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2 PUBLIC SERVICE COMMISSION

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5
6 TRANSCRIPT OF PROCEEDINGS

7 On-The-Record Discussion

8 June 16, 2010
9 Jefferson City, Missouri
Volume 1

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12 In the Matter of the Application)
Of Kansas City Power & Light)
13 Company Regarding the Sale of) File No. EO-2010-0353
Assets and Property Rights Located)
14 Near Spearville, Kansas)

15

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17 MORRIS L. WOODRUFF, Presiding,
CHIEF REGULATORY LAW JUDGE.

18

19 ROBERT M. CLAYTON III, Chairman,
JEFF DAVIS,
TERRY JARRETT,
20 KEVIN GUNN,
ROBERT S. KENNEY
21 COMMISSIONERS.

22

23 REPORTED BY:

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25

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

2 JUDGE WOODRUFF: The clock on the wall says
3 8:30, so let's go ahead and get started. We're here for
4 an on-the-record discussion concerning the application of
5 Kansas City Power & Light Company regarding the sale of
6 assets and property rights located near Spearville,
7 Kansas, which is File EO-2010-0353.

8 This is kind of an informal process, so I'm
9 just going to allow the Commissioners to start asking
10 questions, and we'll go from there and see how things
11 develop. Commissioner Jarrett.

12 COMMISSIONER JARRETT: I had a question. I
13 guess I'll ask Kansas City Power & Light first. My
14 understanding is the assets that are considered here are
15 located in Kansas. Is the location of those assets
16 relevant at all?

17 MR. FISCHER: It's located in Ford County,
18 Kansas, in western Kansas. The area is adjacent to the
19 Spearville Wind Farm that Kansas City Power & Light
20 currently has. Otherwise, I don't think it's particularly
21 relevant. The property -- the turbines are still in
22 crates. I do have some pictures if that would be of
23 interest, so you can see what we're talking about.

24 COMMISSIONER JARRETT: Sure. Yeah,
25 absolutely.

1 MR. FISCHER: These are just pictures that
2 have various pieces of the property. They're all, as you
3 can see, in various forms of crates or packaging so that
4 they won't be damaged by the winds or the dirt in Kansas,
5 I guess.

6 COMMISSIONER JARRETT: I'm going to pass
7 for now, if anybody -- any of the other Commissioners have
8 questions.

9 JUDGE WOODRUFF: Before we do, let's go
10 ahead and take entries of appearance from the parties, I
11 kind of forgot to do that, starting with KCPL.

12 MR. FISCHER: Yes, Judge. My name is Jim
13 Fischer with the law firm of Fischer & Dority, PC. Our
14 mailing address is 101 Madison Street, Suite 400,
15 Jefferson City, Missouri 65101, and we're appearing today
16 on behalf of Kansas City Power & Light Company.

17 JUDGE WOODRUFF: For Staff.

18 MR. WILLIAMS: Nathan Williams and Steve
19 Dottheim, P.O. Box 360, Jefferson City, Missouri 65102.

20 JUDGE WOODRUFF: For Public Counsel.

21 MR. MILLS: Lewis Mills. My address is
22 Post Office Box 2230, Jefferson City, Missouri 65102.

23 JUDGE WOODRUFF: Okay. Commissioner Gunn.

24 COMMISSIONER GUNN: What are we selling out
25 of here? Everything?

1 MR. FISCHER: We're selling 32 wind
2 turbines and the property rights associated with the
3 development there.

4 COMMISSIONER GUNN: And so when you say
5 turbines, you mean the tubes, the blades, everything?

6 MR. FISCHER: Yes. And I do have our
7 senior director of strategic planning and development,
8 John Grimwade, here. If you want to get into some of the
9 factual questions, he'd be most familiar with those, but
10 that's my understanding.

11 COMMISSIONER GUNN: Now I want to turn to
12 Staff real quick. Does Staff have a position or have they
13 had the opportunity to take a position on the actual sale
14 about whether that -- whether the sale is a prudent sale
15 or not, or is this merely -- is this merely a you have to
16 ask us first before you do this based on statute and that
17 will -- then that triggers some sort of review of this, or
18 have they not taken that position yet?

19 MR. WILLIAMS: The short answer is we don't
20 have enough information at this point to take a position
21 on the appropriateness of the transaction that's proposed.
22 Also, of course, the Commission's jurisdiction is a
23 factual determination as well. The Commission gets to
24 make a determination as to whether it has jurisdiction on
25 facts involved in making that determination.

1 COMMISSIONER GUNN: So jurisdictional is a
2 fact that's in question?

3 MR. WILLIAMS: You determine your
4 jurisdiction based on the facts that are present.

5 COMMISSIONER GUNN: So right now we have --
6 explain to me what the Staff's belief is in terms of its
7 connection to Missouri. They're wind turbines. They're
8 parts basically right now in another state that we have
9 not granted a certificate to that now want to be sold.

10 So is the entire -- so then tell me what
11 the connection is that -- what other facts do you need or
12 what facts have I said that gives you a connection to
13 Missouri that brings it under our jurisdiction?

14 MR. WILLIAMS: Well, they're assets that
15 Kansas City Power & Light Company has purchased for
16 purposes of capacity in wind-generated energy to serve its
17 customers. They're wanting to do it through a PPA
18 according to their application as opposed to owning
19 generation, but I don't think they're disputing that they
20 were acquired for that purpose. We think that gives the
21 Commission jurisdiction over them in terms of being an
22 asset of the utility that's useful and necessary for
23 providing service.

24 COMMISSIONER GUNN: I'm going to come back
25 to you. Go ahead.

1 MR. DOTTHEIM: Commissioner, there's a case
2 that hasn't been raised yet that involves a Stipulation &
3 Agreement, and the Staff would raise it not for purposes
4 of literally the terms of the Stipulation & Agreement
5 because it contains the standard boilerplate that the
6 Stipulation & Agreement doesn't set any precedent or can't
7 be used for setting any precedent, but we would raise it
8 for purposes of KCPL's argument that the November 17th
9 e-mail from Mr. Fischer to the Staff regarding the RFPs to
10 which the Staff responded that we had no comments on the
11 RFP was taken by KCPL as an indication that the Staff was
12 not asserting that the transaction had to come before the
13 Commission.

14 We would cite this case and the
15 Stipulation & Agreement as an indication that KCPL, as
16 well as the other cases cited in the response that the
17 Staff has already filed, for an indication that KCPL is on
18 notice that the Staff clearly would cite that the
19 Commission has jurisdiction.

20 And the case is Case No. EM-2001-464. I
21 have copies, and Mr. Fischer should be familiar with the
22 case. He was counsel for KCPL. It's the case where KCPL
23 sought and was granted authority to go to a public utility
24 holding company structure, and there was an issue
25 involving a memorandum of understanding where KCPL had

1 rights to five CTs, and there was a provision in the
2 Stipulation & Agreement involving those rights to the five
3 CTs.

