

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS  
Scheduling Conference  
April 24, 2012  
Jefferson City, Missouri  
Volume 3

In The Matter of Kansas City Power )  
& Light Company's Request For ) File No.  
Authority To Implement A General ) ER-2012-0174  
Rate Increase For Electric Service )  
  
In The Matter Of KCP&L Greater )  
Missouri Operations Company's Request ) File No.  
For Authority Implement A General ) ER-2012-0175  
Rate Increase For Electric Service )

DANIEL JORDAN, Presiding  
SENIOR REGULATORY LAW JUDGE  
  
KEVIN D. GUNN, Chairman  
TERRY M. JARRETT  
ROBERT S. KENNEY,  
COMMISSIONERS

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## PROCEEDINGS

1  
2 JUDGE JORDAN: The Commission is calling File  
3 Numbers ER-2012-0174 and ER-2012-0175. We're here to discuss  
4 a few extra scheduling challenges in these cases. I'm Daniel  
5 Jordan, I'm the regulatory law judge assigned to this action.  
6 We'll be on the record this morning for at least part of this  
7 conference. I'll begin by taking entries of appearance.  
8 Let's start with the applicants, Kansas City Power & Light  
9 Company.

10 MR. FISCHER: Yes, Judge. Let the record  
11 reflect the appearance of James M. Fischer, Fischer & Dority,  
12 101 Madison Street, Suite 400, Jefferson City, Missouri.  
13 Appearing on behalf of Kansas City Power & Light Company and  
14 also KCP&L Greater Missouri Operations Company.

15 JUDGE JORDAN: Thank you. And for Staff?

16 MR. WILLIAMS: Kevin Thompson and Nathan  
17 Williams.

18 JUDGE JORDAN: Thank you. For the office of  
19 the Public Counsel?

20 MR. MILLS: On behalf of the office of the  
21 Public Counsel and the public, my name is Lewis Mills, my  
22 address is Post Office Box 2230, Jefferson City, Missouri  
23 65102.

24 JUDGE JORDAN: Thank you. Let's go through  
25 the intervenors now also. Is there anyone present for the --

1 for AARP and the Consumer Council of Missouri? Not hearing  
2 one.

3 We'll go to Ag Processing. Anyone here for Ag  
4 Processing?

5 Anyone here for the City of Kansas City,  
6 Missouri?

7 MR. COMLEY: Absolutely. On behalf of the  
8 city of Kansas City, Mark W. Comley; Newman, Comley & Ruth,  
9 601 Monroe, Suite 301, Jefferson City, Missouri.

10 JUDGE JORDAN: Thank you, counsel.

11 For Dogwood Energy, LLC? Not hearing anyone.

12 For Midwest Energy Consumers Council?

13 MR. WOODSMALL: Thank you, Your Honor. David  
14 Woodsmall. Thank you.

15 JUDGE JORDAN: For the Midwest Energy Users  
16 Association?

17 For Missouri Department of Natural Resources?

18 MS. FRAZIER: Yes, Your Honor, Jennifer  
19 Frazier with the Attorney General's Office, and my contact  
20 information has been provided to the court reporter.

21 JUDGE JORDAN: Thank you, counselor.

22 For Missouri Industrial Energy Consumers?

23 For Praxair, Incorporated?

24 For the following parties: Sierra Club, Earth  
25 Island Institute, doing business as Renew Missouri, and The

1 Natural Resources Defense Counsel? Not hearing one.

2 Anyone for Southern Union, doing business as  
3 MGE?

4 MR. COOPER: Yes, Your Honor. Dean Cooper on  
5 behalf of Southern Union Company, d/b/a Missouri Gas Energy.  
6 Address has been provided to the court reporter.

7 JUDGE JORDAN: Thank you. And I will note for  
8 the record that Union Electric Company, doing business as  
9 Ameren Missouri, has been excused by contact with the  
10 regulatory law judge this morning.

11 Anyone present for the applicants for  
12 intervention, the federal agencies, whose motions are still  
13 pending? I'm not hearing anyone.

