

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of January, 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 of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief.)
)
) **Case No. EM-2007-0374**
)

ORDER DENYING MOTION FOR RECONSIDERATION

Issue Date: January 24, 2008

Effective Date: January 24, 2008

On December 13, 2007, the Office of the Public Counsel (“OPC”) filed a pleading styled “Motion to Dismiss.” That motion was denied on January 2, 2008. On January 11, 2008, OPC filed a motion for reconsideration of the Commission’s denial of their motion to dismiss. The Commission could address OPC’s motion point-by-point, but the Commission finds that OPC has added little more than additional verbiage to its original motion to dismiss this matter. The Commission found OPC’s original motion to be meritless and the re-argument of its same positions is equally meritless.

Moreover, just as Staff noted in its response to OPC’s Motion for Reconsideration, the Commission also notes:

Assuming, *arguendo*, that Public Counsel’s predicate is accurate, dismissal is not the result. Public Counsel has not produced even a single Missouri case wherein a cause was dismissed because of an appearance of impropriety on the part of the tribunal. Instead, under Missouri’s well-established Rule of Necessity, the adjudication must go forward and the decision will be subject to heightened scrutiny on judicial review. See *Weinstock v. Holden*, 995 S.W.2d 408, 410 (Mo. banc 1999); *Rose v. State Board of Registration for the Healing Arts*, 397 S.W.2d 570, 575

(Mo. 1965); *Stonecipher v. Poplar Bluff R1 School District*, 205 S.W.3d 326, 328 (Mo. App., S.D. 2006).

The Commission further observes that the statutory mandate of Section 393.190 requires the Joint Applicants to seek approval of their merger from the Commission.

Because there is no other forum in which the Joint Applicants may seek approval of their requested merger application, and because the Rule of Necessity would apply and prevent dismissal even if OPC was correct in its assertions, **which it is not**, OPC's Motion for Reconsideration of the denial of its Motion to Dismiss is meritless.¹

IT IS ORDERED THAT:

1. The Office of the Public Counsel's January 11, 2008, Motion for Reconsideration is denied as being meritless.
2. This order shall become effective on January 24, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., not participating.
Murray, Appling, and Jarrett, CC., concur.
Clayton, C., dissents, with separate dissenting opinion to follow.

Stearley, Regulatory Law Judge

¹ OPC acknowledges in paragraph 7 of its Motion For Reconsideration the proper application of the Rule of Necessity. Consequently, OPC must be aware of the frivolous nature of its motions.