4 And when -- when the Staff, the Office of
5 Public Counsel and the company came before the Commission
6 for the on-the-record presentation involving the
7 Stipulation & Agreement, the Commissioners had questions
8 from the Bench, in particular Commissioner Gaw, which
9 resulted in the Stipulation & Agreement being amended, and
10 in particular resulted in the provision involving the five
11 CTs being amended.

12 So I have copies of the original
13 Stipulation & Agreement and the amended Stipulation &
14 Agreement which was approved by the Commission, and the
15 Commissioners can see the difference again. And I'm
16 citing it really for the purposes that KCPL was on notice
17 that the Staff has always asserted that the Commission has
18 jurisdiction over transactions of this nature.

19 And I don't know if these should be marked
20 as exhibits or I can just -- I can just hand these out
21 and --

22 JUDGE WOODRUFF: We'll call it Exhibit 1.

23 COMMISSIONER GUNN: Mr. Dottheim, can I ask
24 you just a quick clarifying question?

25 MR. DOTTHEIM: Yes.

1 COMMISSIONER GUNN: So this is to show that
2 these types of transactions the Commission would have
3 jurisdiction over, not involving these --

4 MR. DOTTHEIM: Or at least the Staff would
5 assert.

6 COMMISSIONER GUNN: I appreciate the
7 clarification. But not over this specific -- these
8 specific pieces of equipment?

9 MR. DOTTHEIM: Yes. Yes.

10 COMMISSIONER GUNN: So while you're handing
11 that out, let me go back. And I just want to -- these
12 were -- is the Staff's assertion correct that these were
13 bought to serve customers of -- KCP&L customers and that a
14 determination was made at some point that KCPL was going
15 to use a PPA rather than own outright these --

16 MR. FISCHER: Yes, sir. A management
17 decision was made that a PPA was more in the interest of
18 the company and its ratepayers, and we decided to go
19 forward utilizing some assets that were available and had
20 never been used, had never been installed, had never
21 produced electricity, had never been taken out of the
22 crate, and we were going to transfer those assets to the
23 developer, and then we would enter into a PPA with that
24 developer with an option to purchase those assets at the
25 end of five years.

1 And it was our clear perspective that these
2 assets never having been in rates, never having been used
3 or necessary to serve the public, that the Commission
4 would not have jurisdiction over the transfer. However,
5 when Staff raised the question, we felt it was prudent to
6 come back before the Commission and ask in the application
7 that you decline jurisdiction just to make sure that that
8 wasn't an issue.

9 COMMISSIONER GUNN: I want to come back. I
10 apologize for bouncing around. So let's assume we have
11 jurisdiction. Let's just put that aside. Let me ask you
12 about this sentence in 393.190, section 1, which says,
13 nothing in the subsection contained shall be construed to
14 prevent the sale, assignment, lease or any other
15 disposition by any corporation, person or public utility
16 of class designated in this subsection of property which
17 is not necessary or useful in the performance of its
18 duties to the public, and any sale of this property by
19 such corporation, person or public utility shall be
20 conclusively presumed to have been a property which is not
21 useful or necessary in the performance of its duties to
22 the public as to any purchaser of such property in good
23 faith or value.

24 That is an incredibly long sentence and
25 probably written in wherever. So my question is, if this

1 is -- if this is not a jurisdictional issue, does this
2 type of property rise to our statutory requirement to
3 approve the sale or does it fall under this section that
4 says, since it's not currently useful, since it's not
5 currently being used, that under the statute our approval
6 is not required? Do you have any reaction to that?

7 MR. WILLIAMS: I would say that useful or
8 necessary is broader than actually being used, and I think
9 it's clear that this property is useful.

10 COMMISSIONER GUNN: Well, you base that on,
11 in the briefs, on a definition in another statute which is
12 kind of the future use of these things, correct?

13 MR. WILLIAMS: Well, I made the point that
14 if you're giving pre-approval through a certificate of
15 convenience and necessity of the construction of a power
16 plant, it doesn't make sense that because it's not
17 actually being used, the utility can sell it at any point
18 after that certificate's been granted but before it's put
19 in to become fully operational and used for service. Used
20 and useful is the terminology that's often used.

21 COMMISSIONER GUNN: But a certificate
22 hasn't been granted, has it?

23 MR. WILLIAMS: No. I'm just pointing out
24 the inconsistency on a broader basis, not limiting it to
25 the facts of this particular case.

1 COMMISSIONER GUNN: Well, let's limit it to
2 the facts of this particular case. Because we don't have
3 a certificate of convenience and necessity, we don't have
4 a pre-approval here, do we?

5 MR. WILLIAMS: There hasn't been any given.

6 COMMISSIONER GUNN: So these are
7 essentially just parts right now. So my question
8 essentially is, what point do we not -- does this take
9 effect? Is it if they have a bag of bolts that could
10 eventually be used in one of their plants that if they
11 want to sell they would have to come and get approval from
12 us?

13 MR. WILLIAMS: No, and we're not talking
14 about something as minor as a bag of bolts. We're talking
15 about roughly \$100 million worth of assets.

16 COMMISSIONER GUNN: So is it -- what
17 makes -- what's that line? Is it -- because you have a
18 statute here that says, if it's not useful, then it
19 doesn't need approval or this doesn't constrain. So are
20 you drawing a -- on a size amount on this?

21 MR. WILLIAMS: It has to do with whether --
22 the impact on the provision of safe and adequate service.
23 And also you have now the Renewable Energy Standard that
24 has requirements about using renewable energy sources such
25 as wind.

1 COMMISSIONER GUNN: I understand. My
2 question is, a single bolt can be pretty important to a
3 power plant. The bolt doesn't exist, the power plant
4 could explode and stop providing -- if that bolt wasn't
5 there, you could not have safe and adequate service. Am I
6 right in saying that?

7 MR. WILLIAMS: I'm not an engineer, but I
8 suppose.

9 COMMISSIONER GUNN: Or let's even say
10 100 bolts, that if 100 bolts weren't in a generating plant
11 at strategic locations, it would be bad for the generating
12 plant. So why aren't we requiring approval if they --
13 would we be requiring approval if they wanted to sell
14 those 100 bolts? Because they are potentially very
15 important to the generation of electricity or they could
16 be used in that as opposed to this.

17 MR. WILLIAMS: You're saying if they wanted
18 to sell these 100 bolts, that might be --

19 COMMISSIONER GUNN: Under your legal
20 theory, from what I understand -- and maybe I'm wrong.
21 Under your legal theory, they would need to come to us to
22 get permission from that -- for that. You are putting a
23 -- you're putting a dollar amount or a size amount on a
24 statutory requirement.

