

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

In the Matter of a Proposed Experimental Regulatory)
Plan of Kansas City Power & Light Company) Case No. EO-2005-0329

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

In its order, the Commission voted to grant Sierra Club (SC) and Concerned Citizens of Platte County's (CCPC) motion requesting a continuance of the evidentiary hearing in this case. The Commission should not have granted the request of one attorney who was given ample notice of the required pleading deadlines and the date of the hearing to prepare and properly advocate for her clients to the detriment of sixteen other parties who will now have to rearrange their schedules and the schedules of their witnesses in order to comply with the Commission's order. I must, therefore, dissent.

Kansas City Power and Light Company ("KCP&L") filed a Stipulation and Agreement on March 28, 2005, which was the opening of this formal case.¹ Prior to that time, most of the parties had been negotiating for months to reach the non-unanimous Stipulation and Agreement. SC and CCPC participated in the process leading to the Stipulation, have strongly advocated their position,² and are fully aware of the issues and parties in this case.

¹ The Stipulation and Agreement was reached at the conclusion of the Investigative Docket related to this case. See Case No. EO-2004-0577. It concerns, for the most part, the proposed billion-dollar construction of Iatan 2, a coal-fired generation plant that both Empire District Electric Company (Empire) and Aquila, Inc. (Aquila), are planning to participate in. Both Empire and Aquila have opened a docket for approval of their participation in this project. See Case Nos. EO-2005-0263 and EO-2005-0293.

² SC and CCPC did not sign the Stipulation and Agreement, but during the course of the Investigative Docket they supported environmental upgrades at the Iatan 1 and LaCygne plants as well as energy efficiency programs proposed in the Stipulation. See KCP&L's Response to CCPC and SC's Objections to the Stipulation.

On May 4, 2005, following a prehearing conference, all the parties, including Counsel for SC and CCPC, agreed to a procedural schedule and agreed to the hearing dates of June 6-8, 2005. Counsel for SC and CCPC then took two weeks to figure out that she just did not understand how much work she had to accomplish in order to make good on her agreement and that she was incapable of meeting the procedural schedule for the filing of various pleadings and preparing for the hearing. Counsel then, at the eleventh hour, filed a motion for a continuance on May 25, 2005 that is the subject of the Commission's June 2, 2005 Order.

In addition to the short request for a continuance, Counsel for SC and CCPC has responded to the Commission's inquiry about what dates would comport with the parties' schedules. On May 31, 2005, Counsel sent a letter pleading for understanding of her ignorance of Commission filing requirements, as well as her inability to meet the procedural deadlines and prepare for hearing. Counsel's ignorance of the Commission's rules is no excuse for causing delay in this case. An attorney is presumed to know the rules of any tribunal he or she practices before and should not be granted lenience for his or her ignorance. On June 1, 2005, Counsel sent a letter complaining about the personal inconvenience of scheduling the hearing for the week of June 13, 2005, despite the fact that the Commission was trying to see if it could accommodate her request for some additional time.³

All of the parties, other than SC and CCPC, were prepared to participate in the hearings scheduled to begin on June 6, 2005. KCP&L has met its obligations to respond to SC and CCPC's discovery requests in an expedited manner. The local

³ The filing of letters to plead a cause is very unusual. It is my understanding that such letters were invited by the judge because of the short time frame before the issue came back for the Commission's deliberation. Nevertheless, the tone and informality of Counsel's letters are unprofessional.

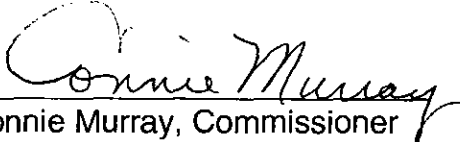
public hearings requested by SC and CCPC were held, as scheduled. Numerous attorneys and witnesses have arranged their schedules to accommodate the June 6-8 hearing dates and have complied with the filing deadlines set forth in the Order Establishing Procedural Schedule. These attorneys and their witnesses have made the necessary efforts to comply with the agreed-to schedule. It is unconscionable, only two working days before the scheduled hearing, to force numerous attorneys and witnesses to rearrange their calendars to accommodate one attorney who has demonstrated her unwillingness to comply with the procedural schedule to which she had agreed.⁴

This delay is not only inconvenient to the other parties, but also jeopardizes the scheduled bid process for construction of Iatan 2 that KCP&L has put into place, presumably in reliance on the procedural schedule initially established in this case. Further, both Empire's and Aquila's timetables for completing their negotiations to become potential partners in Iatan 2, and for pursuing the approval of their applications before the Commission most likely will have to be adjusted – causing ripples of delay that could have an impact on the ultimate financing of the Iatan 2 project.

Counsel for SC and CCPC is not new to the issues presented in this case and should have been able to comply with the existing deadlines. It is my opinion that the procedural schedule initially agreed to by the parties should have been enforced and that Counsel for SC and CCPC should have made the extra effort to meet the deadlines and prepare for hearing, or she should have enlisted the aid of her co-counsel in order to comply. For these reasons, I respectfully dissent.

⁴ I must note that KCP&L has stated that it has a local public hearing scheduled in the state of Kansas on June 23, 2005, the first day of the new hearing schedule. In addition, at least two of the KCP&L witnesses are not available on both June 23 and June 24, although they are available on one of the two scheduled days. See KCP&L's letter dated June 1, 2005 in response to Counsel for SC and CCPC's May 31, 2005 letter. KCP&L copied its letter to counsel for the other parties in this case.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri
on this 2nd day of June, 2005.