14 So let me begin this conference by making  
15 something clear and that is the occurrence of this conference  
16 is not meant as a criticism of anyone or the proposed  
17 schedule that's been filed. Part of the difficulties arise  
18 from -- if there is any fault at all, from your regulatory  
19 law judge because I did not mention as I review the  
20 transcript from the prehearing conference, that the dates  
21 that the Commission had set were also in play. And I'm sorry  
22 about that. I was, as anyone in this room will recall, a  
23 little bit distracted due to a certain somewhat gruesome  
24 medical condition.

25 This is -- scheduling is difficult due to the

1 Ameren rate case, which immediately proceeds the hearing as  
2 currently scheduled for this action. And I don't know that  
3 there's been anything more challenging to face the  
4 Commission. Nevertheless, there's certain things that are  
5 not working as currently scheduled. And like I say, that's  
6 not a criticism of anyone.

7           The Commission is concerned, though, that the  
8 scheduling of these hearings immediately in immediate  
9 succession may hamper the work of the parties who are  
10 involved in both cases, and that as a matter of regulation  
11 includes OPC and Staff. So I've decided to have a  
12 conversation about these issues in-person rather than on  
13 paper.

14           I'm aware that I am the least experienced  
15 probably of anyone in this room with dealing with this kind  
16 of challenge, so I wanted to have a more efficient exchange.  
17 My hope is that what will come out of this will be an Amended  
18 Motion, a motion to amend the schedule and an Order can  
19 follow quickly.

20           Yes, counselor.

21           MR. MILLS: Judge, I hate to interrupt, but I  
22 just got an e-mail from Carl Lumley who states that several  
23 people are on the line waiting to join the conference.

24           JUDGE JORDAN: Thank you, Counselor. I  
25 thought I'd opened the phone line but I'm going to try that

1 again. And you may reply to him with that message.

2 (An off-the-record discussion was held.)

3 JUDGE JORDAN: All right. My version of this  
4 Order had a different number than everybody else's did, but  
5 we'll take care of that off the record. In the meantime,  
6 let's go back on the record. And we have some parties on the  
7 telephone line with us. Let's start by taking their entries  
8 of appearance.

9 MR. LUMLEY: This is Carl Lumley for Dogwood  
10 Energy.

11 JUDGE JORDAN: Thank you, Counselor. Is  
12 anyone else on the line?

13 MR. LOWERY: This is Jim Lowery for Ameren  
14 Missouri.

15 JUDGE JORDAN: Well, thank you for joining us,  
16 Mr. Lowery. Thank you, Counselor. Anyone else on the line?

17 MR. COFFMAN: This is John Coffman,  
18 representing AARP and Consumers Council of Missouri.

19 JUDGE JORDAN: Very good. Thank you,  
20 Counselor.

21 Who else is on the line today?

22 MR. HEALY: This is Doug Healy representing  
23 MJMEUC.

24 JUDGE JORDAN: Thank you. Anyone else on the  
25 line today?

1                   Okay. Well I'm glad to have you with us. I  
2 apologize for our technical difficulties. I should probably  
3 say clerical difficulties since the technical end of it seems  
4 to be working just fine.

5                   Okay. Well, we're here for scheduling. I've  
6 mentioned to the parties in the room since I didn't know we  
7 had anyone on the line that this is not the result of  
8 anything that anyone that -- that any of the parties have  
9 done wrong. I'm hoping that we can resolve the difficulties  
10 as I've described them in the Order scheduling this  
11 conference rather than have a series of motions adjusting  
12 dates. I'm hoping that's more efficient. So I'll open the  
13 floor to suggestions. Does anyone have any suggestions as  
14 far as adjusting these dates.

15                   MR. WILLIAMS: Exactly what are you looking  
16 for? Because of course the parties got together and made a  
17 proposal.

