

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Oral Argument

April 6, 2009
Jefferson City, Missouri
Volume 10

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

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

NANCY DIPPELL, Presiding,
DEPUTY CHIEF 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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1 P R O C E E D I N G S

2 JUDGE DIPPELL: This is Case No.
3 ER-2009-0090 In the Matter of the Application of
4 Kansas City -- or KCP&L Greater Missouri Operations
5 Company For Approval to Make Certain Changes in Its
6 Charges For Electric Service, and Case No.
7 HR-2009-0092 In the Matter of the Application of
8 KCP&L Greater Missouri Operations Company For
9 Approval to Make Certain Changes in Its Charges For
10 Steam Heating Service.

11 My name is Nancy Dippell and I'm the
12 regulatory law judge assigned to preside over these
13 two cases.

14 We have previously had an oral argument
15 in the ER-2009-0089, and now we have convened to hear
16 oral arguments on the motion regarding the procedural
17 schedule in this -- in these two matters. I'm going
18 to go ahead and take entries of appearance again and
19 then -- is that --

20 MR. WOODSMALL: You're not on.

21 JUDGE DIPPELL: Oh, I'm muted. Thank
22 you. Thank you very much, okay. For those of you
23 listening out there, I have just unmuted and we've
24 just gone on the record with the case numbers. And I
25 was about to say, as soon as I can figure out how to

1 get it off intermission -- there we go. Now we can
2 look at all of your lovely faces on line.

3 Okay. I was about to say that I'm going
4 to go ahead and take entries of appearance in these
5 cases, and then I'd like to see about just adopting
6 the transcript from the previous matter as oral
7 arguments, and then I will give you an opportunity to
8 give a specific arguments related to these cases and
9 the Commissioners a chance to ask specific questions
10 related to these cases. And I was hoping in that
11 manner we could shorten the time that it takes us to
12 hear this -- this portion of the oral arguments.

13 So let's go ahead and take the entries
14 of appearance. I'm going to begin with KCP&L Greater
15 Missouri Operations Company.

16 MR. FISCHER: Thank you, Judge. Let the
17 record reflect the appearance of Bill Riggins, Karl
18 Zobrist and Jim Fischer appearing today on behalf of
19 KCP&L Greater Missouri Operations Company. Our
20 addresses and phone numbers are on our written
21 entries of appearance.

22 JUDGE DIPPELL: Thank you. The City of
23 Kansas City?

24 (NO RESPONSE.)

25 JUDGE DIPPELL: The Missouri Department

1 of Natural Resources?

2 (NO RESPONSE.)

3 JUDGE DIPPELL: Staff of the Missouri
4 Public Service Commission?

5 MR. WILLIAMS: Nathan Williams and Steve
6 Dottheim, P.O. Box 360, Jefferson City, Missouri
7 65102.

8 JUDGE DIPPELL: Union Electric Company?

9 (NO RESPONSE.)

10 JUDGE DIPPELL: Office of Public
11 Counsel?

12 MR. MILLS: On behalf of the Office of
13 the Public Counsel and the public, my name is Lewis
14 Mills. My address is Post Office Box 2230, Jefferson
15 City, Missouri 65102.

16 JUDGE DIPPELL: Dogwood Energy?

17 (NO RESPONSE.)

18 JUDGE DIPPELL: The Federal Executive
19 Agencies?

20 (NO RESPONSE.)

21 JUDGE DIPPELL: Is there anyone here for
22 the Hospital Intervenors?

23 (NO RESPONSE.)

24 JUDGE DIPPELL: Ag Processing?

25 MR. WOODSMALL: Yes, your Honor.

1 Appearing on behalf of Ag Processing, Sedalia
2 Industrial Energy Users Association and Wal-Mart --
3 Wal-Mart Stores, Inc., David Woodsmall of the firm of
4 Finnegan, Conrad and Peterson.

5 JUDGE DIPPELL: Thank you. And is there
6 anyone here for the Union Intervenors?

7 (NO RESPONSE.)

8 JUDGE DIPPELL: Is there anyone else
9 that needs to make an entry of appearance?

10 MR. MILLS: Judge, before we go past
11 entries, I just -- earlier today we had Mr. Lumley on
12 behalf of Dogwood Energy point out that he was not
13 actually a party in the previous case and plans to
14 participate in this particular hearing. We also had
15 at least, I think, four or five other people on the
16 phone. Would it perhaps be appropriate to check to
17 make sure that port is still open? Because I had
18 expected that some of them would still be there at
19 this point.

20 JUDGE DIPPELL: That's a good
21 suggestion, Mr. Mills. Let me check on that. Let's
22 take a five-minute break while I do that because I
23 don't think I can do that and continue on the record.
24 Thank you.

25 (DISCUSSION HELD OFF THE RECORD.)

1 JUDGE DIPPELL: Okay. We've tested our
2 equipment, and it appears that if anyone has dropped
3 off the phone, they should be able to call the same
4 number back and get back in the conference call. And
5 so we're assuming that if they're not still on the
6 line, that that is their intention. So is there
7 anyone else that needs to make an entry of appearance
8 at this time?

9 (NO RESPONSE.)

10 JUDGE DIPPELL: Am I still muted? I'm
11 having trouble with that today. Is there anyone else
12 that needs to make an entry of appearance at this
13 time?

14 (NO RESPONSE.)

15 JUDGE DIPPELL: All right. Seeing none,
16 then let's go ahead. Would anyone have an objection
17 to adopting the transcript from the previous oral
18 arguments in ER-2009-0089 as oral arguments in this
19 case? Mr. Williams?

20 MR. WILLIAMS: Judge, I don't know that
21 I would couch it as an objection, but in that case
22 Kansas City Power & Light Company made reference to
23 the experimental regulatory plan. Of course, KCP&L
24 Greater Missouri Operations Company does not have
25 such a plan. So with that point of clarification, I

1 don't have an objection.

2 JUDGE DIPPELL: Okay. Thank you.

3 MR. FISCHER: We have no objection
4 either, your Honor.

5 JUDGE DIPPELL: All right, then. We
6 will adopt the transcript from the earlier oral
7 arguments this morning. And then I would like to
8 give the parties an opportunity to have any
9 additional comments related specifically to these
10 cases, and then the Commissioners to ask any specific
11 case-related questions as well. So I'll go ahead and
12 begin with Mr. Zobrist.

13 MR. ZOBRIST: Thank you, Judge. May it
14 please the Commission. And I was going to mention
15 exactly what Mr. Williams said, is that this case is
16 not governed by the comprehensive energy plan and the
17 stipulation that the Commission approved in 2005.
18 But it is also interesting and the Commission should
19 recall to the extent it has concerns about the
20 Iatan 1 project.

21 This case includes the improvements of
22 Sibley and Jeffrey. They are on time and generally
23 on budget, I understand. Sibley is on budget as far
24 as the company is concerned and they are still
25 subject to the Staff's position that rates should be

1 interim and subject to refund.

2 I would like to move the admission or at
3 least the identification as Exhibit 1 of the excerpts
4 from the procedural filings that bear the docket
5 numbers in this case. Except for the different
6 docket numbers, it is identical to Exhibit 1 in the
7 other case, but I just prepared two in case the
8 Commissioners were here for one hearing and not for
9 the other.

10 I would just like to make a couple of
11 points. We did touch on these during the previous
12 argument, and then I'll entertain questions, Judge,
13 if that's all right.

14 A number of the questions this morning
15 focused on substantive issues, and it's the position
16 of the company that this is not an occasion to talk
17 about budget overruns, struggling to meet in service
18 criteria, whether anybody is behind schedule.

19 The company has provided a substantive
20 case, and we're ready to have that heard by the
21 Commission in two weeks. The company assumed that
22 the audit which Staff apparently has not completed
23 began in 2007. The prefiled testimony will advise
24 the Commission that there were 12 onsite visits to
25 Iatan 1 that began on February 9th, 2007, when

1 Mr. Taylor and Mr. Bender and Ms. Mantle -- earlier
2 it was Mr. Taylor and Mr. Bender came to discuss the
3 Burns and McDonnell plans and they completed a site
4 of the tour [sic], and it continued through 2007,
5 2008 and into 2009.

6 The other thing that the Commission will
7 recall is that in the latter stages of Great Plains
8 Energy's application to acquire Aquila, Staff
9 served a number of subpoenas. The company response
10 produced documents, it produced over a dozen
11 witnesses that detailed what was going on at Iatan 1
12 and Iatan 2 and in the entire Iatan station.

13 Then after the crane collapse, we came
14 back to the Commission in June, and once again, Brent
15 Davis who was a witness in this case, and financial
16 witness Mr. Cline came and testified about
17 creditworthiness issues and issues with regard to
18 Iatan 1.

