

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

In the Matter of the Joint Application of Great Plains)
Energy, Inc., Kansas City Power & Light Company,)
And Aquila, Inc. for Approval of the Merger of Aquila,) Case No. EM-2007-0374
Inc. with a Subsidiary of Great Plains Energy, Inc. and)
For Other Related Relief)

**STAFF RESPONSE IN SUPPORT OF INDICATED INDUSTRIALS’
SECOND MOTION IN LIMINE**

Comes now the Staff of the Missouri Public Service Commission (Staff), by and through undersigned counsel of the General Counsel’s Office, and submits the instant response in support of the March 13, 2008 Second Motion In Limine Of Indicated Industrials. In support thereof, the Staff states as follows:

1. On March 13, 2008, Praxair, Inc. (Praxair), AG Processing, Inc. (AGP) and Sedalia Industrial Energy Users’ Association (SIEUA) (Praxair, AGP and SIEUA collectively referred to as Indicated Industrials) filed a Second Motion In Limine Of Indicated Industrials. On December 3, 2007 on the first day of the evidentiary hearings in this case, counsel for the Staff stated on the record that the Staff supported the Motion In Limine Of Indicated Industrials’ filed on November 28, 2007.¹ The Staff hereby states its support for the Indicated Industrials’ Second Motion In Limine.

2. At pages 1 and 8, in its March 18, 2008 Opposition Of Great Plains Energy Inc. And Kansas City Power & Light Co. To Second Motion In Limine Of Indicated Industrials, Great Plains Energy Incorporated (GPE) and Kansas City Power & Light Company (KCPL) accuse the Staff of “a hyper-technical reading of Section 393.190.1” relating to the Staff’s

¹ Vol. 2, Tr. 99, ls. 12-16.

position that the Joint Applicants must request and obtain authorization of a merger or consolidation of KCPL and Aquila if the Joint Applicants are to claim the merger synergies for the not detrimental to the public interest standard / net benefit test that the Joint Applicants are claiming in this proceeding. They are claiming these merger synergies without their seeking and obtaining authorization to merge or consolidate KCPL and Aquila pursuant to Section 393.190.1.

3. The opening statement of KCPL's Vice President, Legal and Environmental Affairs and General Counsel, William G. Riggins (Vol. 2, Tr. 27, ls. 14-17) indicates that the Joint Applicants believe there is substance to the Staff's "hyper-technical reading of Section 393.190.1," but the Joint Applicants are more fearful of the risks associated with seeking and obtaining authority to merge / consolidate KCPL and Aquila than they are of not seeking and obtaining authorization to doing so. Mr. Riggins stated that while "at the time we were considering the deal and while we were negotiating it, one of the issues we considered was whether to merge Aquila and KCPL&L as part of the transaction." (Vol. 2, Tr. 31, ls. 5-8). He identified the following rationales as short-term reasons not to merge Aquila and KCPL; the first rationale being the most important reason, the protection of KCPL:

- (1) Aquila still has numerous significant potential liabilities related to its trading operations. Merging Aquila into KCP&L would have transferred those potential liabilities to KCP&L. In addition, merging a non-investment-grade utility into KCP&L could have endangered KCP&L's credit rating.

Finally, we were concerned that merging the two could have caused some parties to argue that KCP&L's commission-approved regulatory plan was no longer binding.

- (2) Secondly, there were some operational reasons not to immediately merge the two, the most prevalent of which was the fact that KCP&L is in the SPP and Aquila is not. Aquila's long-term status regarding RTOs is uncertain at this point in part because of the pending Commission proceeding that's addressing that issue.

- (3) A third reason for not immediately merging the two was that we assessed, and it turns out it was correct, that the FERC's market power concerns would be lessened if we didn't immediately merge the control areas of the two companies.
- (4) And finally there were some administrative closing issues. This is a complex three-way transaction that involves separating Aquila's non-Missouri properties from its Missouri properties, and for those non-Missouri properties there are a large number of franchises and contracts that need to be assigned, and frankly, closing within the year to year and a half contemplated by the merger agreement would have been difficult if, in addition to all that work, we would have also had to have transferred and assigned Missouri assets as well as obtaining financing consents or arranging new financings for outstanding issuances.

(Vol. 2, Tr. 31, l. 12 – Tr. 32, l. 19). Mr. Chris B. Giles testified that he agreed with Mr. Riggins regarding the reasons why an actual statutory merger of KCPL and Aquila was not chosen at this time. (Vol. 2, Tr. 251, l. 10 – Tr. 253, l. 18).

Wherefore the Staff files the instant response in support of the Second Motion In Limine Of Indicated Industrials.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 20th day of March 2008.

/s/ Steven Dottheim