18                   MR. WOODSMALL: Let me ask a question. Moving  
19 these dates, you're gaining on one side and being hurt on the  
20 other. And I just want you to understand that and maybe  
21 discuss your preference. If we move the hearing back, that  
22 will cut into the time the Commission has to issue its Report  
23 and Order. Do you have a preference -- you know, we can  
24 certainly move the hearing back. In fact, I would love to do  
25 it, but you know, if we move it back two weeks so there's a

1 gap, that takes two weeks away from how much time you have to  
2 prepare the Report and Order, unless we get the operational  
3 law date moved.

4 JUDGE JORDAN: Well -- and I hate to short the  
5 Commission's time for thoroughly exploring, discussing, and  
6 resolving the issues. But it's pretty plain to me that  
7 there's going to be some very hard work on your end, your  
8 side of the bench. So it may just be that there has to be  
9 some even more hard work on my side of the bench. So I think  
10 moving the hearing date as currently scheduled, that has to  
11 be an option. Now if we did that, that may change -- it will  
12 have an effect on dates for true-up -- true-up testimony,  
13 maybe a briefing and -- for briefing of non-true-up issues as  
14 well.

15 MR. FISCHER: Judge, your Order focused on the  
16 week before the evidentiary hearings and concerns about the  
17 list of issues and the position statements. And I was  
18 focusing a little bit on that hoping that we wouldn't have to  
19 make major changes in the schedule. And I was wondering  
20 whether the concern was that there wouldn't be enough time to  
21 review position statements or the list of issues.

22 Often what happens in these cases, we have  
23 actually exchanged informally lists of issues, so the parties  
24 know a good deal before we actually file a list of issues  
25 what the likely issues are. And if one of the concerns was

1 we needed to get the position statements in sooner, it might  
2 be possible for us to work off of an informal list of issues  
3 or have the list of issues filed earlier in the process to  
4 give us more time to get our position statement to the  
5 Commission so that you could review that a few more days  
6 ahead of the hearing. If that was major concern.

7 I know in the past, too, there's been a  
8 concern about having enough time to -- for tariffs to be  
9 prepared at the end of the case, and the parties were aware  
10 of that concern when we developed the procedural schedule and  
11 yet there's also the other, you know, if you push too much  
12 there, then you limit the ability to complete the audits.

13 So this was kind of a balancing, I think that  
14 all the parties tried to do to come up with a schedule that  
15 would work. And I know there's also a complicating factor  
16 that we have back-to-back cases with KCP&L and GMO. A number  
17 of the cases in the GMO case will be similar to or identical  
18 to the issues in the KCP&L case and there may be some overlap  
19 there. The position statements may be identical, for example  
20 on rate of return or most of the non-GMO specific issues.

21 So just from my perspective if we could maybe  
22 move -- if that's the main issue is getting the position  
23 statements in, we could probably work around that more  
24 informally by working with the parties. But whatever other  
25 folks will have a view of that, I'm sure.

1                   JUDGE JORDAN: Well, I'll tell you what's on  
2 my mind. Your focus on position statements is accurate  
3 because the filing -- though there is a weekend between the  
4 filing date and the start of the evidentiary hearing as  
5 currently scheduled, that, I feel, may not -- especially with  
6 cases of this -- of this scale, may not be enough time for  
7 the Commission to review those statements.

8                   MR. FISCHER: And that would be a bigger  
9 issue, probably, for the KCP&L case. Right now, it's  
10 scheduled position statements is October the 12th and the  
11 hearing would begin October 15th. However, the GMO would be  
12 -- there would be another week in between those. So that  
13 would be -- there would be more time for the GMO from the  
14 time we filed the position statements in that case until the  
15 evidentiary hearing began October 22nd.

16                   JUDGE JORDAN: Okay.

17                   MR. WILLIAMS: Staff was contemplating we'd  
18 probably try it like we did last time where the common issues  
19 were done first and then the GMO-specific issues were done  
20 later.

21                   MR. FISCHER: I guess I would just throw out  
22 the possibility could we put in a date for informally  
23 exchanging list of issues and then at least -- and if you  
24 wanted to move that list of issue date back to before  
25 surrebuttal or close right after surrebuttal of the KCP&L

1 case that, would pick up about four days.