19 So the company assumed that the audit
20 was well on its way, and it's our position that the
21 company should not be punished by the inability or
22 the failure of Staff to complete the construction
23 audit. That will not be changed, that situation will
24 not be changed that -- to the extent the record will
25 not be changed by extending the true-up period from

1 March 31 to April 30th. Basically everybody concedes
2 that. And all the parties have conceded the
3 Commission does not have the authority without the
4 consent of the company to impose the five conditions
5 that were in its March 18 order.

6 So what I would stress to the company is
7 that -- or to the Commission is that this is a
8 critical issue, it's a critical procedural issue for
9 the company. It is not an unforeseen issue. To the
10 extent that this is a complex case, everybody knew
11 that two, three years ago when Iatan 1 was part of
12 the comprehensive energy plan for KCP&L. And even
13 though Aquila, now known as Greater Missouri
14 Operation Company was not a part of that, Aquila has
15 been a partner in that process for the past couple of
16 years. So these are -- these are not -- not new
17 issues.

18 And to the extent that anyone is
19 suggesting that interim rates subject to refund are
20 appropriate, we don't agree to that. This -- is --
21 it may be a complicated case, but it is -- it has
22 been the subject of the direct testimony of the
23 company and of our rebuttal testimony, those basic
24 issues are joined. And to the extent that any party
25 has not decided to join in those issues, that is

1 something that they must answer to the Commission
2 for.

3 The true-up period is simply to deal
4 with the numbers, to collect the invoices, to verify
5 that the invoices relate to Iatan 1 and that the sums
6 and totals of those are proper. The Commission must
7 then weigh the issues and it will make a decision on
8 prudence. There is no reason to delay that. Looking
9 at the Ag Processing case, I don't believe the
10 Commission has got the power to -- to not decide
11 those kinds of issues.

12 And particularly because of the
13 financial times that we're in and the critical nature
14 of bringing these costs that had been expended onto
15 rate base and the voluntary extension of the tariff
16 date to September 5, we believe that the company --
17 that the company's motion for reconsideration is well
18 founded. I'm ready for any questions, Judge.

19 JUDGE DIPPELL: Thank you. I'll ask if
20 there's any Commissioner questions at this time or if
21 you'd like to wait a little bit later. Commissioner
22 Davis?

23 COMMISSIONER DAVIS: I think I'll hold.

24 JUDGE DIPPELL: Okay. Commissioner
25 Jarrett?

1 COMMISSIONER JARRETT: I don't have any
2 questions, thank you.

3 JUDGE DIPPELL: Okay. Thank you.
4 Staff?

5 MR. WILLIAMS: No, don't believe --

6 JUDGE DIPPELL: Do you have --

7 MR. WILLIAMS: No, I think Staff's
8 stated its position adequately in the prior oral
9 argument.

10 JUDGE DIPPELL: All right. Would --
11 Commissioner Davis, did you have any questions at
12 this time for Staff or do you want to --

13 COMMISSIONER DAVIS: Yes, I do. I guess
14 since you responded, Mr. Williams, I'll address this
15 to you. How many data requests has the PSC sent to
16 KCP&L in this case?

17 MR. WILLIAMS: Off the top of my head I
18 don't know. The majority of our data requests were
19 submitted in the KCP&L case.

20 COMMISSIONER DAVIS: Okay. So you
21 submitted a number of data requests in the case -- I
22 mean, did they apply to all three cases?

23 MR. WILLIAMS: They were available to
24 use in all three, yes, the responses.

25 COMMISSIONER DAVIS: Okay. So did

1 you -- did you send data requests regarding the
2 Iatan, I guess you'd call them environmental
3 improvements?

4 MR. WILLIAMS: Yes.

5 COMMISSIONER DAVIS: How many?

6 MR. WILLIAMS: I don't know off the top
7 of my head how many pertain specifically to those
8 improvements. There were a number.

9 COMMISSIONER DAVIS: More than ten?

10 MR. WILLIAMS: Yes.

11 COMMISSIONER DAVIS: More than 50?

12 MR. WILLIAMS: I can consult. I don't
13 know offhand.

14 MR. FISCHER: Judge, I think --

15 COMMISSIONER DAVIS: Mr. Zobrist and
16 Mr. Fischer are anxious to assist you, Mr. Williams.

17 MR. FISCHER: Judge, I think on the
18 Iatan question specifically, on one day there were
19 150 filed on one day in EFIS. There were a total
20 of over 1,000 data requests for Staff in three case.
21 608 were filed, I know, in the KCP&L case. The
22 remainder were filed in the GMO steam and electric
23 cases.

24 COMMISSIONER DAVIS: Okay. So it's fair
25 to say, then, Mr. Williams, that Staff has conducted

1 discovery on this issue, correct?

2 MR. WILLIAMS: Yes.

3 COMMISSIONER DAVIS: And let's see.

4 When was the last rate case?

5 MR. WILLIAMS: Just been a couple years
6 ago.

7 COMMISSIONER DAVIS: Right. And we've
8 had the merger case since then?

9 MR. WILLIAMS: Yes.

10 COMMISSIONER DAVIS: So is it fair to
11 say that the auditing Staff is -- is familiar with
12 the -- the books and the works of KCP&L?

13 MR. WILLIAMS: That's fair to say.

14 COMMISSIONER DAVIS: Now, are there --
15 are there two audits at issue here or is there just
16 one? Is there -- is there a difference between a
17 construction audit and a true-up audit? Is it the
18 same thing? I mean, are there differences? What are
19 the nuances?

20 MR. WILLIAMS: Well, in a prudence
21 review, you're looking at the invoices to determine
22 whether or not the expense should even have been
23 incurred, so it would be a more thorough review than
24 you might perform otherwise.

25 COMMISSIONER DAVIS: Okay. So -- and

1 does -- does the auditing Staff collect those
2 invoices on -- on an interim basis or have they not
3 collected any invoices?

4 MR. WILLIAMS: If you're asking normally
5 what does the Staff do, they obtain data as it --
6 information as it becomes available. It's not a case
7 of waiting till the -- all of the costs have been
8 incurred and then reviewing everything. You get as
9 it comes through.

10 COMMISSIONER DAVIS: Okay. So the PSC
11 Staff would have the invoices for February 2009 and
12 prior to that?

13 MR. WILLIAMS: I don't know the specific
14 data that they looked at. I know they've looked at
15 general ledgers and other ledgers. In terms of
16 invoices, I think they normally sample as opposed to
17 looking at every invoice.

18 COMMISSIONER DAVIS: Okay. So they
19 basically are doing random sampling and monitoring;
20 is that fair to say?

21 MR. WILLIAMS: I don't know specifically
22 what they've done in terms of what they've looked
23 at with regard to Iatan 1 and 2 costs or the
24 Iatan-related costs in this case. I know typically
25 they will do sampling of invoices, but they won't

1 look at every invoice for every cost for the entire
2 company.

3 COMMISSIONER DAVIS: Okay. Well, will
4 they do that -- will they do that in a rate case?

5 MR. WILLIAMS: Will they do what in a
6 rate case, sir?

7 COMMISSIONER DAVIS: Look at every
8 invoice for the entire company during the historical
9 test period.

10 MR. WILLIAMS: Can't be done.

11 COMMISSIONER DAVIS: Can't be done.
12 Okay. So when they do the prudence audit for a large
13 construction -- okay. Let me -- let me just -- is
14 Aquila -- Aquila is not a partner in Iatan 1,
15 correct?

16 MR. WILLIAMS: Yes, they are.

17 COMMISSIONER DAVIS: They are a partner.
18 So Iatan 1 is an issue here?

19 MR. WILLIAMS: Yes.

20 COMMISSIONER DAVIS: Okay. So is Staff
21 going to go back and look at every invoice related to
22 Iatan 1?

23 MR. WILLIAMS: I doubt if the audit
24 would be that thorough, but I don't know.

25 COMMISSIONER DAVIS: There's been a --

1 how long will it -- how long do you estimate it will
2 take to do a prudency audit?

3 MR. WILLIAMS: That's subject a lot of
4 variables dependent on how readily the information is
5 available, it depends on the resources that Staff has
6 to be able to perform the audit. So in other words,
7 I can't give you a definitive answer. I mean, it
8 also depends on what we're looking at.

9 COMMISSIONER DAVIS: So is it your
10 opinion that the auditors don't know what they're
11 looking at?

12 MR. WILLIAMS: I'm talking about what
13 the -- what the scope of the audit is, if you're
14 talking about a CT or if you're talking about a coal
15 plant or --

16 COMMISSIONER DAVIS: Well, let's say
17 it's Iatan 1.

18 MR. WILLIAMS: The environmental
19 improvements at Iatan 1?

20 COMMISSIONER DAVIS: The environmental
21 improvements at Iatan 1.

22 MR. WILLIAMS: I don't know offhand. I
23 mean, our auditors might have an opinion, they may
24 not. They may not have looked at it close enough to
25 know.

