

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

**ORDER GRANTING, IN PART, MOTION TO MAKE CERTAIN  
DOCUMENTS PUBLIC**

Issue Date: April 8, 2008

Effective Date: April 8, 2008

On March 21, 2008, the Office of the Public Counsel filed a Motion to Make Certain Documents Public and Request for Waiver. Public Counsel requests that the Commission designate portions of the testimony filed on February 25, 2008, by Great Plains Energy Incorporated and Kansas City Power & Light Company as "Public." In addition, Public Counsel requests a waiver of 4 CSR 240-2.135(11) which requires that a motion challenging the designation of testimony be filed no later than ten days after the testimony is filed.

On February 25, 2008, GPE/KCPL filed additional testimony of Michael Cline, Chris Giles, and Terry Bassham. The testimony of Michael Cline and Terry Bassham contained portions that were designated as "Highly Confidential." Schedules MWC-18 and MWC-19, attached to Mr. Cline's testimony were designated as "Highly

Confidential” in their entirety with no attempt to make even the page headings known to the public.

On March 28, 2008, GPE and KCPL replied to Public Counsel’s motion. In their reply, GPE and KCPL voluntarily declassified “the first seven pages of Schedules MWC-18 and MWC-19.”<sup>1</sup> GPE and KCPL further indicated that the information contained in Schedule MWC-17 is “confidential, financial and business information.”<sup>2</sup> As such, it would fall under the Commission’s definition of “Proprietary” information.<sup>3</sup>

GPE and KCPL argued that the remaining information designated as “Highly Confidential” should keep that designation because the information was either “[r]eports, work papers, other documentation related to work produced by internal or external auditors or consultants”<sup>4</sup> or “[s]trategies employed, to be employed or under consideration in contract negotiations.”<sup>5</sup> Specifically, GPE and KCPL state that “Schedules MWC-18 and MWC-19 contain combined company financial metrics and projections prepared by an outside consultant, Credit Suisse . . . [and that t]his information relates to strategies to be employed in operating the business in the future . . . as well as confidential, or private technical, financial and business information . . . .”<sup>6</sup>

Public Counsel filed a further response on March 28, 2008.

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<sup>1</sup> *Reply of Applicants in Opposition to Motion to Make Certain Documents Public and Request for Waiver*, (filed 3-28-08) para. 9.

<sup>2</sup> *Id.* at para. 11.

<sup>3</sup> 4 CSR 240-2.135(1)(A) states that, “Proprietary information is information concerning trade secrets, as well as confidential or private technical, financial, and business information.”

<sup>4</sup> 4 CSR 240-2.135(1)(A).

<sup>5</sup> 4 CSR 240-2.135(1)(B).

<sup>6</sup> *Reply of Applicants in Opposition to Motion to Make Certain Documents Public and Request for Waiver*, (filed March 28, 2008), para. 12.

The Commission's rule 4 CSR 240-135(1) sets out what information may be kept from public access. In addition, Section(11) of that rule states that any party objecting to the designation must do so within ten days of that information being filed. Public Counsel has requested a waiver of that rule and cites several reasons it believes there is good cause to waive the rule. The Commission agrees with Public Counsel that "the public interest is best served by having as much information in the public domain as possible."<sup>7</sup> The Commission also agrees that KCPL and GPE made the analysis of the designations more difficult by its broad designations. Additionally, no harm has occurred because the motion was filed late. Thus, the Commission finds that good cause exists to grant Public Counsel a waiver of the rule.

GPE and KCPL have consistently designated information as "Highly Confidential" in an overly broad fashion. This tactic caused significant delay during the hearing in December. It is obvious that once again GPE and KCPL did not take the time to analyze the information submitted and determine what the proper designation of that information should be. Instead, GPE and KCPL continually dump entire documents marked as "Highly Confidential" into the case requiring the other parties, and ultimately the Commission, to sift through the information and dispute its designation. In light of the lack of effort that GPE and KCPL have made, the Commission is tempted to simply grant Public Counsel's motion and designate the information in its entirety as "Public." That, however, would not be in the public interest.

Instead, the Commission must sift through the information and balance the need of the public to have open access and the need of the company to keep the

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<sup>7</sup> *Motion to Make Certain Documents Public and Request for Waiver*, (filed March 21, 2008), p. 3.

information confidential. For that reason, the Commission will declassify only certain portions of the information as set out in the Ordered Paragraphs below. Finally, the Commission cautions GPE and KCPL that if they fail to scrutinize carefully the classified designations of their information in the future, they may very well learn the lesson of “the boy who cried wolf.”

**IT IS ORDERED THAT:**

1. The request for waiver of 4 CSR 240-2.135(11) filed by the Office of the Public Counsel on March 21, 2008, is granted.
2. The motion to make certain documents public filed by the Office of the Public Counsel on March 21, 2008, is granted in part and denied in part as set out below.
3. The portions of the body of Mr. Cline’s and Mr. Bassham’s testimony filed on February 25, 2008, and designated as “Highly Confidential” continue to be designated as such.
4. Schedule MWC-17 is designated as “Proprietary.”
5. Pages 1-8, page 16, and page 20 of Schedules MWC-18 and MWC-19 are designated as “Public.”
6. The headings and captions of pages 9-25 of Schedule MWC-18 and pages 9-25 of MWC-19 shall be designated as “Public” with the remaining portions being designated as “Highly Confidential” as set out in the redacted public versions of the documents attached to this order.

7. 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.

Colleen M. Dale  
Secretary

( S E A L )

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

Dippell, Deputy Chief Regulatory Law Judge