

1 STATE OF MISSOURI

2 PUBLIC SERVICE COMMISSION

3

4 TRANSCRIPT OF PROCEEDINGS

5 Prehearing Conference

6 October 15, 2008

7 Jefferson City, Missouri

8 Volume 1

9 In the Matter of the Application)
of Kansas City Power and Light)
10 Company For Approval to Make)
Certain Changes in its Charges for) Case No. ER-2009-0089
11 Electric Service to Continue the)
Implementation of its Regulatory)
12 Plan)

13 In the Matter of the Application)
of Aquila, Inc. d/b/a KCP&L)
14 Greater Missouri Operations) Case No. ER-2009-0090
Company For Approval to Make)
15 Certain Changes in its Charges for)
Electric Service.)

16 In the Matter of the Application)
17 of Aquila, Inc. d/b/a KCP&L)
Greater Missouri Operations) Case No. HR-2009-0092
18 Company, For Approval to Make)
Certain Changes in its Charges for)
19 Steam Heating Service.)

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21 NANCY M. DIPPELL, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

22 HAROLD STEARLEY, Presiding,
REGULATORY LAW JUDGE.

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR, CCR
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1 P R O C E E D I N G S

2 JUDGE DIPPELL: I think we'll go ahead and
3 go on the record. This is Case Nos. ER-2009-0089,
4 ER-2009-0090 and HR-2009-0092. My name is Nancy Dippell,
5 and I am one of two Regulatory Law Judges who have been
6 assigned to these cases. I also have sitting here by me
7 Harold Stearley, who is also a Regulatory Law Judge
8 assigned to these cases.

9 We've come here today for a procedural
10 conference and settlement conference if you-all can try to
11 work out your issues, but mainly to try to figure out
12 dates and how this case is going to move forward. We set
13 these conferences together because of the parties being
14 the same and some of the issues maybe being the same, so
15 at least some of the witnesses that have prefiled
16 testimony thus far are the same, but at this point the
17 cases are not at all consolidated. Judge Stearley will
18 probably end up handling the KCPL leg of the case, and I
19 will do the other two, the old Aquila and the steam case.

20 I'm going to begin by saying that there
21 were several requests for intervention that have not --
22 that are outstanding and not yet been granted. There was
23 no opposition to those requests for intervention. I
24 believe Mr. Woodsmall had something that he needed to
25 clarify.

1 MR. WOODSMALL: Yes, your Honor. When I
2 went to file in EFIS in the 0090, the Aquila rate case, I
3 inadvertently grabbed the wrong document to attach. I
4 attached the KCP&L intervention. So I will fix that in
5 EFIS. I will tell you when I served it on KCP&L and Staff
6 and Public Counsel, I did attach the right one. So the
7 parties are aware of which entities I'm intervening on
8 behalf of in which case.

9 So in the Aquila cases, the 0090 case, I'm
10 intervening on behalf -- we'd already filed an
11 intervention on behalf of AGP and SIEUA, and I'm also
12 intervening on behalf of Wal-Mart, and I'll clear that up
13 in EFIS later today.

14 JUDGE DIPPELL: All right. So I'll just go
15 ahead, then, and I'm going to grant the pending
16 interventions since there's no objection. Would there be
17 any objection to Mr. Woodsmall's correction on the record
18 on that intervention?

19 (No response.)

20 JUDGE DIPPELL: Seeing none, I will also
21 grant that --

22 MR. WOODSMALL: Thank you, your Honor.

23 JUDGE DIPPELL: -- intervention. There
24 will be formal orders that come out later today granting
25 those interventions.

1 So let's go ahead, then, and with that I'm
2 going to get entries of appearance, and I'd like to begin
3 with Staff.

4 MR. WILLIAMS: Nathan Williams, Deputy
5 General Counsel, and Steven Dottheim, Chief Deputy General
6 Counsel, P.O. Box 360, Jefferson City, Missouri 65102.

7 JUDGE DIPPELL: Public Counsel?

8 MR. MILLS: On behalf of Office of the
9 Public Counsel and the Public, my name is Lewis Mills. My
10 address is Post Office Box 2230, Jefferson City, Missouri
11 65102.

12 JUDGE DIPPELL: Kansas City Power & Light?

13 MR. FISCHER: Let the record reflect the
14 appearance of James M. Fischer and Curtis Blanc on behalf
15 of Kansas City Power & Light Company in ER-2009-0089, and
16 would you also like the appearance -- same attorneys will
17 be appearing on behalf of Aquila, Inc., doing business as
18 KCP&L Greater Missouri Operations Company in the other two
19 cases, ER-2009-0090 and HR-2009-0092. Thank you.

