

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Oral Argument

April 6, 2009  
Jefferson City, Missouri  
Volume 10

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

HAROLD STEARLEY, Presiding,  
SENIOR REGULATORY LAW JUDGE

ROBERT M. CLAYTON III, Chairman  
CONNIE MURRAY,  
TERRY JARRETT,  
KEVIN GUNN,  
COMMISSIONERS.

REPORTED BY:  
Pamela Fick, RMR, RPR, MO CCR #447  
Midwest Litigation Services

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23 FOR: Staff of the Missouri Public  
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25

1 P R O C E E D I N G S

2 JUDGE STEARLEY: Good morning. I'm  
3 bringing this hearing to order this morning. Today  
4 is Monday, April, 6th, 2009, and the Commission has  
5 set this time to hear oral argument on a motion for  
6 reconsideration of the Commission's March 18th order  
7 which modified the procedural schedule for the  
8 true-up proceedings in Case No. ER-2009-0089 which is  
9 captioned In the Matter of the Application of Kansas  
10 City Power & Light Company For Approval To Make  
11 Certain Changes In Its Charges For Electric Service  
12 To Continue the Implementation of Its Regulatory  
13 Plan.

14 My name is Harold Stearley and I am the  
15 regulatory law judge presiding over this proceeding.  
16 Our court reporter this morning is Pam Fick, and we  
17 will begin by taking entries of appearance starting  
18 with Kansas City Power & Light Company.

19 MR. FISCHER: Your Honor, let the record  
20 reflect the appearance of Bill Riggins, Karl Zobrist  
21 and Jim Fischer on behalf of Kansas City Power &  
22 Light Company. Our addresses and phone numbers are  
23 listed on the written entries.

24 JUDGE STEARLEY: All right. Thank you,  
25 Mr. Fischer. Empire District Electric Company?

1 MS. CARTER: Diana Carter, Brydon  
2 Swearingen & England. The address is reflected on  
3 the written entry.

4 JUDGE STEARLEY: All right. Thank you,  
5 Ms. Carter. Trigen Kansas City Energy Corporation?

6 MR. KEEVIL: I'm sorry, Judge, was that  
7 Trigen?

8 JUDGE STEARLEY: Yes, it was.

9 MR. KEEVIL: Yes. Jeffrey A. Keevil,  
10 Law Firm of Stewart & Keevil, LLC, 4603 John Garry  
11 Drive, Suite 1120, Columbia, Missouri 65203.

12 JUDGE STEARLEY: Thank you, Mr. Keevil.  
13 The Midwest Energy Users Association.

14 MR. WOODSMALL: Thank you, your Honor.  
15 Appearing on behalf of Midwest Energy Users  
16 Association and Praxair, David Woodsmall of the firm  
17 of Finnegan Conrad Peterson.

18 JUDGE STEARLEY: All right. Thank you,  
19 Mr. Woodsmall. Missouri Industrial Energies  
20 Consumers?

21 (NO RESPONSE.)

22 JUDGE STEARLEY: And let the record  
23 reflect we have no appearance for MIEC. Union  
24 Electric doing business as AmerenUE?

25 MR. LOWERY: Thank you, your Honor.

1 James B. Lowery, Law Firm of Smith Lewis, LLP, 111  
2 South Ninth, Suite 200, Columbia, Missouri 65201 on  
3 behalf of Union Electric Company.

4 JUDGE STEARLEY: Thank you, Mr. Lowery.  
5 Missouri Joint Municipal Electric Utility Commission?

6 (NO RESPONSE.)

7 JUDGE STEARLEY: And let the record  
8 reflect we also have no appearance from MJMEUC. Ford  
9 Motor Company?

10 (NO RESPONSE.)

11 JUDGE STEARLEY: And Ford Motor Company  
12 has also not shown. U.S. Department of Energy, the  
13 National Nuclear Security Administration and the  
14 Federal Executive Agencies?

15 MR. BRUDER: Arthur Perry Bruder, U.S.  
16 Department of Energy, Office of the General Counsel,  
17 1000 Independence Avenue Southwest, Washington, D.C.  
18 20585.

19 JUDGE STEARLEY: Thank you, Mr. Bruder.  
20 The Hospital Intervenors?

21 (NO RESPONSE.)

22 JUDGE STEARLEY: Let the record reflect  
23 there's no appearance from the Hospital Intervenors.  
24 Missouri Department of Natural Resources?

25 (NO RESPONSE.)

1                   JUDGE STEARLEY: Also no appearance by  
2 the Missouri Department of Natural Resources. Office  
3 of the Public Counsel?

4                   MR. MILLS: On behalf of the Office of  
5 the Public Counsel and the public, my name is Lewis  
6 Mills, my address is Post Office Box 2230, Jefferson  
7 City, Missouri 65102.

8                   JUDGE STEARLEY: All right. Thank you,  
9 Mr. Mills. Staff of the Missouri Public Service  
10 Commission?

11                   MR. WILLIAMS: Nathan Williams and Steve  
12 Dottheim, P. O. Box 360, Jefferson City, Missouri  
13 65102.

14                   JUDGE STEARLEY: All right. Thank you,  
15 Mr. Williams.

16                   Well, as with all hearings, I need to  
17 advise you-all to please shut off any cell phones,  
18 BlackBerries or other electronic devices that might  
19 interfere with our web-casting and recording today.

20                   And for preliminary matters, for  
21 starters, I know Staff has a motion to late-file its  
22 response to KCP&L's motion for reconsideration which  
23 was filed on the 24th, and I don't believe we issued  
24 a ruling on that and the Commission grants leave and  
25 considers Staff's response to be timely filed.



1                   Are there any other preliminary matters  
2 we need to take up before we proceed with the  
3 arguments?

4                   MR. LUMLEY: Judge, this is Carl Lumley  
5 on the phone. Just to clarify, I represent Dogwood  
6 Energy. We're not a party to the number 89 case, but  
7 I didn't want to fail to understand what was  
8 happening at 11 in the 90 case if I didn't listen, so  
9 I'm just monitoring and not a party on this call.

10                  JUDGE STEARLEY: All right. Very good,  
11 Mr. Lumley and thank you for announcing that. I'm  
12 assuming no other party --

13                  MR. BRUDER: If -- if I may, this is  
14 Arthur Bruder. I did want to ask, is this going to  
15 be, or is it now on the live video web cast? I'm not  
16 getting it, but I thought I'd try to get it if it is  
17 on.

18                  JUDGE STEARLEY: We should be  
19 web-casting at this moment, Mr. Bruder. It  
20 appears --

21                  MR. WOODSMALL: It's not on the monitor.

22                  MR. MILLS: The monitor's turned off.

23                  JUDGE STEARLEY: On my computer screen  
24 it is web-casting. I'm logged into the web.

25                  MR. BRUDER: Okay. It isn't on mine,

1 but I may not be -- well, I'm -- I'm not getting it.

2 I don't know why that would be.

3 JUDGE STEARLEY: Okay.

4 MR. BRUDER: Okay. I'll just listen,  
5 that's all right.

6 JUDGE STEARLEY: All right. Perhaps  
7 Judge Dippell who's in the back of the room can do me  
8 a favor and contact our IT department.

9 MR. ZOBRIST: There we are.

10 JUDGE STEARLEY: There we are. Okay.  
11 It's streaming?

12 MR. ZOBRIST: It's streaming.

13 JUDGE STEARLEY: All right. Very good.  
14 I'm assuming no parties have any objection to  
15 Mr. Lumley monitoring this first argument.

16 (NO RESPONSE.)

17 JUDGE STEARLEY: Hearing none, we'll  
18 continue. Are there any other preliminary matters we  
19 need to take up before we begin?

20 (NO RESPONSE.)

21 JUDGE STEARLEY: We didn't really  
22 establish in our order setting this hearing any  
23 particular order or procedure for oral arguments, so  
24 my plan today was to have the movants go first  
25 followed by Staff, Public Counsel and industrial

1 intervenors who had all filed responses to their  
2 motion. Any other parties beyond that that wish to  
3 respond will be given an opportunity and we'll have  
4 some time for rebuttal as well.

5 All right. Very well. We'll begin with  
6 you, Mr. Zobrist, then, for Kansas City Power and  
7 Light.

8 MR. ZOBKRIST: Thank you, Judge. May it  
9 please the Commission. As you stated, we are here  
10 requesting reconsideration of the Commission's  
11 March 18 order. Briefly, that motion extended the  
12 true-up period from March 31 to April 30 and other  
13 true-up dates including the true-up hearing from  
14 early June to early July.

15 It also extended the effective date of  
16 the tariff at the request of the company from  
17 August 5 to September 5. But the order imposed five  
18 conditions without a hearing and without any evidence  
19 of record. They were a condition that any costs  
20 exceeding Iatan 1 base costs, a term that was not  
21 defined, were to be interim rates subject to refund.

22 And also imposed conditions concerning  
23 the depreciation reserved at Iatan 1, the deferred  
24 income tax reserved at Iatan 1, environmental credits  
25 for Iatan 1 generation and a fifth condition

1 indicating that the value of power generated by  
2 Iatan 1 met a variable costs to be credited to costs  
3 that were to be placed in service, all these five  
4 conditions that were imposed in the Commission's  
5 order without the consent of the company.

6 Judge, I'm gonna continue despite the  
7 static if that's all right with you.

8 JUDGE STEARLEY: Yes, please do,  
9 Mr. Zobrist, and I apologize. We're testing some new  
10 technology today.

11 MR. ZOBRIST: That's -- that's fine.  
12 Now, the purpose of the motion for reconsideration is  
13 to ask the Commission respectfully to remove the  
14 conditions that were not agreed to by the company and  
15 that in the company's view are contrary to law  
16 without such an agreement or without such an  
17 evidentiary hearing or any evidence of record.

18 We therefore request that the true-up  
19 date be moved to April 30th, 2009 -- pardon me --  
20 that the true-up be moved to April 30th, 2009, that  
21 the effective date be moved with the consent of the  
22 company to September 5, 2009. This will result in 30  
23 days where consumers will have the benefit of current  
24 rates yet at the same time will be served by  
25 electricity being generated with the clean air

1 equipment at Iatan 1 and the other new infrastructure  
2 that will be in service but will not be reflected in  
3 rates.

4           We ask that there be no further delay to  
5 avoid the possibility of serious financial  
6 consequences to the company. In that regard, we have  
7 Mr. Michael Cline who submitted an affidavit with our  
8 original status report and motion, and Mr. Cline is  
9 here in the hearing room and would be available to  
10 respond to any questions from the Commission.

11           Although we are pleased to be here to  
12 explain the reasons for not only the March 2 status  
13 report and the motion to extend the true-up as well  
14 as our March 19 motion for reconsideration, we regret  
15 our failure to respond immediately in opposition to  
16 Staff's March 6th recommendations that contain not  
17 only the five commissions -- five conditions in your  
18 order, but even a 6th condition.

19           We understand now that the Commission  
20 and the judge apparently interpreted our silence as  
21 acquiescence or agreement. We frankly believe that  
22 given the substantive nature of the proposed  
23 conditions and the fact that the company had only  
24 voluntarily agreed to extend the tariff for 30 days,  
25 that the Commission would not find any of those

1 conditions to be lawful or reasonable because they  
2 lacked any evidence of record, and moreover because  
3 the interim rates subject to refund condition was a  
4 substantive position that had been taken in prefiled  
5 testimony by Staff and at least one other party.

6           So although the company's failure to  
7 respond was regrettable, we do welcome this  
8 opportunity to explain why extending the true-up date  
9 30 days to April 30th and the effective date 30 days  
10 to September 5 is reasonable.

11           In response to the motion for -- for  
12 reconsideration, no party, no party has offered any  
13 legal reasoning as to why or how these conditions  
14 could be imposed by the company. So we're really  
15 here today just to talk about scheduling issues. And  
16 although one of the parties speaks of consumer  
17 protections, the delay of 30 days actually gives  
18 consumers 30 more days of electricity with the clean  
19 air equipment at Iatan on line at the old rates.

20           Additionally, we believe that the  
21 Commission upon reflection will realize that the same  
22 reasons that it gave for rejecting the sixth  
23 condition proposed by Staff apply here. At page 4 of  
24 your order in response to Staff's request that any  
25 overstatement of Iatan 1 costs would be deemed to

1 have violated the Commission's order in this case,  
2 the Commission said it would not prejudge any  
3 potential violation without knowing the facts and  
4 circumstances surrounding that violation, and that  
5 reasoning certainly applies to the other five  
6 conditions.

7                   Now, Judge, with your leave, I would  
8 like to briefly go over the procedural issues that  
9 were discussed by the parties several months ago, and  
10 I have an outline that I'd be -- an exhibit I'd like  
11 to present to the Commission and I've got copies for  
12 the other parties.

13                   JUDGE STEARLEY: All right. Very well.

14                   MR. ZOBRIST: Now, Judge, this is  
15 obviously just a demonstrative exhibit, but if you'd  
16 like to have it marked and admitted, I will certainly  
17 ask the court reporter to do so.

18                   JUDGE STEARLEY: Yes, why don't we go  
19 ahead and have it marked as Exhibit 1.

20                   (EXHIBIT NO. 1 WAS MARKED FOR  
21 IDENTIFICATION BY THE COURT REPORTER.)

22                   MR. ZOBRIST: Okay. Thank you. As I  
23 said --

24                   MR. WOODSMALL: Your Honor, if I may  
25 quickly, I'm a little confused. If you're accepting

1 evidence, is this an evidentiary hearing or is this  
2 only an oral argument? As an oral argument, I  
3 wouldn't think we'd be accepting evidence. I'm just  
4 trying to figure out where we are.

5 JUDGE STEARLEY: It is just an oral  
6 argument, but if the parties are going to offer  
7 exhibits and the company's offered witnesses, should  
8 the Commission decide to call them, the Commission  
9 will take these and preserve them in the record.

10 MR. ZOBRIST: It's meant to be -- in  
11 response to Mr. Woodsmall's question, it's meant to  
12 be demonstrative evidence. It certainly doesn't  
13 purport to set forth everything. It's demonstrative  
14 evidence.

15 JUDGE STEARLEY: Does that satisfy your  
16 concerns?

17 MR. WOODSMALL: That -- that answers it,  
18 thank you.

19 JUDGE STEARLEY: All right.

20 MR. ZOBRIST: Judge, back on  
21 September 5, the company proposed that tariffs with  
22 an effective date of August 5 and a true-up date of  
23 April 30 be adopted by the Commission. On  
24 October 14, Staff responded and said that April 30  
25 true-up date would be acceptable if agreement could



1 be reached on other issues. That did not occur.

2 In response, the company came back with  
3 two proposals. The first was a March 31 true-up date  
4 with an August 5 effective date, or either the  
5 March 31/August 5 time frame or the  
6 April 30/September 5 based upon the company's  
7 presenting a report to the Commission on the status  
8 of Iatan 1.

9 Now, the Staff responded and stated that  
10 the most prudent schedule for these cases would be  
11 the use of an April 30 cut -- true-up cutoff date  
12 which would allow a reasonable time for the parties  
13 and the Commission to perform their functions, but  
14 that that would require the September 5 target date  
15 for new rates to take effect.

16 The Office of the Public Counsel, the  
17 industrials added a day later that they did not  
18 object to the April 30/ September 5 time frame, and  
19 that's what we are here requesting at this time.

20 Now, when the Commission issued its  
21 procedural order on November 20th, it stated that  
22 having the true-up be as late as April 30 did not  
23 allow sufficient time but the tariff sheets were not  
24 suspended for at least one month. And it noted the  
25 opposition of Staff, Public Counsel and the

1     industrials and determined that that schedule would  
2     not be acceptable.

3                     So the Commission set the true-up date  
4     of March 31 and the effective date at April 5. And  
5     in footnote 3, it stated that the companies were put  
6     on notice that if the true-up period is to be  
7     extended, there is a possibility that the tariff  
8     effective date will also need to be extended.

9                     And -- and we present this to the  
10    Commission to show that what we're proposing here is  
11    not something radical, it's not something that the  
12    parties never talked about before, it's something  
13    that indeed was contemplated a number of months ago  
14    because of some of the start-up issues relating to  
15    Iatan 1.

16                    The other point I would make is with --  
17    with regard to this case and with regard to Kansas  
18    City Power & Light Company and not the greater  
19    Missouri operations companies that we're going to  
20    talk about later today on the second oral argument.

21                    This is consistent with the frame of  
22    reference that was provided in the comprehensive  
23    energy plan stipulation that the Commission approved  
24    in 2005, that is that there would be four rate cases,  
25    that the third rate case would have the Iatan 1

1 investments. And in all of those cases, the true-up  
2 period for all of the cases was 90 days. The  
3 proposal that the company brings before the  
4 Commission is to extend that another 30 days.