1 COMMISSIONER DAVIS: What do they call
2 that, Judge? Is that -- is that -- would that be an
3 offer of demonstrative evidence?

4 JUDGE DIPPELL: Perhaps he could ask the
5 auditors to do that; otherwise, you could take that
6 testimony, I suppose.

7 COMMISSIONER DAVIS: Do you want to --
8 do you want to inquire with -- with Staff that may be
9 here and see if you can respond to that question?

10 MR. WILLIAMS: Certainly, but of course,
11 the Commission is aware that the Staff is not asking
12 for additional time to perform a prudence audit.

13 COMMISSIONER DAVIS: I -- I understand
14 that.

15 MR. WILLIAMS: I've been informed that
16 it would take in the neighborhood of six months to
17 perform a prudence review of the Iatan 1
18 improvements.

19 COMMISSIONER DAVIS: Okay.

20 MR. WILLIAMS: And of course, that's
21 Staff's best estimate.

22 COMMISSIONER DAVIS: I understand
23 that's -- that's Staff's best estimate. Now, are
24 there concurrent proceedings going on in front of the
25 Kansas Corporation Commission?

1 MR. WILLIAMS: With regard to KCP&L
2 Greater Missouri Operations Company?

3 COMMISSIONER DAVIS: Uh-huh.

4 MR. WILLIAMS: No.

5 COMMISSIONER DAVIS: No. Are there --
6 what about with regard to KCP&L?

7 MR. WILLIAMS: Yes.

8 COMMISSIONER DAVIS: And what has the
9 Kansas Corporation Commission done with regard to
10 these -- is this -- is this an issue in Kansas, how
11 is the Kansas Commission addressing it?

12 MR. WILLIAMS: My understanding's that
13 in front of the KCC that Kansas City Power & Light
14 Company entered into a stipulation and agreement that
15 extended their effective date from sometime in June
16 until August 20th to allow time for the review by
17 their staff and other parties.

18 And I'm sure someone from Kansas City
19 Power & Light Company or perhaps KCP&L Greater
20 Missouri Operations Company can be more definite
21 about that.

22 COMMISSIONER DAVIS: Does anybody else
23 want to respond to that?

24 MR. ZOBRIST: We can have Mr. Giles
25 respond to that.

1 or 45 days in the tariff effective date was due to
2 the common plant issue. And in Kansas they do not
3 have a true-up proceeding like we have in -- in
4 Missouri, so the delay in effective date was made to
5 accommodate the change in the common plant issue
6 because there was not a true-up proceeding in place
7 for that to occur.

8 COMMISSIONER DAVIS: Mr. Williams,
9 Mr. Zobrist has taken the position that his clients
10 have the burden of proof in this case. Do you agree
11 with that?

12 MR. WILLIAMS: Yes.

13 COMMISSIONER DAVIS: So then, doesn't
14 Staff have the obligation that if they want to
15 disallow certain expenses -- expenses, that they have
16 the burden of rebutting the evidence offered by
17 Kansas City Power -- or I'm sorry -- by Aquila or
18 Greater Missouri Operations and whatever the steam
19 company calls itself?

20 MR. WILLIAMS: They're both KCP&L
21 Greater Missouri Operations Company, and yes, once
22 the companies come forward and produce evidence on an
23 issue, then any party contesting it would have the
24 obligation of producing evidence in response.

25 COMMISSIONER DAVIS: Okay. And so it's

1 your position that assuming that KCP&L Greater
2 Missouri gets all of the pertinent evidence to
3 you by April 30th, that there's no way that you
4 can -- can possibly put on a case to -- to rebut that
5 evidence in early July which is the scheduled date
6 for the true-up hearing now, I think; is that
7 correct?

8 MR. WILLIAMS: I don't believe Staff has
9 said that, no.

10 COMMISSIONER DAVIS: But you said you
11 can't do a true-up audit probably in less than six
12 months or a prudence audit, so you can -- you can be
13 prepared April 30th, May, June -- when is the true-up
14 hearing scheduled?

15 JUDGE DIPPELL: July 1st and 2nd.

16 COMMISSIONER DAVIS: Okay. So
17 assuming -- assuming that all of the evidence does
18 come in by -- is it April 30th -- what's the date for
19 getting all of their invoices and everything in,
20 the --

21 MR. WILLIAMS: It's later than
22 April 30th.

23 MR. ZOBRIST: In the Commission's latest
24 order, the true-up invoice cutoff date is May 29 and
25 the true-up invoice receipt date is June 1.

1 COMMISSIONER DAVIS: Okay. So does
2 May 29 or June 1, do those -- those dates would
3 effectively give you one month. Does that not give
4 you enough time to prepare?

5 MR. WILLIAMS: I can't answer that
6 question. I mean, it depends on the information and
7 how it's flowed in and also depends on Staff
8 resources. I can't answer your question.

9 COMMISSIONER DAVIS: Okay. Well, walk
10 me through some of the assumptions or variables
11 there.

12 MR. WILLIAMS: Well, one, it depends on
13 when we get information. If we're receiving
14 information from the company on a timely basis as it
15 becomes available, that will reduce the amount of
16 workload that comes in on the back end.

17 COMMISSIONER DAVIS: Uh-huh.

18 MR. WILLIAMS: If we don't receive any
19 of the information until late May or early June,
20 there will -- there will be too much to go through.

21 COMMISSIONER DAVIS: And haven't they
22 been submitting information to you on a monthly basis
23 so far?

24 MR. WILLIAMS: My understanding is that
25 a lot of the information, the regular, more routine

1 information, we've been getting roughly three weeks
2 after, I think it's the close of books, but whenever
3 the company has it available or should -- beyond the
4 date when the information pertains to.

5 COMMISSIONER DAVIS: Okay. So to the
6 best of your knowledge, they have not failed to
7 provide you data in a timely information so far, have
8 they with regard to Iatan, the environmental
9 improvements?

10 MR. WILLIAMS: I don't know. I know we
11 didn't get some information pertaining to Iatan 2
12 because there were objections raised that were only
13 recently withdrawn.

14 COMMISSIONER DAVIS: Okay. But nothing
15 so far with regard to Iatan 1?

16 MR. WILLIAMS: Not that I am aware of or
17 can recall off the top of my head.

18 COMMISSIONER DAVIS: Okay. So
19 Mr. Featherstone hasn't come running to you saying I
20 feel like the company is hiding things from me with
21 regard to Iatan 1?

22 MR. WILLIAMS: Not that I can recall
23 offhand.

24 COMMISSIONER DAVIS: Okay.

25 MR. WILLIAMS: Of course, he's not the

1 only person working on the matter.

2 COMMISSIONER DAVIS: But he is the, what
3 do you call it, the auditor five, is he -- is he not
4 the audit supervisor for --

5 MR. WILLIAMS: He's -- he's one of the
6 case coordinators.

7 COMMISSIONER DAVIS: Can you -- can you
8 identify for the record who are the case coordinators
9 in this case?

10 MR. WILLIAMS: For this particular case?

11 COMMISSIONER DAVIS: Yes.

12 MR. WILLIAMS: Curt Wells and Carrie
13 Featherstone, but that's more management of flow of
14 information amongst the divisions and within --
15 within the division primarily, is my understanding.

16 COMMISSIONER DAVIS: Okay. And I guess,
17 let me back up. Mr. -- Mr. Zobrist, can you -- can
18 you estimate what -- what portion of the receipts for
19 Iatan 1 have you -- has -- has KCP&L GMO or KCP&L
20 already submitted to the Staff, what percentage, what
21 portion?

22 MR. ZOBRIST: I'm going to ask
23 Mr. Fischer to address that.

24 COMMISSIONER DAVIS: Okay.

25 MR. FISCHER: Commissioner, the company

1 has been providing cost information on Iatan 1 every
2 month for the last couple of years. I understand
3 that the last, most recent information would have
4 been through probably February, so there's very
5 little information that has not been provided. And
6 we'll -- we will be getting some additional
7 information up to the cutoff date, and that will be
8 turned around within the cutoff period as required by
9 the Commission's order. Missouri Staff's been
10 basically getting the same information the Kansas
11 Staff has been getting on an ongoing basis, so...

12 COMMISSIONER DAVIS: Okay. Now, are
13 there -- and I -- this is for everyone. Are there
14 issues relative to Sibley and Jeffrey that are -- are
15 peculiar in this case?

16 MR. ZOBRIST: The company does not
17 believe so.

18 MR. WOODSMALL: When you say "peculiar,"
19 easier, maybe, because they are both -- as
20 Mr. Zobrist said, both on time and on budget. So
21 peculiar in that they're different and easier, if
22 that helps. They -- they don't offer the same
23 complexities.

