

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

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 of Aquila, Inc. with a Subsidiary of Great Plains Energy Incorporated) And for Other Related Relief.)

Case No. EM-2007-0374

**RESPONSE TO AQUILA’S OBJECTION TO THE APPLICATION
TO INTERVENE OF SOUTH HARPER RESIDENTS**

COMES NOW Frank Dillon, Kimberly Miller, James E. Doll, Randy Cooper, Gary Crabtree, Eric Thompson, and Allen Bockelman (hereinafter collectively as “South Harper Residents”) to respond to the May 4, 2007 “Objection of Aquila, Inc. to the Application to Intervene of South Harper Residents” (“Aquila’s Objection”).

In support of this Response, the South Harper Residents state as follows:

1. Aquila’s Objection attempts to convince the Commission that it should deny the South Harper Residents’ Application to Intervene, asserting that the South Harper Residents have “failed to meet the minimal requirements” of the Commission’s intervention rule; however, Aquila does not mention the actual standard contained in Commission Rule 4 CSR 240-2.075. Subsection (4) of that rule states that intervention is proper provided whenever:

- (A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or
- (B) Granting the proposed intervention would serve the public interest.

Although either of these two grounds may independently justify intervention, Aquila focuses primarily upon the first ground.

2. Aquila's first argument notes that the South Harper Residents are not customers of either Aquila or KCPL, and then claims that "[a]s such, they have no cognizable interest whatsoever in the outcome of this proceeding." (Aquila's Objection, paragraph 4). This statement is incorrect and misrepresents the Commission's standard. If no interest other than *consumer interests* could be represented by intervenors in a merger case, then a variety of important interests would be denied due process. For instance, if Aquila's suggested standard prevailed, then the intervention of potential energy providers (i.e., Dogwood Energy LLC), labor union interests (i.e., IBEW), environmental organizations, and other potentially impacted parties could not be proper intervenors.

The South Harper Residents have already explained that their interests are derived from their status as property owners adjacent to illegally built Aquila facilities and the interests of residents who currently experience the nuisances that emanate from those Aquila facilities. The South Harper Residents are very interested in the ultimate details of how the merger is proposed to take place, because the manner in which any merger is finalized may change the ownership of these facilities. The South Harper Residents will need to proceed in civil court against whatever entity becomes the owner of these facilities as a result of any approved merger arrangement. One concern is that the South Harper Project facilities, along with its associated liabilities could be transferred to an entity that would frustrate the pursuit of a proper remedy in civil court. These facilities could ultimately belong directly to Great Plains Energy or to KCPL, or the ownership of these facilities and the associated liabilities could be shifted to some

other affiliate corporation. Aquila has a history of creating affiliates for such purposes. It is also possible for merger proposal details to change during a pending review or for significant conditions to be placed on the approval of such proposals. The South Harper Residents have a clear and definite interest in ensuring that their right to pursue a remedy for past and ongoing damages is not frustrated by some yet-unrevealed corporate shell game.

The concerns of the South Harper Residents are magnified by the fact that so many details of the proposed merger are still being kept secret. The initial filing in this case contains basic direct testimony, but it is thin on many particulars. Moreover, as the Commission Staff has noted, this proposed merger contains many unique items that have either never been reviewed by the Commission previously or have been consistently denied. This situation creates the possibility of significant changes in the proposal as it progresses forward.

It is also unsettling that Aquila has objected to the intervention of the South Harper Residents before they have even been able to determine whether or not the merger would harm their interests. It is entirely possible that, when sufficient detail about the proposal is revealed, the South Harper Residents will find the merger to not be detrimental to their interests. However, with no solid answers about what will happen to the ownership and liabilities associated with the South Harper facilities, the South Harper Residents must protect their interests by intervening and actively seeking those answers.

3. Aquila also states that the interests of the South Harper Residents are no different from the interests of the general public, suggesting that their interests may be

represented by the Office of the Public Counsel (“Public Counsel”). (Aquila’s Objection, paragraph 6). This argument is also a stretch and contrary to past Commission practice and understanding. Clearly, the interests of the South Harper Residents are different and distinct from the interests of the general public that are typically represented by the Public Counsel. The Public Counsel has traditionally focused its representation on the *rate paying public*, and Aquila *concedes* that the South Harper Residents are not ratepayers of either KCPL or Aquila. The interests of the South Harper Residents could be adversely impacted by the manner in which this merger proposal is ultimately approved, even if ratepayers are not so adversely impacted. Despite Aquila’s claims, the Public Counsel cannot simultaneously represent the interests of the rate paying public while also attempting to adequately protect the property interests of the South Harper Residents.

WHEREFORE, the South Harper Residents respectfully request that the Commission grant their Application to Intervene, entitling them to fully participate as a party to this proceeding.

Respectfully submitted,

/s/ John B. Coffman

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Allen Bockelman)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties to this proceeding on this 13th day of May 2007.

/s/ John B. Coffman

John B. Coffman