25 If that's what you're doing, that's fine.

1 I'm not saying that's wrong. I'm just trying to get the
2 distinction between why this particular sale doesn't fall
3 under this category right here if the definition of useful
4 is larger than present tense useful, why other smaller
5 things that seem inconsequential or are in what some might
6 view inconsequential dollar amounts still under the
7 statute wouldn't be required to come to our approval, to
8 get our approval to be sold.

9 MR. WILLIAMS: And I think you're asking me
10 to draw a line that the Commission would draw. I think
11 you have discretion.

12 COMMISSIONER GUNN: Let me ask this. What
13 line does the statute draw? In Staff's legal opinion,
14 what line does the statute draw? Because that's what I'm
15 trying to figure out.

16 MR. WILLIAMS: Whether what's involved
17 would affect the safe and adequate service, the provision
18 of safe and adequate service, and comply with the
19 statutory requirements in Missouri.

20 COMMISSIONER GUNN: And that's -- that's
21 discretionary, up to the Commission?

22 MR. WILLIAMS: I think where that line is
23 is discretionary with the Commission in the first
24 instance. If you go too far, I think a court's going to
25 say you've gone too far.

1 COMMISSIONER GUNN: At what point do we
2 make the determination that these -- or how do we make the
3 determination that these turbines and wind blades are
4 necessary for safe and adequate service?

5 MR. WILLIAMS: I think you would look at
6 that in part whenever you're looking at the request to
7 transfer ownership of them to some other entity in this
8 instance.

9 COMMISSIONER GUNN: Okay. That would be
10 when we would look at it, but I mean, if it -- is it a
11 detailed economic analysis that says that owning these
12 things outright and then putting it in -- putting it in
13 rate base is more beneficial or provides safe and adequate
14 service or meets the RPS standard rather than -- rather
15 than having it as a PPA or rent to own kind of financing
16 arrangement?

17 MR. WILLIAMS: I think that's more of a
18 costing issue for ratemaking. I think the question is
19 what impact is it going to have on the company's ability
20 to provide safe and adequate service to its customers, the
21 bottom line in terms of whether the transfer of ownership
22 should be approved or not.

23 COMMISSIONER GUNN: But if they sell this,
24 it's not -- I mean, as of right now -- let me go back to
25 you. Are you a -- do you have enough generation currently

1 to meet all of the needs of your customers?

2 MR. FISCHER: Yes, sir.

3 COMMISSIONER GUNN: So how does this impact
4 on safe and adequate service?

5 MR. WILLIAMS: Well, in the future they're
6 going to have an obligation to provide some renewable
7 energy source that they're going to have to acquire, and
8 that --

9 COMMISSIONER GUNN: So we're supposed to
10 make the determination that these particular wind turbines
11 are going to be useful and necessary at some future point
12 in order to meet the renewable energy standard?

13 MR. WILLIAMS: I think that plays in to
14 whether or not the transaction should be approved.

15 COMMISSIONER GUNN: You have been dying to
16 jump in.

17 MR. MILLS: Yes, I have. Thank you very
18 much.

19 COMMISSIONER GUNN: I will let you take a
20 holistic approach to my questions.

21 MR. MILLS: Really, there's two thresholds.
22 One is whether you have jurisdiction at all, and then the
23 second one is whether or not you approve the sale. I
24 think the first one is much smaller than the second one.

25 COMMISSIONER GUNN: I disagree with you.

1 Sorry to interrupt. I actually think that there are three
2 thresholds. The first is the jurisdictional issue, the
3 second is the statutory issue, and then the third is
4 whether we approve it or not. Because what I read in the
5 statute may say that they don't need to come to us if it
6 is -- if it is of such a nature that -- so we have
7 jurisdiction, but statutorily -- we have general
8 jurisdiction. Statute says you don't need approval, and
9 then finally whether it's prudent or appropriate to sell.

10 MR. MILLS: What I was talking about is
11 whether you have statutory jurisdiction over this
12 particular transaction. You generally certainly have
13 jurisdiction over the company, but whether you have
14 jurisdiction under 393.190 is a factual question.

15 And with all due respect to Mr. Williams,
16 there is no -- nothing in the statute that talks about
17 safe and adequate service. The phrase is necessary or
18 useful in the performance of its duties to the public. To
19 my mind, that's a very, very broad standard, a very low
20 threshold. Almost anything could meet that threshold.

21 You can get to the point where it's so de
22 minimis that nobody would want to bother with a bag of
23 bolts, but I think when you're talking about combustion
24 turbines, when you're talking about this number of wind
25 turbines, particularly since KCPL has held these for a

1 number of years fully intending to use them to serve its
2 customers, I think you meet the jurisdictional threshold.
3 I think this is the type of plant that is necessary and
4 useful in the performance of its duties. Even though it
5 is not currently being used to provide service, it's
6 necessary and useful in the performance of the duties.

7 COMMISSIONER GUNN: So you believe useful
8 is a future tense? It's any -- you think necessary and
9 useful means anything that in the future could potentially
10 become useful to this company is -- they need to come to
11 us and get approval?

12 MR. MILLS: This is a completely different
13 standard than the used and useful standard. Used and
14 useful -- the used part of used and useful means it's
15 actually in service to provide service to customers.
16 Useful means that it is the best way or a reasonably good
17 way to provide service.

18 This is -- this is a similar kind of useful
19 to that. This would be a reasonable or a reasonably good
20 way to provide service, and so the Commission should take
21 jurisdiction to see whether the customers are getting a
22 good deal or a raw deal by KCPL's trying to transfer this
23 away to some third entity.

24 COMMISSIONER GUNN: There's no de minimis
25 exception written into the statute.

1 MR. MILLS: There is not. I grant you
2 that. And I think it's an interesting debate over where
3 you would draw that line, but not particularly germane to
4 this particular question because I think we're so far
5 beyond where you might draw the de minimis line here that
6 it doesn't even play in. I think these particular
7 turbines, these particular property rights are so far
8 beyond de minimus that we don't get to that question here.

9 COMMISSIONER GUNN: Does Office of Public
10 Counsel have an initial opinion as to whether the sale --
11 on the particular sale, whether it should be approved or
12 not?

13 MR. MILLS: Really, it's more of a gut
14 feeling than an opinion because we really don't have a
15 whole lot of information. It seems hard for me to imagine
16 that inserting a middleman into this whole stream between
17 generating -- owning the turbines, generating electricity
18 and providing it to customers is going to be a better deal
19 for customers.

20 I don't -- it seems counterintuitive to
21 think that some third -- that by selling these turbines
22 and property rights to a third party and then buying the
23 power back and maybe buying the turbines at the end of a
24 period of time back is going to be a better deal than
25 simply continuing ownership of KCPL and have KCPL develop

1 the properties and provide the service to its customers.

2 I don't know that. There could be quirks
3 that would make the path that they've chosen more
4 beneficial to customers, but it does seem
5 counterintuitive.