24 COMMISSIONER DAVIS: No reference to the
25 small towns located to the -- to the south of -- of

1 Kansas City. So let me ask you this, Mr. Woodsmall.
2 In your opinion, is it -- would it -- would it be
3 easier, can we -- can we address Sibley and Jeffrey
4 in this case with the traditional April 30th true-up?

5 MR. WOODSMALL: The only reason I
6 hesitate, I believe both of those are finished and in
7 service, so if that is correct, I think so. I'm --
8 I'm trying to distinguish the in service criteria
9 from the construction audit, and I believe if they
10 are both in service, I believe the April 30th date
11 works.

12 COMMISSIONER DAVIS: Okay. Now, was
13 there -- and I throw this out to everyone too, so
14 anyone can just feel free to jump in, hold up your
15 hand or whatever. Mr. Williams, you said that the
16 issues in the KCP&L experimental regulatory plan
17 really aren't an issue in this case; is that correct?

18 MR. WILLIAMS: I was pointing out that
19 the KC -- Kansas City Power & Light Company
20 experimental regulatory plan does not apply to KCP&L
21 Greater Missouri Operations Company. It's not a
22 party to that plan nor is it subject to that plan.

23 COMMISSIONER DAVIS: Okay. And
24 you're -- you're familiar with the KCP&L experimental
25 regulatory plan, are you not?

1 MR. WILLIAMS: I have some familiarity
2 with it, I'm sure not as much as Mr. Dottheim.

3 COMMISSIONER DAVIS: Okay. Maybe I
4 ought to inquire of Mr. Dottheim, then. That was --
5 was it EO-2005-329, was that -- was that the case?

6 MR. DOTTHEIM: Yes, yes.

7 COMMISSIONER DAVIS: And we approved the
8 experimental regulatory plan that was -- do you
9 remember, that was in 2005, correct?

10 MR. DOTTHEIM: That is correct. I think
11 it was possibly in August.

12 COMMISSIONER DAVIS: Okay. So on or
13 about sometime in August of 2005. And that was a
14 contested case, was it not?

15 MR. DOTTHEIM: Yes, it was.

16 COMMISSIONER DAVIS: Okay. Now, there
17 were a number -- there were -- there were a number of
18 attachments on that document, were there not?

19 MR. DOTTHEIM: Yes.

20 COMMISSIONER DAVIS: And I believe one
21 of them talked about Kansas City Power & Light's
22 parent company, Great Plains Energy, issuing a
23 certain amount of equity in order to complete the
24 experimental regulatory plan. Do you recall that
25 attachment?

1 MR. DOTTHEIM: Commissioner, I don't
2 recall it with specificity. There was -- there was a
3 financing case associated with the KCPL regulatory
4 plan which was to -- which was to follow.

5 COMMISSIONER DAVIS: And I seem to -- I
6 seem to recall somewhere that there was contemplated
7 that there was going to be \$100 million worth of
8 equity issued by GPE in 2009 -- I don't know if
9 that's highly confidential or not, excuse me. Does
10 anybody -- does anybody recall that?

11 MR. ZOBRIST: That's correct,
12 Commissioner.

13 COMMISSIONER DAVIS: Okay.

14 MR. ZOBRIST: I have been advised.

15 COMMISSIONER DAVIS: Okay. So
16 Mr. Zobrist, does the -- does the Commission's
17 decision in this case affect the -- the issuance of
18 equity in the -- that was contemplated as an
19 attachment to the experimental regulatory plan in I
20 think it's EO-2005-329.

21 MR. ZOBRIST: Yes, Commissioner, but it
22 also goes beyond that, as Mr. Cline indicated in his
23 affidavit attached to the status report in the motion
24 to extend the true-up period.

25 COMMISSIONER DAVIS: Uh-huh. Okay.

1 Now, Aquila also has an experimental regulatory plan
2 with the Commission, does it not?

3 MR. WILLIAMS: No.

4 MR. DOTTHEIM: No, Commissioner, it does
5 not.

6 COMMISSIONER DAVIS: Well, what was --

7 MR. DOTTHEIM: Empire has a experimental
8 regulatory plan.

9 MR. WOODSMALL: Aquila had a financing
10 plan, if that's what you're recalling.

11 COMMISSIONER DAVIS: Yeah, that's
12 what -- that's what I'm recalling. And was that --
13 was that the 2005 293 case, or what was that?

14 MR. FISCHER: I think you're correct.

15 COMMISSIONER DAVIS: Okay. Because that
16 was the -- there was a five-year credit facility, I
17 believe, as part of that plan, was there not,
18 Mr. Fischer?

19 MR. FISCHER: Judge, I wasn't involved
20 in that personally, but what's my recollection having
21 read it.

22 COMMISSIONER DAVIS: Right, okay. So
23 yes. So there was -- there was a financing case.
24 Now -- but I'm looking at the -- I think I actually
25 have the financing case in front of me, so is

1 anything in that financing case an issue here in this
2 case?

3 MR. ZOBRIST: Well, not directly as far
4 as the company is concerned.

5 COMMISSIONER DAVIS: Okay. All right,
6 Judge, I think I'm done for right now.

7 JUDGE DIPPELL: Okay. Commissioner
8 Jarrett, did you have anything at this time?

9 COMMISSIONER JARRETT: No questions.

10 JUDGE DIPPELL: Okay. I'll go ahead,
11 then. Mr. Woodsmall, did you have some additional
12 comments with respect to these cases?

13 MR. WOODSMALL: Just briefly, your
14 Honor. And I won't hit my whole statement. I'll
15 just hit a couple of things that have come up. In
16 regard to the question of the number of DRs, it's
17 important to remember that just getting the DRs in is
18 just a small part of the equation. Sometimes a
19 one-sheet DR will garner a 300-page response. So
20 while we're talking about hundreds of DRs, we're
21 talking about tens of thousands of pages.

22 So while Staff may have been able to
23 start the discovery associated with their
24 construction audit, digesting the information takes
25 much, much longer. That's one point.

1 When we're talking about the interim
2 subject to refund option, it's important to remember
3 that that only, using Mr. Zobrist's term, punishes
4 the company if they are subsequently found to be
5 imprudent. If everything is prudent just as the
6 company says, there's no implication to the company.
7 So it's -- it's important to remember that that
8 option only comes into play if there's a later
9 finding of imprudence. And the -- and the company
10 seems confident in what they're saying of -- you
11 know, as to a lack of imprudency. So you know, that
12 should be a nonissue then to them.

13 The company seeks to minimize the
14 construction audit by just talking about invoices and
15 the invoice turnover date. A construction audit is
16 not just a matter of getting in invoices and taking a
17 ten-key and adding them up. Construction audit goes
18 much deeper. Issues such as whether the company was
19 prudent in continuing to build Iatan 2 given the
20 economic collapse, given changes in load forecasting,
21 given their reforecast.

22 There are numerous issues. A very --
23 very small portion of this is about adding up
24 invoices, so I want to make sure the Commission is
25 aware of what's involved in this construction audit.

1 Finally, I'd point out that the company
2 has really hampered the Commission in trying to find
3 an option for getting out of this. The company
4 continues to take the position that the only thing
5 you should do is allow them relief from the in
6 service criteria date, but not give any other relief.
7 We come forward with options such as interim subject
8 to refund and extending for a construction audit, and
9 they continue to take a very hard-nosed approach to
10 this and hamstring the Commission in trying to find
11 an alternative.

12 And so I'd like the Commission to keep
13 that in mind, and maybe the company at some point
14 will come forward with some other options designed to
15 accommodate a construction audit, but as I had
16 mentioned this morning, the current schedule will
17 not, given what we've heard, accommodate a
18 construction audit. And hopefully the company may
19 present an option because I'm out of ideas. I've
20 tried to give options and the company has continually
21 turned those back. I think that's all I had.

22 JUDGE DIPPELL: And Mr. Woodsmall, let
23 me ask you just briefly as sort of a summary, do you
24 consider the four options you laid out in the earlier
25 case to be the same four options in these cases? Is

1 there any change from Greater Missouri Operations?

2 MR. WOODSMALL: I don't believe so. I
3 don't -- I don't believe so. I want to make sure
4 somewhat similar to what Mr. -- Commissioner Davis
5 was just saying, there are complicating factors in
6 this case regarding Jeffrey and Sibley. I don't
7 think those suffer from the same budget problems and
8 timeline problems. So with that caveat, I think they
9 are the same options.

10 JUDGE DIPPELL: But you would say that
11 your option four which seemed to be a new option
12 brought up here today would -- would apply equally to
13 this case as it did to the earlier one?

