costs.

12. This comparison of a current, realistic assessment of the costs and progress of the CEP projects to the information provided to the credit rating agencies is the focus of the proposed depositions. Depositions in this case are not expected to go into the same level of detail and same scope as depositions pursuant the CEP alone, but the parties and the Commission must reassure themselves in this case that the merger will not cause a downgrade. It would be disastrous to customers as well as to Joint Applicants to approve a merger that resulted in KCPL or GPE losing its investment grade ratings just as the largest CEP investments are approaching. In an ideal world, the Commission could simply say that any adverse effects of a downgrade would be borne solely by shareholders and ratepayers would be insulated. But given GPE/KCPL's required expenditures under the CEP, it would be almost impossible for shareholders to absorb all the negative effects of a downgrade; some detriment – likely significant detriment – would inevitably hit ratepayers as well.

13. In its filing on March 6, 2008, GPE/KCPL apparently acknowledges that "inquiry into the CEP" to determine its "hypothetical potential impacts on credit quality" is within the scope of this proceeding.[4] GPE/KCPL also cites with approval prior Commission decisions finding that inquiry into "the applicant's general financial health and ability to absorb the proposed transaction"[5] is proper in a merger case. These are precisely the subjects that Staff, seeks to explore in depositions. (Chesser Staff production requests 15, 16, 17, 18, 19, 22, 24, 27, 28, 29, and 30.)

14. Throughout this case, the Joint Applicants have stressed the importance of maintaining the investment grade credit ratings of KCPL and GPE. It is not open and

[4] Reply Of Applicants To Response Of Staff, Et Al. And Staff's Request For 16 Depositions, filed March 6, 2008, page 3.

[5] *Ibid.*, page 9.

transparent, and is particularly disingenuous, for GPE/KCPL to now urge the Commission to foreclose investigation into whether or not credit rating firms Standard & Poor's and Moody's have current, accurate information on Regulatory Plan / CEP projects.

15. The anonymous letter filed January 31, 2008 ("Even with the sale of Strategic Energy it's going to be too much.") and the anonymous letter filed February 13, 2008 ("from what I understand the sale of strategic energy is not going to get the money we are including in our models") refer to GPE's projected sale of Strategic Energy. (Chesser Staff production requests number 2 and 8.)

16. At page 9, paragraph 18 of its March 6, 2008 Reply, GPE/KCPL states that in considering whether to approve a proposed acquisition/merger "the Commission has previously considered such factors as 'the applicant's experience in the utility industry; the applicant's history of service difficulties; the applicant's general financial health and ability to absorb the proposed transaction; and **the applicant's ability to operate the asset safely and efficiently**.'" *In the Matter of the Application of Kansas City Power & Light Company for an Order Authorizing its Plan to Reorganize Itself into a Holding Company Structure,* Order Approving Stipulation And Agreement And Closing Case, Case No. EM-2001-464, 10 Mo.P.S.C.3d 394, 400 (2001), citing *In the Matter of the Joint Application of Missouri Gas Energy et al.*, Report And Order, Case No. GM-94-252, 3 Mo.P.S.C.3d 216, 220 (1994); emphasis supplied. This is precisely the point that the Staff, Public Counsel and the Industrial Intervenors are seeking to make. To the extent that the allegations in the three anonymous letters from asserted GPE/KCPL employees are true regarding the current state of GPE/KCPL's performance, then GPE's plans to own and GPE/KCPL's plans to direct the operations of Aquila are proper matters for this proceeding. The Staff's data requests and depositions of Messrs. Chesser, Downey, Easley,

Grimwade, Davis, Foster, and Jones and Ms. Cheatum intended to inquire, in a limited manner, as to the current GPE/KCPL culture and performance regarding whether employees believe they must resort to anonymous letters to regulators to express their concerns respecting significant company matters for fear either of indifference or of retaliation. The first letter was filed January 31, 2008, the second letter was filed February 13, 2008, and the third letter was filed March 3, 2008. The request for GPE/KCPL policies and procedures relating to employee complaints is to evaluate the GPE/KCPL corporate culture and determine the extent, if any, that GPE/KCPL has investigated the anonymous allegations as a matter of its corporate culture. Thus, would the authors of the anonymous letters be motivated to send these letters outside GPE/KCPL, instead of raising the matters internally? The request for internal employee complaints is to evaluate how robust GPE/KCPL's culture is relative to addressing internal employee issues. (Chesser Staff production requests number 4, 5, 6, 7, 8, 9, and 10).[6]

17. GPE/KCPL objects that Chesser Staff production requests number 4, 5, 6, 7, 8, 9, and 10 are overbroad and unduly burdensome in that they have no time limits. The Staff apologizes for this error. This is an oversight; it is not intentional that they have no time limits. The time frame for each of these Staff production requests should be as follows:

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[6] For example, regarding synergies, the anonymous letter filed on January 31, 2008 states as follows:

> The synergies being touted are not going to be there. There are a lot of good stories being told, but if you talk to the people in the trenches the synergies are not there. If only they were in a position to testify and tell the truth. But they are not. They have to tow the company line.

Further regarding synergies, the anonymous letter filed on February 13, 2008 states as follows:

> You also need to look at these synergy savings we keep talking about. People are being forced to agree to savings that they know will never happen. But it is either they do it or lose their jobs. . . .

Finally regarding synergies, the anonymous letter filed on March 3, 2008 states as follows:

> Synergies are NOT there. I am on several transition teams. We are being forced to continue to come up with new synergies because things estimated are not there. Our management is saying that we have compromised a lot in the discussions. They are fooling you. We just need more time to find or artificially create those synergies they talk about.