5           So even though we had this 90-day time  
6 frame for the true-up process, we are recommending to  
7 the Commission that it be extended to 120 days to  
8 give the Commission more time to address tariff  
9 compliance issues as well as to let Staff and the  
10 parties present their evidence, study the evidence  
11 and to allow sufficient time for rehearing motions  
12 and other sorts of things.

13           Pursuant to the procedural schedule  
14 issued by the Commission, the company was obligated  
15 to advise you on January 20th if it could live with  
16 the March 31 true-up date, and at that time the  
17 company thought that it could.

18           Three weeks later, events occurred at  
19 Iatan regarding the start-up process and the turbine  
20 rotor shaft issue that you're aware of that proved  
21 this unworkable. And at that time, the -- the  
22 company filed its March 2nd status report and advised  
23 that the motion to extend would need to occur.

24           These negotiations leading up to this  
25 procedural schedule and the Commission's order were,

1 in our view, conducted in a good faith attempt to  
2 coordinate the difficult issues of bringing Iatan 1  
3 on line with its state-of-the-art environmental air  
4 quality control system as well as the procedural  
5 desires of the party and the requisites that the  
6 Commission has advised us of.

7           If you look at the stipulation, there  
8 are certain provisions in that document that give  
9 Kansas City Power & Light Company the ability to  
10 decide when to include new infrastructure in their  
11 rate cases. This is all in section 3(b)3 of that  
12 stipulation.

13           And there -- there's a specific  
14 provision that a number of the parties have cited  
15 that talk about the magnitude of these investments  
16 and the length of time that the comprehensive energy  
17 plan will take. And in light of that, it was stated  
18 in there and provided that Kansas City Power and  
19 Light may need to adjust the timing of the rate  
20 filings.

21           So again, what we're here talking about  
22 is something that was contemplated a number of years  
23 ago, four years ago in the stipulation and agreement,  
24 and that we have tried to work through for the last  
25 several years. And generally, we've been successful,

1 but it didn't occur as far as these issues that are  
2 here before you.

3           The proposal of the company is  
4 reasonable given the background of the procedural  
5 discussions in this case. April 30 as the true  
6 off -- the true-up cutoff date gives the companies  
7 additional time to meet the operational criteria of  
8 Iatan 1 to bring on line this equipment which will  
9 reduce emissions and provide clean air to the  
10 citizens of Missouri and elsewhere. The September 5  
11 delay and the effective date provides benefits to  
12 consumers who will be able to use the electricity  
13 generated by the retrofitted Iatan 1 unit and to  
14 enjoy cleaner air for 30 days, in essence, without  
15 having to pay for it.

16           And it avoids financial consequences  
17 which would likely be quite severe given the  
18 recession that we're in and the problems in the  
19 financial industry which Mr. Cline is here to address  
20 if requested.

21           And legally, it avoids the Commission,  
22 in our view, committing clear reversible error by  
23 imposing substantive conditions in a procedural order  
24 either without the consent of the company or without  
25 due process in the form of a hearing and evidence of

1 record to support that decision. Thank you, Judge.

2 JUDGE STEARLEY: Okay. Mr. Zobrist, if  
3 you'd please remain at the podium. Commissioners  
4 have any questions for Mr. Zobrist starting with  
5 Commissioner Murray?

6 COMMISSIONER MURRAY: I have none at  
7 this time. Thank you.

8 JUDGE STEARLEY: Commissioner Jarrett?

9 COMMISSIONER JARRETT: Good morning,  
10 Mr. Zobrist.

11 MR. ZOBRIST: Good morning.

12 COMMISSIONER JARRETT: I have no  
13 questions. Thank you.

14 MR. ZOBRIST: Thank you.

15 JUDGE STEARLEY: Commissioner Gunn?

16 COMMISSIONER GUNN: I don't have any  
17 questions. Thank you.

18 JUDGE STEARLEY: Chairman Clayton?

19 CHAIRMAN CLAYTON: Judge, I apologize  
20 for being a little late here this morning. Is the  
21 procedure that we're going to have presentations by  
22 counsel from all the parties and then see if there's  
23 a need to go into factual witnesses, is that your  
24 plan?

25 JUDGE STEARLEY: That's correct.

1 Mr. Zobrist has brought some witnesses if you would  
2 have questions for those people.

3 MR. ZOBRIST: Well, I -- yes, Judge, and  
4 I brought Mr. Cline because he had an affidavit that  
5 was attached to the status report filed on March 2nd,  
6 and he is here to respond to questions.

7 JUDGE STEARLEY: I'm also going to allow  
8 a little bit of time for rebuttal.

9 CHAIRMAN CLAYTON: Okay. I guess what I  
10 wanted to ask is that if -- if -- we're -- we're --  
11 the next item of business we'll have one of the other  
12 attorneys will give that presentation or are we going  
13 to Mr. Zobrist's witnesses, I guess is what I'm  
14 asking?

15 JUDGE STEARLEY: That -- that could be  
16 your choice, Commissioner. If you would like to hear  
17 from his witnesses now, you may.

18 CHAIRMAN CLAYTON: I would -- I would --  
19 I mean, if my colleagues are in agreement with this,  
20 I'd prefer to hear each presentation from the  
21 attorneys and then decide. If we can get -- if we  
22 can get our answers -- get our answers from the  
23 attorneys, then we can decide whether to move into  
24 the factual witnesses.

25 MR. ZOBRIST: Mr. Chairman, I -- I don't

1 have direct examination for Mr. Cline. There were  
2 just some comments from the parties about his  
3 affidavit, and he is here to respond to questions  
4 from the Commission, from the judge and from the  
5 parties if -- if they -- they have them. But I --  
6 I -- we've concluded our presentation because we  
7 understood it was primarily oral argument, but  
8 Mr. Cline is here to talk about the financial issues  
9 raised in his affidavit.

10 CHAIRMAN CLAYTON: I guess what I'm --  
11 what I'm saying is that I'd prefer to wait, give  
12 everybody a chance to make a statement and then -- I  
13 just wanted to make sure I wasn't waiving my chance  
14 to go after Mr. Zobrist here. Can't miss that  
15 opportunity.

16 MR. ZOBRIST: I don't think you'd ever  
17 waste that chance.

18 JUDGE STEARLEY: Not at all. And the  
19 Commissioners will have another opportunity after  
20 rebuttal as well.

21 MR. ZOBRIST: Okay. Thank you, Judge.

22 JUDGE STEARLEY: Thank you, Mr. Zobrist.  
23 Mr. Williams?

24 MR. WILLIAMS: Thank you, Judge. May it  
25 please the Commission? The Commission should start



1 by recalling the test year in this case with the  
2 calendar year 2007. We have a nine-month update  
3 period, and then we're looking at the true-up on top  
4 of that. And with a April 30th true-up, you're  
5 talking about 14 months after the end of the test  
6 year that you're still looking at costs for inclusion  
7 in consideration for rates out of this case.

8                   As the Commission noted in its order  
9 modifying the procedural schedule on page 2, the use  
10 of a true-up audit and hearing in -- in ratemaking is  
11 a comprise between the use of a historical year and  
12 the use of a -- of a projected or future test year.  
13 Both the test year as updated and the true-up are  
14 devices employed to use regulatory lag which is a  
15 lapse of time between a change in revenue requirement  
16 and the reflection of that change in the rates.

17                   In its November 20th order setting  
18 procedural schedules, the Commission recognized that  
19 inclusion of the Iatan 2 projects in the true-up  
20 period might be significant. In fact, it's very  
21 significant. They drive the revenue requirement in  
22 the Staff's case with Kansas City Power & Light  
23 Company.

24                   Also, some of the issues that are going  
25 to be involved in the true-up are off-system sales,

1 common costs from Iatan 1 and 2 and pension costs  
2 that Staff has seen the company's position on two of  
3 those three issues moved by tens of millions of  
4 dollars. And I have here, as a demonstrative  
5 exhibit, some information about how we've seen those  
6 numbers move for purposes of common costs. If I  
7 might approach?

8 JUDGE STEARLEY: You may. And I'll also  
9 have this marked as Exhibit 2. Whether you actually  
10 offer it in the direct, Mr. Williams, is your choice.

11 MR. WILLIAMS: Sure.

12 (EXHIBIT NO. 2 WAS MARKED FOR  
13 IDENTIFICATION BY THE COURT REPORTER.)

14 MR. WILLIAMS: And the reason I'm doing  
15 this as a handout is this information is highly  
16 confidential. The purpose of Exhibit 2 is to  
17 indicate to the Commission some of the variability  
18 that the Staff's seen and the numbers that have been  
19 provided to the Staff for what the company's position  
20 is on certain true-up issues, in particular the  
21 Iatan 1 and 2 common cost issue.

22 And what that pertains to is there are  
23 some improvements that have been made at Iatan that  
24 will serve not only the new equipment, new facility,  
25 but also the upgrades that are occurring at Iatan 1.

1 So the issue is whether those costs are properly  
2 includable as Iatan 1 costs in this case or if they  
3 should be included as Iatan 2 costs or split between  
4 the two, and if so, how.

5           As Staff indicated in its pleading that  
6 it filed in response to the company's motion, we've  
7 also had difficulty in getting information from the  
8 companies due to objections they've made. And only  
9 recently has Kansas City Power & Light Company  
10 withdrawn one of its -- one of its objections  
11 regarding the assertion that Iatan 2 costs are  
12 irrelevant to this proceeding.

13           Mr. Zobrist also mentioned the KCP&L  
14 experimental regulatory plan and that this case is  
15 contemplated as case 3. Staff doesn't disagree that  
16 case 3 doesn't contemplate improvements for Iatan 1;  
17 however, that case was optional, it certainly wasn't  
18 a mandatory case.

19           And the company was also to be  
20 consulting with the parties about changes they were  
21 going to make. There was a recognition at that point  
22 in time that the parties were not omniscient and  
23 didn't know all of the things that might occur in the  
24 future and understanding that there might need to be  
25 changes. However, the company unilaterally chose to

1 make what changes it did when it filed its case.

2                   As to the conditions that the Staff  
3 recommended, the interim subject to refund  
4 conditions, Staff did propose that as something that  
5 the company would consent to in order to get the  
6 April 30th extension. Staff -- it's not Staff's  
7 position that the Commission should impose that  
8 without conducting some kind of an evidentiary  
9 hearing or with the company's consent.

10                   The other conditions were primarily in  
11 place because of the company's principal request was  
12 to do an isolated adjustment for Iatan 1. If the  
13 Commission goes with moving the true-up date to a  
14 later date, those would be potential true-up issues  
15 as opposed to things that should be conditions.

16                   Unless the Commissioners have questions,  
17 that concludes what I plan to present.

18                   JUDGE STEARLEY: Commissioner Murray,  
19 any questions for Mr. Williams?

20                   COMMISSIONER MURRAY: Mr. Williams, I'm  
21 a little unclear about your last statement.

22                   MR. WILLIAMS: Okay.

23                   COMMISSIONER MURRAY: Would you restate  
24 that and perhaps elaborate on what you just said?

25                   MR. WILLIAMS: The company -- as the

1 Staff understood it, the company's principal position  
2 was to extend out the time period for Iatan 1 costs,  
3 and we were wanting to make sure that some matching  
4 matters were included with that extension. They were  
5 seeking to go beyond March 31. So that was our  
6 primary concern with the conditions that we requested  
7 be imposed, other than the interim subject to refund  
8 condition.

9 COMMISSIONER MURRAY: And is it your  
10 position that those conditions are or could be  
11 limited to the Iatan 1 costs that are going to be  
12 included but wouldn't otherwise be included if the  
13 true-up date were not extended?

14 MR. WILLIAMS: I think the answer to  
15 that's yes. Our position is if the true-up date is  
16 actually extended to April 30th, the need for  
17 including those matters which would be offsets to  
18 Iatan 1 costs beyond March 31, which was a date the  
19 company was proposing that the Commission remain  
20 with, would no longer be present as long as we're not  
21 talking about going past April 30th or anything.

22 COMMISSIONER MURRAY: But all of those  
23 conditions were positions that the Staff had taken in  
24 the rate case itself in prefiled testimony, were they  
25 not?

1                   MR. WILLIAMS: I believe some of those  
2 were not presented in the prefiled testimony.

3                   COMMISSIONER MURRAY: Do you know which  
4 ones were not?

5                   MR. WILLIAMS: Not off the top of my  
6 head I do not. We had taken a position on interim  
7 subject to refund, but that was at the close of the  
8 evidence in the case. We were recommending that the  
9 Commission set a portion of the rates interim subject  
10 to refunds.

11                  COMMISSIONER MURRAY: Based on a  
12 position that Staff had not had enough time to do the  
13 complete prudence review?

14                  MR. WILLIAMS: Based on Staff's  
15 inability to complete a prudence review, yes.

16                  COMMISSIONER MURRAY: Thank you.

17                  JUDGE STEARLEY: Commissioner Jarrett?

18                  COMMISSIONER JARRETT: No questions,  
19 thank you.

20                  JUDGE STEARLEY: Commissioner Gunn?

21                  COMMISSIONER GUNN: Yeah, I just have a  
22 couple. And I -- following up on some of the  
23 questions that Commissioner Murray had, and I'm --  
24 I'm a little bit confused about some of the stuff.  
25 You said that -- that the Staff would not have

1 requested condition one without an evidentiary  
2 hearing or consent of the company, correct?

3 MR. WILLIAMS: Yes.

4 COMMISSIONER GUNN: Was that in the  
5 filing that you made with the conditions? And it  
6 wasn't in our order, was it?

7 MR. WILLIAMS: It appeared in the body  
8 of the order correctly that Staff had an agreement of  
9 the company's consent, but we didn't have the  
10 evidentiary hearing. We were just saying if the  
11 company agrees to interim subject to refund, then  
12 we're okay with going to April 30th as long as the  
13 other conditions are imposed as well.

14 COMMISSIONER GUNN: So the company has  
15 not consented and we -- and the order did not provide  
16 for an evidentiary hearing for this --

17 MR. WILLIAMS: Correct.

18 COMMISSIONER GUNN: -- for this  
19 condition?

20 MR. WILLIAMS: Correct.

21 COMMISSIONER GUNN: So we got that one  
22 wrong?

23 MR. WILLIAMS: Staff thinks this  
24 isn't -- right.

25 COMMISSIONER GUNN: Okay. That's why

1 we're here. That's why we're doing -- we're doing a  
2 do-over here. So we got -- so first condition we got  
3 wrong. We either need to have an evidentiary hearing  
4 or consent of the company. If not, that condition  
5 you don't believe can be imposed unilaterally?

6 MR. WILLIAMS: It should not be.

7 COMMISSIONER GUNN: Okay.

8 So then let's go to -- you said  
9 something about how -- how -- and I was confused on  
10 this a little bit too, how the other four conditions,  
11 and maybe I'm wrong, but some of them would be issues  
12 in the true-up and they wouldn't be true conditions  
13 that were being imposed. Does that -- did I hear  
14 that wrong or...

15 MR. WILLIAMS: No, you heard that  
16 correctly. There are -- there's a concern with  
17 matching costs and revenues --

18 COMMISSIONER GUNN: Right.

19 MR. WILLIAMS: -- and Staff believes  
20 there will be some offsets on those Iatan 1 costs.  
21 And the company was asking for Iatan 1 as an isolated  
22 adjustment going beyond the March 31 date, and we  
23 were wanting to have the matching revenues to go with  
24 that, and that's the purpose of those conditions.

25 COMMISSIONER GUNN: And that -- so --



1 so -- so you're saying that -- if they were dealt  
2 with in the true-up, they wouldn't have to be imposed  
3 as a condition?

4 MR. WILLIAMS: Right.

5 COMMISSIONER GUNN: Which one are those?

6 MR. WILLIAMS: The last four which would  
7 be the -- the depreciation reserve, the deferred  
8 income tax reserves, the environmental credits --

9 COMMISSIONER GUNN: So -- so all four?

10 MR. WILLIAMS: Yes.

11 COMMISSIONER GUNN: So all four of  
12 those, if -- if the -- if the true-up takes those  
13 into account, then we can take care of those  
14 conditions?

15 MR. WILLIAMS: Right.

16 COMMISSIONER GUNN: All right. So  
17 substantively, if -- if the period is extended to  
18 April 30th/September 5th and our -- and the true-up  
19 takes into account these four issues, then you're  
20 fine -- and obviously we got the first one wrong,  
21 then you'd be fine with removing the conditions?

22 MR. WILLIAMS: Yes, although we're not  
23 advocating the April 30th.

24 COMMISSIONER GUNN: Right. But you were  
25 okay with the previous thing as long as other -- the

1 date itself is -- isn't as problematic if other  
2 things occur. Am I wrong about that or am I -- am I  
3 okay?

4 MR. WILLIAMS: It depends on information  
5 flow and how things progress. I mean, when we were  
6 talking at the end of October of last year, we didn't  
7 know exactly how this case was going to progress in  
8 terms of information flow.