6 COMMISSIONER GUNN: I'm pretty much done.

7 MR. MILLS: Can I add one more thing to
8 that?

9 COMMISSIONER GUNN: Sure.

10 MR. MILLS: I think that the question --
11 Mr. Williams mentioned that he thinks it's really a
12 question of fact as to whether or not these turbines are
13 necessary or useful in the provision of service, and
14 there's a case that speaks to that, and it's the MCI Metro
15 Access Services case, 941 SW 2d 634, in which MCI tried to
16 sell some assets to another company, and the question came
17 up as to whether or not the statute applied. It was a
18 different statute, a telecom statute, but the same
19 language is in Chapter 392.

20 And the court said -- the appellate court
21 said the circuit court erred in dismissing because finding
22 whether or not the statute applies is a question that
23 falls within the primary jurisdiction of the Commission.
24 And so the Commission has to in the first instance make a
25 factual determination as to whether the assets in question

1 fall under the provisions of 393.190 that requires the
2 Commission to give approval or not.

3 COMMISSIONER GUNN: I'll let you respond.

4 MR. FISCHER: I agree with Mr. Mills that
5 it's not a safe and adequate service standard at all.
6 It's really the legal question is whether it's part of
7 KCPL's franchise, works or system necessary or useful in
8 the performance of the duties to the public, and that's
9 393.190.

10 And I agree with your question that that
11 last sentence is the controlling sentence here that I
12 think should control on how it comes out. These turbines
13 have never been used. They've never been installed.
14 They've never produced any electricity. They're not in
15 rates. They're not in rate base. They're not necessary
16 for the performance of their duties to the public.
17 They're not part of the current franchise, works or
18 system. That's all you have to decide.

19 Now, going to a couple other questions,
20 though, this is really a management decision on how in the
21 future they're going to be operating, and it's not a
22 question that the Commission has to address today. At
23 some future rate case you'll be looking at the ratemaking
24 implications of whether it's a PPA or whether it's owned
25 by the company, whether it should even be included in

1 rates at all. That's a decision that you'll take up in a
2 rate case. This is just a sale of property that has not
3 been used and is not necessary for service, and that's
4 where I think it should all end.

5 COMMISSIONER GUNN: People generally agree
6 that this is about how we view useful, whether it's a
7 current useful or whether it's some future -- useful at
8 some future date along kind of some continuum even
9 granting that kind of de minimis stuff, that it's
10 significantly useful sometime in the future should
11 determine -- is kind of a determinative factor here. It's
12 critical.

13 MR. MILLS: Yes, but I think if you look at
14 the dictionary definition of useful, it's not going to say
15 used. It's going to say useful, which is capable of being
16 used and capable of being put to a certain task rather
17 than used. I think that's a critical distinction.

18 COMMISSIONER GUNN: I mean, you can pars
19 words on that, too, because I can take all the
20 different -- I can take tungsten out of -- I can take
21 lithium out of the ground and say, well, this is capable
22 of being used in a battery, but it's not currently being
23 used in a battery, so is this raw lithium useful?

24 Ultimately what everybody's saying is
25 that's -- that's really where we have to make that

1 determination.

2 MR. MILLS: And I think you have to make
3 that determination based on evidence on the record.

4 COMMISSIONER GUNN: Completely factual
5 determination. Okay. Well, I'm going to pass.

6 JUDGE WOODRUFF: Chairman.

7 CHAIRMAN CLAYTON: Thank you, Judge. I
8 guess I want to start off saying it's now 9 o'clock.
9 Agenda's scheduled for 9:30, and I just anticipate that
10 Commissioners exhaust their questions here, and then we
11 will move into agenda. I don't think there's any reason
12 to break and then come back, if everybody's comfortable
13 with that, make sure everybody has their questions
14 answered.

15 MR. FISCHER: Mr. Chairman, before you came
16 in, I handed out some pictures if you're interested. Oh,
17 you have it?

18 CHAIRMAN CLAYTON: I've got them, yeah.

19 COMMISSIONER DAVIS: I need them.

20 CHAIRMAN CLAYTON: How far is Spearville
21 from here?

22 MR. FISCHER: It's west of Wichita. How
23 far is it?

24 MR. GRIMWADE: About 17 miles from Dodge
25 City, Kansas.

1 CHAIRMAN CLAYTON: Where's Dodge City,
2 Kansas? How far from Kansas City, do you think?

3 MR. FISCHER: This is Mr. Grimwade, by the
4 way.

5 MR. GRIMWADE: It's probably about 250
6 miles.

7 CHAIRMAN CLAYTON: Not a relevant question.
8 I want to ask Staff, if the Commission were to assert
9 jurisdiction or make the finding that the statute applies
10 and that Commission approval is necessary, is Staff in a
11 position to state whether or not it would recommend
12 approval of the transaction?

13 MR. WILLIAMS: No, it is not.

14 CHAIRMAN CLAYTON: Is it because it's made
15 a decision to not recommend it or just the analysis hasn't
16 been done?

17 MR. WILLIAMS: We issued data requests
18 seeking information so that we have a basis upon which to
19 make an analysis.

20 CHAIRMAN CLAYTON: Okay. If the Commission
21 were to either decline to take any action in this case or
22 assert jurisdiction, assert the statute is in play and
23 then just approves the transaction, does the Staff have
24 protections for future rate cases in which it can address
25 the prudence issue and the cost issue as it would be

1 applied to rates?

2 MR. WILLIAMS: I think the short answer is
3 yes, because the dollars would come into play at that
4 point.

5 CHAIRMAN CLAYTON: And really it's the
6 dollars, the impact on ratepayers, it's the dollar that
7 matters the most from the Staff perspective?

8 MR. WILLIAMS: What we could do is
9 potentially we could do the same thing as we did with
10 what's now GMO and its generation where we imputed two
11 combustion turbines to the same site as what GMO has at
12 South Harper.

13 CHAIRMAN CLAYTON: Affectionately known as
14 the phantom turbines?

15 MR. WILLIAMS: By many, as opposed to
16 relying on the actual additional generation that GMO had
17 at Crossroads. We could take that kind of a position
18 potentially in a rate case.

19 CHAIRMAN CLAYTON: You could take it.
20 Well, I guess then I'm asking that, regardless of how this
21 case comes out, there's still opportunities for Staff to
22 assert positions to address inequities to the ratepayer or
23 problems in ratemaking. How critical is this process,
24 this step in the process?

25 MR. WILLIAMS: It's always better to have

1 what's being done based on reality as opposed to some
2 imputation.

3 CHAIRMAN CLAYTON: Has the Staff formulated
4 a position whether it prefers utility-owned generation
5 versus PPAs as it relates to renewable sources, and does
6 that play into whether the Staff approves or recommends
7 not approving this transaction?

8 MR. WILLIAMS: Well, as Mr. Mills was
9 saying earlier, generally there's a preference for owning
10 the generation. PPA's going to be 20-year term. At some
11 point you're going to have to do something to replace that
12 power. If you own it, you have a lot more control over
13 it.

