

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 3rd day of  
June, 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 PETITION TO REOPEN RECORD AND SCHEDULE  
HEARING**

Issue Date: June 3, 2008

Effective Date: June 3, 2008

On May 30, 2008,<sup>1</sup> the Industrial Intervenors<sup>2</sup> in this matter filed a pleading entitled, "Petition to Reopen the Record and Schedule Hearing" ("Petition"). Industrial Intervenors seek to reopen the record to allow for the introduction of evidence as to matters which occurred on May 23, when a crane used in the construction of the environmental upgrades at Iatan I collapsed. Industrial intervenors assert the crane was unique and that its loss could affect the construction schedules of the Iatan 1 and 2 power plants, which in turn could affect Joint Applicants'<sup>3</sup> contention that they will achieve or maintain an investment grade credit rating following the closing of Joint Applicant's proposed merger. (The Commission has not yet made a decision regarding Joint Applicant's application to approve

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<sup>1</sup> All dates throughout this order refer to the year 2008 unless otherwise noted.

<sup>2</sup> The "Industrial Intervenors" are: Ag Processing, Inc. Praxair, Inc. and the Sedalia Industrial Energy Users' Association.

<sup>3</sup> Joint Applicants in this matter are: Great Plains Energy, Inc., Kansas City Power and Light Company and Aquila, Inc.

the proposed merger.) Industrial Intervenors further claim that in making their request they do not seek to delay this matter.

On May 30, the Commission issued an order requiring expedited responses to the Petition. As part of that order, the Commission noted that Section 536.067(4), RSMo 2000, requires ten days notice for setting a hearing in a contested matter “except in cases where the public morals, health, safety or interest may make a shorter time reasonable.”<sup>4</sup> The Commission has not yet determined whether the public interest requires less than ten days notice for a hearing in this matter, and the Commission gave the parties an opportunity to file responses indicating whether they consent to the setting of a hearing date with less than ten days notice, if the Commission grants the motion to reopen the case. The response deadline was 12:00 noon, Monday, June 2.

**GPE/KCPL responded** noting that the Commission’s rule allowing for the opening of a case requires there be material changes in fact or law after the conclusion of an evidentiary hearing. GPE/KCPL asserts there has been no material change that could affect the post-closing credit ratings from S&P and Moody’s related to the crane incident because S&P and Moody’s letters were premised on many different assumptions at a discrete point in time and credit ratings are not normally changed due to a single event.<sup>5</sup> Additionally, GPE/KCPL point out that the Commission has already taken evidence of the potential impact changed circumstances might have on the credit ratings of Great Plains

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<sup>4</sup> Section 536.067(4), RSMo 2000.

<sup>5</sup> See Transcript 2324 (Bassham testimony).

Energy and KCPL,<sup>6</sup> and if the Commission were to reopen the case every time an assumption changed that a rating agency might have relied upon, it would never be able to make a decision. Moreover, the company installing the pollution control equipment on Iatan 1 has several alternatives that should allow it to meet the Unit 1 schedule,<sup>7</sup> and KCPL's reforecast budget for Iatan Unit 1 contains an unallocated reserve contingency to cover costs associated with unanticipated events. GPE/KCPL argues that reopening the docket to examine the effect the crane incident might have, if any, on the validity of the rating agency letters will only serve to burden the record and unnecessarily tax the resources of the Commission as well as all of the parties to this case. However, in the event the Commission does grant the relief requested by the Industrials, GPE/KCPL consents to having a hearing on June 11.

**Industrial Intervenors** responded stating they believe that this matter can be easily addressed in a single day hearing, and do not object to a June 11 hearing date so long as it accommodates the parties other due process rights. Industrial Intervenors further state that the facts of this matter are solely within the possession of KCPL, and since the abbreviated hearing notice will not accommodate discovery, the Industrial Intervenors anticipate that they will subpoena three KCPL/GPE witnesses (Carl Churchman – Vice President of Construction, Brent Davis – Project Manager at Iatan, and Michael Cline – Treasurer and Chief Risk Officer) to testify as to the facts of the crane collapse, the ramifications of the crane collapse on the Iatan 1 and 2 schedule and budget, and the

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<sup>6</sup> For example, KCPL witnesses Bassham and Cline were cross-examined during the hearings in this case concerning the schedule and budget changes affecting both Unit 1 and Unit 2 at Iatan, as set forth in the reforecast.