9 COMMISSIONER GUNN: Right.

10 MR. WILLIAMS: At this point, we've seen  
11 more and we still have -- we have issues with how  
12 we've been getting information that we feel we need  
13 in order to do the true-up.

14 COMMISSIONER GUNN: Is that directly  
15 related to Iatan -- to the Iatan 1 issue or is that  
16 as a general rule?

17 MR. WILLIAMS: General, but more to the  
18 Iatan 1.

19 COMMISSIONER GUNN: All right. And have  
20 those discovery issues that you mentioned earlier  
21 gotten to the point where Staff feels like they need  
22 to file a motion to compel or bring that to the  
23 Commission?

24 MR. WILLIAMS: We're -- we're either  
25 going to get some kind of resolution soon or bring it

1 to the Commission, yes.

2 COMMISSIONER GUNN: All right.

3 MR. WILLIAMS: I mean, the company has  
4 indicated they'd like to talk with us more at this  
5 point, so we're not bringing them to the Commission  
6 yet.

7 COMMISSIONER GUNN: Okay. I don't think  
8 I have any further questions, but I appreciate the  
9 time.

10 MR. WILLIAMS: Thank you.

11 JUDGE STEARLEY: Chairman Clayton?

12 CHAIRMAN CLAYTON: Judge, I've changed  
13 my mind and -- because I -- this is the line I kind  
14 of wanted to follow up on Commissioner Gunn.  
15 Basically I want to understand, condition 5A in the  
16 order that relates to Iatan 1 costs that exceed base  
17 costs, Staff agrees that that cannot be imposed  
18 without the consent of -- of the applicant.

19 MR. WILLIAMS: At this stage in the  
20 proceeding.

21 CHAIRMAN CLAYTON: At this stage in the  
22 proceeding. Okay. So if you -- if the conditions B,  
23 C, D and E remain that are either revenue or their  
24 revenue issues associated with Iatan 1, does Staff  
25 still object to modification of the April 30th date?

1 That's depreciation reserve, deferred income tax  
2 reserve. Not trying to surprise you.

3 MR. WILLIAMS: I was looking at the  
4 wrong list, is my problem.

5 CHAIRMAN CLAYTON: Well, I'm looking at  
6 the order because I know that the list in Staff's  
7 application is a little different. I can just read  
8 those to you if it would be helpful. B is  
9 depreciation reserve attributable to Iatan 1;  
10 deferred income taxes, C; D is environmental credits  
11 and E is the value of power generated by Iatan 1 net  
12 of variable costs.

13 MR. WILLIAMS: We don't have a -- we  
14 don't believe there's a need to impose those if  
15 you're going to extend the true-up date to  
16 April 30th.

17 CHAIRMAN CLAYTON: But would -- would  
18 the Commission -- as I understood the application  
19 by -- by the utility, and I may be wrong, but I  
20 thought they just wanted to extend the period for the  
21 costs associated with plant only, that no other  
22 factors were to be included in the extension of time.  
23 Am I incorrect in --

24 MR. WILLIAMS: I think that was their  
25 primary request. They subsequently said they're

1 willing to extend the whole true-up cutoff to  
2 April 30th.

3 CHAIRMAN CLAYTON: Okay. Okay. So --  
4 so including all of those revenue items, does -- if  
5 those are included, does Staff still object to  
6 extending the -- is it the update period or the  
7 true-up period?

8 MR. WILLIAMS: True-up period.

9 CHAIRMAN CLAYTON: Thank you, thank you.

10 MR. WILLIAMS: And the answer to that is  
11 yes.

12 CHAIRMAN CLAYTON: And why?

13 MR. WILLIAMS: Staff believes that we're  
14 getting far enough out that we need to put a stop to  
15 moving targets. The company had its opportunity on  
16 January 20th which it had asked for as opposed to  
17 going ahead and going with an April 30th date of  
18 electing to stay with March 31 or moving to  
19 April 30th. It chose at that point in time to stay  
20 with March 31 in the hopes they would make it.

21 As far as that goes, in the next case,  
22 assuming there is going to be one which I'm sure  
23 there will, the company could seek some interim rates  
24 on the basis that there's a plant that's significant  
25 rate base that's already in service, and they -- they

1 would be unduly harmed by having to wait 11 months in  
2 order to get revenues based on that plant.

3 CHAIRMAN CLAYTON: Does Staff agree,  
4 disagree or lacks information to make a decision on  
5 whether or not it was the fault of the company in  
6 these improvements being completed prior to the  
7 March 31 deadline?

8 MR. WILLIAMS: Well, it was -- certainly  
9 wasn't an act of God in the sense of a storm or  
10 something like that that caused it, no. As to  
11 exactly what occurred, we don't have that  
12 information.

13 CHAIRMAN CLAYTON: You don't have the  
14 information to say whether it was the company's fault  
15 or not?

16 MR. WILLIAMS: I wouldn't say that it's  
17 the company's fault at this point with the  
18 information we have.

19 CHAIRMAN CLAYTON: Okay. Okay. Are you  
20 familiar with the case that we had with Empire  
21 Electric where we had to change the true-up date for  
22 the Asbury plant?

23 MR. WILLIAMS: I am not. Steve, are you  
24 familiar with that?

25 MR. DOTTHEIM: I think I have some

1 familiarity with that.

2                   CHAIRMAN CLAYTON: I just want to know  
3 why because in that case I don't think Staff agreed  
4 to the extension, but it didn't really object either,  
5 I think, and I want to know if this case is different  
6 because the Commission did extend that period to  
7 allow those costs to come in.

8                   MR. DOTTHEIM: I -- I think their -- the  
9 Staff did object. In fact -- well, I think there was  
10 a split amongst the Staff, and one member of the  
11 Staff -- well, actually, two members of the Staff, I  
12 believe, testified differently as to how the  
13 Commission might proceed.

14                   CHAIRMAN CLAYTON: So there was a split  
15 and there's no split here, is that what you're  
16 telling me?

17                   MR. DOTTHEIM: That is correct. Yeah.  
18 I think what Mr. Williams is -- is -- is saying, the  
19 Staff is concerned about a -- a sliding schedule.  
20 The company chose the March 31 date. That schedule  
21 has not held. The Commission is being told right now  
22 that the Iatan 1 improvements will be in service this  
23 month. The Staff hopes the company is correct that's  
24 not necessarily the case. There's no -- there's no  
25 certainty of that, although again, the Staff hopes

1 the -- the company is -- is correct.

2                   Now, there certainly is the ability from  
3 a number of perspectives for the company to extend  
4 the -- the effective date of the tariffs because  
5 the -- when the company filed its tariffs, they did  
6 not have, as I recall, the traditional 30-day  
7 effective date. They had an effective date, I think  
8 it was 11 months out. So they -- so the Commission  
9 did not suspend the tariffs to begin with.

10                   But again, the Staff's perspective, and  
11 I think Mr. Williams was -- was indicating, he was  
12 mentioning common costs and the Staff has this  
13 Exhibit No. 2 as demonstrative evidence for the  
14 reason that Staff used this case as being very  
15 atypical. In most all other cases, if not all other  
16 cases, the -- the true-up is not a major part of the  
17 case.

18                   In this case, the true-up will be the  
19 major part of the case, at least from a dollar  
20 perspective. Iatan 2 common costs is one of those  
21 issues which will make the true-up the major part of  
22 this case and causes the Staff problems with being  
23 able to audit the true-up part of the case.

24                   Mr. Williams mentioned pensions which  
25 is -- which is another element which will make the



1 true-up the major part of this case and presents  
2 problems for the Staff.

3 Iatan 1 is another element which will  
4 make the true-up the major part of the case. And  
5 there's a fourth issue, off-system sales, which will  
6 make the true-up a major part of the case. So --  
7 and -- and that's what Mr. Williams was -- was  
8 seeking to indicate to the Commission in his -- in  
9 his presentation.

10 This one sheet, which is Exhibit 2,  
11 shows how the information that -- that the Staff is  
12 getting from the company on common costs is just  
13 fluctuating. We have received three different  
14 numbers and our expectation is that we are going to  
15 receive a fourth number as far as -- if I'm not  
16 mistaken -- as to what is the quantification of  
17 Iatan 1 and 2 common costs.

18 CHAIRMAN CLAYTON: Mr. Dottheim, I don't  
19 mean to interrupt you. Can I ask a question?

20 MR. DOTTHEIM: Yes.

21 CHAIRMAN CLAYTON: And I don't know who  
22 this goes to. I don't want to -- whoever wants to  
23 answer. The numbers that are on Exhibit 2 that  
24 refers to them as common costs, and I guess I'm  
25 trying to identify what -- what are common costs.

1 Are these expenses, are these actual investments, is  
2 this plant in service numbers, and -- and then the --  
3 the numbers that are listed over time, I'm not sure I  
4 understand why they're different. I mean, how  
5 they --

6 MR. DOTTHEIM: Well, we're trying to  
7 understand --

8 CHAIRMAN CLAYTON: These are the numbers  
9 that the company gave you, that's what it is?

10 MR. DOTTHEIM: Yeah, that's right.

11 CHAIRMAN CLAYTON: Okay. And so that's  
12 the fluctuation. That's where I was confused.

13 MR. DOTTHEIM: Yes. Yes.

14 CHAIRMAN CLAYTON: Now -- now, these  
15 numbers that are referenced here, are -- are these  
16 representing additions to rate base or plant in  
17 service?

18 MR. DOTTHEIM: Yes. And we are supposed  
19 to audit these.

20 CHAIRMAN CLAYTON: Okay. And these  
21 are -- these are over and above any other additions  
22 to plant in service as of March 31?

23 MR. DOTTHEIM: Well --

24 CHAIRMAN CLAYTON: Or are these just  
25 differences in --

1                   MR. DOTTHEIM: Well, these -- these are  
2 related to -- well, these are -- these are related to  
3 the Iatan 1 and 2 projects. These are -- these are  
4 costs which are attributable to the Iatan 1 and 2  
5 projects. At one time we were told that all of the  
6 common costs because of a FERC rule were going to be  
7 assigned by the company to Iatan 1, and we raised  
8 with the company the issue of proposition one about  
9 Iatan 2 not being fully operational and used for  
10 service.

11                   Whether that was the reason or the  
12 Commission's decision in the AmerenUE case on the  
13 COLA issue in that case or for some other reason,  
14 KCPL changed its position. KCPL has changed its  
15 quantification, as this Exhibit 2 indicates, a number  
16 of time -- times. And we -- I mean, this is what  
17 we're supposed to audit and give to the Commission  
18 our considered opinion as to what is the correct  
19 quantification as to what costs are properly  
20 associated with Iatan 1 and what costs are properly  
21 associated with Iatan 2. And -- and this is just one  
22 of the -- one of the issues. And as you can see,  
23 frankly, if my memory serves me correctly, these --  
24 these costs, these Iatan common costs exceed the  
25 costs of Iatan 1 when it was built.

1                   CHAIRMAN CLAYTON: Okay.

2                   MR. DOTTHEIM: So these are not in --  
3 these are not inconsequential dollars.

4                   CHAIRMAN CLAYTON: Okay. Is one of the  
5 conditions that Staff asked for the -- the difference  
6 in the base cost with the actual costs that we've  
7 talked a little bit about here today? Is it possible  
8 to provide in an open session a figure that would  
9 represent the base costs or is that a highly  
10 confidential number so that we would know the  
11 difference between the numbers listed on Exhibit 2?  
12 Is that a --

13                   MR. DOTTHEIM: No. Those -- that --  
14 that quantification is not on Exhibit 2.

15                   CHAIRMAN CLAYTON: Exactly, that's what  
16 I'm asking. Is that a public number or is that a  
17 highly confidential number, the base costs that are  
18 referenced in that condition?

19                   MR. WOODSMALL: It's included in Brent  
20 Davis's public testimony, the base cost as well as  
21 the new reforecasted cost.

22                   CHAIRMAN CLAYTON: Can you tell me what  
23 that -- it's public is it?

24                   MR. FISCHER: Judge -- Judge, I think  
25 that's one of the problems with the order, is the

1 base cost is not defined.

2 MR. DOTTHEIM: Yeah.

3 MR. FISCHER: That term is not defined.  
4 There have been suggestions in some of the pleadings  
5 it should be something called a definitive estimate.  
6 We have a budget control number. There are different  
7 numbers that -- and the testimony in the case  
8 addresses those particular numbers and why it's  
9 not -- one's appropriate, one's not to use for  
10 purposes of regulatory comparison.

11 CHAIRMAN CLAYTON: So each party has a  
12 position; is that correct?

13 MR. FISCHER: I believe that's true.

14 CHAIRMAN CLAYTON: Just -- just to give  
15 me a frame of reference, can -- Mr. Fischer, can you  
16 just -- can you tell me what the company's position  
17 is on that number? I'm just trying to get a handle  
18 of --

19 MR. FISCHER: One -- one of the issues,  
20 Judge, is whether the definitive estimate, the term  
21 as that is used, is the appropriate one for -- for  
22 reviewing, for example, cost overruns. We take the  
23 position that that's not an appropriate number, that  
24 that was done when 20 percent of the engineering was  
25 done.

1                   Instead, we do have a budget control  
2 estimate number that has been used, and -- and we  
3 have witnesses that explain differences of costs  
4 going up or down from that number, and we believe  
5 that's a more appropriate number to -- to use in this  
6 context. We have witnesses that could address that  
7 in the case too.

8                   MR. WOODSMALL: Mr. Chairman, to help  
9 you out, I believe the numbers are in the control  
10 budget estimate. The original estimate was 376  
11 million, the new reforecasted amount is 484 million,  
12 so we're talking about a difference of 108 million.

13                   CHAIRMAN CLAYTON: That first number,  
14 the 376, is that a Staff-derived number, is that your  
15 party's, your client's derived numbers?

16                   MR. WOODSMALL: No. Those are numbers  
17 provided by the company. The first number is the  
18 number that they budgeted, the control budget  
19 estimate. That's a number they'd budgeted for the  
20 Iatan 1, environmental improvements. Sometimes  
21 subsequent to that, they conducted a reforecast and  
22 that number went up to 484 million. What the final  
23 number is, is subject to bate -- to debate because  
24 we're not there yet. But over time the number has  
25 changed.

1                   MR. WILLIAMS: Commissioner?

2                   CHAIRMAN CLAYTON: Yes.

3                   MR. WILLIAMS: That was Staff's proposal  
4 and we were referring to the control budget estimate,  
5 although it was not done very well.

6                   CHAIRMAN CLAYTON: So you agree with the  
7 with Mr. Woodsmall's statement about the -- the  
8 difference in 108 million?

9                   MR. DOTTHEIM: Well, the -- the number I  
10 believe that we're using I did not bring with me, but  
11 I have sent someone to -- to get that number.

12                   CHAIRMAN CLAYTON: Okay. Mr. Zobrist?

13                   MR. ZOBRIST: Well, Mr. Chairman, if I  
14 could just say something. You know, we're really  
15 here on the motion for reconsideration, and I  
16 understand, you know, the basis of your questions  
17 because one is tempted to get down into these -- you  
18 know, into these data.

19                   And what I would say is that the  
20 significance of these numbers is what the Commission  
21 ought to think about in terms of the 30 days. I  
22 mean, we are talking hundreds of millions of dollars  
23 in a time when, you know, the company is facing, you  
24 know, severe financial problems in the course of a  
25 depression -- recession, whatever we're in.

1                   And I think as opposed to getting down  
2 and trying to pre-try the rate case that we're going  
3 to start here in three weeks, you know, we ought to  
4 step back and look at the procedural significance,  
5 with all due respect, because as Mr. Fischer said,  
6 the company has set out the parameters in both its  
7 direct and its rebuttal cases. And the issue of  
8 common costs is something that will be dealt with in  
9 the true-up which is why we need to have this 30 days  
10 plus an extension of the tariff to try to deal with  
11 these matters.

12                   CHAIRMAN CLAYTON: Mr. Dottheim?

13                   MR. DOTTHEIM: One thing that the Staff  
14 failed to put in one or even more of its pleadings, I  
15 think the company to some extent has attempted to  
16 give the impression as to how atypical the disputes  
17 on procedural schedule in these proceedings are.

18                   In the Wolf Creek -- in the Wolf Creek  
19 case, the company first filed its Wolf Creek case in  
20 August of 1984 and the case number was ER-85-43. And  
21 it withdrew that case in November of 1984 and refiled  
22 it. With -- when it -- when it filed its case in  
23 August of 1984, of course, the 11 months would have  
24 run to July of 1985 and Wolf Creek went into service  
25 on September 3 of 1985. And the Staff was engaged in



1 a dispute with the company as to whether that  
2 original case was really the Wolf Creek case or not.

