

**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**

**ORDER DENYING MOTION TO QUASH DEPOSITION SUBPOENAS**

Issue Date: March 20, 2008

Effective Date: March 20, 2008

On March 12, 2008 Great Plains Energy Incorporated and Kansas City Power & Light Company filed a Motion for Protective Order of Great Plains Energy Inc., and Kansas City Power & Light Co. to Quash Deposition Subpoenas. In its motion, GPE and KCPL stated that the Staff of the Missouri Public Service Commission served them on March 8, 2008, with subpoenas for eight KCPL employees.<sup>1</sup> GPE and KCPL argue that the areas of examination that Staff seeks in the depositions are neither relevant nor reasonably calculated to lead to discovery of admissible evidence in proceeding. GPE and KCPL also object to producing documents requested by Staff and request that the Commission issue an order limiting the scope of the depositions to the proposed acquisition.

GPE and KCPL claim that the Staff is trying to substantially expand the scope of this proceeding to include a collateral attack on the Commission's 2005 decisions in Case No. EO-2005-0329. As GPE and KCPL explain, that case included approval of a detailed Stipulation and Agreement that established a regulatory plan with regard to KCPL's CEP.

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<sup>1</sup> Micheal Chesser, Willaim Downey, Stephen Easley, John Grimwade, Brent Davis, Terry Foster, Lora Cheatum, and Steve Jones.

Included in that plan were procedures that should be utilized for any issues related to the CEP. GPE and KCPL argue that because Staff wishes to depose individuals whose sole responsibilities are related to the latan construction project, they cannot be relevant to the acquisition of Aquila, Inc. by GPE. The Commission disagrees.

Staff filed its response to the motion on March 17, 2008. In its response, Staff explains that its requests for depositions and for the production of documents are all related to verifying “that the assurances of the ratings agencies (referenced in the most recent testimony of Michael Cline and Terry Bassham) were based on accurate, up-to-date information from the Joint Applicants.”<sup>2</sup> In addition, Staff argues that “GPE’s plans to own and GPE/KCPL’s plans to direct the operations of Aquila are proper matters for this proceeding”<sup>3</sup> and that its deposition and document requests are related to that issue. Finally, Staff explains that its requests for employee complaints and other corporate policies and procedures are related to evaluating “how robust GPE/KCPL’s culture is relative to addressing internal employee issues”<sup>4</sup> which Staff believes is important to the Joint Applicants’ ability to judge synergies in combination of the corporate cultures. Finally, the Staff added time limits to certain of its document requests and indicated that the requests through June 2008 are meant to be in the nature of data requests which are required to be updated throughout the course of the proceedings.

The Public Counsel also filed a response to the motion to quash and for a protective order. Public Counsel echoed Staff’s statements that the purpose of the

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<sup>2</sup> *Staff Response in Opposition to Motion for Protective Order of Great Plains Energy Inc. and Kansas City Power & Light Co. to Quash Deposition Subpoenas* (filed March 17, 2008) at para. 10.

<sup>3</sup> *Id.* at paragraph 16.

<sup>4</sup> *Id.*

depositions is to ensure that accurate and up-to-date information was given to ratings agencies. The Sedalia Industrial Energy Users' Association, AG Processing Inc., a Cooperative, and Praxair, Inc., also filed a response urging the Commission not to limit the scope of discovery in this matter.

While the Commission does not sanction a “fishing expedition” by Staff regarding the latan construction projects or enlarging the scope of this case, parties are allowed to conduct any discovery which is reasonably calculated to lead to the discovery of admissible evidence.<sup>5</sup> Thus, based on the arguments presented regarding proposed depositions, the Commission determines that the depositions may lead to the discovery of relevant evidence.

The standard for a merger case<sup>6</sup> is sufficiently broad to include in this case issues related to “the interrelationship between latan 1 and latan 2 and GPE’s acquisition of Aquila, questions respecting KCPL’s procurement function and asserted merger savings estimates, and questions respecting debt rating information and related debt ratings.”<sup>7</sup> While it is true that there are other proceedings pending which are capable of disposing of disputes regarding the CEP, that does not automatically mean that those disputes are not relevant to this application. The Commission is not, however, granting a blank check to any party to harass another party with discovery, or to attempt to burden the record in this case with irrelevant information or issues. The Commission will not allow a full reevaluation of

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<sup>5</sup> Missouri Rule of Civil Procedure 56.01(b)(1).

<sup>6</sup> That the transaction not be detrimental to the public interest. *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980).

<sup>7</sup> *Response* (filed March 4, 2008), para. 16.

the CEP in the context of this case; however, there is no indication from the requests made by Staff that such a broad inquiry is intended to be made.

With regard to the requests for production of documents, Staff has placed appropriate time limits on its requests with the exception of requesting documents to be created at some point in the future (June 2008). The Commission understands that Staff included this future date as a way to signal to the Joint Applicants that it wants the document production requests to be updated. However, the subpoena is not the same type of discovery as those which must continue to be updated under the Civil Rules of Procedure. Furthermore, it is impossible for the subpoenas to be complied with if they contain a date for documents which may or may not come into existence in the future. Therefore, the Commission will limit the subpoena request for the production of documents to documents created on or before March 8, 2008. If Staff desires to have documents created on later dates, it should issue additional discovery requests.

**IT IS ORDERED THAT:**

1. The Motion for Protective Order of Great Plains Energy Inc. and Kansas City Power & Light Co. to Quash Deposition Subpoenas filed on March 12, 2008, is denied with the exceptions below.
2. The subpoenas for the production of documents are limited by the time limits provided by the Staff of the Missouri Public Service Commission in its March 17, 2008 response.
3. The subpoenas for the production of documents are limited in scope to documents created on or before March 8, 2008.

4. This order shall become effective on March 20, 2008.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a faint, illegible background.

Colleen M. Dale  
Secretary

( S E A L )

Nancy Dippell, Deputy Chief Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 20th day of March, 2008.