14 CHAIRMAN CLAYTON: So is that a yes?

15 MR. WILLIAMS: I think so, although wind
16 has some differences in that normally you have some kind
17 of rights to put up the generation that may be of a
18 definitive risk.

19 CHAIRMAN CLAYTON: Is that -- so it's not a
20 conclusive factor, Staff would conduct a review on whether
21 this transaction was appropriate or not? It's just but
22 one piece of the whole puzzle?

23 MR. WILLIAMS: Yes.

24 CHAIRMAN CLAYTON: Rather than just being
25 conclusive. Is the Staff aware of any specific reasons

1 right now with the information that you have that Staff
2 would oppose this transaction if the Commission asserted
3 jurisdiction, or asserted that the statute was in play?

4 MR. WILLIAMS: I can't definitively say
5 that we would oppose it at this stage.

6 CHAIRMAN CLAYTON: One way or the other,
7 there's no position out there. How long would it take
8 Staff to conduct a review or prepare a Staff
9 recommendation if the Commission were to assert our
10 authority over the transaction?

11 MR. WILLIAMS: That's going to depend on
12 when we get information. We've issued data requests.

13 CHAIRMAN CLAYTON: Okay. So if the data
14 requests were answered, how long would it take to analyze
15 the information you expect to receive?

16 MR. WILLIAMS: Assuming that we got
17 everything we needed in response to the data requests, I
18 suspect it could be done within a couple of weeks.

19 CHAIRMAN CLAYTON: Mr. Fischer?

20 MR. FISCHER: Yes, sir.

21 CHAIRMAN CLAYTON: From your perspective,
22 if Staff would have said in their response to KCP&L
23 inquiries several weeks back as you shared the RFP that
24 Staff believed that Commission authority needs to be
25 granted before proceeding with this transaction, would the

1 company have moved forward with asking our permission or
2 asking for an Order of the Commission, or would it have
3 been a case similar to this where you seek an Order
4 declining jurisdiction and move forward?

5 MR. FISCHER: If Staff had indicated in
6 November when we sent them the RFP that they had a concern
7 about that, we would have taken that into account in
8 deciding if we needed to file an application, because
9 certainly that position by the Staff clouds the title, so
10 to speak, of our ability to sell those turbines.

11 And in this case, now time is of the
12 essence because we hope to get this transaction done at
13 the end of June so that the developer can begin
14 construction during the summer season and get it done
15 before the end of the year. There's also some grants or
16 tax implications to getting it done.

17 Had we known in November when we sent it
18 around and began talking about it that that was going to
19 be the Staff's position, we would have taken that into
20 account. I don't know either definitively what we would
21 have done. I suspect that would have given us more time
22 to sort through this.

23 CHAIRMAN CLAYTON: I understand. So I
24 looked -- I looked through the filings in this case, and I
25 may have missed some things, but the communication that I

1 seem to remember was basically the company sent an e-mail,
2 sent around a copy of the RFP on the wind, and it said,
3 are there any comments or thoughts on it? Are there any
4 e-mails or correspondence where the company said, do
5 you-all think we need to ask for permission?

6 MR. FISCHER: I don't recall anything like
7 that. We've been talking about this in the wind status
8 reports for quite a while, where the various wind projects
9 are. We've been talking about things like this issue in
10 the comprehensive energy plan quarterly report meetings
11 that we've had, and in November we indicated we were about
12 to issue this RFP and we wanted their comments.

13 I'm not suggesting that their comments were
14 going to determine the legal issue here. The legal issue
15 I think is very clear, but --

16 CHAIRMAN CLAYTON: I understand. I
17 understand. But from a timing standpoint and from a
18 communication standpoint, I think that's part of the
19 application of KCPL, that basically we gave the Staff an
20 opportunity to comment on this and Staff was silent, said
21 no comment. They didn't say great job. They didn't say
22 we have real concerns. They didn't say you need to get a
23 Commission order. They just said no comment, and then on
24 that you relied -- I say you, the company relied in moving
25 forward with the transaction. And I guess it's a little

1 more vague than what I thought it was going to be.

2 MR. FISCHER: We went forward, and then in
3 our last quarterly comprehensive energy plan status report
4 meeting we talked to the Staff and indicated we were about
5 to go ahead and pull the trigger on the transaction, and
6 at that point the Staff did express their preference to
7 owning assets in the ground, so to speak. And then a
8 couple days later we received information that Staff was
9 going to take the position that they needed -- the
10 Commission needed to approve the transaction.

11 So it was at that point we decided it would
12 be prudent to raise the issue to the Commissioners to
13 allow you to take a look at whether you have -- you want
14 to assert jurisdiction or decline it. We're certainly
15 asking that you decline jurisdiction.

16 CHAIRMAN CLAYTON: In making this decision,
17 I don't -- I'm not asking for KCP&L to spell out its
18 philosophy or its business strategy or anything like that,
19 but does KCP&L by seeking to move forward with this
20 transaction, is it making a decision that, in terms of
21 wind or renewable resources, that PPAs are referable to
22 owning their own generation, or is this a one-time-only
23 transaction, or can you give me any feedback?

24 MR. FISCHER: The company looked at its
25 current options in the current environment and concluded

1 that this was the best option for itself and its
2 ratepayers because it will allow the company to finance
3 the transaction in a way that will maintain a cushion
4 around its financial metrics and maintaining its
5 investment grade rating.

6 Now, in the future we do have an option to
7 purchase these particular assets, and we'll take a look at
8 the situation at that time and make a decision about
9 whether we would like to exercise that option.

10 So I don't think this is any kind of a
11 great philosophical thing. It's just that based on the
12 current market conditions and based on the current
13 situation as we have it with these assets available to be
14 transferred to the developer and our ability to enter into
15 a reasonable PPA with them, that that is the best decision
16 that we should make.

17 But I'm saying again that that's not a
18 decision this Commission needs to look at now. You can
19 look at that in a rate case whenever we ask that that be
20 included, and that's where the Commission should exercise
21 its jurisdiction is over the ratemaking implications of
22 that decision.

23 CHAIRMAN CLAYTON: If the Commission were
24 to assert jurisdiction, how long would it take KCP&L to
25 respond to the data requests that Staff has submitted?

1 MR. FISCHER: They have submitted a number
2 of them.

3 MR. GRIMWADE: We're working on the data
4 requests currently and hope to have them available by the
5 due dates specified, which I believe were the 23rd and
6 29th.

7 CHAIRMAN CLAYTON: Of June?

8 MR. GRIMWADE: Of June.

9 MR. WILLIAMS: Chairman, you'd asked about
10 how much time Staff would need. I have spoken with Staff
11 personnel, and they've said due to workload it would
12 probably be more like three to four weeks that the Staff
13 would require from when we get the information.

14 CHAIRMAN CLAYTON: Last set of questions.
15 Mr. Fischer, to whom were the inquiries made regarding
16 feedback on the RFP? When you correspond with Staff, what
17 is the chain of command that you use?