14 MR. WOODSMALL: Certainly the same
15 statutes, the same legal concerns would apply, and I
16 would maintain that the interim subject to refund
17 with some suspension of tariffs is legal. And so
18 yes, it does apply.

19 JUDGE DIPPELL: Thank you.

20 MR. WOODSMALL: You're welcome.

21 JUDGE DIPPELL: Commissioner Davis, did
22 you have any questions for Mr. Woodsmall?

23 COMMISSIONER DAVIS: Mr. Woodsmall, I --
24 you know, I've heard your comments about the company
25 and certainly your comments would -- would -- would

1 lead one to infer that the company has been
2 stonewalling the Commission Staff and other parties
3 on this issue. Is that a fair statement?

4 MR. WOODSMALL: No. When you say
5 "stonewalling," that in my mind implies that they're
6 withholding information. I don't have any
7 independent knowledge that they're withholding
8 information. I think what the company is doing is
9 taking a hard-line approach to the procedural options
10 available to the Commission.

11 For instance, when I bring up the idea
12 of a compromise, if you will, the interim subject to
13 refund, they flat out reject it. And while the
14 Staff's proposal I believe would have called for the
15 consent of the company, I believe that my proposal
16 that I presented this morning doesn't require the
17 company's consent. I believe that the Commission can
18 unilaterally suspend the tariffs and impose some
19 amount of rates on an interim subject to refund
20 basis.

21 So when you talk about stonewall, I
22 don't believe the company's stonewalling, I believe
23 they're taking a hard-line approach to the procedure.

24 COMMISSIONER DAVIS: Okay. Thank you,
25 Mr. Woodsmall.

1 MR. WOODSMALL: Thank you.

2 COMMISSIONER DAVIS: Can I go back to
3 Staff?

4 JUDGE DIPPELL: Sure.

5 COMMISSIONER DAVIS: Mr. Dottheim, do
6 you -- do you recall the arguments made by the PSC
7 Staff in the KCP&L Aquila merger case, the arguments
8 against the merger?

9 MR. DOTTHEIM: I -- I think so,
10 hopefully.

11 COMMISSIONER DAVIS: Do you recall
12 that -- that one of the themes in that case was that
13 the merger was somehow not consummated properly, that
14 it was -- it was not a true merger so that therefore
15 there could be no synergies and Staff didn't even
16 address this energy issue about -- they didn't -- you
17 know, any of K -- they didn't really address any of
18 KCP&L's proposed synergies; is that -- is that a fair
19 statement?

20 MR. DOTTHEIM: That the Staff didn't do
21 a bottoms-up approach to synergies, but I remember
22 the argument that it wasn't a proper -- the
23 transaction wasn't properly structured from a -- from
24 the application that was pending before the
25 Commission and what GPE KCPL were indicating they

1 were planning to do from a functional structural
2 perspective with Aquila once it was acquired.

3 COMMISSIONER DAVIS: I don't know if
4 Mr. Williams was anxious to jump in there or --

5 MR. DOTTHEIM: I think Mr. Williams was
6 just checking to see if the microphone was on.

7 COMMISSIONER DAVIS: So are you done,
8 Mr. Dottheim?

9 MR. DOTTHEIM: Yes, sir.

10 COMMISSIONER DAVIS: Mr. Dottheim, how
11 do we know -- how does the Commission know that
12 Staff's apparent failure to perform any auditing work
13 in this case is not a part of a calculated legal
14 strategy to just -- you know, to defer the -- the
15 issue of whether the Iatan 2 cost overruns should be
16 included in rates or not?

17 MR. DOTTHEIM: Because the Staff is
18 proposing that the Iatan 2 costs should be included
19 in rates in this case -- oh, excuse me, I'm sorry,
20 I'm sorry. I was thinking of Iatan 1, not Iatan 2.

21 COMMISSIONER DAVIS: The Iatan -- I'm
22 referring to the Iatan 1 environmental costs.

23 MR. DOTTHEIM: Okay, I'm sorry. And I
24 just assumed that I had heard Iatan 1 as opposed to
25 Iatan 2 which is what you said.

1 COMMISSIONER DAVIS: I'm sorry. Forgive
2 me.

3 MR. DOTTHEIM: No, no, you said it
4 correctly. I -- I thought I heard something else but
5 I didn't hear it because you did say Iatan 2.

6 Commissioner, I'm not quite sure I know
7 how to answer that because I may -- I'm just -- I
8 don't know how to answer it because that thought has
9 never crossed my mind. I don't know -- I don't know
10 how you get to what you're suggesting. I have to sit
11 here and think about that. And I think the fact that
12 I first answered your question by assuming you were
13 asking me about Iatan 1 is an indication that I
14 really can't even fathom your question to me about
15 Iatan 2.

16 The Staff proposed about Iatan 1 when it
17 had not audited the cost. The Staff is not
18 suggesting that the cost not be put into the rates,
19 the Staff is suggesting that the cost be put into
20 rates.

21 The Staff suggested in the Staff -- in
22 the Staff's report two scenarios: One, that the cost
23 be put into rates interim subject to refund such that
24 at a subsequent time when the prudence of the Iatan
25 costs are looked at by the Commission when it might

1 have some testimony challenging the prudence, and
2 there may never be testimony challenging the
3 prudence, but if at some subsequent time, next case,
4 there is some challenge to the prudence of those
5 costs, and if the Commission makes the determination
6 that some of the costs are imprudent, the cost would
7 have been recovered interim subject to refund.

8 So there would be a pot of dollars in
9 existence from which dollars could be refunded to
10 customers or credited to customers. And in that
11 manner, because there is a fund of dollars that are
12 interim subject to refund, there is no retroactive
13 ratemaking. Without those rates going into effect
14 interim subject to refund, it would be retroactive
15 ratemaking for the Commission to make a determination
16 at a later time that the costs were imprudent and to
17 try to flow the dollars back to ratepayers or credit
18 the dollars back to ratepayers.

19 COMMISSIONER DAVIS: Right, I -- I
20 understand.

21 MR. DOTTHEIM: Yes.

22 COMMISSIONER DAVIS: And it wouldn't be
23 retroactive ratemaking to tell you that,
24 Mr. Dottheim, you've got until July 1 to come in here
25 and make your best argument, would it, as part of the

1 true-up?

2 MR. DOTTHEIM: Pardon? I'm sorry. I
3 didn't -- Commissioner, I didn't follow you.

4 COMMISSIONER DAVIS: Okay. We've got --
5 we've got a true-up scheduled for early July in this
6 case.

7 MR. DOTTHEIM: Yes or whenever.

8 COMMISSIONER DAVIS: You could -- or
9 whenever. Or tentatively I think it's scheduled
10 for -- for early July, I think. What -- what
11 prohibits you from coming in and arguing imprudence
12 as part of that proceeding right there?

13 MR. DOTTHEIM: Resources. The Staff
14 doesn't have the time, the resources available to
15 perform a prudence audit in that time frame.

16 COMMISSIONER DAVIS: Okay.

17 MR. DOTTHEIM: Alternative --
18 Commissioner, sorry to interrupt you. But in the
19 Staff's report that was filed on February 11th, there
20 was an alternative --

21 COMMISSIONER DAVIS: Uh-huh.

22 MR. DOTTHEIM: -- and it was phrased to
23 attempt in part to address a collateral estoppel
24 argument. Mr. Zobrist today has attempted to meet
25 that argument by citing the Ag Processing case, but

1 if the rates are not interim subject to refund, I do
2 believe there is case law that the Commission in a
3 subsequent case, even if it finds that the costs are
4 prudent because this is an administrative body --

5 COMMISSIONER DAVIS: Uh-huh.

6 MR. DOTTHEIM: -- the Commission in any
7 subsequent case can find that there is new
8 information or it has a different understanding of
9 information and find that there was imprudence.

10 Now, since the rates were not interim
11 subject to refund, the Commission cannot flow any
12 rates that were collected back to ratepayers or
13 credit any dollars back to ratepayers. But the
14 Commission could make disallowances, and on a
15 going-forward basis --

16 COMMISSIONER DAVIS: Going forward
17 basis.

18 MR. DOTTHEIM: -- affect rates. And
19 therefore not do anything that would be retroactive
20 ratemaking, but just affect rates on a going-forward
21 basis.

22 COMMISSIONER DAVIS: Okay.

23 MR. DOTTHEIM: So the Staff's
24 recommendation about interim subject to refund is an
25 alternative, and it's an effort to address the rates

1 that are coming out of this case. If the Commission
2 determines that either it believes that for whatever
3 reason the Staff should have completed an audit in
4 the context of this case or the company's correct,
5 there is some legal impediment to making the rates
6 interim subject to refund, I think there still is the
7 option for the Commission, for a subsequent
8 Commission to on a going-forward basis if a party
9 presents the issue of prudence, to make a prudence
10 adjustment.

