

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of Kansas City )  
Power & Light Company for Approval to Make )  
Certain Changes in its Charges for Electric ) **Case No. ER-2009-0089**  
Service to Continue the Implementation of its )  
Regulatory Plan )

In the Matter of the Application of Aquila, Inc. dba )  
KCP&L Greater Missouri Operations Company )  
for Approval to Make Certain Changes in its ) **Case No. ER-2009-0090**  
Charges for Electric Service )  
)

In the Matter of the Application of Aquila, Inc. dba )  
KCP&L Greater Missouri Operations Company )  
for Approval to Make Certain Changes in its ) **Case No. HR-2009-0092**  
Charges for Steam Heating Service )  
)

**RESPONSE OF PUBLIC COUNSEL AND INDUSTRIAL INTERVENORS TO ORDER  
ESTABLISHING TIME FOR RESPONSE**

COME NOW the Office of the Public Counsel and Industrial Intervenors<sup>1</sup> in response to the Commission's Order Establishing Time For Response state as follows:

1. On September 5, 2008, Kansas City Power & Light Company, and Aquila, Inc.<sup>2</sup> (the Companies) filed general rate increase cases. The Companies chose this filing date because they believed it struck the appropriate balance between: 1) the Companies' desire to get rates increased as soon as possible; and 2) the Companies' desire to have investments in plant upgrades (notably upgrades to Iatan I) included in rates.

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<sup>1</sup> In the three cases, the Industrial Intervenors are as follows: ER-2009-0089: Praxair, Inc. and Midwest Energy Users' Association; ER-2009-0090: Ag Processing, Inc., Sedalia Industrial Energy Users' Association, and Wal-Mart Stores, Inc.; HR-2009-0092: Ag Processing, Inc.

<sup>2</sup> Aquila, Inc. is now known as KCP&L Greater Missouri Operations Company, or KCPL-GMO.

2. In an order issued on November 20, 2008, the Commission established the procedural schedules for these cases. Recognizing the importance of the Iatan investments, and also recognizing the risky situation the Companies had placed themselves in by filing these cases when they did, the Commission took the extraordinary step of allowing the Companies the opportunity to make changes to the procedural schedule if they experienced delays getting plant upgrades online. This opportunity significantly reduced the Companies' self-imposed risk of not having plant upgrades in service by the true-up cut-off date.

3. To avail themselves of this opportunity, the Companies simply had to make a filing on January 20, 2009<sup>3</sup>, requesting that the true-up cut-off date and the effective date of the tariffs be extended. In their filing on January 20, 2009, the Companies acknowledged that the Commission had "enabled the Companies to request that the true-up date be extended if necessary ... [by submitting] a notification in these proceedings by no later than January 20, 2009 if they sought to extend the true-up date." But the Companies chose not to take this opportunity, figuratively crossing their fingers and hoping that there would be no further delays in getting the upgrades online. This decision appears to have been based entirely on hope rather than a realistic assessment of the risks and consequences of delays. As it turns out, this hope was misplaced. The Companies badly overestimated their ability to bring these projects in on time.

4. Some two months after the deadline that they themselves had proposed, the Companies recognized their miscalculation, and again asked the Commission to take extraordinary action to bail the Companies out of the situation that they had put themselves in. In a filing on March 3, 2009, the Companies asked the Commission to either: 1) alter the true-up

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<sup>3</sup> It must be noted that both the concept of this opportunity and the January 20 date to use it were the Companies' proposals that several parties objected to, and which the Commission nevertheless adopted

date for just one item (the troublesome Iatan I upgrades); or 2) allow the Companies to belatedly try to take advantage of the opportunity it passed up on January 20, 2009.

5. In a well-reasoned response to the Companies' March 3 filing, the Staff recommended that the Commission simply hold the Companies to the schedule that the Companies had proposed in October 2008, and elected to stay with in January 2009. In the alternative, Staff suggested if the Commission were to allow the Companies yet more extraordinary relief from the Companies' bad decisions, that the Commission impose certain conditions that offer some balance to ratepayers.

6. In a response filed on March 11, 2009, Public Counsel and a number of other parties suggested that the Commission allow the Companies until April 30, 2009 to demonstrate that the plant upgrades are fully operational and used for service.<sup>4</sup> Because granting the Companies this accommodation would necessarily compress the remaining schedule, these parties requested that the Commission suspend the tariffs until October 5, 2009.