18 MR. FISCHER: Our application included
19 that. I believe it included Mr. Dottheim,
20 Mr. Schallenberg, Lena Mantle, Steve Reed, Nathan
21 Williams, is who we sent the e-mail to.

22 CHAIRMAN CLAYTON: Mr. Dottheim?

23 MR. DOTTHEIM: Yes. And the communication
24 was, counsel, attached are draft requests for proposal for
25 additional wind generation that KCPL and GMO are planning

1 to issue early next week. If you have any questions,
2 please let me or Tim Rush know. Jim Fischer.

3 The Stipulations & Agreements that I handed
4 out, I would direct the Commissioners to page 14 of each
5 of those Stipulations & Agreements. It's on page 14. It
6 is section Arabic No. 9 combustion turbines, where the
7 Memorandum of Understanding involving the five combustion
8 turbines is discussed, which was extensively discussed at
9 the on-the-record presentation.

10 The jurisdictional issue was discussed, and
11 as a result of the extensive discussion, the on-the-record
12 presentation, Section 9 was redrafted. Originally there
13 were three turbines out of the five that were covered.
14 As a result of the on-the-record with the Commissioners,
15 all five of the turbines were covered.

16 And again, I am not raising this for
17 purposes of asserting that KCPL has previously asserted,
18 that it has agreed to Commission jurisdiction. I'm
19 raising this for purposes of asserting that KCPL knows
20 full well what the Staff's position is on jurisdiction of
21 matters such as the 32 wind turbines. Staff's position is
22 that KCPL needs to come before the Commission.

23 CHAIRMAN CLAYTON: Mr. Dottheim, if an
24 inquiry were made, if KCP&L actually asked the question,
25 does the Staff believe that we need to get permission or

1 an order to transfer these turbines, who has authority on
2 the part of the Staff to say, we don't think you need the
3 Commission's authority? Who has the ability on Staff to
4 give a definitive answer to that?

5 MR. DOTTHEIM: That would come from now the
6 Staff Counsel's Office, General Counsel's Office. That's
7 a -- that's a legal determination, but that's something
8 that would be discussed within the entire Staff, and by
9 that I mean within the oper -- the utility operations
10 division and the utility services division, to make
11 certain that we in the Staff Counsel's Office did not miss
12 anything in our consideration of the legal issues, because
13 it is not infrequent that, in our looking at an issue,
14 that the services division or the operations division add
15 a certain perspective that we hadn't considered. So as a
16 matter of form, we get together as a staff and discuss
17 issues of this nature.

18 CHAIRMAN CLAYTON: So who -- is it a
19 democracy? Does the Staff take a vote? I mean, who has
20 the ultimate authority to make the decision? I know
21 General Counsel will transfer it and it will be legal
22 communication, but who has the authority?

23 We sent -- this communication went to five
24 people. What happens if you had Lena and Wes say one
25 thing and you and somebody else say another thing? I

1 mean, who has the authority to make the definitive
2 decision?

3 MR. DOTTHEIM: If it's a legal decision,
4 it's the Staff Counsel's Office.

5 CHAIRMAN CLAYTON: And would this be a
6 legal decision?

7 MR. DOTTHEIM: Yes, ultimately I believe it
8 would.

9 CHAIRMAN CLAYTON: So it would be you or
10 Mr. Williams in consultation with your colleagues?

11 MR. DOTTHEIM: With Mr. Thompson.

12 CHAIRMAN CLAYTON: If the Commission --

13 MR. DOTTHEIM: And Ms. Slack.

14 CHAIRMAN CLAYTON: Okay. So if -- if the
15 Staff were to say, we don't think you need authority from
16 the Commission, at what point does the Commission ever
17 chime in with a position, whether we agree or disagree
18 with that assertion?

19 MR. DOTTHEIM: That would be a very serious
20 consideration of ours, and I think in most instances we
21 would probably -- it would probably be extremely rare for
22 us not to say that you don't need the Commission's
23 determination because we wouldn't want to render that
24 determination on behalf of the Commission.

25 CHAIRMAN CLAYTON: Good answer. Good

1 answer.

2 MR. FISCHER: Mr. Chairman, I might chime
3 in. The company is not resting on the fact we sent an
4 e-mail to the Staff and they gave us no comments that said
5 none of the people that got the e-mail had any comments
6 about it. That's not -- it's the legal issue that's
7 important here, and the legal issue is controlled by
8 393.190.1, and that's what the argument is about.

9 CHAIRMAN CLAYTON: I understand, but it was
10 included in the application. If you're going to include
11 it, we're going to talk about it. That's the thing. You
12 can't raise it and say, oh, by the way, this buttresses
13 our position.

14 MR. FISCHER: I don't have a problem with
15 that.

16 MR. DOTTHEIM: Chairman, I would like to
17 take exception to what Mr. Fisher just said because KCPL
18 very much put their decision not to come before the
19 Commission on the Staff. So despite what he just -- he
20 just said, a fair reading of their filing puts the onus on
21 the Staff as to why KCPL is now in this fix is because the
22 Staff back in November did not definitively come forward
23 and say to KCPL, you need to bring this to the
24 Commission's attention what you're proposing to do.

25 I mean, in fact, KCPL didn't have the

1 courtesy to bring this before the Commission in an agenda
2 and give the Commission the right in that form for the
3 Commissioners to say, KCPL, don't you think you need our
4 authorization on this? I mean, I think maybe KCPL owes
5 the Commission, if nothing else, an apology for not having
6 advised the Commission earlier, much earlier what they
7 were proposing to do for which they believe they don't
8 need the Commission authorization to do.

9 MR. FISCHER: I would say, Judge, that as
10 soon as the Staff did tell us that they thought we needed
11 to come before the Commission, we did. We did begin
12 preparing an application asking that you decline
13 jurisdiction. So to that extent, certainly the Staff's
14 actions were a major part of that, but what I'm trying to
15 say is, this case should turn on the legal issue. That's
16 all I'm trying to say.

17 CHAIRMAN CLAYTON: I understand. I'm sorry
18 to -- okay. Last question. Let's talk about deadlines
19 from your -- from KCPL's perspective. What is the
20 deadline that is looming for this transaction?

21 MR. FISCHER: The end of June. I think
22 June 25th we included in the application, but the end of
23 June is when we need to make a decision and go forward.
24 To the extent it's delayed, it may cloud the ability to do
25 the transaction.

1 CHAIRMAN CLAYTON: From the purchaser, from
2 the developer?

3 MR. FISCHER: Yes.

4 CHAIRMAN CLAYTON: And who is the
5 developer?

6 MR. GRIMWADE: Third Planet Wind Power and
7 Skyward Energy.

8 CHAIRMAN CLAYTON: Okay. Mr. Mills, do you
9 want a piece of this at all?

10 MR. MILLS: I do. I just have a couple
11 points that I think were implicit in one of the things
12 that Mr. Fischer said, and they may have actually been
13 implicit in the some of the questions from Commissioner
14 Gunn, and that's the notion that the Commission can not
15 worry so much about this, take care of all the ratemaking
16 implications in a case later.