20 JUDGE DIPPELL: Yes. When I call out the
21 first party, you can give me the other parties that you
22 represent. Empire District Electric Company?

23 MS. CARTER: Diana Carter, Brydon,
24 Swaengen & England, P.O. Box 456, Jefferson City,
25 Missouri 65102, appearing for the Empire District Electric

1 Company and Missouri Gas Energy only in the KCP&L case,
2 0089.

3 JUDGE DIPPELL: And the Federal Executive
4 Agencies?

5 MR. BRUDER: Arthur Bruder, 1000
6 Independence Avenue Southwest, Washington, D.C. 20585, for
7 the Federal Executive Agencies.

8 JUDGE DIPPELL: Mr. Bruder, does that
9 include Department of Energy and the National Nuclear
10 Security Administration?

11 MR. BRUDER: Yes, it does.

12 JUDGE DIPPELL: Okay. And City of Kansas
13 City?

14 MR. COMLEY: Good morning, Judge Dippell.
15 Let the record reflect the entry of Mark W. Comley,
16 Newman, Comley & Ruth, 601 Monroe, Jefferson City,
17 Missouri, on behalf of the City of Kansas City.

18 JUDGE DIPPELL: Missouri Department of
19 Natural Resources?

20 MS. WOODS: Shelley Ann Woods, Assistant
21 Attorney General, Post Office Box 899, Jefferson City,
22 Missouri 65102, appearing on behalf of the Missouri
23 Department of Natural Resources Energy Center.

24 JUDGE DIPPELL: Missouri Industrial Energy
25 Consumers?

1 MS. ILES: Carole Iles and Diana Vuylsteke
2 of Bryan Cave, LLP, 211 North Broadway, St. Louis,
3 Missouri 63102. We're appearing on behalf of Missouri
4 Industrial Energy Consumers and for Ford Motor Company.

5 JUDGE DIPPELL: Missouri Joint Municipal
6 Electric Utility Commission? Not seeing anyone present
7 for them today. Praxair?

8 MR. WOODSMALL: Thank you, your Honor.
9 Appearing on behalf of Praxair and the Midwest Energy
10 Users Association in Case ER-2009-0090, David Woodsmall
11 and Stu Conrad, the firm of Finnegan, Conrad & Peterson.
12 0089. I'm sorry. I'm sorry.

13 JUDGE DIPPELL: And then did you have other
14 parties you were representing in other cases?

15 MR. WOODSMALL: Yes, your Honor. In Case
16 ER-2009-0089, we're appearing on behalf of Praxair and the
17 Midwest Energy Users Association. In Case
18 No. ER-2009-0090, appearing on behalf of Ag Processing,
19 SIEUA and Wal-Mart Stores, Inc., and in Case
20 No. HR-2009-0092, appearing on behalf of Ag Processing.

21 JUDGE DIPPELL: Thank you. And Dogwood
22 Energy?

23 MR. LUMLEY: Thank you, Judge. Appearing
24 in Case ER-2009-0090, Carl Lumley of the Curtis Heinz
25 firm, 130 South Bemiston, Suite 200, Clayton, Missouri

1 63105.

2 JUDGE DIPPELL: And Trigen?

3 MR. KEEVIL: Thank you, Judge. Appearing
4 on behalf of Trigen-Kansas City Energy Corporation,
5 Jeffrey A. Keevil of the law firm of Stewart & Keevil,
6 LLC, 4603 John Garry Drive, Suite 11, Columbia, Missouri
7 65203. And I would note for the record that Trigen is
8 only intervening in Case No. ER-2009-0089. Thank you.

9 JUDGE DIPPELL: Thank you. Now, did I miss
10 anyone?

11 (No response.)

12 JUDGE DIPPELL: All right. Okay. So I
13 have ordered that procedural schedules be filed on the
14 22nd of October. There was supposed to be responses to
15 the dates for true-up and test year. We didn't have any
16 objections. Staff filed a filing. Was there any other
17 discussion of dates for the true-up or test year?

18 MR. MILLS: Judge, I think that's one of
19 the things that we're going to talk about today and how
20 those are going to work out with proposed testimony
21 filings and things like that.

22 JUDGE DIPPELL: Okay. I was going to say
23 that I scheduled the true-up hearings and so forth. I
24 realize that those dates might not have worked out for
25 what you-all had planned in the previous, especially with

1 the previous case to KCP&L. So certainly as you work out
2 those dates, I'm -- I started to say happy, but I don't
3 know about happy. But I will hear requests to alter those
4 dates. However, the hearing dates, you know, I picked the
5 best dates I could find on the calendar for the
6 Commission, so try to keep that in mind as you're working
7 things out.