11 And I did raise -- or excuse me, the
12 Staff raised in the report that was filed on
13 February 11th the suggestion that the Commission find
14 in its Report and Order that it -- that it did not
15 make a prudence determination regarding the Iatan 1
16 costs which, again, Mr. Zobrist has raised to counter
17 that, the Ag Processing decision. So I'm quite sure
18 the Commission is going to see in briefs a full -- a
19 full development of the legal issues.

20 COMMISSIONER DAVIS: All right. I found
21 your -- I found comments regarding creating a, quote,
22 pot of money very interesting. Do you recall KCP&L's
23 first rate case after the adoption of the
24 experimental regulatory plan?

25 MR. DOTTHEIM: Yes.

1 COMMISSIONER DAVIS: Okay. And you
2 recall that as a part of the experimental regulatory
3 plan, it was contemplated that KCP&L would require
4 approximately \$17 million in amortizations. Do you
5 recall that?

6 MR. DOTTHEIM: Yes.

7 COMMISSIONER DAVIS: And what was
8 Staff's actual recommendation in that case for
9 amortizations, do you recall?

10 MR. DOTTHEIM: Commissioner, are -- do
11 you mean from a quantification perspective or -- or
12 something other than quantification, because I
13 don't --

14 COMMISSIONER DAVIS: Wasn't the
15 number -- wasn't the number approximately 50 million?

16 MR. DOTTHEIM: I don't recall.

17 COMMISSIONER DAVIS: Wasn't Staff's last
18 recommendation that KCP&L was actually overearning by
19 approximately 17 million and recommended offsetting
20 that number by approximately \$50 million in
21 amortizations?

22 MR. DOTTHEIM: Commissioner, I -- I
23 don't recall. If that's -- if that's what you say
24 was the Staff's position, I -- I will accept that.

25 COMMISSIONER DAVIS: Does anybody else

1 recall that?

2 MR. FISCHER: Judge, my recollection is
3 that that may have been the position going in. When
4 it got trued up, it was less than that.

5 COMMISSIONER DAVIS: Okay. Okay. All
6 right. Well, turning -- turning to another issue,
7 Mr. Dottheim, do you recall the -- the -- not the
8 most recent Ameren rate case, but I guess it would be
9 the 2006 Ameren rate case where I believe Ameren's
10 initial position was that they were entitled to
11 approximately \$240 million in new revenue and that
12 Staff initially recommended a \$180 million reduction?
13 Do you -- do you recall some initial testimony like
14 that or -- in the true-up reconciliation?

15 MR. DOTTHEIM: Chairman, I just don't
16 remember the numbers. I'm sorry. Commissioner.

17 COMMISSIONER DAVIS: Okay. That's fair.
18 But do you recall that there was -- do you recall
19 that there was -- there was a large gap?

20 MR. DOTTHEIM: Yes, Commissioner.

21 COMMISSIONER DAVIS: And that the gap
22 was pretty near half a billion dollars?

23 MR. DOTTHEIM: There was a wide
24 difference.

25 COMMISSIONER DAVIS: Now, subsequently,

1 that -- there were numerous issues settled in that
2 case before things went to hearing and I guess during
3 the hearing, and I think I recall that the Commission
4 ultimately awarded approximately \$40 million or
5 something of that nature?

6 MR. DOTTHEIM: I think so.

7 COMMISSIONER DAVIS: Mr. Dottheim, I'm
8 going to go back to my original question to you, and
9 that is tell me again why I should believe that this
10 is not just another attempt by Staff to either gain
11 the system now or gain the system at a later date?

12 MR. DOTTHEIM: Chairman [sic], the
13 numbers in the case from the Staff are not intended
14 to game the system. I explained this morning, and I
15 don't know whether you would interpret this, what I
16 explained this morning as -- as gaming the system.

17 And maybe on pain of boring Commissioner
18 Jarrett by going through this again, and I think
19 Judge Dippell who was also here, but I explained this
20 morning that Staff will put in its revenue
21 requirement when -- when the revenue requirement as
22 determined by the Staff is close to zero or
23 marginally negative.

24 And the Staff believes that once it gets
25 further into the case, that, for example -- and I

1 use -- I use this case -- that the true-up period,
2 that in the context of the true-up, that because of
3 the true-up, the case will go very positive or
4 that -- that the true-up has a -- will cause the case
5 to increase greatly. The Staff will put in a
6 known -- what it calls an allowance for known and
7 measurable changes or a true-up estimate.

8 COMMISSIONER DAVIS: Uh-huh.

9 MR. DOTTHEIM: In this case the Staff
10 has put in an allowance for known and measurable
11 changes a true-up estimate of \$60 million. Without
12 that \$60 million, our number, our revenue requirement
13 is negative.

14 COMMISSIONER DAVIS: Okay.

15 MR. DOTTHEIM: We put in that allowance
16 for known and measurable changes true-up estimate
17 because we don't want to give --

18 COMMISSIONER DAVIS: Is that in this
19 case?

20 MR. DOTTHEIM: Excuse me, I'm sorry.
21 I'm sorry. I was talking about this morning, I was
22 talking about --

23 COMMISSIONER DAVIS: Well, let's stick
24 with this case, Mr. Dottheim.

25 MR. DOTTHEIM: Okay. Okay. But I

1 need -- let me just do that hypothetically.

2 COMMISSIONER DAVIS: Okay.

3 MR. DOTTHEIM: I'll do that
4 hypothetically because we're talking about gaming the
5 system.

6 COMMISSIONER DAVIS: Uh-huh.

7 MR. DOTTHEIM: The Staff will put in a
8 number --

9 COMMISSIONER DAVIS: Uh-huh.

10 MR. DOTTHEIM: -- like that because it
11 doesn't want to create a false impression that the
12 case may lead to rate reductions or no rate increase
13 based upon what the revenue requirement is based upon
14 the test year.

15 COMMISSIONER DAVIS: Uh-huh.

16 MR. DOTTHEIM: The Staff believes
17 that -- or if the Staff believes --

18 COMMISSIONER DAVIS: Because you've got
19 the update and the true-up.

20 MR. DOTTHEIM: Yes.

21 COMMISSIONER DAVIS: Okay.

22 MR. DOTTHEIM: Commissioner, to my
23 knowledge, that is the only, quote, gaming the
24 system, closed quote, that I am aware of the Staff
25 doing, is putting in, as I referred to it this

1 morning, plugs. Okay? We try issues that we're not
2 certain we're going to win.

3 COMMISSIONER DAVIS: Uh-huh.

4 MR. DOTTHEIM: We try issues that we
5 think philosophically we should put before the
6 Commission that we may lose but that we think we
7 should put before the Commission for the Commission
8 to decide. I don't know if you would refer to that
9 as gaming the system.

10 I don't believe that the Staff puts on a
11 case with inflated numbers or maybe from some
12 people's perspective the company's perspective,
13 deflated numbers. That's -- that's not been my
14 experience over 30 years as to how the Staff
15 operates.

16 We don't take an issue into the hearing
17 room unless we think we can do a credible job.
18 Sometimes we're mistaken. Sometimes we're very
19 disappointed because we don't think we've done a
20 credible job by the time it's all over. But we don't
21 purposely try issues to lowball the company or game
22 the system.

23 Commissioner, that's just my
24 perspective. We think if we did what you're
25 suggesting, we'd have no credibility. And maybe we

1 have no credibility to begin with because maybe
2 people believe we operate as you're suggesting. We
3 don't think we do.

4 COMMISSIONER DAVIS: Do you understand
5 how people could get that impression?

6 MR. DOTTHEIM: I do. There are other
7 members of the Staff who don't. But I understand
8 what you're saying, but I don't believe it's true.

9 COMMISSIONER DAVIS: Okay.

10 MR. DOTTHEIM: If I did believe it's
11 true, I would have serious problems with it because I
12 wouldn't want to be associated with it.

13 COMMISSIONER DAVIS: All right. Thank
14 you -- thank you, Mr. Dottheim. One more question.
15 This is for everyone. To the extent that there has
16 been discussion here about the construction cost
17 overruns related to the environmental upgrades at
18 Iatan 1 and the possible impact on rates, does a
19 decision here that impacts rates constitute
20 prejudgment?

21 MR. ZOBRIST: It very well could, yes,
22 because if you are -- if the Commission adopts one of
23 the proposals that's been suggested which is to
24 either not move the date or to do certain other
25 things that would maintain these conditions which

1 essentially would either insert issues into the case
2 which have not been raised in prefiled testimony or
3 adopt Staff's litigation position with regard to
4 interim rates subject to refund, that would be
5 prejudging the case.