2 MR. WOODSMALL: There are -- I think as  
3 Mr. Fischer suggests, there are things that we can do to make  
4 that week before hearing easier on the Commission. That  
5 said, it is a fact given this schedule that not only the  
6 Commission, OPC, Staff, myself will be going straight out of  
7 the UE hearings into these hearings. So I guess I'm looking  
8 for clarification, is the concern with the items that are  
9 scheduled for that week before hearing or is the overarching  
10 concern going from one hearing immediately into the other  
11 one?

12 JUDGE JORDAN: Well, I think they're the same  
13 concern. I think it's the same issue.

14 MR. WOODSMALL: I don't --

15 JUDGE JORDAN: That is does the Commission  
16 have enough time to review position statements before the  
17 evidentiary hearing starts?

18 MR. WOODSMALL: Well, even if we make the  
19 position statements due the Monday before the hearing starts,  
20 will the Commission have time given that they're going to be  
21 in the Ameren hearings?

22 JUDGE JORDAN: Oh, I think a week between the  
23 two would help tremendously.

24 MR. WOODSMALL: A week between the hearings?

25 JUDGE JORDAN: Yes.

1                   MR. WOODSMALL: That was -- that was what I  
2 was wondering, because no matter how we change the position  
3 statements and things like that, that doesn't fix the time  
4 between hearings. If the overarching concern is you want  
5 some time between hearings, then I think we're going to have  
6 to talk further just between the parties.

7                   MR. LOWERY: Judge Jordan, this is Jim Lowery  
8 for Ameren. Of course, there's no way for anyone to know for  
9 sure, but that last week of the Ameren's hearing was added  
10 sort of as a just in case we need it in general. We have not  
11 needed that long to try our rate cases in the past. So the  
12 odds are fairly good we won't go that entire week, but of  
13 course we could.

14                  JUDGE JORDAN: Okay. Well any more comments  
15 or suggestions that anyone wants to make on the record?

16                  MR. MILLS: Just a -- more of a question than  
17 a comment. Are you -- are you hoping to get position  
18 statements before the Wednesday agenda, before the hearing  
19 starts or would -- I mean, because that would mean sometime  
20 Tuesday or just -- or just a couple of days earlier in the  
21 week?

22                  JUDGE JORDAN: Well in the past, I know that  
23 I've received position statements without time to put them on  
24 any agenda, so I don't think the -- the presence -- the  
25 timing of an agenda is necessarily crucial or critical.

1 MR. MILLS: Okay. Thank you.

2 JUDGE JORDAN: What else can I do for the  
3 parties right now? I mean besides what I've done already.

4 MR. FISCHER: Well, Judge, what if we looked  
5 at moving the position statements back a week, talk over the  
6 -- say the October 5th date? We would also then have to move  
7 the list of issue date back to probably a week. If we did  
8 that, it would be -- right now the list of issues are due  
9 October the 9th. We'd move that back to the 2nd. Does that  
10 give you enough time? I mean, we'd be dealing with a list of  
11 issues before we had surrebuttal filed, but I think from at  
12 least the company's perspective, I'm not sure that's  
13 critical. We'll know -- we can always adjust things, if we  
14 had to. The basic issues will be known at that point.  
15 Others may have a different view of that.

16 MR. WOODSMALL: These type of suggestions  
17 normally I would be receptive to, but my concern is we're  
18 pushing these scheduling matters right into the heart of the  
19 Ameren case. I know Mr. Mills, myself, Staff, we're going to  
20 be detained in a hearing and trying to get out position  
21 statements right in the middle of the Ameren hearing's going  
22 to be very difficult.

23 One of the things I'd like to suggest, and  
24 it's something the Commission did in the last GMO case, the  
25 statute provides that the Commission is to address the

1 initial tariff filing within 11 months. That means the  
2 Commission has 11 months to get out their Report and Order  
3 and approve or reject the initial tariff filing.