8 MR. FISCHER: Judge, could I clarify?
9 There are hearing dates and true-up dates scheduled in
10 your procedural order. Are you suggesting that it's
11 appropriate for the parties to talk about changing those,
12 maybe taking those further into the future if necessary?

13 JUDGE DIPPELL: I wouldn't take them too
14 much further into the future is what I'm saying. I picked
15 about as far out of dates as the Commission is comfortable
16 with as far as the evidentiary hearing goes. If you-all
17 can come back with a proposal that you-all agree to, the
18 Commission will consider altering those dates. But I'm
19 just telling you, looking at the calendar from what I knew
20 when I picked those dates, those were the best dates for
21 the Commission as far as the evidentiary hearing goes.

22 MR. WILLIAMS: Judge, I also have a query
23 that I think may assist the parties in working out a
24 procedural schedule. If the parties were to reach
25 agreement on consolidating for purposes of a hearing or

1 any other purpose in these cases, would that be something
2 the Commission would entertain?

3 JUDGE DIPPELL: Yes, definitely. If it
4 looks like some of the issues are going to consolidate and
5 there's not going to be three separate hearings and the
6 steam case is going to settle or major issues in the other
7 cases are going to settle or the whole cases are going to
8 settle, then definitely those dates can shift along with
9 that. So definitely keep that in mind. But in general,
10 that block of hearing dates that I picked was looking like
11 the best dates for the Commission.

12 Also due next week are suggestions about
13 local public hearings. I did want to bring especially to
14 the company's attention that we just went through a large
15 round of local public hearings with the Ameren rate case,
16 and some of the technical staff and people who were
17 involved in scheduling those hearings recently met to
18 figure out if the procedures worked, if the locations were
19 conducive to a productive hearing and so forth.

20 One of the things that came out of that
21 meeting was that everyone agreed that the way Ameren
22 handled the local public hearings seemed to be very
23 helpful from the public perspective. They showed up with
24 a lot of staff. They had access to customer accounts and
25 were able to talk to customers about their tree trimming

1 programs and other major issues that were involved in
2 Ameren's case as well as tell customers specifically what
3 their rate increase would be from the proposed rates and
4 so forth.

5 That all seemed to be very helpful to the
6 customers, and from a procedural standpoint it seemed that
7 those hearings, even though there were a lot of them, went
8 fairly smoothly. So just a word about that, and would
9 encourage you-all to talk to Ameren about how they handled
10 that.

11 I also wanted to mention, well, we talked
12 about that a little bit, about consolidation. As you're
13 going through, if there are witnesses that you think will
14 be testifying about the same matter, definitely think
15 about consolidating days of hearing, or I don't know if
16 the whole hearings will be able to be consolidated, but
17 definitely look at that when you're looking at your
18 schedules and the issues as they arise.

19 Try to make your issues list as clear as
20 you can and maybe we can avoid some of the
21 misunderstandings that sometimes happen in the rate cases
22 about exactly what the issues are. You-all understand the
23 issues better than the judges or the commissioners at this
24 point, so if you can present them clearly to us as to
25 exactly what the issue is and why you have your different

1 sides, then that will make things go smoother when we get
2 to a hearing.

3 Judge Stearley, did you have anything else
4 you wanted to add?

5 JUDGE STEARLEY: No. I'm going to pull a
6 Sarah Palin and try to avoid all comments this morning.

7 JUDGE DIPPELL: Okay. Is there anything
8 else that needs to be on the record?

9 MR. CONRAD: Yes.

10 JUDGE DIPPELL: Mr. Conrad?

11 MR. CONRAD: With some reluctance, I have
12 to bring this up. In connection with another matter, that
13 being one of the Ameren matters, on September the 8th of
14 this year, Mr. Dottheim and I had occasion to pay visit to
15 Judge Dale's office. On the wall in Judge Dale's office
16 was a document which caught my eye, and may have caught
17 Mr. Dottheim's eye also, that referred to something that
18 had occurred on 11/14/2006 and appeared to have something
19 to do with requesting a waiver from a profanity rule that
20 appeared to be in force.

21 Ms. Dippell, your name appeared on that
22 document as being a party or a person who had requested a
23 waiver from the profanity rule, and the subject of the
24 profanity was with respect to counsel for Praxair and
25 Explorer, both of which are seated here. I would like to

1 have, now that we're on the record in this proceeding, an
2 explanation of that, please.