3           So I only go into that to try to give  
4 the Commission some perspective that the disputes  
5 involving schedule in this case and probably the  
6 disputes you may see in the Iatan 2 case on schedule  
7 are nothing new.

8           CHAIRMAN CLAYTON: Let me -- let me try  
9 to refocus my questions because I'm -- I'm not  
10 intending to get into details or get into litigation  
11 over the figures. I am trying to get a handle on --  
12 on what the numbers mean and what -- I'm sorry,  
13 Mr. Dottheim.

14           MR. DOTTHEIM: I believe the -- the  
15 number that the Staff is using for base cost  
16 definitive estimate is approximately \$376.8 million.

17           CHAIRMAN CLAYTON: Okay. Sounds  
18 familiar. Sounds familiar. Good. Okay. Then --  
19 then let me ask this question. If you make the  
20 assumption that -- that I -- and we -- and we didn't  
21 have to be here today, that the Iatan 1 improvements  
22 were addressed prior to the March 31 deadline. How  
23 much time or when would the Staff have begun its  
24 audit of those expenditures assuming a March 31  
25 deadline?

1                   Because I'm assuming that that audit  
2 hasn't occurred. That's what you're telling me that  
3 you can't get the audit done or it's insufficient  
4 time to get the audit done. Help me with how time  
5 would normally work here. And I'm assuming you're  
6 saying 30 days isn't -- the next 30 days isn't enough  
7 to complete the audit or -- I'm not sure.

8                   MR. DOTTHEIM: We're not suggesting that  
9 the case be put on the schedule to permit that audit  
10 to be performed, if I understand you correctly. That  
11 is -- that is the prudence audit of the Iatan 1 air  
12 quality control system and enhancements.

13                   CHAIRMAN CLAYTON: I mean, that's the  
14 basis for the Staff objection to changing the -- I  
15 mean, other than the general we had a deal on our  
16 procedural schedule -- the procedural schedule, isn't  
17 that the gist of the Staff argument, that basically  
18 if you change the date, there isn't enough time to  
19 conduct the audit, that's why a number of these  
20 safeguards are included in terms of Staff's  
21 recommendation and -- and that's why we shouldn't  
22 extend the date? Maybe I have it wrong. Correct me  
23 if I'm wrong.

24                   MR. DOTTHEIM: Well, the -- the Staff's  
25 suggestion that the date not be extended is the



1 proposal that they would have the opportunity to seek  
2 an -- to get an extension of the true-up cutoff  
3 coupled with the possibility of an extension of the  
4 operational law date. That was the January 20th date  
5 where they told the Commission, hey, we can make  
6 March 31. In order to get the audit done and  
7 completed and plan it with its resources, the Staff  
8 has to have some certainty.

9 CHAIRMAN CLAYTON: Okay. Let me ask  
10 this one final question, then I'm going to -- I want  
11 to let the other parties chime in. The question is  
12 is -- is based around the fact that we have a  
13 regulatory plan and we kind of have different  
14 circumstances than in a normal rate case.

15 We've got a plan under construction,  
16 we've got some planned environmental upgrades. In a  
17 normal case where you do not have that, you set your  
18 true-up date, I'm assuming. You just set it at a  
19 point in time and the parties argue over that and  
20 then you hold fast to that.

21 And the difference I see in this case is  
22 that you actually have specific projects that were at  
23 least contemplated. Maybe they weren't assuredly  
24 going to be included in this case or not. And I  
25 guess I want to know if you disagree with that and --

1 and should the focus be on the projects rather than  
2 just -- just the point in time. Because we do have a  
3 regulatory plan. Maybe it wasn't a mandated case,  
4 but there has been a plan, there's been some  
5 planning. Give me Staff's position why it shouldn't  
6 be -- why we shouldn't be considering that project an  
7 important part of making this decision.

8 MR. WILLIAMS: Considering the Iatan 1  
9 improvements --

10 CHAIRMAN CLAYTON: Yes.

11 MR. WILLIAMS: -- is that what you're  
12 talking about? I think it is an important part of  
13 your decision-making, but you shouldn't -- the plan's  
14 not something that's solvent on everything. I mean,  
15 even when the fourth case, the Iatan 2 case comes in,  
16 there's some contemplation within the plan that there  
17 could be slippage on the date in that case.

18 I don't think the Commission should let  
19 that experimental regulatory plan override and  
20 control what happens in this case to disregard for  
21 everything else. In a lot of ways, this is your  
22 typical case in that even without the plan, the  
23 company would have been trying to time the rate case  
24 to match when rates would go into effect as close to  
25 whenever the plant would be in service that it could

1 possibly do. They have every reason to do that.

2 MR. DOTTHEIM: The Staff doesn't believe  
3 what it's suggesting is in violation of the KCPL  
4 regulatory plan. The schedule on -- on -- on rate  
5 case three went off the tracks when KCPL took it off  
6 the tracks when they didn't file the case by  
7 February 1, 2008.

8 CHAIRMAN CLAYTON: Okay. So basically,  
9 Staff's position is that even though there are some  
10 different things that are occurring with KCP&L, you  
11 still should stick to the standard process of any  
12 other rate case; is that correct?

13 MR. DOTTHEIM: Yes.

14 CHAIRMAN CLAYTON: Okay. Thank you.  
15 Judge, I'll stop right there and let others  
16 participate.

17 JUDGE STEARLEY: All right. Thank you,  
18 Mr. Chairman. Mr. Williams, did you have anything  
19 else to conclude?

20 MR. WILLIAMS: Are you done with me?

21 COMMISSIONER MURRAY: Judge? I have  
22 a --

23 JUDGE STEARLEY: Yes, Commissioner  
24 Murray.

25 COMMISSIONER MURRAY: Mr. Williams

1 and/or Mr. Dottheim, what I'm -- what I'm hearing you  
2 say is that Staff understood that KCP&L was -- was  
3 expecting to have the improvements completed by  
4 March 31 and that they would have been included in  
5 the true-up period. But what I'm also hearing you  
6 say is that Staff at that time, had that happened,  
7 was not prepared to say that these -- whether or not  
8 these improvements were prudent and was at that time  
9 proposing that we make them subject to refund, and  
10 that Staff's position really doesn't change whether  
11 or not we grant this extension for the true-up.  
12 Staff doesn't want to include the improvements to  
13 Iatan 1 in this proceeding unless they are subject to  
14 refund; is that correct?

15 MR. WILLIAMS: No. Staff's position is  
16 that a portion of the costs that would be included in  
17 rates would be put in interim rates, assuming the  
18 plant was completed within the true-up period.

19 COMMISSIONER MURRAY: A portion of the  
20 costs?

21 MR. WILLIAMS: The rest of the costs  
22 would be in permanent rates.

23 COMMISSIONER MURRAY: Okay. But you're  
24 not willing to say that you -- Staff would not be  
25 prepared to have concluded its audit of all of the

1 costs of the improvements to Iatan 1 had the March 31  
2 date -- had it been in service by the March 31 date;  
3 is that right?

4 MR. WILLIAMS: Are you talking about for  
5 prudence?

6 COMMISSIONER MURRAY: Yes.

7 MR. WILLIAMS: I believe we would not.

8 COMMISSIONER MURRAY: So really, the  
9 Staff's position doesn't change regarding whether or  
10 not there's an extension of the true-up period?  
11 Staff's position still is that a part of those costs  
12 should be subject to refund; is that not correct?

13 MR. DOTTHEIM: Yes. And in -- in our --  
14 in the Staff's report, if my memory serves me  
15 correctly, we had an alternative position too.

16 COMMISSIONER MURRAY: To disallow it all  
17 together?

18 MR. DOTTHEIM: No. Now, in the -- in  
19 the Staff's report, if my memory serves me correctly,  
20 we had an alternative position to interim subject to  
21 a refund for the costs that are in excess of the  
22 definitive estimate, and that is that at a minimum,  
23 the Commission should state in its Report and Order  
24 that it's not ruling on the prudence of the Iatan 1  
25 costs so as to address any argument that any party in



1 particular the -- the company might make regarding  
2 collateral estoppel. I think --

3 COMMISSIONER MURRAY: Isn't the bottom  
4 line here that Staff is objecting to having to say  
5 yes, we've completed our audit and we can say whether  
6 or not it's prudent, all of these costs are prudent?

7 MR. DOTTHEIM: Well, I don't know that  
8 the Staff is objecting to that -- to that because the  
9 Staff is saying that we haven't completed an audit.

10 COMMISSIONER MURRAY: Right. And that  
11 would be whether or not we're looking at March 31 or  
12 April 30?

13 MR. DOTTHEIM: That's right.

14 COMMISSIONER MURRAY: So that's not  
15 changed regarding --

16 MR. DOTTHEIM: That's -- that's correct,  
17 Commissioner.

18 COMMISSIONER MURRAY: Okay. Thank you.

19 MR. DOTTHEIM: Yeah. And -- and, in  
20 fact, going back to that other case I had mentioned,  
21 ER-85-43, when -- when KCP&L pulled that case, it  
22 said -- in its filing letter where it pulled that  
23 case and said it was going to refile, it said that it  
24 was going to refile so as to permit the Staff to be  
25 able to complete its audit of Wolf Creek.



1 return, but also the depreciation on that. And it --  
2 the numbers that I gave you first off were a total  
3 company number. Since we're talking about the KCP&L  
4 case, we'd be talking about 70 percent of that is  
5 KCP&L's share. As far as the effect on rates,  
6 70 percent would be included in rate base. You would  
7 have a rate of return on that plus depreciation on  
8 that.

9 MR. MILLS: Mr. Chairman, if I could  
10 jump in here real quick. I think the -- the numbers  
11 on Exhibit 2 are really not comparable to the budget  
12 numbers for Iatan 1. These are joint and common cost  
13 numbers, and they may be somewhat similar to the  
14 current costs for the Iatan 1 improvements, but these  
15 aren't the same. This is a whole different topic  
16 that's on Exhibit 2.

17 MR. DOTTHEIM: Correct.

18 MR. WILLIAMS: Commissioner, those would  
19 pertain to things like there's a common stack with  
20 two flues, one for each unit.

21 MR. DOTTHEIM: Chimney.

22 MR. WILLIAMS: Chimney, okay. That's  
23 the type of problem -- I mean, that's an example of  
24 the type of problem we're talking about with common  
25 property.

1                   CHAIRMAN CLAYTON: Well, I guess I  
2 just -- I'm trying to get a handle on how much --  
3 what -- what is the impact on the revenue requirement  
4 on this dispute?

5                   MR. ZOBRIST: Well, Judge, it is --  
6 Commissioner, it is significant. And without going  
7 into what they specifically represent, whether it's  
8 Iatan 1 or 2 or the common cause or other elements of  
9 the rate of case, they are significant. They are  
10 significant dollars.

11                   MR. MILLS: And just for ball park, I  
12 mean, if you talk about \$100 million times, you know,  
13 roughly at 11 or 12 percent pretax return -- I'd have  
14 to get a calculator out to do that, but that's the --  
15 that's the kind of number you're talking about.

16                   CHAIRMAN CLAYTON: Well, 10 percent of  
17 ten -- of \$100 million is \$10 million, right?

18                   MR. MILLS: Yeah, that's the --

19                   CHAIRMAN CLAYTON: Last I heard.

20                   MR. MILLS: That's the -- yeah, that's  
21 the ball park number that we're talking about on this  
22 issue.

23                   CHAIRMAN CLAYTON: Okay. Okay. Well,  
24 then -- then, my follow-up question to that is, I  
25 mean, what is anticipated to be the potential for

1 additional amortizations in this case to get an idea  
2 of a comparison of the dollars since there are going  
3 to be additional dollars proposed to -- to help in  
4 the regulatory plan? Do we have any idea what those  
5 numbers are, what they suggest?

6 MR. FISCHER: Judge, at this point, the  
7 company's position is at the end of the day, there's  
8 not going to be a regulatory amortization  
9 given, the revenue requirement in the traditional  
10 case.

11 CHAIRMAN CLAYTON: Oh, so -- so the  
12 company thinks there won't be my need for additional  
13 amortization?

14 MR. FISCHER: That's correct.

15 CHAIRMAN CLAYTON: Now, that would  
16 potentially be impacted by --

17 MR. FISCHER: Well, it will be the  
18 amount. It won't be anything new.

19 CHAIRMAN CLAYTON: There'd be no  
20 increase?

21 MR. ROGERS: No increase, yes. What  
22 the -- yeah, as coming out of this case.

23 CHAIRMAN CLAYTON: How much is included  
24 in rates right now in additional amortizations? Is  
25 that a public number?

1                   MR. WOODSMALL: It's approximately 50  
2 million a year, if I recall correctly.

3                   MR. FISCHER: I'm being told 50.

4                   CHAIRMAN CLAYTON: So if we disallow  
5 this and we just kept the March 31 deadline, does  
6 that mean the additional amortizations would go up by  
7 that much, by ten million? And so does it really  
8 matter, I guess, is what I'm trying to figure out?

9                   MR. WOODSMALL: Well, first off, I'm  
10 warning against grasping on to the \$10 million  
11 figure. Mr. Mills just threw out a calculation. If  
12 it's 100 million, then it'd be ten million. What  
13 we're talking here is a total company Iatan 1 amount  
14 of 376 million plus there's also issues about the  
15 magnitude of common costs that would -- could be over  
16 and above that.

17                   So the \$10 million figure that he was  
18 calculating is just a hypothetical. So we're talking  
19 about numbers greatly in excess of 100 million if  
20 that makes any sense to you.

21                   CHAIRMAN CLAYTON: You-all agree with  
22 that?

23                   MR. ZOBRIST: Yes.

24                   CHAIRMAN CLAYTON: Thanks, guys.

25                   JUDGE STEARLEY: Well, any other

1 questions for Mr. Williams?

2 (NO RESPONSE.)

3 JUDGE STEARLEY: Okay. Thank you,  
4 Mr. Williams.

5 MR. WILLIAMS: Thank you.

6 JUDGE STEARLEY: Office of Public  
7 Counsel, Mr. Mills. Do you have anything else you'd  
8 like to add?

9 MR. MILLS: I do, but by your leave,  
10 I'll have Mr. Woodsmall go next and then I'll go  
11 after him, if that's all right with you.

12 JUDGE STEARLEY: That's perfectly fine.  
13 Mr. Woodsmall?

14 MR. WOODSMALL: Thank you and good  
15 morning. My opening statement has been trashed by  
16 now, so I'm going to be jumping around to try and  
17 answer some questions and I'll try and get back to  
18 point.

19 First off, I want to discuss briefly for  
20 you just kind of a glossary of the things we're  
21 talking about. One of the terms you've heard up till  
22 now is historical test year. Now, it's important to  
23 understand what a historical test year is.

24 Historical test year is the period of  
25 time at which the company's books are audited. And

1 what you're doing is auditing those books to  
2 determine a relationship between revenues and  
3 expenses and rate base and taxes and all those  
4 things. And you put them together and you determine  
5 based upon that 12-month period how much of an  
6 increase do they need.

7 Not only do you do that, but you also  
8 look at the historical test year to see, okay, is it  
9 going to be reflective of the period of time in which  
10 rates are in effect. That's the historical test  
11 year.

12 True-up, on the other hand, is a period  
13 for in the future from that, closer in time. And  
14 you're looking at the same interrelationship to  
15 determine if there is a need for a rate increase, but  
16 you're doing it at a forward period in time so you've  
17 reduced regulatory lag.

18 So it's important to understand that  
19 true-up is not a statutory requirement. This was a  
20 regulatory concession. This was a tool created by  
21 the Commission done to minimize regulatory lag, done  
22 to convenience the parties.

23 So while a true-up has been used, it is  
24 always important to recognize that a true-up should  
25 also accommodate the fundamental consumer



1 protections, things like the need for the audit, the  
2 need for due process. So even though we're talking  
3 about a true-up, always keep in mind that you have to  
4 still accommodate consumer protections within the --  
5 within the context of that true-up.

6                   As an initial matter, we have no  
7 problems with true-up audits in hearings. The tool  
8 provides an effective method for minimizing  
9 regulatory lag. That said, we do object to any type  
10 of true-up that does not accommodate consumer  
11 protections.

12                   With that said, I just wanted to spend a  
13 little bit of time discussing with you the four  
14 options for handling this case as I see them. The  
15 first option. The Commission could accept the  
16 company's position and conduct a true-up for capital  
17 costs through April 30th knowing that an audit of  
18 those costs would be impossible.

19                   You've heard the Staff say today we  
20 can't do an audit for April 30th. The target's been  
21 moving, the numbers are changing, we can't get an  
22 audit done. The company's saying, tough, we need to  
23 get -- we have financial implications here and we  
24 need to get that into rates. So do the true-up, no  
25 audit.

1                   This option would allow the company to  
2 increase rates for the cost of Iatan 2 environmental  
3 projects, but would not allow for an audit of the  
4 prudence of the costs to be included in rates. So  
5 that's the first option, a true-up with no  
6 construction audit. That's the company's position.