4 JUDGE JORDAN: Uh-huh.

5 MR. WOODSMALL: What we've been doing in  
6 typical cases is using that 11 months to address compliance  
7 tariffs as well. That is done solely for the benefit of the  
8 utility. In the last case, the Commission, the GMO case,  
9 ER-2010-0356, the Commission got out their Report and Order  
10 by the operation of law date, but the compliance tariffs were  
11 addressed after that.

12 If we do that here -- and this isn't a normal  
13 case. We have three cases here, we have the KCP&L case, we  
14 have the GMO NP case, and the GMO LMP case, all right after  
15 the UE case. Empire has announced that we're going to file a  
16 case. So we're not dealing with normal circumstances.

17 Given that, I would suggest that if you want  
18 more time to put two weeks between the hearings, more time  
19 for the procedural -- or the position statements, that you  
20 could look at getting the Report and Order done, pushing that  
21 back, getting it done within the 11 months, but the  
22 compliance tariffs would be dealt with as the statute  
23 provides after that 11 months.

24 That would give us time to, you know, prepare  
25 for the other hearing, it would make the position statements

1 more meaningful for the Commission, it would give the  
2 Commission more time to prepare. I don't know how others  
3 feel about that. I'm certain I could tell you how the  
4 company feels about that, but it's just an idea.

5 JUDGE JORDAN: Well, I appreciate that  
6 suggestion and I definitely see your reading of the law, that  
7 is that on these tariffs, the decision to be made is approve  
8 or reject. And that is what the 11-month deadline really  
9 applies to in the filing of new tariffs initiates a new case.

10 MR. WOODSMALL: And our schedule is using that  
11 11 months, at least 30 days of it, to deal with the  
12 compliance tariffs. So if you take that aspect out of this  
13 case, you can move the Report and Order back, you can move  
14 the hearing back, put two weeks between these cases, put a  
15 week between it, the Commission gets their time to prepare,  
16 we get our time to prepare, the Commission still gets its  
17 Report and Order out, and we comply with the statute.

18 JUDGE JORDAN: Any -- any response to that?

19 MR. FISCHER: Well, Judge, I think what  
20 Mr. Woodsmall is suggesting is that that 11-month period will  
21 now become 12 months, which the company would have a problem  
22 with. The -- in the past, in years gone by, and I reflect my  
23 age in how long I've been doing this, I guess, they didn't  
24 require a 30-day filing of the compliance tariffs or an  
25 effective date didn't need to be 30 days. It usually would

1 be on a 10-day process.

2 JUDGE JORDAN: Uh-huh.

3 MR. FISCHER: Or they would allow for a Motion  
4 for Expedited Treatment to get those compliance tariffs into  
5 effect sooner. In more recent years, they've required a  
6 30-day effective date and that has added time at the end of  
7 the process. I know there have been issues in getting some  
8 of the compliance tariffs processed, but that -- I mean, I  
9 think you could look at some options there to expedite that  
10 process, if that's a concern.

11 JUDGE JORDAN: Okay.

12 MR. LOWERY: Your Honor, this is Jim Lowery.  
13 You know, the law is what the law is, and this is KCP&L's  
14 case, so I'm not going to speak for -- for them in terms of  
15 what they would or wouldn't agree to. I will only say that  
16 -- that I am not sure that I agree with Mr. Woodsmall's  
17 analysis and I'm not sure that it's nearly as clear as it's  
18 being portrayed that, in fact, the Commission can deal with  
19 compliance tariffs after the 11-month period. That's an  
20 issue that hasn't come up in one of our cases. That's  
21 something that we'll deal with if it does. But I don't think  
22 that the law is nearly as clear as it's being discussed this  
23 morning.

24 JUDGE JORDAN: Okay. Any other comments or  
25 suggestions?

1                   MR. MILLS: Well, just while we're on the  
2 record, I can't -- I can't help but chime in. I think it is  
3 entirely clear and I think Mr. Woodsmall is entirely right.  
4 And furthermore, I think that his reading is appropriate not  
5 just in extraordinary circumstances but in normal  
6 circumstances.