17 I think the AGP case about the St. Joe
18 Light & Power merger says that, no, you can't do that. If
19 you do take jurisdiction and you ultimately authorize this
20 transaction, you have to do so on the basis that it's not
21 detrimental to the public interest, and I'm not sure you
22 can set off a lot of ratemaking implications without
23 determining that and still find it not detrimental.

24 CHAIRMAN CLAYTON: Would you anticipate
25 that your office would prepare a recommendation or

1 position if we were to assert jurisdiction, or would
2 you-all --

3 Mr. MILLS: We talked yesterday about
4 issuing some DRs. I think we are going to get into this
5 if we have the time and the opportunity to do so.

6 CHAIRMAN CLAYTON: Aside from the
7 preference of whether a utility own its wind resources or
8 secure them through a PPA, are there any other details or
9 facts that jump out as problematic in this case?

10 MR. MILLS: Well, this isn't just issue an
11 RFP and say, can somebody give us some wind power? This
12 is a deal -- think about owning a car. This is where you
13 sell your car to somebody else, they lease that car back
14 to you with an option for you to purchase it after a
15 number of years. This is not just saying, you guys go
16 find out your resources and provide us some energy.
17 They're selling something they already own to somebody
18 with the option to buy it back, and then they're buying
19 the output of those assets.

20 So with regard to whether I have a general
21 preference for a PPA or owning the generation, I'm not
22 sure that I do with respect to renewables, but with
23 respect to this particular PPA, it's got some quirks that
24 I think bear looking at.

25 CHAIRMAN CLAYTON: My car is leasing

1 back -- if I could unload my car, that's not a good
2 example.

3 MR. MILLS: Well, okay. In general,
4 selling something that you own, leasing it back with an
5 option to buy it back again seems to me it's worth looking
6 at. It's an unusual transaction.

7 CHAIRMAN CLAYTON: Thank you. I don't have
8 any other questions. I'll pass.

9 JUDGE WOODRUFF: Commissioner Davis.

10 COMMISSIONER DAVIS: Mr. Fischer, I got
11 here just a couple minutes late, so forgive me if I'm
12 being redundant here.

13 MR. FISCHER: Not a problem at all, Judge.

14 COMMISSIONER DAVIS: Is KCP&L conceding
15 that we have jurisdiction and asking us not to exercise
16 it?

17 MR. FISCHER: No, sir.

18 COMMISSIONER DAVIS: Okay. That's -- I
19 mean, to me, I almost get that impression from reading
20 your pleading.

21 Mr. Dottheim, I can't recall, but I'm sure
22 you can. We had a gas case -- maybe between you and
23 Mr. Mills. We had a gas case maybe in '04 or '05 where
24 one of the issues I believe in MGE's rate case was the
25 fact that there was an allegation that their employees

1 were part of the franchise, works and system. Do you
2 recall that?

3 MR. DOTTHEIM: Commissioner, I don't recall
4 that, but I do know that the Staff has made that assertion
5 in other cases. I know, for example, that there are other
6 cases where the Staff has asserted, I believe, where
7 there's been a transfer of personnel where the Staff has
8 asserted that.

9 COMMISSIONER DAVIS: From say MGE to
10 Southern Union that --

11 MR. DOTTHEIM: I think I may be remembering
12 a Southwestern Bell case where the Staff has asserted that
13 when the Commission used to rate base regulate
14 Southwestern Bell.

15 COMMISSIONER DAVIS: And so you would say
16 that a learned Commission observer like Mr. Fischer here
17 ought to have notice of those proceedings as well and note
18 that Staff's always going to err on the side of
19 jurisdiction over such transactions, and if you would
20 argue over employees, then you'd certainly argue over
21 turbines?

22 MR. DOTTHEIM: Yes.

23 COMMISSIONER DAVIS: Anything you want to
24 add to that, Mr. Mills?

25 MR. MILLS: No. I do recall the case,

1 although I also recall a number of telephone cases in
2 which the merging -- and these were mergers, I believe,
3 rather than sales and acquisitions, but it's a similar
4 standard, in which the merging telephone companies would
5 go to the staff counsel and say, we don't think the
6 Commission has jurisdiction over this. Can you give us a
7 letter? And the General Counsel would send a letter back
8 to the telephone company saying, we don't think we have
9 jurisdiction.

10 And I know that because in a number of
11 those cases Public Counsel asserted that the Commission
12 did have jurisdiction, and the staff counsel letter got
13 into the record that way. So I think even in cases in
14 which companies thought that the Commission didn't have
15 jurisdiction, the Commission ultimately thought it didn't
16 have jurisdiction, they nonetheless came and asked.

17 MR. FISCHER: Judge, I would say that in
18 those cases you've got the distinction that in, and I
19 think every one of those cases the property in question or
20 the employees in question had actually been providing
21 service and been part of the rate base, probably included
22 in rates in that. In this case, that's certainly not
23 true.

24 COMMISSIONER DAVIS: Okay.
25 MR. WILLIAMS: Commissioner Davis, if I

1 might respond to that?

2 COMMISSIONER DAVIS: Absolutely,
3 Mr. Williams.

4 MR. WILLIAMS: We, of course, have the
5 anti-CWIP statute, 393.135, so these assets couldn't be
6 included in rate base even if the company wanted them to
7 be, these turbines, and --

8 COMMISSIONER DAVIS: Why couldn't they,
9 Mr. Williams? I mean, if they're necessary or useful, I
10 mean --

11 MR. WILLIAMS: There's a prohibition.

12 COMMISSIONER DAVIS: I read the statute,
13 but under, quite frankly, your bastardized reading of the
14 statute, I don't know why necessary can't be referred to
15 being, quote, used because, you know, it's there, it's
16 waiting, it's there. I mean, you know -- I mean, if
17 you're going to -- it appears to me that you're making a
18 stretch here, and if we're going to make that much of a
19 stretch, why not put it in rate base?

20 MR. WILLIAMS: There's a requirement in
21 393.135 that says that something has to be fully
22 operational and used for service in order to be put in
23 rates.

24 COMMISSIONER DAVIS: Does it say fully
25 operational or does it say used and useful?

1 MR. WILLIAMS: Fully operational and used
2 for service.

3 COMMISSIONER DAVIS: Okay. So it's not
4 fully operational.

5 MR. WILLIAMS: And that's a statute that
6 came long after 393.190 was promulgated, and at one time
7 companies did recover CWIP. And I do have a case from
8 New Hampshire where a similarly worded statute, and I
9 won't say it's exactly worded the same, where a public
10 utility company, I believe it is, Public Service Company
11 of New Hampshire sought and obtained commission authority
12 to reduce its ownership interest in Seabrook, and it came
13 in and asked for authority to transfer a portion of its
14 ownership interest in that plant.