7                   The second option. The Commission can  
8 order an additional suspension period in order to  
9 accommodate the prudence audit. This would give  
10 consumers the protection of only paying rates that  
11 are based upon prudent costs. The downside of this  
12 option is that the company would be delayed in  
13 reflecting those costs in rates. Second option.  
14 Further suspension to allow a construction audit.

15                   Third option. Recognizing that an audit  
16 of construction costs is not possible before the  
17 tariff effective date, the Commission could merely  
18 cancel the true-up and base rates on the historical  
19 test year. Again, this gives consumers the  
20 protection of knowing -- or the comfort of knowing  
21 that costs are -- are prudent and only those costs  
22 would be included in rates. The downside again, the  
23 company would have to file a new rate case to  
24 incorporate the costs of capital projects. So that's  
25 the third option, no true-up, just reliance on the

1 test year.

2                   The fourth option was the option the  
3 Commission -- that was the option the Commission --  
4 Commission initially grasped ahold of was an interim  
5 subject to refund as reflected in the March 18th  
6 order. This option appears to be the best of both  
7 worlds. The company would get to reflect its  
8 construction costs in rates and get to begin  
9 collecting those rates.

10                   The customers, on the other hand,  
11 understand that if it is subsequently determined that  
12 any amount of these construction costs are imprudent,  
13 they could get a refund. Again, this seems to  
14 accommodate all the parties' concerns. But the  
15 companies have claimed that it is unlawful for the  
16 Commission to act in this manner. Instead, the  
17 company seeks to force the Commission to choose from  
18 among the other three less palatable options. That's  
19 the interim subject to refund proposal. Those are  
20 the four proposals.

21                   Now, what you've heard is the company  
22 say that the fourth one is unlawful. You've heard  
23 Staff even concede in that. Now I'm going to suggest  
24 that there is a method for doing that, for doing the  
25 interim subject to refund and doing it in a lawful

1 manner.

2                   The company and Staff believes it's  
3 unlawful because interim subject to refund has always  
4 been ancillary -- that's the word used by the Supreme  
5 Court, I believe it was -- ancillary to a permanent  
6 rate case. And so if the permanent rate case is not  
7 pending if you issue orders, how can you do interim  
8 subject to refund since it's ancillary?

9                   One of the options available to you is  
10 to suspend the tariffs for a sufficient period of  
11 time to allow the construction audit, but connected  
12 with that, allow the interim subject to refund. It  
13 would still be ancillary to the permanent rate  
14 increase. So there is a way to make that work.  
15 There is a way to get around the companies trying to  
16 force your hand on this issue.

17                   So that's just what I'd ask you to  
18 consider, those different options. You need to  
19 maintain the customer protections that are in this  
20 case, the true-up audit and the true-up hearing so  
21 that we can accommodate due process concerns.

22                   Now, to get to a quick question that was  
23 asked earlier, you asked about the difference between  
24 this and the Empire case. The Empire case was vastly  
25 different. What you had in the Empire case was a

1 capital project, an SER that was on budget, that was  
2 already completed and the in service criteria had  
3 been met. You came into the hearing, all those  
4 things were done. All you did was order the parties  
5 to go up and do a true-up.

6                   What had happened was, the date had  
7 passed and it was just a matter of a date. You know,  
8 they missed it because of something beyond their  
9 control, and so the Commission just said, okay, we're  
10 just going to move that date, go out and look at it.  
11 But the in service criteria had been met, the books  
12 were closed, the thing was in service and it was on  
13 budget. So it's vastly different.

14                   What we have here is something that at  
15 latest numbers was 108 million over budget, at least  
16 25 percent over budget. We have a capital project  
17 that is still not in service and has continued to  
18 change over the last two months. So it's vastly  
19 different than the -- than the situation we found in  
20 the Empire case. So don't use that as a guide.

21                   I'll answer any questions you may have.

22                   JUDGE STEARLEY: Commissioner Murray?

23                   COMMISSIONER MURRAY: Mr. Woodsmall,  
24 isn't it true that all of the parties knew from at  
25 least 2005 that the Iatan 1 improvements were to be

1 considered for inclusion in this rate case?

2 MR. WOODSMALL: Absolutely. All the  
3 parties knew that Iatan 1 improvements were supposed  
4 to be handled in this case to the extent the company  
5 filed a case. So when they filed a case, it was  
6 supposed to be handled. I think what everybody did  
7 not understand was the complexity of including those.  
8 True-ups up till now have typically focused on  
9 expense items. You've seen items like what are the  
10 number of employees that the company have, what is  
11 the fuel price, is it focused on expense items.

12 Here we're dealing with a true-up to  
13 accommodate a capital improvement, a capital  
14 improvement that involves multiple contractors,  
15 that -- that involves -- involves several, several  
16 years, that involves changing -- changing costs  
17 because of changing engineering points in time.

18 So while this case was always understood  
19 to be the Iatan 1 environmental case, I don't think  
20 anybody understood the -- the complexities of trying  
21 to handle that in the course of a two-day true-up  
22 hearing.

23 COMMISSIONER MURRAY: So would your  
24 position be any different if the improvements had  
25 been completed prior to March 30th -- completed and

1 in service prior to March 31?

2 MR. WOODSMALL: Our position early on  
3 was that a March 31 date was ambitious, that it would  
4 give an abbreviated period of time to conduct an  
5 audit. That said, it was always our party's  
6 intention -- our client's intention to rely upon  
7 Staff to do the audit. We did not have the resources  
8 to do such an audit. But what has come to fruition  
9 is that it was an abbreviated schedule, it was  
10 ambitious to try to have anybody do a construction  
11 audit of something that was changing so drastically  
12 up until even now.

13 COMMISSIONER MURRAY: But when a company  
14 needs to file a rate case and time it based upon the  
15 improvements that they're making, whether they're  
16 capital improvements or whatever they are, the audit  
17 would always have to coincide with that, would it  
18 not, I mean, to be included in a rate case?

19 MR. WOODSMALL: The --

20 COMMISSIONER MURRAY: And assuming that  
21 the true-up period were as it was originally set.

22 MR. WOODSMALL: What always has to  
23 happen is that the capital improvement will go into  
24 service sometime in advance of the rates. The  
25 question presented by this is how far in advance.

1 And what I'm telling you is it has to be sufficiently  
2 at a point in advance of that tariff effective date  
3 to allow for this construction audit.

4 This whole case is about how close can  
5 we push those two together, the in service date and  
6 the tariff effective date. And what I'm telling you  
7 is, we've pushed them so close that we can't get a  
8 construction audit done, and we're asking you to do  
9 something to get more time in there. Either, as  
10 Staff says, leave the date further in advance or push  
11 the tariff-effective date. We need give on one end  
12 or the other. We can't take the company's proposal  
13 that has these two so close together in time so that  
14 a construction audit can't occur.

15 COMMISSIONER MURRAY: So your  
16 suggestion, I believe, if I heard it correctly, was  
17 that the tariffs be suspended and -- to allow for a  
18 sufficient time for an audit, and in the meantime,  
19 make rates interim subject to refund.

20 MR. WOODSMALL: Let me clarify. What I  
21 laid out was four -- were the four options that the  
22 Commission had before them. One of the options that  
23 I said the Commission could do is leave -- make the  
24 permanent case, suspend that out far enough and do  
25 interim subject to refund while this case is still



1 pending. That gets around the company's unlawfulness  
2 proposal. It also allows for sufficient time for a  
3 construction audit and the other consumer  
4 protections.

5 COMMISSIONER MURRAY: How does that  
6 differ from what I just said you proposed?

7 MR. WOODSMALL: Well -- and I don't know  
8 that it did. I -- I was clarifying my position  
9 because I didn't know if I completely grasped what  
10 your question was.

11 COMMISSIONER MURRAY: You said extend  
12 the date which -- meaning -- meaning suspend the  
13 tariff, right?

14 MR. WOODSMALL: Extend the tariff  
15 effective date, yes, whether that's through some  
16 voluntary action of the company as has occurred up  
17 till now or a suspension by the Commission.

18 COMMISSIONER MURRAY: I'll be interested  
19 in hearing responses to that. Thank you.

20 MR. WOODSMALL: You're welcome.

21 JUDGE STEARLEY: Commissioner Jarrett?

22 COMMISSIONER JARRETT: Good morning,  
23 Mr. Woodsmall.

24 MR. WOODSMALL: Good morning,  
25 Commissioner.

1                   COMMISSIONER JARRETT: I guess my only  
2 question is can't we decide all those issues in the  
3 rate case without setting them out as preconditions  
4 in our order that we issued before?

5                   MR. WOODSMALL: I -- to the extent I  
6 understood what Staff's suggest -- proposal was in  
7 the Commission's adoption of that proposal, I believe  
8 certain of those conditions, I believe it was B, C, D  
9 and E, could certainly be done at some later point in  
10 time. The interim subject to refund in my mind  
11 provides the parties, the consumers the knowledge of  
12 knowing that you're not just going to put this into  
13 rates without some consumer protection. That could  
14 be done at a future period in time, yes.

15                   COMMISSIONER JARRETT: All right. I  
16 believe Staff agreed with the company that that  
17 either had to be done with an evidentiary hearing or  
18 with agreement by the company; is that correct?

19                   MR. WOODSMALL: That's what -- that's  
20 what Staff said. What -- what I was attempting to  
21 say in response to Commissioner Murray was that there  
22 is a way to do that without the company's consent;  
23 that is, you suspend the tariffs of this case for a  
24 period of time so that the interim subject to refund  
25 is still ancillary to a permanent case. You can't

1 have interim subject to refund without a permanent  
2 case still pending.

3 COMMISSIONER JARRETT: Thank you. No  
4 further questions.

5 JUDGE STEARLEY: Commissioner Gunn?

6 COMMISSIONER GUNN: So -- so your  
7 proposal would work where you would go ahead and  
8 allow the date to be moved to April 30th and -- and  
9 then you would push the date to whatever Staff says  
10 they could complete the audit, which today was  
11 obviously somewhere past October 5th from what  
12 Mr. Dottheim said.

13 And then kind of in the middle of the  
14 proceeding or concurrent to the proceeding, have an  
15 evidentiary hearing on interim rates so you -- you  
16 wouldn't -- as I understood, the Staff said you  
17 couldn't have the interim rate subject to refund  
18 without consent or an evidentiary hearing. So you  
19 would make it lawful by having a concurrent -- a  
20 concurrent evidentiary hearing?

21 MR. WOODSMALL: I believe that's  
22 correct. You would need an evidentiary hearing so  
23 that you knew the amount of rates to make interim  
24 subject to refund, if that's what your question was.

25 COMMISSIONER GUNN: It would be a

1 smaller percentage of whatever was going on in the --  
2 in the traditional case?

3 MR. WOODSMALL: Right.

4 COMMISSIONER GUNN: I don't think I have  
5 any more questions. Thank you.

6 JUDGE STEARLEY: Chairman Clayton?

7 CHAIRMAN CLAYTON: Mr. Woodsmall, so  
8 basically, you're saying that -- that -- that we  
9 would render a decision in this case, but we would  
10 keep it open, it wouldn't become a final decision,  
11 we'd enter an order that would be interim subject to  
12 refund and the case -- the company would get some  
13 sort of rate increase that would be inclusive of a  
14 certain number of the components that -- that are  
15 being litigated here, and then the case would proceed  
16 to an additional hearing down -- down the line that  
17 would fully resolve the issue with a final Report and  
18 Order at some point, as Commissioner Gunn said,  
19 sometime in the fall; is that correct?

20 MR. WOODSMALL: Right. And what would  
21 be another part of that final Report and Order is if  
22 you found some amount of costs to be imprudent, some  
23 order to the company to refund X amount based upon  
24 our imprudency finding.

25 CHAIRMAN CLAYTON: Okay. Okay. Does --

1 can I ask Staff, do you-all have an opinion on that  
2 proposal?

3 MR. DOTTHEIM: We haven't visited  
4 amongst ourselves regarding that -- that proposal.

5 CHAIRMAN CLAYTON: Would it be workable,  
6 I guess? Let me ask you -- let me ask the question  
7 that way.

8 MR. DOTTHEIM: That, I think, would be  
9 best answered after we've consulted internally. I  
10 certainly think you would want to ask the company,  
11 which I anticipate you would because that would have  
12 definite implications for their Callaway -- excuse  
13 me.

14 CHAIRMAN CLAYTON: Don't bring that in  
15 here.

16 COMMISSIONER JARRETT: I didn't bring  
17 that up.

18 MR. DOTTHEIM: At least I didn't say  
19 Southwestern Bell. That would have definite  
20 implications for their Iatan 2 case. And as a  
21 consequence, I -- I think you best visit with -- with  
22 them on that matter alone if for no other reason.

23 COMMISSIONER GUNN: Can I ask a  
24 question, Mr. Chairman? Because I think the question  
25 is -- is, A, would you consider that to be lawful and

1 -- and, B, they're giving you -- let's -- let's  
2 answer that because I think that's part of a -- part  
3 of a question. Would that be in your mind a lawful  
4 way to do this?

5 MR. DOTTHEIM: Yes, I think that --  
6 that -- that would be lawful. If my memory serves  
7 me, I believe KCPL filed its tariffs with an  
8 effective date of August 5, 2009, which means they  
9 could be suspended for an additional 11 months, which  
10 would carry the operation of law date to  
11 approximately July 5, 2010, if I am not mistaken.

12 And if -- I think Mr. Woodsmall was  
13 referring then to the Commission issuing an order  
14 interim subject to refund within that -- that time  
15 frame which would make it a traditional type of order  
16 the company would -- if it were to be truly  
17 traditional, the company would file an additional  
18 rate case with a different number. But yes, I think  
19 something could be adopted that would be within the  
20 traditional bounds.

21 What the Staff had otherwise  
22 contemplated was something possible that was not  
23 traditional, that was not an ancillary case to a  
24 permanent rate case that is contemplated within the  
25 State ex rel Laclede case, the 1976, I believe,

1 Supreme Court decision which indicates that there may  
2 be some standard other than an emergency standard for  
3 interim rate relief. But KCPL might even qualify for  
4 the interim standard that presently exists. I don't  
5 know. But there -- there is that -- that language in  
6 the Supreme Court decision.

7 COMMISSIONER GUNN: Sorry.

8 CHAIRMAN CLAYTON: Take -- take your  
9 time.

10 I want to ask -- I want to give the  
11 company a chance to respond to this suggestion about  
12 an interim order in the case followed by additional  
13 hearings or -- or litigation or additional  
14 proceedings on the extra amounts.

15 MR. ZOBRIST: Well, Judge, I'd like to  
16 hear all my other adversaries before I get up, but I  
17 can tell you we are adamantly opposed to that,  
18 adamantly opposed to that. This is not a big deal.  
19 We're asking for 30 days and 30 days on the other  
20 end. And I've got a few other points I'd like to  
21 make, Mr. Chairman.

22 CHAIRMAN CLAYTON: Please, or do you  
23 want to wait till --

24 MR. ZOBRIST: I'm going to wait till  
25 I --

1                   CHAIRMAN CLAYTON:  -- save -- save it  
2 for your rebuttal?

3                   MR. ZOBRIST:  Yes, thank you.

4                   CHAIRMAN CLAYTON:  Okay.

5                   MR. DOTTHEIM:  And Chairman, the -- the  
6 Staff -- the Staff is not proposing -- and  
7 Commissioner Gunn, the Staff is not proposing that --  
8 that alternative.

9                   CHAIRMAN CLAYTON:  Okay.  I don't think  
10 I have any other questions.

11                   JUDGE STEARLEY:  Any other questions for  
12 Mr. Woodsmall?

13                   COMMISSIONER MURRAY:  If we were to buy  
14 into the position that there were -- there was not  
15 enough time to do an adequate audit, and it appears  
16 to me that that's the parties' -- it's your position,  
17 that's the Staff's position, we've not yet heard from  
18 the other parties, but I would be surprised if it's  
19 not their position also, that the -- time would have  
20 been insufficient to do an audit had the March 31  
21 true-up period remained in effect, correct?

22                   MR. WOODSMALL:  I believe that's  
23 correct, and the best evidence of that is the fact  
24 that when Staff filed their direct testimony in this  
25 case back in February, they realized that and they



1 put the interim subject to refund condition in their  
2 direct testimony.

3 COMMISSIONER MURRAY: And if we were to  
4 buy into that, then we would be establishing a  
5 procedure here whereby in a traditional rate case  
6 with a true-up period set in advance that would allow  
7 parties who objected to some portion of whatever the  
8 company was asking for in rates to say there was  
9 insufficient time here to complete an audit, so at  
10 least a portion of these rates in this rate case in  
11 which we are considering every -- every item, some of  
12 that's got to be interim subject to refund. And that  
13 would be a complete variance from the way that we do  
14 our traditional rate cases here, would it not?