7                   If the company wants to have a rate increase  
8 approved in 11 months, they should file a rate increase  
9 that's just and reasonable. If the Commission finds that the  
10 rate increase they've requested is not just and reasonable,  
11 that does not really offer them the opportunity to come back  
12 and try again within the same 11 months and get something  
13 that is more reasonable in effect.

14                  JUDGE JORDAN: Anything else?

15                  MR. WILLIAMS: Is the concern with position  
16 statements or list of issues? I mean, I think the parties  
17 probably could even file a tentative list of issues earlier,  
18 if that would help.

19                  JUDGE JORDAN: Yeah, that's really -- I think  
20 that's really the focus is the Commission's ability to  
21 prepare for the evidentiary hearing. I'm confident that the  
22 parties will have a good grasp of what's at issue and what's  
23 not. Anything else?

24                  Here's what I'd like to do then. This room is  
25 at the party's disposal. I'd like to see an Amendment to the

1 Motion to Set the Procedural Schedule by the end of the day  
2 and we have many suggestions on the table, so I'd hope to see  
3 something by the end of the day that addresses these issues  
4 and takes into account some of these suggestions. And I  
5 promise the parties that I will issue my Order shortly  
6 thereafter.

7 MR. WOODSMALL: When you say you'd like to see  
8 something by the end of the day, you're looking for a formal  
9 pleading from the parties by the end of the day?

10 JUDGE JORDAN: Yes.

11 MR. WOODSMALL: Because I can see this  
12 involving some lengthy negotiations here possibly in getting  
13 that. Can we have tomorrow?

14 JUDGE JORDAN: I'd like to see a Motion for --  
15 an Amendment to the Motion by the end of the day.

16 MR. WOODSMALL: Okay.

17 MR. FISCHER: Judge, could I just ask: Is  
18 there a minimum number of days that the position statements  
19 need to be in to the Commission that -- for you to be able to  
20 deal with it? I mean, if we moved it just a few days earlier  
21 in the week, that would give you enough -- or at least the  
22 time that has been allowed in some of the past cases to  
23 review the position statements before going to hearing. I  
24 recognize right now it's a Friday and then you go to hearing  
25 on Monday. But if we got it to you Tuesday or Wednesday,

1 would that -- that would give you three days to -- three or  
2 four days before the -- the weekend even.

3 JUDGE JORDAN: Well, that's a possibility.

4 MR. FISCHER: Okay.

5 JUDGE JORDAN: And it depends on everything  
6 else that changes in the schedule also.

7 MR. FISCHER: A little tweak to the schedule  
8 like that, I think, would be easier to deal with than  
9 changing the evidentiary hearing dates, from at least our  
10 company's perspective.

11 MR. WOODSMALL: Do you have any problem with  
12 starting a hearing instead of on Monday, starting it on  
13 Wednesday so we have some more time? It may involve spilling  
14 over into a third week, but if we move from Monday to  
15 Wednesday, that may give a couple-days gap, it will give the  
16 position statements a little more meaning.

17 JUDGE JORDAN: That could be helpful. I mean,  
18 there's nothing that requires the evidentiary hearing to  
19 start on Monday.

20 MR. WOODSMALL: Okay.

21 JUDGE JORDAN: I will go ahead and go off the  
22 record, then, and leave the parties to discuss this, and  
23 thank you very much for your hard work on these difficult  
24 issues.

25 Counsel, you had something?



CERTIFICATE OF REPORTER

STATE OF MISSOURI )

) ss:

COUNTY OF GASCONADE )

I, JENNIFER L. LEIBACH, Registered Professional Reporter, Certified Court Reporter, CCR #1108, and Certified Realtime Reporter, the officer before whom the foregoing matter was taken, do hereby certify that the witness/es whose testimony appears in the foregoing matter was duly sworn by me; that the testimony of said witness/es was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this matter was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

\_\_\_\_\_

Court Reporter