3 JUDGE DIPPELL: Mr. Conrad, I apologize
4 very much. That, as I recall, was an office -- let me
5 start by saying we had -- or my boss had implemented a
6 profanity ban in the interest of not offending any of the
7 people who work in the office and maintaining a
8 professional office.

9 In joking around in the office, which
10 apparently was very inappropriate, there was some -- I'm
11 going off of vague memory -- there was some issue that had
12 occurred in one of the cases, multiple filings by Praxair,
13 objections and so forth, and there was some joke in the
14 office apparently with regard to waiving the profanity ban
15 with regard to counsel for those parties as you read that
16 on there.

17 That obviously was inappropriate. I
18 apologize for taking part in that. All I can say is it
19 was inappropriate and I apologize.

20 MR. CONRAD: Are you aware of what happened
21 to that document?

22 JUDGE DIPPELL: I am aware of what happened
23 to that document. When I discovered that you were upset
24 about it, I informed Ms. Dale that you were upset about
25 it, and she destroyed the document.

1 MR. CONRAD: So on the record here, you're
2 stating that the document, to your knowledge, was
3 destroyed?

4 JUDGE DIPPELL: I believe so, yes.

5 MR. CONRAD: How did you find out about my
6 interest in that document?

7 JUDGE DIPPELL: Kevin Thompson mentioned
8 that you were upset about the document, our General
9 Counsel. My office, as you know, is located next to
10 Ms. Dale's office, and he was looking for her to tell her
11 that you were upset about it. He did not find her that
12 day, and when she arrived, I informed her of that.

13 MR. CONRAD: You understand that that
14 document might well in appropriate circumstance constitute
15 evidence?

16 JUDGE DIPPELL: No, I guess I don't
17 understand that, Mr. Conrad.

18 MR. CONRAD: Very well.

19 JUDGE DIPPELL: Do you feel that it would
20 be necessary for me to recuse myself from these cases?

21 MR. CONRAD: I will first ask you if you
22 feel that it's necessary to do that?

23 JUDGE DIPPELL: No, I do not, Mr. Conrad.
24 I fully --

25 MR. CONRAD: I have not understood yet the

1 nature of the profanity or the occasion for it or whether
2 it involved a case that you were involved in.

3 JUDGE DIPPELL: It was not, in fact, a case
4 that I was involved in at that time, I do not believe. It
5 might have been the Empire case, which I am now involved
6 in, but I don't even think -- I don't even know what case
7 it was involving at the time, Mr. Conrad.

8 MR. CONRAD: So you don't recall or you
9 have -- or you knew at the time that you --

10 JUDGE DIPPELL: I'm sure I knew at the
11 time.

12 MR. CONRAD: And you knew at the time that
13 it was not a case you were involved in?

14 JUDGE DIPPELL: I don't remember what case
15 it was, so I can't say. I don't believe it was a case I
16 was involved in. I believe it was a case Ms. Dale was
17 involved in.

18 MR. CONRAD: Very well. We'll leave the
19 record at this point, and then we'll review it and make a
20 decision in consultation with our clients about the
21 question that you pose.

22 JUDGE DIPPELL: The other thing is I
23 believe the counsel that was being referred to was
24 actually Mr. Woodsmall.

25 MR. CONRAD: Well, that may be the case,

1 but that was not made clear on the document. I think we
2 both entered appearances for those clients, and, in fact,
3 one of those clients is involved in one of the cases that
4 is before the Bench today.

5 JUDGE DIPPELL: I understand, and if you
6 feel that because of that I should recuse myself, I would
7 be happy to do so.

8 MR. CONRAD: Very well. We'll leave it at
9 that and we'll make a review of the record that's been
10 created this morning. Thank you.

11 JUDGE DIPPELL: Thank you. Is there
12 anything else that needs to be brought up on the record?

13 (No response)

14 JUDGE DIPPELL: All right. Seeing nothing
15 further, then, we can go ahead and go off the record.
16 Thank you. I hope you-all have productive discussions.

17 WHEREUPON, the recorded portion of the
18 prehearing conference was concluded.

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C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified

Shorthand Reporter with the firm of Midwest Litigation
Services, and Notary Public within and for the State of
Missouri, do hereby certify that I was personally present
at the proceedings had in the above-entitled cause at the
time and place set forth in the caption sheet thereof;
that I then and there took down in Stenotype the
proceedings had; and that the foregoing is a full, true
and correct transcript of such Stenotype notes so made at
such time and place.

Given at my office in the City of
Jefferson, County of Cole, State of Missouri.

Kellene K. Feddersen, RPR, CSR, CCR
Notary Public (County of Cole)
My commission expires March 28, 2009.