15 MR. WOODSMALL: Well, two points:  
16 First, if you're saying could a party attempt to gain  
17 this, sure, they could attempt to. That's why we  
18 have the Commission, to try and see through that.  
19 The second point being that this is a different beast  
20 than what you do in normal true-ups. As I said  
21 before, normal true-ups involve what is the parties'  
22 gas prices going forward, what are the number of  
23 employees, what is some other expense.

24 True-ups are typically associated with  
25 expense items. And even when they're associated with

1 capital items, it's usually a turnkey type of thing,  
2 like we put in a CT, we bought it, we know what the  
3 cost is. I don't believe we've ever had a true-up of  
4 a capital project in which the company has actively  
5 managed a huge capital addition like this.

6                   So to your point, yes, a company  
7 could -- or a party could attempt to gain it; second,  
8 I don't find that to be very likely because you would  
9 be able to say these are just expense items, we deal  
10 with true-up of expense items all the time.

11                   COMMISSIONER MURRAY: But wouldn't it be  
12 normal for a company that had a large capital  
13 expenditure planned to time their rate case so that  
14 that capital expenditure could be completed and in  
15 service prior to the end of the true-up period?  
16 Wouldn't that be the way that a company would  
17 normally conduct --

18                   MR. WOODSMALL: When you say "normal,"  
19 it's -- it's important to recognize that  
20 historically, true-ups have not been used for this  
21 type of project. We haven't had these type of  
22 projects for 25 years. If you go back to when  
23 electric utilities were adding generation plants, the  
24 Iatan plants, the Wolf Creek plants, the Callaway  
25 plants, those were all added with a historical test

1 year.

2                   What has happened since those cases is  
3 we've introduced the tool of the true-up, and those  
4 true-ups have generally been used for expense items  
5 and CTs, turnkey type items. They haven't been used  
6 yet for large coal-fired generation where the  
7 prudence of cost is a much more difficult  
8 determination than it is for just adding a single CT.

9                   COMMISSIONER MURRAY: So basically,  
10 you're proposing that we not use true-up periods for  
11 these large capital expenditures that are likely to  
12 be occurring on a frequent basis?

13                  MR. WOODSMALL: That's not what I said.  
14 In fact, at the very beginning, I said we have no  
15 problems with true-ups as long as you allow  
16 sufficient time for the construction audit.

17                  COMMISSIONER MURRAY: But how can you  
18 allow sufficient time for the construction audit if  
19 the completion and in service date occurs during the  
20 true-up period?

21                  MR. WOODSMALL: You can't put the tariff  
22 effective date and the in service date so close  
23 together. There will always be, by necessity, some  
24 amount of regulatory lag. And I don't blame the  
25 company. They're trying to minimize that. I don't

1 blame them. That's the prudent stockholder proposal  
2 is to try and minimize that time.

3                   What I'm telling you is from a consumer  
4 standpoint, the time between an in service date and  
5 the tariff effective date has to be sufficient to  
6 allow a construction audit. And the more you tighten  
7 that, as we've seen in this case, the more you try to  
8 push those two together, the more problems you're  
9 going to have. And that's why we're here today,  
10 because we've pushed those two too close.

11                   COMMISSIONER MURRAY: And what is not  
12 too close?

13                   MR. WOODSMALL: It will differ on the  
14 case and it will differ on the amount of other cases  
15 going on at the time. If -- what we have are four  
16 different cases going on. We have MGE coming in, we  
17 have Ameren saying they're going to come in. So  
18 if -- if it was like Kansas, Kansas doesn't have this  
19 problem because they're just dealing with the one  
20 KCP&L case, they don't have all the Aquila cases.

21                   So if the parties are only dealing with  
22 a single case, they can get the audit done in a  
23 shorter period of time than they can in a situation  
24 like we have now where we're dealing with multiple  
25 cases. So it would be a case-by-case determination,

1 is what I'm telling you.

2 COMMISSIONER MURRAY: And it would be  
3 more likely to be the scenario you're proposing here  
4 because going forward, we're more likely to be  
5 dealing with several cases at once, several large  
6 cases at once, are we not?

7 MR. WOODSMALL: Well, it kind of looks  
8 like that's the mode we're in right now.

9 COMMISSIONER MURRAY: Thank you.

10 MR. MILLS: Judge, if I may add a little  
11 bit to that answer. I think one of the things that's  
12 different here is that, you know, not only do we have  
13 all the time concerns that Mr. Woodsmall is talking  
14 about in general, but we have a project that is at  
15 least six or seven months beyond the time it was  
16 originally projected to be complete in the regulatory  
17 plan and at least 25 percent over budget.

18 And I think typically -- for example,  
19 the Empire case. The project came in almost on time  
20 and on budget, and so you didn't have, going in,  
21 reason to be concerned about there being prudence  
22 problems. I think here we have indications just from  
23 those two factors the fact that it's so far behind  
24 and it's so far over budget that we think that there  
25 may be questions of prudence, and I think that's

1 unusual. We haven't seen much of that since nuclear  
2 plants were built in this -- in this state.

3                   So I think that's -- that's reason to  
4 look at this case differently from what we had --  
5 we've had in the past and what we can expect in the  
6 future. We have some indication that there is a need  
7 to look deeply into the question of prudence. Thank  
8 you.

9                   COMMISSIONER MURRAY: And -- and those  
10 two factors are the delay beyond the original  
11 projected construction date or completion date and  
12 the amount over budget?

13                   MR. MILLS: Yes.

14                   COMMISSIONER MURRAY: Okay. Thank you.

15                   JUDGE STEARLEY: Mr. Mills is next up  
16 for his argument.

17                   MR. MILLS: You know, Judge, given that  
18 we've been going almost two hours and I think  
19 everybody's covered just about everything I had in my  
20 prepared remarks, I'll just -- I'll just hit a couple  
21 of topics and -- and then open up for questions.

22                   JUDGE STEARLEY: Okay. Let me first  
23 make sure -- Mr. Woodsmall, is there any other  
24 questions for Mr. Woodsmall?

25                   (NO RESPONSE.)

1 MR. WOODSMALL: Thank you.

2 JUDGE STEARLEY: Thank you,  
3 Mr. Woodsmall.

4 MR. MILLS: I think -- and I'm just  
5 building off of what -- what I was just mentioning to  
6 Commissioner Murray. I think one of the things  
7 that's going on here, and maybe, you know, from the  
8 company's perspective, they're not giving you this  
9 perspective, so let me give you mine.

10 I think what's going on here is that we  
11 have -- we have a plant that has not been able to  
12 meet the in service date and the parties are  
13 struggling to come up with a mechanism to allow the  
14 company to recover in rates some or most of the costs  
15 of that plant if it -- if it does eventually, albeit  
16 somewhat late, demonstrate that it's in service.

17 It's an unusual situation because under  
18 normal ratemaking, if it misses the in service date,  
19 it's just not included in rates. We're trying to  
20 find a way to allow the company to recover some of  
21 the costs of that.

22 The company is, judging from -- from  
23 Mr. Zobrist's brief remarks just a moment ago, I  
24 think we stridently oppose any type of interim rates,  
25 but I can't think of a better mechanism to allow the

1 company to recover money that it may be entitled to  
2 and still allow customers some kind of -- some kind  
3 of protection.

4           And I think one of the reasons that the  
5 company is -- is so adamantly opposed to having any  
6 of its rates recovered subject to refund is because  
7 it thinks it can get a better result out of you.  
8 Right now it thinks it can -- it can get you to go  
9 to, you know, the April 30th date and the -- and the  
10 September 5th date for effective dates -- effective  
11 date of rates and -- and be done with it.

12           And that's -- that's a -- in a normal  
13 case, that might be a perfectly acceptable solution.  
14 The problem is in this case, we have a hugely  
15 complicated air quality system upgrade to Iatan 1  
16 that's way late, way over budget, coming in perhaps  
17 in service the middle of this month if things go  
18 well, you know, with a -- with a -- a true-up hearing  
19 just a -- a few short months from now.

20           And as everyone has told you, that --  
21 that, under these circumstances is not enough time to  
22 allow the parties to conduct an audit of the entire  
23 construction project. It just -- it just can't be  
24 done in that amount of time.

25           So I think if we're -- if we are to



1 allow the company some rate relief based on the  
2 Iatan 1 project, there has to be some sort of an  
3 unusual accommodation to allow that to happen while  
4 still maintaining customer protections. And I -- you  
5 know, the company opposes it, but I can't think of a  
6 better way to do that than having the Commission  
7 extend the effective date of the tariffs which it can  
8 do for, with all due respect to Mr. Dottheim, 120  
9 days plus six months by statute which comes out to be  
10 approximately ten months rather than 11, but that  
11 gets you to -- to roughly, what is that, June 5th of  
12 2010 which would certainly be enough time for the  
13 Staff and the other parties to -- to do an adequate  
14 construction audit.

15                   And I think in the interest of time, I  
16 will stop there and take any questions.

17                   JUDGE STEARLEY: All right, Commissioner  
18 Murray, any more questions for Mr. Mills?

19                   COMMISSIONER MURRAY: Just -- just one.  
20 And I'm -- I'm assuming that your position is also  
21 that had the March 31 true-up date, had it been in  
22 service by then, your position would still be that  
23 there was not adequate time for an audit?

24                   MR. MILLS: Well -- and again, I'll go  
25 back to the fact that this isn't typical. If the --

1 if the -- if the project had come in -- you know, if  
2 March 31 had been the original projected date and the  
3 project had come in under budget so that there  
4 weren't sort of these -- these built-in red flags  
5 that made us concerned that there may be imprudence,  
6 then perhaps a prudence audit -- audit wouldn't have  
7 to take so long, wouldn't have to be in as much  
8 detail, and if possible, it could have been done. I  
9 think because of the red flags that have been raised,  
10 the prudence audit has to be more detailed than --  
11 you know, than a normal one would be on -- on a --  
12 you know, putting a CT in service, for example.

13                   There's -- there's reason to think you  
14 have to dig a lot in -- into those -- those numbers  
15 because of the fact that it wasn't done on March 31.

16                   So I think as the circumstances have  
17 developed, yes, I think now we know that March 31  
18 with a -- with a -- an August 5 effective date  
19 wouldn't have been enough time, but if it was a  
20 project that had been, you know, brought in on time  
21 and on budget, yeah, that may have been enough time.

22                   COMMISSIONER MURRAY: Okay. Thank you.

23                   JUDGE STEARLEY: Commissioner Jarrett?

24                   COMMISSIONER JARRETT: Yes. Mr. Mills,  
25 my question is, even if we don't impose interim --

1 interim rates, I mean, Staff could still do a  
2 construction audit, and if they find that some costs  
3 were not prudent, couldn't they file a complaint?

4 MR. MILLS: They could, but complaints  
5 typically take longer than -- than rate-increase  
6 cases, and by then, you know, the rates would have  
7 been collected pursuant to the order that the  
8 Commission issues in this case, and there's no way to  
9 get them back if they weren't made interim subject to  
10 refund. But going forward, you could lower rates,  
11 but that's unlikely to be helpful for a year or so,  
12 perhaps well in excess of a year given the time that  
13 it usually takes to process a complaint.

14 COMMISSIONER JARRETT: Okay. Thank you.

15 JUDGE STEARLEY: Commissioner Gunn?

16 COMMISSIONER GUNN: I just -- I just  
17 want to try to get some -- some clarity here. It  
18 seems to me that we're -- we're dealing with what at  
19 least you guys consider to be a fundamental flaw  
20 where we are right now. So this -- so -- so the 30  
21 days that we're talking about here, whether we grant  
22 that or not, doesn't appear to fix what you believe  
23 is the fundamental flaw in this, which is that a full  
24 construction audit couldn't -- couldn't be done.

25 MR. MILLS: That's certainly a flaw. I

1 mean, it -- just extending the tariff date by 30 days  
2 and -- and the tariff effective date by -- by 30 days  
3 allows the in service criteria, hopefully, to be met.

4 COMMISSIONER GUNN: Right.

5 MR. MILLS: And so that -- I mean,  
6 that's a problem that we had in the -- in the  
7 original schedule that sticks by this. But the other  
8 flaw is the prudence audit, and that wouldn't fix  
9 that part.

10 COMMISSIONER GUNN: Because -- because  
11 in the big -- in the big scheme of things, 30 days  
12 may not be a -- may not be a big deal if -- if we  
13 thought it -- you thought -- you thought everything  
14 was going fine. As you said, the red flags, if the  
15 red flags weren't there, the 30 days on either end  
16 wouldn't be a big deal for you.

17 MR. MILLS: Right.

18 COMMISSIONER GUNN: So there is -- so --  
19 so really we're talking about a different issue than  
20 the 30 days.

21 MR. MILLS: Yeah.

22 COMMISSIONER GUNN: And that's what --  
23 what I'm -- what I'm starting to --

24 MR. MILLS: Yeah.

25 COMMISSIONER GUNN: -- you know, you

1 come into these things and you realize that things  
2 aren't really about what they're -- they purport to  
3 be about.

4 MR. MILLS: Yeah, there -- there's 30 --  
5 I mean, there's -- they are really two different  
6 questions: One is, is it going to meet the in  
7 service criteria by a certain date, and that's really  
8 more operational. Does it -- you know, does it run  
9 enough, you know, is it generating enough power if  
10 we're going to do whatever criteria the Commission  
11 establishes.

12 The second question is, you know,  
13 getting to that point. Did the company manage the  
14 project well enough and did it spend the appropriate  
15 amount of money or did it take too long and cost too  
16 much.

17 COMMISSIONER GUNN: So let's assume that  
18 their -- that -- that the project was on budget, and  
19 let's assume that they had this turbine issue that  
20 Staff has said they don't believe is the company's  
21 fault at this point. Hypothetical, perhaps. Then  
22 would there be as large -- as large an objection to  
23 the 30-day period of time that the company's  
24 requesting?

25 MR. MILLS: From my perspective, if

1 you've got a project that's coming in on time and on  
2 budget, you probably don't need to do as in-depth of  
3 a -- of a prudence audit as if you -- as if it's  
4 neither of those things in this case.

5                   As to whether or not that's enough time,  
6 honestly, as Mr. Woodsmall said, it's the Staff that  
7 does those audits. The other -- the other parties  
8 really don't have the resource to get in and do a  
9 construction audit. So I would let him answer that  
10 question as to whether in a normal circumstance there  
11 would have been enough time in this case. But  
12 certainly from my perspective, it would take less  
13 time to -- to audit the prudence of a project that  
14 doesn't have the red flags.

15                   COMMISSIONER GUNN: And that's what  
16 I'm -- what I'm trying to figure out because it seems  
17 that I'm hearing that -- that if this turbine  
18 incident didn't happen, Staff may not have still been  
19 able to do the audit -- or a construction audit.  
20 And -- and -- I mean, if that's the case, then that's  
21 an entirely different issue than -- than really what  
22 we're hearing our oral arguments on.

23                   MR. MILLS: Like I said, I think there's  
24 two different issues. There's -- there's the in  
25 service date issue, and then there's the prudence of

1 the expenditures issue. And you only -- you only fix  
2 one of them by moving the date to the next 30 days.

3 COMMISSIONER GUNN: And that's -- the  
4 fact -- the fact that Staff wouldn't have been able  
5 to complete an audit, even given the -- you know,  
6 everything going fine, is an issue.

7 MR. MILLS: Yes, yes.

8 COMMISSIONER GUNN: I mean, and it's --  
9 it's a -- it's almost a more fundamental issue than  
10 the one we're talking about that's being addressed in  
11 this audit.

12 MR. MILLS: Yes. And I was -- I was  
13 trying to jump in early on in this proceeding to try  
14 and highlight that question because, yeah, I think  
15 that -- that -- that is not something that has come  
16 out as clearly in the pleadings as perhaps it should  
17 have, but it's definitely a very, very significant  
18 issue.

19 And the pleading's sort of a -- and  
20 Staff's conditions were designed to sort of address  
21 that question, but it may be that we didn't frame the  
22 issue as well as we did and just, you know, threw out  
23 some solutions rather than explaining why there's a  
24 problem.

25 COMMISSIONER GUNN: I will -- I will

1 probably agree with you there. All right. But I --  
2 it just -- it seems that again we've got -- we may  
3 need to do some more work to find out that reason.  
4 Is it a resource issue? Is it -- is it a -- I think  
5 Mr. Woodsmall has suggested that we are being overly  
6 ambitious with the resources that we have and the  
7 number of cases we have in between the -- the filing  
8 and maybe we need to take a look at other mechanisms  
9 in order to do what we said as to avoid regulatory  
10 lag while still giving everybody enough time to do  
11 the work that they're supposed to be doing. So I  
12 don't have any other questions. Thank you, I  
13 appreciate it.