<sup>7</sup> For example, KCPL believes that Alstom should be able to replace the Manitowoc 18000 Crane with any one of three cranes that are already at the Iatan Generating Station if those cranes were reconfigured.

extent to which the crane collapse and its effect on the latan capital projects have been communicated and considered by the credit rating agencies. Because 4 CSR 240-2.100 provides for the issuance of a subpoena no fewer than 20 days before a hearing unless good cause is shown, to the extent the Commission schedules a hearing with only 10 days, or less than ten days notice it precludes the parties from seeking a subpoena unless such good cause is shown.

**Staff responded** stating that if the Commission believes it is appropriate to reopen the record with regard to the Industrial Intervenors's Petition, then it will be available for a hearing scheduled for June 11.

**The Office of the Public Counsel** filed a late response, seeking leave from the Commission for that late-filing. Public Counsel does not object to having an evidentiary hearing as requested by the Industrial Intervenors and has consented to a hearing date of June 11.

### **Relevant Commission Rules**

Commission rule 4 CSR 240-2.110(8) states:

A party may request that the commission reopen a case for the taking of additional evidence if the request is made after the hearing has been concluded, but before briefs have been filed or oral argument presented, or before a decision has been issued in the absence of briefs or argument. Such a request shall be made by filing with the secretary of the commission a petition to reopen the record for the taking of additional evidence in accordance with these rules, and serving the petition on all other parties. The petition shall specify the facts which allegedly constitute grounds in justification, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing. The petition shall also contain a brief statement of the proposed additional evidence, and an explanation as to why this evidence was not offered during the hearing.

Commission Rule 4 CSR 240-2.100(2) states:

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Except for a showing of good cause, a subpoena or subpoena *duces tecum* shall not be issued fewer than twenty (20) days before a hearing.

## **Decision**

The Commission, without additional evidence, has no way to judge the affect, if any, the crane incident will have on the latan construction projects and, in turn, any potential affect the incident would have on GPE/KCPL's post-merger credit rating. Consequently, the Commission shall reopen the record to accept additional evidence on this subject matter, and this subject matter alone.

The termination clause in the merger agreement sets August 6 as the deadline to consummate the merger. Given that the parties would need a final decision regarding the merger from the Commission prior to this deadline, the Commission finds good cause to expeditiously reopen the record, set a hearing and waive the 20 day requirement for the issuance of subpoenas prior to hearing. The hearing shall be set for June 11; the date consented to by all of the parties responding to the Commission's May 30 order.

## **IT IS ORDERED THAT:**

1. The Office of the Public Counsel's motion for leave to file its "Response to Order Directing Expedited Response by All Parties" is hereby granted, and its response is deemed to be timely received.
2. The "Petition to Reopen Record and Schedule Hearing," filed by the Industrial Intervenors on May 30, 2008, is hereby granted.
3. The evidentiary hearing shall be scheduled for June 11, 2008, pursuant to the parties' consent.

4. The Commission directs that the following conditions for the evidentiary hearing shall apply:

(A) The hearing shall be live and the Commission will not receive pre-filled testimony.

(B) The response and objection intervals for Data Requests shall be shortened to two days for responses and two days for objections, weekends and holidays notwithstanding.

(C) The 20-day requirement for the issuance of subpoenas in Commission Rule 4 CSR 240-2.100(2) is hereby waived; good cause being found as described in the body of this order.

(D) All parties are required to bring an adequate number of copies of exhibits that they intend to offer into evidence at the hearing. The party offering the exhibit should bring, in addition to the copy for the court reporter, copies for the five Commissioners, the Presiding Judge, and all counsel.

(E) The Commission will entertain closing arguments at the evidentiary hearing in lieu of post-hearing briefs.

(F) The hearing transcripts will be expedited to be filed one business day following the hearing.

5. The following procedural schedule is established:

Witness List, Order of Witnesses & Cross Examination	-	June 9, 2008
Evidentiary Hearing	-	June 11, 2008, at 8:00 a.m.
Transcripts Filed	-	June 12, 2008

6. The hearing will be held in the offices of the Missouri Public Service Commission at the Governor Office Building, Room 310, 200 Madison Street, Jefferson City, Missouri. This hearing will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in

this hearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the hearing.

7. This order shall become effective on June 3, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Murray, Clayton, and Jarrett, CC., concur.  
Davis, Chm. And Gunn, C. abstain.

Stearley, Regulatory Law Judge