7. In an order issued on March 18, 2009, the Commission allowed the Companies to extend the true-up cut-off date until April 30, 2009, required the Companies to extend the effective date of the tariffs until September 5, 2009, and imposed most of the conditions suggested by Staff.

8. On March 19, 2009, the Companies filed a "Motion for Reconsideration and/or Rehearing of Order Modifying Procedural Schedules for True-Up Proceedings and Motion for Expedited Treatment." In that motion, the Companies continue their theme that the Commission's main role is to ensure that the Companies are able to include the plant upgrades and get increased rates put into place as soon as possible. The Companies fail to recognize or

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<sup>4</sup> At this time, there is not agreement on what criteria the Commission should use to determine whether the upgrades are fully operational and used for service.

acknowledge that their continual procedural scrambling has an impact on customers, other parties, and the Commission. The Companies fail to recognize or acknowledge that their repeated demands for accommodation in the procedural schedule should be balanced by conditions that afford some protections to ratepayers. The Companies ask the Commission to rescind each and every condition that benefits ratepayers.

9. In a statement in the March 19 Motion that ought to outrage the Commission, the Companies suggest that the only reason the Commission might impose conditions that create some degree of ratepayer protection was if “the Commission believed that the Companies were willing to accept Staff’s proposed conditions.” The Commission’s role is to use the police power of the state to protect the public from the monopoly power of utilities. In doing so, it should try when possible to align the interests of the Companies with the interests of the public. But the Commission should never remove conditions it has imposed to protect the public because of the Companies’ refusal to accept those conditions. If the Companies do not like the conditions that go along with the Commission’s most recent attempt to create a procedural schedule that accommodates the Companies, then the Companies can just live with the schedule that they proposed in October 2008 and elected to keep in January 2009.

10. The Companies claim that the Commission lacks authority to impose the conditions, primarily on the mistaken notion that the imposition of the conditions amounts to pre-judging certain issues. Far from pre-judging, the imposition of the conditions allows the parties a chance to investigate and make a case concerning Iatan I issues, and allows the Commission the opportunity to make a reasoned decision concerning those issues. The Company insists that it has the right to file its rate case whenever it wants (despite its agreement to the contrary in the Regulatory Plan), to demand whatever schedule it wants, and to provide

information on whatever timetable it wants. But it insists that the Commission has no authority to impose conditions to ensure that customers do not pay for a plant that is not yet ready or that costs more than it should have. Because of the Companies' inability to complete the Iatan I projects on time, the parties do not have time in this case to adequately evaluate whether it meets rational in-service criteria, nor do they have time to investigate whether the massive cost overruns are indicative of imprudence. The so-called "Iatan I Cost Condition" does not pre-judge these issues, it simply preserves them.

11. The Companies argue that the Commission lacks authority to make rates "interim subject to refund." The argument is unconvincing, not least because the Companies' Motion is full of cites to cases in which the Commission did make rates interim subject to refund. The Companies also conveniently ignore the entire PGA/ACA process in which rates are approved on an interim subject to refund basis in order to get rate changes into place quickly, and then the level and prudence of costs is reviewed in detail on a more extended timeframe. This is exactly the type of process that the Commission has created here with the imposition of the Iatan I Cost condition.

12. The Companies also protest the imposition of the remaining four conditions that simply balance the Companies' ability to get the plant upgrades included in rates as of April 30, 2009 with a recognition that rates will not go into effect until some months later. Presumably the plants will be producing power, creating emissions allowances, and enabling off-system sales as of April 30, all to the Companies' benefit. But the Companies balk at any recognition of the plants' operating status that might inure to customers' benefit. It is simply fair, and well within the Commission's discretion in setting just and reasonable rates, to impose conditions that

account for depreciation, taxes, environmental credits and test power in the interim between the in-service date and the effective date of rates.

WHEREFORE, Public Counsel and the Industrial Intervenors respectfully request that the Commission deny the Companies' motion to reconsider the Order Modifying Procedural Schedules For True-Up Proceedings And Formally Adopting Test Year And Update Period.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all parties this 23rd day of March 2009.

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