6 MR. WOODSMALL: Your Honor, and I think
7 I disagree. All that's being asked for here is
8 procedural points, whether it's 30 days for them to
9 show in service criteria or whether it's an interim
10 subject to refund mechanism so that Staff has time to
11 do a construction audit, we're merely talking about
12 procedural aspects of this case. We're not asking
13 for prejudgment of substantive issues. We're asking
14 for the Commission to allow sufficient time, whether
15 it's on in service criteria or construction audits or
16 whatever it is, sufficient time for the parties to
17 put on their case. Nothing to do with prejudgment.
18 Just sufficient time, procedural.

19 COMMISSIONER DAVIS: And Mr. Woodsmall,
20 going back to your proposed alternative, what -- how
21 much -- assuming that KCP&L can provide everything by
22 the -- you know, their various dates, but April 30th,
23 May 29th, June 1st, the -- the invoice data dates or
24 whatever they're called, what do you think is an
25 appropriate amount of time?

1 MR. WOODSMALL: I have to rely upon
2 Staff. I have to.

3 COMMISSIONER DAVIS: Okay.

4 MR. WOODSMALL: Our -- our clients
5 cannot afford the money. We're not like the utility
6 in which everything we spend gets passed back to the
7 ratepayers. They can spend millions of dollars on
8 rate cases because my clients pay it. My clients
9 can't afford then to buck up additional money to
10 challenge the construction audit. We have to rely on
11 Staff. And so when Staff says they need three months
12 or six months, I believe them.

13 And getting to the point about gaming
14 the system, we -- my clients are the ones that will
15 suffer if Staff games the system, and I don't believe
16 it's happening. I believe Staff is approaching this
17 in a very credible manner. I believe when they say
18 they need additional time, they need it.

19 And so I'm merely stepping out there
20 with our position that they be allowed that time to
21 do the construction audit. And so if they say
22 they -- again, if they say they need six months or
23 three months, I believe that the process ought to
24 accommodate not an unreasonable amount of time, but
25 the amount of time they need to conduct their

1 construction audit.

2 COMMISSIONER DAVIS: Mr. Mills, did you
3 have anything?

4 MR. MILLS: Yeah, just a little bit
5 different perspective. I mean, I think the way that
6 the company urges you to -- to approach this right
7 now is don't give Staff any more additional time.
8 Obviously, you know, I think if you gave the Staff an
9 additional year or two, they could probably fill that
10 up.

11 I don't know the exact answer of how
12 much time it takes, you know, the minimum time to do
13 a really good job, but almost anything more than
14 nothing is going to be better than what we've got
15 now. So you know, maybe -- maybe four months is an
16 incredibly short amount of time, but at least it
17 would allow some more auditing to be done than --
18 than the company would have you do under their
19 proposal.

20 So I think anything incremental to zero
21 is to our advantage. Maybe you really can't see
22 going six months out to the future, but four months
23 ought to allow something to be done.

24 COMMISSIONER DAVIS: And Mr. Mills, it's
25 true if they are overwhelmed, they are capable of

1 hiring external consultants to perform work, are they
2 not?

3 MR. MILLS: I don't know. I certainly
4 am not. My budget is tapped for -- for this year --

5 COMMISSIONER DAVIS: Right.

6 MR. MILLS: -- and I can see I would
7 spend it all next year without hiring consultants for
8 a construction audit. I don't know what Staff's
9 ability to do that is.

10 COMMISSIONER DAVIS: Right. But they --
11 they have hired consultants in the past, have they
12 not?

13 MR. MILLS: Certainly.

14 COMMISSIONER DAVIS: All right. Most --
15 most notably Steven Hill in the Ameren rate case, is
16 that had not true, Mr. Dottheim?

17 MR. DOTTHEIM: Yes, that is.

18 MR. WOODSMALL: But again, everybody
19 else's budget does not appear to be as unlimited as
20 the company's when they get to pass all these costs
21 through as rate case expense. So they may have
22 something, but no one's is near the budget that the
23 companies have.

24 MR. ZOBRIST: Commissioner, can I be
25 heard on --

1 COMMISSIONER DAVIS: Certainly.

2 MR. ZOBRIST: You know, if the other
3 parties are going to start talking about facts, let
4 me just tell you what is going to be in the record.
5 Beginning on February 9th, 2007, the first of 13
6 visits began at Iatan 1. Then there was a meeting in
7 June 2007. This is all contained in Brent Davis's
8 testimony.

9 In 2008, there were nine visits,
10 February, April, two in May, June, July, August,
11 September and November. There was a meeting on
12 January 16th, and I understand there was one last
13 week. We thought the audit began then. We certainly
14 thought it was underway at the time of the Aquila
15 acquisition when we produced 11 folks for their
16 depositions, produced thousands of documents. And
17 then in January of this year, although we thought
18 somewhat late, 150 DRs came through in the Iatan
19 projects.

20 Why didn't this begin in earnest months
21 ago? It is -- I don't think you need to go to intent
22 or gamesmanship. The facts speak for themselves.
23 They didn't get the job done. We have evidence ready
24 to put in the record and we're only asking for
25 30 days. We're asking for 30 days to meet the in

1 service criteria. The procedural issue before the
2 Commission at this point isn't going to solve the
3 fact that Staff did not get its work done.

4 And we're entitled to have our case be
5 judged as it is without punishing us in the financial
6 marketplace with an interim rate subject to refund
7 order because that will have financial effects on
8 this company, and we don't need to go there because
9 we're ready to go to hearing in two weeks -- or three
10 weeks -- two weeks.

11 MR. MILLS: If I may respond, I think if
12 the Commission would focus on the procedural issue
13 that is before the Commission, I think it would
14 address the question. The Commission has issued an
15 order which obviously it felt was lawful and
16 reasonable under the circumstances. The company's
17 asking you to change your mind. If you don't change
18 your mind, then I think that the issues that we're
19 talking about in terms of construction audits and the
20 time to -- to complete those are taken care of.

21 The company wants you to change your
22 order, change the order that you lawfully issued to
23 do something else. And if you do do that, then some
24 of the parties believe that there won't be sufficient
25 time to do a construction audit. So the procedural

1 aspects that we're addressing here is whether or not
2 the Commission should change its mind on an order
3 it's already issued.

4 COMMISSIONER JARRETT: Yeah, but Staff
5 admitted -- Staff admitted that they got -- that we
6 got it wrong on the -- on that one condition with the
7 interim rates, so --

8 MR. MILLS: Well, you misunderstood
9 Staff's position. I still think that your order is
10 lawful and reasonable.

11 COMMISSIONER JARRETT: I -- it seemed
12 pretty clear to me that he said we got it wrong. I
13 can go back and look at the transcript.

14 MR. MILLS: No, no, I think that is
15 true. You misunderstood what the Staff said. But I
16 don't know that that means that the order itself is
17 wrong.

18 COMMISSIONER DAVIS: Well, hold -- hold
19 that -- hold that thought, Mr. Dottheim.
20 Mr. Dottheim is wanting to jump in. We're going
21 to -- we're going to give him a placeholder here. I
22 want to go back to Mr. Zobrist.

23 Mr. Zobrist, obviously we've had a
24 change of administration here since January, and
25 we've gone to agenda meetings that were -- are only

1 one day a week now. Did that impact your ability at
2 all to -- to file a timely response prior to the --
3 prior to the Commission issuing the order in this
4 case?

5 MR. ZOBRIST: Commissioner, I'm not sure
6 I can comment with sufficient knowledge on your
7 change of procedure. I did tell the Commission this
8 morning that we regretted the fact that we did not
9 come in right away in response to Staff's proposal.
10 We frankly thought that we read it carefully and
11 understood that Staff was saying you can only impose
12 interim rates, you know, upon our agreement which we
13 did not agree to. We should have advised the
14 Commission very quickly that we did not agree to
15 that.

16 The other five conditions, one of which
17 you -- that the Commission did reject said we're not
18 going to prejudge any alleged violation of a
19 Commission order.

20 The other four have not been raised in
21 the evidence by any party, the depreciation, reserve,
22 any income tax, those other things, and Mr. Williams
23 or Mr. Dottheim said this morning, those conditions
24 were introduced by Staff in case you adopted the
25 first alternative that KCP&L had with regard to only

1 having the true-up period move for Iatan 1 which they
2 viewed as an isolated adjustment. Understanding now
3 that the company says no, we'll -- we're proposing to
4 have the true-up in general moved to April 30th, I
5 don't think those other four conditions are at issue.

6 But with regard to your point, I mean,
7 the Commission is always free, and I think
8 Commissioners are always free to propose that the
9 Commission give the 24-hour notice under the Open
10 Meetings Act and that you convene immediately and if
11 need be, take it up as a good cause item. So I think
12 certainly it's -- it's within the power of the
13 Commission to move off a particular schedule that you
14 may have adopted reasonably.