Chesser Staff production request number 4: current policy

Chesser Staff production request number 5: current policies

Chesser Staff production request number 6: February 1, 2007 through March 7, 2008

Chesser Staff production request number 7: June 1, 2005 through March 7 2008

Chesser Staff production request number 8: June 1, 2007 through March 7, 2008

Chesser Staff production request number 9: January 1, 2007 through March 7, 2008

Chesser Staff production request number 10: current policy

If there are any such other instances, the Staff is desirous of addressing such matters.

18. The Staff believes that the type of corporate culture and employee faith in GPE/KCPL management fostered by GPE/KCPL is, and will be, important respecting making any judgments regarding whether GPE/KCPL will likely be able to produce the synergies asserted by GPE/KCPL that it will be able to induce from the acquisition of Aquila even though GPE/KCPL will not have the Commission authorization to engage in the combination, consolidation and combination of KCPL and Aquila that it intends to effectuate. Without the support of GPE/KCPL's workforce, the proposed transaction will not likely have any hope of producing the synergies that are projected and that are necessary for the proposed transaction, even under the Joint Applicants' calculations, to be not detrimental to the public interest. (Chesser Staff production requests number 4, 5, 6, 7, 8, 9, and 10).

19. As footnote 6 indicates, the three anonymous letters filed in this case since the hearings were suspended on December 6, 2007, contain allegations that GPE/KCPL has been pressuring individuals to support synergy estimates that are not realistic. Some of the depositions proposed by the Staff relate to these purported synergies. At paragraph 34, pages 14-

15 of the Joint Application filed on April 4, 2007, GPE stated that "[t]otal pre-tax synergies for KCPL and Aquila are estimated to reach approximately $500 million over a five-year period (2008 – 2012)," which GPE represented that it did not anticipate would change significantly, but it would provide an update in August 2007. Despite GPE's initial assurances, Mr. Bassham's February 25, 2008 testimony at page 3 states that the synergies are now expected to be $305 million during the first five years. These results represent an approximately 40% reduction in benefits. GPE/KCPL has failed to include in its testimony the caveats and disclaimers regarding these synergies that it provided in its filings with the U.S. Securities and Exchange Commission.

20. GPE/KCPL bolsters the $305 million level of synergies by substantially increasing alleged savings from supply chain (procurement) activities. ** _____

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_____ ** The procurement area represents approximately one-third of the alleged benefits that GPE/KCPL contends will result from the acquisition of Aquila. The $80 million increase over the initial synergy estimate for this area is significant as GPE is acknowledging a $200 million reduction in its prior synergy estimates. The depositions of Cheatum and Jones will inquire into supply chain (procurement) matters. GPE/KCPL states at page 7, paragraph 14 of its Motion For Protective Order To Quash Deposition Subpoenas that "[a]ny additional depositions on this issue should begin with the witnesses whose testimony has been filed with the Commission who have not yet been deposed." There is such a person for whom the Staff has obtained a subpoena duces tecum:

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Lori Cheatum. The Staff has not previously deposed Steve Jones, he has not filed testimony in this case, but he is a procurement manager for KCPL.

21. At page 7, paragraph 16 of its Motion For Protective Order To Quash Deposition Subpoenas, GPE/KCPL states that "[i]n many instances, the Staff requests documents that don't yet exist because the overbroad requests ask for documents through June 2008. KCPL objects to these requests." The Staff used the June 2008 date to attempt to indicate that the Staff expects the information specified will continue to be produced, and, as a consequence, the Staff will expect, in the manner of a continuing data request, that this information will be retained and provided to the Staff during the pendency of the case. The items covered in the Attachments A to the subpoenas duces tecum are covered in part by the Staff data requests to which GPE/KCPL has objected. In a March 6, 2008 letter in which GPE/KCPL objected to Staff Data Request Nos. 369-386, GPE/KCPL states, in part, that it will not respond to the Staff's data requests pending a ruling by the Commission on the scope issue:

> As you may know, GPE and KCPL (Applicants) filed on March 6, 2008, a Reply Of Applicants To Response To Staff, Et Al. And Staff's Request For 16 Depositions. In this pleading, the Applicants have requested that the Commission explicitly rule that any issues related to the details of KCPL's Comprehensive Energy Plan will not be addressed in this proceeding. Pending a ruling on this request, KCPL must respectfully object to the above-referenced data requests on the grounds that such discovery is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. . . .

22. At page 4, paragraph 7 of its Motion For Protective Order To Quash Deposition Subpoenas, GPE/KCPL asserts that "[t]he transaction that must be examined by the Commission is the acquisition of Aquila by a subsidiary of Great Plains Energy, and the integration of Aquila and KCPL personnel and operations." GPE/KCPL is completely silent on the legal issue of whether the proposed transaction before the Commission, regardless of how it may have been

altered on February 25, 2008 is unlawful and void, pursuant to Section 393.190.1, because GPE has not sought the authority from the Commission to merge or consolidate, directly or indirectly, the whole or any part of the works or system of KCPL and Aquila necessary or useful in the performance of their duties to the public. GPE/KCPL's silence on this issue is even more alarming, although not surprising in light of the Western District Court of Appeals' most recent South Harper generating station decision.

23. Finally, the Staff would note that Missouri Rule of Civil Procedure 56.01(b)(1) provides, in part: "It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The Staff's discovery is reasonably calculated to lead to the discovery of admissible evidence and is not overbroad or burdensome.

Wherefore the Staff files this Response To Motion For Protective Order Of Great Plains Energy Inc. And Kansas City Power & Light Co. To Quash Deposition Subpoenas.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 17th day of March 2008.

/s/ Steven Dottheim