14 JUDGE STEARLEY: Chairman Clayton?

15 CHAIRMAN CLAYTON: I don't think so.

16 JUDGE STEARLEY: All right. Before we  
17 go much further here, we've been going about two  
18 hours and I want to give my court reporter here a  
19 break soon. Let me ask real quickly, are there any  
20 other parties that wish to make oral arguments before  
21 I allow rebuttal by KCP&L?

22 (NO RESPONSE.)

23 JUDGE STEARLEY: Okay. Well, hearing  
24 none, I have one brief question for Staff, and then  
25 we'll take a ten-minute break and come back for



1 rebuttal.

2                   And then my question for Staff is, we've  
3 heard a number of references to there being  
4 insufficient time and -- with regard to lengths of  
5 suspension. So how much is enough time for this  
6 prudence review? Are you saying the Commission has  
7 to suspend this tariff for another full ten months,  
8 are you saying you can do it in one month, two  
9 months, three months, four months?

10                   MR. DOTTHEIM: I don't have an answer  
11 for you on that. I don't believe it's a matter of  
12 one or two or three months. And the Staff was not  
13 suggesting that the tariffs be suspended until the  
14 Staff completes a prudence audit of the Iatan 1  
15 environmental enhancements. The Staff was planning  
16 to address that in the next case, which the Staff  
17 believes, by law, is possible.

18                   JUDGE STEARLEY: All right. Any other  
19 questions for Staff? And then we're going to break.

20                   COMMISSIONER GUNN: Well, then,  
21 what's -- what's the point? I mean -- I mean, if  
22 you're saying that -- that -- that you can't -- you  
23 can't get this audit done within the next three or  
24 four months and you were going to deal with it in the  
25 next traditional rate case?

1 MR. DOTTHEIM: Yes.

2 COMMISSIONER GUNN: Then why do you care  
3 about the 30 days?

4 MR. DOTTHEIM: We are not just  
5 addressing Iatan 1. There are other issues involved  
6 with the true-up audit which we mentioned, off-system  
7 sales, there's also pensions; although it's related  
8 to Iatan 1 and 2 common costs. But the common cost  
9 is, in itself, not a prudence audit, and as a  
10 consequence, that is what we're attempting to  
11 address, not the prudence audit, the construction  
12 audit of Iatan 1.

13 Our position is not to obtain the  
14 necessary time to perform a prudence audit of  
15 Iatan 1.

16 COMMISSIONER GUNN: Okay. But you  
17 get -- so these other issues, are you saying this 30  
18 days they're requesting, these other issues that you  
19 have, it's impossible to do -- to deal with those  
20 issues with the additional 30 days?

21 MR. DOTTHEIM: The Iatan 1 is a  
22 complicating factor for the rest of the case and for  
23 the Staff completing its audit given the fact that,  
24 as I've previously stated, the bulk -- from our  
25 perspective, the bulk of the case is going to be in

1 the true-up. I mean, you're going to see -- I don't  
2 mean to indicate that you're not going to see issues  
3 tried starting on April 20th, but we will have major  
4 issues in the true-up as opposed to what the  
5 Commissioners generally see of no true-up hearing.

6 COMMISSIONER GUNN: All right. Thank  
7 you, sir, appreciate it.

8 MR. DOTTHEIM: In fact -- in fact,  
9 frankly, if you take a look at the Staff's accounting  
10 schedules, you'll see that the revenue requirement is  
11 not in the test year. The revenue requirement is in  
12 the update period -- excuse me -- the revenue  
13 requirement in the true-up.

14 JUDGE STEARLEY: Chairman Clayton?

15 CHAIRMAN CLAYTON: Mr. Dottheim, are you  
16 suggesting that in the test year there is no revenue  
17 requirement increase, is that what you're saying? Is  
18 that what that last point was?

19 MR. DOTTHEIM: One moment, please. Yes.  
20 Yes, the bulk of the dollars, the positive revenue  
21 requirement is in the true-up.

22 CHAIRMAN CLAYTON: So --

23 MR. DOTTHEIM: Now. Now.

24 CHAIRMAN CLAYTON: -- we have four weeks  
25 set and there's -- I mean, that's what threw me off.

1                   MR. DOTTHEIM:  When -- when you look at  
2 the remedy requirement in the case, we put in an  
3 allowance for known and measurable changes, a true-up  
4 estimate.  Some people refer to it as a plug.  And if  
5 we put that in there so that we don't create false  
6 expectations, if we have reason to believe that the  
7 case is going to go much more positive because of the  
8 true-up, we don't want to file just for the test year  
9 a low number knowing that it is going to be a much  
10 larger number after the true-up to create the false  
11 expectations, the media or people just look at the  
12 number for the test year that the revenue requirement  
13 is very small.  And then later in the case when we  
14 get to the true-up, all of a sudden the revenue  
15 requirement is very large.

16                   So we will put in a known and measurable  
17 amount to compensate for our expectation as to what  
18 the revenue requirement will be because of the  
19 true-up.  This is one of those cases where we put in  
20 an allowance for known and measurable so as to not  
21 create a false impression that the revenue  
22 requirement at the end of the case will be small  
23 because the revenue requirement for the test year is  
24 not a large number.  We've even had cases that for  
25 the test year are either zero if even marginally

1 negative, but we know because of the true-up this  
2 case is going to go positive by a considerable  
3 amount.

4 CHAIRMAN CLAYTON: Is the plug a public  
5 number?

6 MR. DOTTHEIM: Yes.

7 CHAIRMAN CLAYTON: What is the plug? I  
8 assume each party has a plug, or is it just a Staff  
9 plug?

10 MR. DOTTHEIM: It's just -- I can only  
11 refer you to the -- the Staff's plug. And I'd refer  
12 you to the Staff's accounting schedules, the exhibit  
13 which has the red cover on it, cost of service Staff  
14 accounting schedules, I'd refer you to the very first  
15 page, accounting schedule I, I'd refer you to  
16 line 11, allowance for known and measurable changes,  
17 true-up estimate \$60 million. That is what we'd  
18 refer to delicately as a plug.

19 CHAIRMAN CLAYTON: Just so I understand,  
20 the -- the concept of the plug, this is the first  
21 I've heard of the plug, haven't seen it in any books.  
22 That plug would change significantly if the true-up  
23 date changes from the March 31 to April 30?

24 MR. DOTTHEIM: I don't know how  
25 significantly that might change.

1                   CHAIRMAN CLAYTON: But it would change  
2 because there would be a change in off-system sales,  
3 pension costs, common costs and Iatan 1 costs. I  
4 mean, that's basically the gist of your concern.

5                   MR. DOTTHEIM: It -- it would -- it  
6 would change -- we have to -- we have to audit it.  
7 It's -- now, I -- I refer you to line 10 where it  
8 shows revenue requirement where you see for the low  
9 end rate of return the number is negative. Even for  
10 the high end rate of return, the revenue requirement  
11 number is negative. We put in the estimate for known  
12 and measurable changes or the true-up estimate so as  
13 not to create a false expectation that the revenue  
14 requirement at the end of the case is going to be  
15 negative when we have a full -- a full expectation  
16 that it's going to be considerably positive.

17                   CHAIRMAN CLAYTON: I follow you on that.  
18 So the plug as it exists right now does not include  
19 the Iatan 1 improvements, correct?

20                   MR. DOTTHEIM: No, I think it does, but  
21 let me -- let me check.

22                   CHAIRMAN CLAYTON: It can't -- I didn't  
23 think it could because you-all haven't done the audit  
24 yet.

25                   MR. DOTTHEIM: The \$60 million includes

1 the Iatan 1 environmental enhancements, and we  
2 haven't disallowed those costs.

3 CHAIRMAN CLAYTON: Thank you, Judge.

4 MR. DOTTHEIM: And as far as the -- how  
5 much that \$60 million or whatever the actual number  
6 is would change from March 31 to April 30th, we  
7 couldn't actually tell you right now. We'd have to  
8 perform the audit. It might go up, it might go down.  
9 And of course -- well...

10 JUDGE STEARLEY: All right. If there  
11 are no additional questions for Mr. Dottheim, we're  
12 going to take a ten-minute break at this point, come  
13 back, and Mr. Zobrist, you'll have time for some  
14 rebuttal.

15 (A RECESS WAS TAKEN.)

16 JUDGE STEARLEY: All right. We are back  
17 on the record, and Mr. Zobrist for KCP&L, you have an  
18 opportunity for a rebuttal at this time.

19 MR. ZOBRIST: Thank you, Judge. Let  
20 me -- let me make a few points here. As I feared, we  
21 have begun to stray, in response to understandable  
22 questions from the Bench, into evidentiary issues.  
23 We've had issues as to, you know, are we over budget,  
24 are we struggling to meet in service criteria, is  
25 there evidence that the project is significantly

1 behind schedule. That's what we're supposed to do in  
2 three weeks. We are not here to attempt to speculate  
3 on those issues.

4                   We are asking for 30 days which was  
5 contemplated back in November, and we're voluntarily  
6 agreeing to extend the tariff for 30 more days. Now,  
7 if that doesn't solve the in service criteria  
8 problem, it should, because the company has said it's  
9 willing to extend -- or it's requesting that the  
10 true-up date be extended from the 31st to the 30th.  
11 That is an in service criteria date. That's not the  
12 construction date.

13                   This plant has been under construction  
14 for two years. And the 30 days at the end is, again,  
15 to give Staff and all the other parties 30 more days  
16 than was contemplated in the regulatory plan.

17                   And I've heard statements by a number of  
18 counsel that this is so complex and that we did not  
19 anticipate this. This ship was launched four years  
20 ago. There's no mystery to this. Iatan 1 was part  
21 of rate case number 3 when the stipulation was  
22 brought to the Commission in the summer of 2005.  
23 There is no surprise here.

24                   And if Staff was surprised or if any  
25 other party was surprised and if anyone did not



1 allocate the resources to this project or did not  
2 have the resolve to do an audit, that's not Kansas  
3 City Power & Light Company's fault. It's not our  
4 fault, and this company should not be punished and  
5 its credit rating and its financial wherewithal put  
6 at risk because of the failure of other people to do  
7 their jobs.

8                   And Commissioner Gunn said it: What's  
9 the point? If the 30 -- if -- if the proposals are  
10 not going to create time for the construction audit  
11 or any other audit, what's the point? There is no  
12 point. It had been discussed months ago whether the  
13 30 days between April 30th and March 31 was a  
14 reasonable alternative, and all the parties  
15 understood that.

16                   And the demonstrative evidence that I  
17 put before you indicated that everyone understood  
18 that that was in the picture. So there's really  
19 nothing new or surprising about what we're talking  
20 about today.

21                   Now, there were references to some  
22 discovery problems, and as the Commission  
23 understands, there's no motion to compel. There are  
24 no objections that are being asserted today that  
25 relate to Iatan 1, Iatan 2 or common plant. They

1 deal with other issues that we're hopeful that they  
2 can be resolved, but they don't deal with Iatan 1.

3 Staff advised the Commission on  
4 February 11th that they didn't do the audit. So the  
5 fact that we're here in April talking about the lack  
6 of an audit is not a surprise. And the fact that  
7 Staff couldn't do the audit should really have no  
8 influence in your decision.

9 The record will be before you, and I  
10 know you're probably now just beginning to read it.  
11 But if you look at the testimony prefiled by  
12 Mr. Davis and by Mr. Giles and others, you will see  
13 our case. And if we haven't made our case, then you  
14 will make an appropriate decision.

15 And prudence is encompassed in this.  
16 You just can't decide under the Ag Processing case  
17 that you're not going to deal with this issue. In  
18 the Ag Processing case, the Commission attempted to  
19 not deal with the issue of the merger premium. Said  
20 we'll decide that in a rate case. Well, this is a  
21 rate case. You have these issues before you and you  
22 need to decide it. And if we do not meet our burden  
23 of proof, that's our problem.

24 The other thing that I would say is that  
25 although we're talking about April 30 being the

1 true-up cutoff date, things will continue for several  
2 months after that. In the Commission's order that it  
3 issued at the middle of this month, it moved the  
4 true-up hearings to early July. True-up direct will  
5 be filed June 22nd. So to the extent that invoices  
6 are coming in and information regarding the cost of  
7 construction are flowing, you know, they will be  
8 analyzed during that time. So there is -- there is  
9 plenty of evidence before the Commission on those  
10 issues.

11           Let me just say a couple more things.  
12 To the extent that an audit, a construction audit was  
13 not done, and I think this is obvious, the process  
14 had been in place for longer than this rate case to  
15 look at those issues. Those of you who were on -- I  
16 think you were all on the Commission in the  
17 acquisition-of-Aquila case. Staff at that time last  
18 year subpoenaed a number of Kansas City Power & Light  
19 Company executives. They took over a dozen  
20 depositions, they began to look at materials related  
21 to the Iatan plant before this case was even filed.  
22 Frankly, we assumed that the audit had begun over a  
23 year ago.

24           And so if there is any issue as far as  
25 examination of the record, it actually, in our view,

1 preceded this case. More importantly, the record  
2 will show in the prefiled testimony that Staff began  
3 visiting Iatan 1 back in February of 2007, over two  
4 years ago, and they made a number of visits, over 12  
5 visits. So we're not trying to hide the ball. And  
6 any disputes in discovery at this moment do not  
7 affect Iatan. They've all -- that information has  
8 been produced and it will be digested.

9                   And if the 30 days is granted with the  
10 other changes in schedule, there will be time, you  
11 know, for the Commission to look at that.

12                   It's not going to solve the audit  
13 problem. If the audit didn't occur, which is what we  
14 see in Staff's testimony, your decision here is  
15 not -- is not going to resolve that problem. I'd be  
16 glad to answer any other questions that the  
17 Commission may have.

18                   JUDGE STEARLEY: Commissioner Murray?

19                   COMMISSIONER MURRAY: Mr. Zobrist, you  
20 heard a proposal by Mr. Woodsmall regarding the  
21 suspension of the tariff up until, you know, as far  
22 as we could for the operation of law date and then  
23 making a portion of those rates subject to -- interim  
24 subject to refund. What is your position on the  
25 lawfulness of that? And -- and I know you would not

1 agree with it, but what --

2 MR. ZOBRIST: I think it is -- pardon  
3 me. Did I cut you off, Commissioner?

4 COMMISSIONER MURRAY: No.

5 MR. ZOBRIST: It is fraught with issues  
6 of retroactive ratemaking, single-issue ratemaking.  
7 It departs from the whole schedule contemplated by  
8 the 2005 stipulation in the comprehensive energy plan  
9 and it's -- it's a false choice. We don't need to  
10 look at March 31 and interim rates. You're going to  
11 have a case to deal with.

12 This is not an unusual rate case. If  
13 this is an unusual case, heaven help us when Iatan 2  
14 comes before you next year. What are you going to do  
15 with that, throw up your hands? You don't need to.  
16 You've got the tools to be able to manage this case.  
17 And I don't think we need to, you know, create  
18 through some kind of experiment anything dealing with  
19 interim rates and extending the -- the true-up and  
20 extending the effective date. I don't think we need  
21 to go there, Commissioner.

22 COMMISSIONER MURRAY: Well -- and you  
23 just mentioned Iatan 2. I mean, it seems to me that  
24 if we went in that direction, that we would be  
25 creating a precedent for all future rate cases

1 because most at least near future rate cases are  
2 going to involve quite a number of expenses for  
3 environmental compliance, are they not?

4 MR. ZOBRIST: Well, that's probably  
5 true, but this case is the environmental retrofits  
6 for Iatan 1. Iatan 2 is a brand new plant.

7 COMMISSIONER MURRAY: Yes. And there's  
8 a lot of brand new construction going on across the  
9 industry.

10 MR. ZOBRIST: Oh, that's true, yes.

11 COMMISSIONER MURRAY: So that future  
12 rate cases would likely be treated the same if we  
13 were to say, well, this was complicated so we're  
14 going to extend -- we're going to suspend the tariff  
15 out as far as we can, we're going to in the meantime  
16 make rates interim subject to refund. I -- I'm --  
17 I'm trying to see if that wouldn't just be the normal  
18 case, then, going forward.

19 I mean, aren't most of the cases going  
20 forward going to be pretty complicated with a lot of  
21 new construction and environmental compliance issues?

22 MR. ZOBRIST: Well, I can't speak --  
23 speak to other cases, but the whole reason that the  
24 company came here in 2005 was to alert the Commission  
25 to this comprehensive energy plan that it was going

1 to engage in over a number of years. And there were  
2 a number of, you know, rate cases that were scheduled  
3 and safety valves that were -- that were put in to  
4 allow KCPL to change certain dates in order to deal  
5 with some of those scheduling issues. And we think  
6 that up until now we've been able to accommodate  
7 that.