15 COMMISSIONER DAVIS: All right.

16 Mr. Dottheim, back to you.

17 MR. DOTTHEIM: Yes, thank you. Despite
18 what some might seem and what they may have said, the
19 Staff is not seeking to punish the companies. The
20 Staff has not asked for additional time to complete
21 construction audits. The Staff has not suggested
22 that. The Staff's concern is its ability to perform
23 the true-ups which it believes based upon various
24 issues which, Commissioner Davis, you have Exhibit 2,
25 involving Iatan common costs which is not literally

1 tied to the in service date for Iatan 1.

2 Exhibit 2 shows that the Staff has
3 received at least three different -- actually four --
4 well, at least three different quantifications of
5 Iatan 1 common costs. There's also the issue of
6 off-system sales and pensions that will be major
7 issues in the true-up and -- okay, excuse me. I said
8 off-system sales, and that's probably one of the
9 distinctions between ER-2009-0089 and the KCP&L GMO
10 case, but --

11 COMMISSIONER DAVIS: Aquila doesn't have
12 a lot of off-system sales, do they?

13 MR. DOTTHEIM: Not anywhere as much as
14 Kansas City Power & Light Company or at least not
15 anywhere as much as Kansas City Power & Light Company
16 has had previously. So the Staff -- and again, I
17 think it's clear and Commissioner Jarrett has
18 addressed that the Staff is not suggesting that the
19 Commission impose upon KCP&L GMO the condition
20 interim subject to refund, and Mr. Zobrist has
21 addressed correctly what Mr. Williams said this
22 morning.

23 The other four conditions in particular
24 were raised by Staff to address the company's
25 preferred position of only moving the Iatan 1 in

1 service date or time frame to April 30th and keeping
2 everything else at March 31. Based on that
3 condition, the Staff thought it was appropriate
4 having those four other conditions, but KCPL now has
5 agreed to moving the true-up to April 30th, moving
6 everything, not just Iatan 1. So.

7 COMMISSIONER DAVIS: Okay. So let me --
8 let me back up there, Mr. Dottheim. Are the -- are
9 the conditions even at issue in this case anymore?

10 MR. DOTTHEIM: If they will be at --

11 COMMISSIONER DAVIS: In the 0 -- in the
12 090 and the 092 case?

13 MR. DOTTHEIM: If -- if the
14 Commission -- if the -- no, I don't think -- I don't
15 think they are. I mean, if the Commission, for
16 example -- but I don't want to leave an incorrect
17 impression. If the Commission goes to the April 30th
18 true-up date and the September 5 operational law
19 date, the Commission may see something of those
20 issues in the true-up, but I don't think they're --
21 they're at issue as conditions.

22 COMMISSIONER DAVIS: Okay. Because
23 obviously looking -- looking at the three numbers
24 proffered by GMO in Exhibit 2, which is highly
25 confidential as the judge has reminded me, and yes,

1 there -- there appears to be a gap there and there
2 appears to be a -- maybe a -- I'd call it a
3 20 percent gap there, but it certainly doesn't appear
4 to be an insurmountable number to me, Mr. Dottheim.
5 Is that a fair assessment?

6 MR. DOTTHEIM: Commissioner, it -- the
7 purpose of the exhibit is --

8 COMMISSIONER DAVIS: Is illustrative.

9 MR. DOTTHEIM: -- is illustrative to --
10 to attempt to address the Staff's ability to audit
11 the numbers, that the number keeps on changing and we
12 expect it to change again. And --

13 COMMISSIONER DAVIS: Right, but that
14 happens all the time, Mr. Dottheim.

15 MR. DOTTHEIM: Never -- never on such
16 material items and never to this extent. We think --
17 we think this case is unique. And, remember,
18 Commissioner, there is the other case. We are
19 dealing with not just one major rate case, we are
20 dealing with at least two major rate cases. Kansas
21 City Power & Light Company, KCP&L GMO, of which
22 there's KCPL GMO MPS, KCPL GMO LMP, and, of course,
23 there's that steam case which we haven't been talking
24 about which is also tied together with these other
25 cases.

1 So all those cases have to be done by
2 the same group of auditors. So when we're talking
3 about, okay, why doesn't the Staff do a prudency
4 audit, can the Staff do it if we give it another
5 month, can the Staff do it if we give it two months?
6 Well, it depends.

7 MGE just filed a rate increase case last
8 week. It's -- it's not easy for us to sit here in
9 the hearing room and just off the cuff give you
10 those -- those answers. We don't --
11 Mr. Featherstone's sitting in here, but there are
12 other people that we need to consult. We don't know
13 everybody's schedule. It's -- it's -- it's -- I
14 don't like telling you that I don't know the answer,
15 but I'm sorry, I don't know the answer.

16 COMMISSIONER DAVIS: Okay. Judge, I
17 don't think I have any more questions.

18 JUDGE DIPPELL: Okay. Mr. Jarrett -- or
19 Commissioner Jarrett, did you have any questions?

20 COMMISSIONER JARRETT: No further
21 questions.

22 JUDGE DIPPELL: I don't believe I
23 actually let Mr. Mills have his opportunity yet to
24 make any remarks. Mr. Mills, did you have anything
25 further to add?

1 MR. MILLS: You know, I think
2 considering that you're going to take -- take the
3 transcript in 2009-089 into consideration, I don't
4 think I have anything additional to add. Of course,
5 I'd be happy to answer any questions.

6 JUDGE DIPPELL: Okay. Were there any
7 additional questions for Mr. Mills?

8 (NO RESPONSE.)

9 JUDGE DIPPELL: Commissioner Davis?

10 COMMISSIONER DAVIS: I can't think of
11 any, but you'll give them all an opportunity to make
12 some sort of closing statement or something, won't
13 you?

14 JUDGE DIPPELL: Well, this may be
15 coming -- coming up close. I'm going to give
16 Mr. Zobrist an opportunity to say something in
17 rebuttal like we did at the earlier arguments, but if
18 something comes to your mind --

19 COMMISSIONER DAVIS: Well, I guess -- I
20 guess -- I guess before -- I guess before Mr. Zobrist
21 goes to his rebuttal, I just to want ask Mr. Mills,
22 Mr. Woodsmall and Mr. Dottheim if they had anything
23 else to add, then.

24 JUDGE DIPPELL: All right. Commissioner
25 Jarrett, did you have any -- specifically for

1 Mr. Mills?

2 COMMISSIONER JARRETT: Nothing further.

3 JUDGE DIPPELL: All right. Was there
4 any additional comments from either Public Counsel or
5 the Industrial Intervenors or Staff?

6 (NO RESPONSE.)

7 JUDGE DIPPELL: All right. Mr. Zobrist,
8 did you have any closing remarks?

9 MR. ZOBRIST: I did, but Mr. Fischer was
10 going to make a point.

11 JUDGE DIPPELL: All right.

12 MR. FISCHER: Judge, it's hard for me to
13 sit on my hands and I wanted to make one point. And
14 that is that if the Commission adopts the company's
15 proposal and moves the true-up date from March 30 to
16 April 30 and extends the true-up schedule on the
17 other end, it will be the same 120 days for the
18 true-up under what is on the table, the March 30 date
19 or as it's extended by 30 days.

20 We will have the same amount of time
21 to do the true-up. It's not traditionally done
22 that you do a construction audit during a true-up
23 period. You're talking about updating numbers. The
24 construction audit, if it was done, should have been
25 done before, and we'd be talking about that in the

1 say that they did not intend that the company would
2 be punished by the interim rate suggestion, but the
3 point is, if it's the ability of the company to
4 access the capital markets, you know, either debt or
5 equity, and that perception is that if this
6 Commission is changing the rules as far as the
7 procedural schedule, that's the effect that would --
8 that would be to punish the company. It's -- it's
9 just the stark reality of the marketplace, and that's
10 what we ask you to keep in mind. Thank you very
11 much.

12 JUDGE DIPPELL: Thank you.

13 COMMISSIONER DAVIS: Mr. Zobrist, is
14 that -- is that part of Mr. Cline's attached?

15 MR. ZOBRIST: Yes, sir, it is in
16 generalities. As I believe I said at the beginning
17 of my presentation, he is here if anyone wanted to
18 question him on his affidavit, but yes, that is
19 contained in his affidavit.

20 JUDGE DIPPELL: Is that all?

21 MR. ZOBRIST: Yes.

22 JUDGE DIPPELL: Did you have anything
23 else, Commissioner Jarrett?

24 COMMISSIONER JARRETT: I have nothing.

25 JUDGE DIPPELL: All right, then. Having

1 heard the oral arguments in these two cases, then we
2 will adjourn.

3 Thank you. We can go off the record.

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

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