

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 8th day of
April, 2008.

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

**ORDER DENYING SECOND MOTION IN LIMINE
OF INDICATED INDUSTRIALS**

Issue Date: April 8, 2008

Effective Date: April 8, 2008

On March 13, 2008, the Sedalia Industrial Energy Users' Association, AG Processing Inc., a Cooperative, and Praxair, Inc., (collectively referred to as "Indicated Industrials") filed their Second Motion in Limine of Indicated Industrials. The Indicated Industrials request that the Commission "reject and not consider"¹ portions of the testimony filed by Great Plains Energy Incorporated and Kansas City Power & Light Company on February 25, 2008, and labeled "Supplemental Direct Testimony."

The portions of the testimony objected to are identified as:

- Bassham February 25, 2008 testimony, p. 3, Ins. 11-15; p. 5, Ins. 12-16;
- Giles February 25, 2008 testimony, p. 1, Ins. 4-6; p. 1, Ins. 9-16, p. 2, Ins. 1-23; p. 3, Ins 1-23; p. 4, Ins. 1-23; p. 5, Ins. 1-18; and
- Other areas of testimony both live and prefiled which discuss or reference "combinations, consolidations or integrations of operations of KCPL and Aquila for which Commission approval has not been requested."

¹ *Second Motion in Limine of Indicated Industrials*, filed March 13, 2008, p. 5.

The Indicated Industrials argue that Great Plains' application does not request to merge or consolidate KCPL and Aquila, Inc., under Section 393.190.1, RSMo, and therefore, any reference to such activities should be excluded from the evidence. Further, the Indicated Industrials argue that the February 25, 2008 testimony is not "supplemental direct" testimony but is rather "surrebuttal" testimony because it purports to respond to assertions or contentions of other parties to the proceeding. As surrebuttal testimony, the Indicated Industrials argue that the testimony was filed out of order and in violation of the Commission's procedural order.

The Indicated Industrials made a similar motion in limine on November 28, 2007, with regard to the original testimony. That motion was disposed of by ruling at the evidentiary hearing on December 3, 2007.² The Commission shall rule in a similar fashion on the second motion in limine. The motion is to exclude testimony because the Joint Applicants have not requested a "merger" with KCPL as that term is used in Section 393.190.1, RSMo. The Commission must determine, at a minimum, whether the proposed transfer of Aquila to Great Plains and merger with Great Plains' subsidiary is not detrimental to the public interest. In order to make that public interest analysis, the Commission must hear all of the relevant facts. Great Plains' alleged plans to produce "synergy savings" between KCPL and Aquila may be facts which could be relevant to the proposed transactions. In order to determine the public interest, the Commission will take a

² Transcript, pp. 99-102.

broad view of what factors may be relevant. Therefore, the Commission shall not exclude any testimony on that basis and will overrule the second motion in limine.³

The Commission has previously indicated that the nomenclature of the testimony is not a material issue. The Indicated Industrials state that testimony is “surrebuttal” testimony and therefore is in violation of the Commission’s procedural order. The Commission disagrees that the testimony is in violation of its procedural orders. At the evidentiary hearing, it was anticipated by the Joint Applicants and the Regulatory Law Judge that additional testimony would be filed which would respond to some of the concerns of the other parties by formulating a new proposal.⁴

In addition, at the February 28, 2008 prehearing conference, the Regulatory Law Judge granted, without objection, the motion to *file* supplemental direct testimony.⁵ It was only after the RLJ’s ruling that the Indicated Industrials made a suggestion that the nomenclature of the testimony might be at issue but that it could “be addressed at the hearing.”⁶ The Commission also has made it clear that the testimony has not been entered into evidence at this point and that should it be offered, there will be an opportunity for cross-examination.⁷ Therefore, the Commission determines that the testimony filed on

³ If desired, the Indicated Industrials may make their objection to the testimony on the record if the testimony is offered into evidence, and the objection will be treated as a continuing objection in the same manner as the original motion in limine. See, Transcript, p. 102.

⁴ Transcript, pp. 1154-1157.

⁵ Transcript, p. 1184.

⁶ Transcript, p. 1184, ln. 19.

⁷ Transcript, p. 1184, lns. 20-22; *Second Order Adopting Procedural Schedule* (sued March 11, 2008), p. 2.; *Order Denying Application for Reconsideration* (issued March 20, 2008).

February 25, 2008, is not in violation of any Commission procedural order and should not be excluded for that reason.

IT IS ORDERED THAT:

1. The Second Motion in Limine filed by Sedalia Industrial Energy Users' Association, AG Processing Inc., a Cooperative, and Praxair, Inc., is denied.
2. This order shall become effective on April 8, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is positioned above the printed name and title.

Colleen M. Dale
Secretary

(S E A L)

Murray, Clayton, and Jarrett, CC., concur.
Davis, Chm., not participating.

Dippell, Deputy Chief Regulatory Law Judge