8                   There may be other issues with other  
9 companies, and certainly nationwide, you know, we're  
10 going to see a lot of new infrastructures,  
11 particularly if, you know, Congress enacts a carbon  
12 cost tax or something like that. But my point is in  
13 this case, you know, we anticipated these kinds of  
14 issues.

15                   And the framework that the Commission  
16 adopted is not foreign to you. You should be  
17 familiar with it. And we're simply asking for 30  
18 days until April 30, and we will voluntarily agree to  
19 extend the tariff. And if we don't make our case,  
20 then we'll live by that. But we think that the  
21 record is sufficient and that -- and that you will  
22 find that the -- that the investments in the  
23 construction costs were prudent. And if not, then  
24 you have options open to you as to what decision you  
25 will make.

1                   COMMISSIONER MURRAY:  And is it your  
2 position that in preparation for the March 31st  
3 true-up date, that any audits that were going to be  
4 done should have been well, well underway at this  
5 time and that an extension of 30 days wouldn't really  
6 make a huge difference in the auditing process?

7                   MR. ZOBRIST:  It won't make any  
8 difference, because on February 11th Staff stated  
9 that they had not completed their audit and they took  
10 the litigation position, the substantive position --  
11 substantive position that rates should be interim  
12 subject to refund.

13                   Frankly, we had expected -- we thought  
14 that the audit had actually begun during the Aquila  
15 acquisition case.  My recollection is that  
16 substantive data requests were not submitted to the  
17 company on Iatan until January.

18                   COMMISSIONER MURRAY:  And have there  
19 been any discovery disputes regarding the information  
20 that Staff has requested for Iatan 1?

21                   MR. ZOBRIST:  I believe -- I believe  
22 initially that there were but that all that  
23 documentation has now been provided.  I don't think  
24 any of the existing discovery disputes deal at all  
25 with Iatan, either 1 or 2 or common plant.



1 COMMISSIONER MURRAY: Thank you.

2 JUDGE STEARLEY: Questions, Commissioner  
3 Jarrett?

4 COMMISSIONER JARRETT: No questions,  
5 thank you.

6 JUDGE STEARLEY: Commissioner Gunn?

7 COMMISSIONER GUNN: Do you agree with  
8 Mr. Dottheim about where we are in terms of where  
9 some of the more important issues are going to be  
10 decided rather than in the -- in the evidentiary  
11 hearing that's coming up in two weeks or in the  
12 true-up period?

13 MR. ZOBRIST: Well, the true-up is  
14 simply the tabulation, and while the numbers should  
15 be large for the true-up, the whole concepts will  
16 not --

17 COMMISSIONER GUNN: Will not change.

18 MR. ZOBRIST: -- will not change, no.  
19 And again, this was contemplated months ago back in  
20 November. We all knew it would be a historical --  
21 2007, you know, a historical test period. So this is  
22 not a surprise. And there are big dollars that we're  
23 talking about. We're talking roughly \$500 million  
24 for Iatan 1 if March 31 is not moved to April 30th.  
25 But we're really talking about the numbers as opposed

1 to the concepts and everything that went into the  
2 construction.

3 COMMISSIONER GUNN: I don't think I have  
4 anything else. Thanks, Judge.

5 JUDGE STEARLEY: Chairman Clayton?

6 CHAIRMAN CLAYTON: Mr. Zobrist, it seems  
7 like the Commission is in a situation where we either  
8 have to decide to potentially include these costs in  
9 these projects by extending this date without the  
10 Staff's complete analysis of prudence and  
11 appropriateness of those expenses or we just  
12 completely disallow them I guess by not extending the  
13 date. Would you agree with that characterization?

14 MR. ZOBRIST: No, I wouldn't,  
15 Mr. Chairman, because you'll need to look at the  
16 evidence and sift through it and see what it says.  
17 Those are the extremes that you've posed, and I would  
18 suggest that, you know, after looking at the evidence  
19 and hearing the cross-examination of our witnesses  
20 and our cross-examination of the opposing witnesses,  
21 then you'll need to make a decision.

22 CHAIRMAN CLAYTON: Okay. So does --  
23 does Staff's testimony in your opinion complete or  
24 suggest a conclusion about an audit of prudence for  
25 these costs that would -- that would be applicable in

1 that 30-day time -- time frame extension?

2 MR. ZOBRIST: Well, I can't predict what  
3 Staff would say in their true-up testimony.

4 CHAIRMAN CLAYTON: Because they're  
5 saying today that they don't have the ability to  
6 complete that audit. So I mean, I guess if their  
7 testimony suggests differently?

8 MR. ZOBRIST: Well, all I know is that  
9 Mr. Featherstone filed testimony saying that  
10 apparently they had begun an audit, and I know that  
11 the engineers, the utility operations people have  
12 been out at the plant since 2007, but the utility  
13 services accountants have not been able to complete  
14 their work.

15 But, you know, my point for the company  
16 is that's not my problem. I have a burden of proof  
17 and we've got witnesses here set to come before you,  
18 and -- and that evidence must be tested, the opposing  
19 evidence must be tested and then you'd need to make a  
20 decision. We shouldn't use this procedural issue to,  
21 you know, forestall or prejudice those issues.

22 CHAIRMAN CLAYTON: But isn't the Staff  
23 saying that they're not able to provide that opposing  
24 testimony?

25 MR. ZOBRIST: Well, that's what I hear

1    them saying.  And I also understand that the 30 days  
2    isn't going to matter one way or the other.  You're  
3    not going to solve that problem.  As I think  
4    Commissioner Gunn said, you know, well, what's the  
5    point, then?

6                   CHAIRMAN CLAYTON:  Right.  But does  
7    that -- isn't that -- doesn't that stem from the fact  
8    that such an extraordinary project is being included  
9    in the true-up process rather than being in the  
10   general rate case -- what am I saying -- in the  
11   portion of the case that is the test year?

12                   MR. ZOBRIST:  Yes.

13                   CHAIRMAN CLAYTON:  Thank you.

14                   MR. ZOBRIST:  No, no.  It's only the  
15   dollars at the end, Mr. Chairman.  We're talking  
16   about getting those invoices in and meeting the in  
17   service criteria.  That's what we're talking about.

18                   CHAIRMAN CLAYTON:  And are those  
19   invoices all in right now?

20                   MR. ZOBRIST:  Well, if they're extended  
21   to April 30th, then the dates will be moved.  And  
22   there's an invoice cutoff date and then there's an  
23   invoice delivery date or something like that.

24                   CHAIRMAN CLAYTON:  Would you say it's  
25   the exception or the rule that -- that the up -- the

1 true-up date is so close to the in service date of  
2 such a large asset?

3 MR. ZOBRIST: Well, Judge, that's what  
4 happened in rate case number one when the Spearville  
5 wind project came in at \$80 million or whatever it  
6 was, and that's the situation it was in rate case  
7 number two, the La Cygne environmental retrofits came  
8 in in the true-up. So I don't think it is the  
9 exception for these types of cases.

10 CHAIRMAN CLAYTON: Okay. Can you just  
11 give me an idea the -- the dates for those two  
12 examples? Those are helpful, but can you tell me --  
13 do you know offhand the in service dates versus  
14 the --

15 MR. ZOBRIST: I -- I can't recall. I  
16 just -- I just know that Spearville came in in the  
17 true-up and that La Cygne one, the SCR selective  
18 catalytic removal system, came in in the true-up.  
19 Maybe Staff might know. I don't have those dates  
20 right off. We can get you those so -- if -- if  
21 required.

22 CHAIRMAN CLAYTON: The -- you used a  
23 \$500 million figure in your comments. Is that a rate  
24 base -- I mean, I'm assuming that's a rate base  
25 figure?

1                   MR. ZOBRIST: It's an addition to rate  
2 base. It's --

3                   CHAIRMAN CLAYTON: Correct. Give me an  
4 approximation. Would that be, say -- using 10  
5 percent, so that makes a \$50 million difference in --  
6 in the actual revenue requirement? That's what the  
7 impact on rates would be if you assume at 10 percent?

8                   MR. ZOBRIST: I can't do that,  
9 Commissioner -- I can't do that, Mr. Chairman.

10                  MR. FISCHER: Judge, that has to be  
11 grossed up for taxes and it's -- it's substantially  
12 more than that.

13                  CHAIRMAN CLAYTON: Okay. Okay. Based  
14 on test year expenses, how different is the company  
15 from the Staff on revenue requirement increase based  
16 on test year only?

17                  MR. ZOBRIST: Well, test year is 2007  
18 and we have other dollars coming in -- I don't know.  
19 Jim, do you know on that?

20                  MR. FISCHER: Well, the numbers that --  
21 that Mr. Dottheim included had the Staff's numbers in  
22 it. We are still at 101.5 million.

23                  CHAIRMAN CLAYTON: Based on test year?

24                  MR. FISCHER: Based on test year. Those  
25 numbers are what we project at the end of the case

1 after it's all -- all of our investments are  
2 included, all of our expenses. So that is at the end  
3 of the case we believe we will prove at least  
4 100.5 -- \$101.5 million. Staff's number had that \$60  
5 million plug which represents in their mind, I  
6 believe, as I understand it, the amount that they  
7 think will come in in the true-up process.

8 CHAIRMAN CLAYTON: Correct. That was my  
9 understanding as well.

10 MR. FISCHER: I also should correct one  
11 thing. When we were talking about the 500 million,  
12 roughly, that's a total company number. That's not  
13 Missouri-specific.

14 CHAIRMAN CLAYTON: Total company and  
15 including all three assets in Missouri.

16 MR. FISCHER: All three assets --

17 CHAIRMAN CLAYTON: All three units,  
18 KCP&L, Aquila and Aquila are just -- or the two  
19 assets, I guess it would be.

20 MR. RIGGINS: That's total project.

21 MR. FISCHER: That's total project, yes.  
22 And so you'd have to reduce for KCPL down to the  
23 company-specific as -- and also take into account the  
24 State jurisdictional allocation.

25 CHAIRMAN CLAYTON: Okay. Go ahead.

1 Were you going to say anything else?

2 MR. ZOBRIST: No, no.

3 CHAIRMAN CLAYTON: So there is -- the --  
4 the figure that the company has is a -- well, is that  
5 a -- is that a fair comparison, the 100 -- over 100  
6 million increase versus the 60, are those  
7 apples-to-apples comparison in terms of  
8 recommendations on -- on the revenue requirement  
9 increase? If you look at your original filing, that  
10 includes the true-up period, and Staff's plug  
11 includes their version of the true-up period. So is  
12 that an apples-to-apples comparison?

13 MR. FISCHER: Staff -- Staff could  
14 probably better speak to what they expect to happen  
15 in their -- their update period, but we do expect the  
16 numbers to be changing in the update period on things  
17 like off-system sales.

18 CHAIRMAN CLAYTON: Is there any other  
19 action aside from the two extremes that I mentioned?  
20 Mr. Zobrist, you've suggested that we can listen to  
21 the testimony and, I guess, make a decision on the  
22 evidence that's presented.

23 In terms of how the case is framed up,  
24 it seems like the potential is there for those  
25 extremes. Moving forward with certain costs without



1 sufficient audit, it's been alleged, not -- not  
2 conceding that, or just not including it at all, is  
3 there any other common ground that can be reached in  
4 setting up this case in a fair and appropriate manner  
5 that will reach a responsible result?

6 MR. ZOBRIST: Well, Mr. Chairman, I  
7 mean, I would suggest -- because when you're talking  
8 about sifting the evidence, I mean, there may be  
9 elements that you find more persuasive than others.  
10 So I mean, I find the -- particularly the total  
11 disallowance to be, you know, completely not an  
12 option. Because I think everybody's saying that at  
13 least the control budget estimate from the company's  
14 standpoint, the reforecast which we presented you  
15 with evidence of, you know, in the Aquila acquisition  
16 hearing last summer, you know, there would be some  
17 room for you to maneuver.

18 And was discussed, I mean, the  
19 Commission and Staff always have the right to, you  
20 know, commence or continue what audit they've -- were  
21 done to -- the Commission has the right to order an  
22 investigation or to audit certain things, you have  
23 the right to hire consultants. Somebody mentioned  
24 the Kansas Commission. They did that to get their  
25 work done.

1                   There is the complaint jurisdiction, as  
2 Mr. Mills said. That's rather unwieldy. And then we  
3 have rate case number 4 that is going to be filed,  
4 you know, in -- in the near future. And the  
5 Commission, you know, has the ability to examine what  
6 is in rate base, and if there are such things, you  
7 know, involving, you know, either excess capacity or  
8 something that's not deemed to be used and useful,  
9 the Commission has abilities there too.

10                   CHAIRMAN CLAYTON: Well, I guess -- I  
11 guess this is my frustration listening to the case.  
12 First of all, I want to say this -- this has been  
13 very helpful being here today and hearing -- giving  
14 you-all a chance to talk about this.

15                   But I mean, if there is the ability to  
16 reach common ground on the budget control numbers or  
17 the -- or the -- the original cost estimates and that  
18 the real fighting is going to be over that extra 25  
19 percent, shouldn't the Commission's time be focused  
20 in on that 25 percent rather than everything?  
21 Wouldn't that be more efficient?

22                   And I thought that was what the  
23 suggestion on the moving towards a -- an order that  
24 would be interim in the middle of this case and  
25 then -- and pushing off that other litigation down

1 the road. And I -- I wasn't -- I didn't understand  
2 the offense that it seemed like the company was  
3 taking to that proposal.

4 MR. ZOBRIST: Well, let me be clear. We  
5 think that we have put on a very strong case.

6 CHAIRMAN CLAYTON: I understand.

7 MR. ZOBRIST: And we want the ability to  
8 have the evidence come in and to have you-all take a  
9 look at it.

10 CHAIRMAN CLAYTON: Okay.

11 MR. ZOBRIST: And I'm just saying to the  
12 extent that you're not persuaded, then you've got  
13 statutory responsibilities to exercise.

14 CHAIRMAN CLAYTON: I under -- I  
15 understand that.

16 MR. ZOBRIST: Right. But --

17 CHAIRMAN CLAYTON: It's getting in and  
18 focusing on where the fight is, and sometimes it's, I  
19 think, easy for Commissioners, or at least it is for  
20 me, to lose sight of where the real fight is because  
21 we are talking about a significant amount of money,  
22 nine or ten digits of dollars, very complicated  
23 stuff, and I'm trying to find some way to address  
24 these issues and a way of moving forward.

25 MR. ZOBRIST: Yeah. Well, Mr. Chairman,

1 I would suggest perhaps, you know, that the parties  
2 could deal with Judge Stearley and perhaps, you know,  
3 front-load some of the Iatan issues so that they're  
4 tried up front, and perhaps the Commission should  
5 give us guidance on things that they -- they want to  
6 hear. I mean, I think there are procedural tools  
7 available to you to manage that process.

8 CHAIRMAN CLAYTON: Okay. Thank you.

9 JUDGE STEARLEY: Any other questions for  
10 Mr. Zobrist?

11 (NO RESPONSE.)

12 JUDGE STEARLEY: Thank you, Mr. Zobrist.

13 All right. A couple of housekeeping  
14 items. We had two demonstrative exhibits marked  
15 today that were used during the arguments. Are  
16 either of the parties who utilized those intending to  
17 offer those into today's hearing record?

18 MR. ZOBRIST: I -- for the company, I  
19 think they both ought to be included. We have no  
20 objection to Staff's.

21 JUDGE STEARLEY: Okay. Any objections  
22 from any party with allowing those two exhibits into  
23 the record?

24 (NO RESPONSE.)

25 JUDGE STEARLEY: Hearing none, they

1 shall be received and admitted.

2 (EXHIBIT NOS. 1 AND 2 WERE RECEIVED INTO  
3 EVIDENCE AND MADE A PART OF THE RECORD.)

4 JUDGE STEARLEY: We plan on having the  
5 transcript expedited in this proceeding and should  
6 have it within, I believe, within 24 hours.

7 MR. ZOBRIST: Judge, if I may ask one  
8 additional issue. We did have Mr. Cline here, and  
9 I'm presuming that because he's not been asked to  
10 respond to any questions, that everybody is just  
11 remembering that he is available here, and I'm  
12 assuming the Commissioners do not need him.

13 JUDGE STEARLEY: I have not heard any  
14 requests from the Commissioners, and I'm going to  
15 assume also they're not requiring his testimony.

16 Are there any other matters that we need  
17 to take up before we adjourn?

18 MR. KEEVIL: Judge, just so there's no  
19 question from the court reporter, I do not need a  
20 copy of the transcript.

21 JUDGE STEARLEY: All right. Thank you,  
22 Mr. Keevil.

23 Hearing nothing else, then our oral  
24 argument on KCP&L's motion to reconsider the  
25 Commission's March 18th order modifying the

1 procedural schedule for true-up in this proceeding is  
2 hereby adjourned. And we are off the record.

3 (WHEREUPON, the recorded portion of the  
4 oral argument was concluded.)

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