15 COMMISSIONER DAVIS: Was the plant power
16 plant that was operational or plant that was under
17 construction?

18 MR. WILLIAMS: It was under construction.
19 That request occurred after a similar anti-CWIP statute in
20 New Hampshire. I have an opinion here.

21 COMMISSIONER DAVIS: If you would like to
22 provide that to us.

23 MR. WILLIAMS: I would. Also, I have a
24 case where the court said that AmerenUE, I think at the
25 time it was Union Electric Company, could recover

1 cancellation costs for Callaway 2.

2 COMMISSIONER DAVIS: Okay.

3 MR. MILLS: Chairman Davis, while he's
4 handing that out, I think part of the problem we're all
5 having here, despite the fact that this statute is almost
6 100 years old, there really aren't any cases right on
7 point that say what exactly is plant that's necessary and
8 useful. If we had some clear cases, I'm not sure that
9 we'd be having this debate. Despite the fact that it's
10 been around forever, it's an unsettled question.

11 COMMISSIONER DAVIS: Okay. Mr. Williams,
12 let me go back to your response to KCP&L. Let me ask this
13 question another way. And let's -- let's set aside the
14 fully functioning issue. In your brief you said that it's
15 illogical under the act that the utility should be able to
16 sell a generating plant at any time prior to its
17 completion. Okay. So if we're just -- let's just set
18 aside the fully functioning. So but for the fully
19 functioning language in 393.135, then you would say that
20 it's used and useful, correct?

21 MR. WILLIAMS: No. What I was saying there
22 is it didn't make sense that the Commission would have
23 to -- or that a company would come in and get a
24 certificate of convenience and necessity for building a
25 particular plant at a particular site and then could, once

1 it began constructing that plant, go ahead and sell it.

2 COMMISSIONER DAVIS: That's really a red
3 herring here because they don't have a certificate of
4 convenience and necessity, do they?

5 MR. WILLIAMS: But you're looking at a
6 statute that applies more broadly than this particular set
7 of facts.

8 COMMISSIONER DAVIS: I know we interpret
9 our jurisdiction here to be the sun, the moon, the stars,
10 everything south of there, but does KCP&L need a CCN from
11 the Missouri Commission to build any kind of plant in
12 Kansas?

13 MR. WILLIAMS: I don't believe so.

14 COMMISSIONER DAVIS: All right. Do we have
15 authority to issue a CCN for any kind of construction
16 project in Kansas?

17 MR. WILLIAMS: I think because of the
18 location of the plant, probably not.

19 COMMISSIONER DAVIS: Then how are your
20 arguments relevant regarding this whole CCN thing?

21 MR. WILLIAMS: All I was saying is that it
22 doesn't make sense that because something's not being used
23 for service, that automatically means it's not useful or
24 necessary.

25 COMMISSIONER DAVIS: Okay. Well, if that's

1 the case, then, is it also -- does it also not make sense
2 that if it is necessary or useful, then setting aside
3 prohibition in 393.135, I mean, shouldn't public policy
4 say that it should go into rate base?

5 MR. WILLIAMS: I think it was -- I mean,
6 the companies got construction work in progress in the
7 past before 393.135.

8 COMMISSIONER DAVIS: Numbered paragraph 8
9 of your pleading says, while the Commission does not have
10 jurisdiction to manage the utilities it regulates, the
11 Commission does have authority to supervise and regulate
12 them to assure the public interest is served. That
13 authority extends to management decisions that affect the
14 utility's ability to provide safe and adequate service.

15 Are you alleging that this is a safe and
16 adequate service issue?

17 MR. WILLIAMS: Alleging that asserting
18 jurisdiction over this transaction is?

19 COMMISSIONER DAVIS: Yes, or that KCP&L's
20 divestiture of these turbines is somehow a safe and
21 adequate service issue.

22 MR. WILLIAMS: I think that plays into it,
23 yes.

24 COMMISSIONER DAVIS: How is it a safety
25 issue?

1 MR. WILLIAMS: I think it's more an
2 adequacy and complying with the law.

3 COMMISSIONER DAVIS: But it says safe and
4 adequate, not just safe or adequate. So wouldn't safe and
5 adequate mean that you have to have both?

6 MR. WILLIAMS: The cases I've seen
7 addressing safe and adequate service have said that when
8 the Commission steps in is whenever a utility's looking at
9 doing something that may affect its ability to provide
10 safe and adequate service to its existing customers and/or
11 to any customers if it's doing things like an expansion.
12 I think clearly the Commission has at least that much
13 authority. It may go beyond that.

14 COMMISSIONER DAVIS: So articulate to me
15 how the divestiture of these turbines is KCP&L's failure
16 to provide adequate service to the public.

17 MR. WILLIAMS: I don't know that it is.

18 COMMISSIONER DAVIS: Okay. I thought you
19 said you were -- I thought you said when I asked you that
20 were making that argument. So is it a safe and adequate
21 issue? Is it not a safe and adequate issue?

22 MR. WILLIAMS: I think that's one question
23 that gets addressed. I don't have an answer to that
24 question.

25 COMMISSIONER DAVIS: And are you saying

1 that when you -- you need the answers to these data
2 requests to know that?

3 MR. WILLIAMS: I think the answer to that
4 is yes, to perform that evaluation.

5 COMMISSIONER DAVIS: Okay. Going back to
6 your citation of Cass County versus Public Service
7 Commission, does that case really say that before a
8 utility begins construction of a generation plant, that a
9 commission regulated electric utility such as KCP&L must
10 obtain a certificate from this Commission to build that
11 plant at a particular cite based on a determination by the
12 Commission that the plant is necessary or convenient, a
13 certificate of convenience and necessity?

14 MR. WILLIAMS: I believe so.

15 COMMISSIONER DAVIS: You believe so?

16 MR. WILLIAMS: That's my understanding of
17 the ruling. I went through that case.

18 COMMISSIONER DAVIS: If they get planning
19 and zoning from their local municipalities, do they still
20 need this CCN?

21 MR. WILLIAMS: I believe the way that
22 opinion's written, yes.

23 COMMISSIONER DAVIS: Okay. Mr. Williams,
24 Mr. Dottheim, is the Harline case still good law?

25 MR. DOTTHEIM: I don't -- I don't know that

1 it is. If any part of it is, it's certainly much, much
2 narrowed.

3 COMMISSIONER DAVIS: Okay. What about --
4 what about this: What about numbered paragraph 7 that
5 KCP&L only partially cited in their brief. I'll read this
6 passage and I'll let you respond. The utility's ownership
7 of its business and property includes the right of control
8 and management subject necessarily to state regulation
9 through the Public Service Commission. The powers of
10 regulation delegated to the Commission are comprehensive
11 and extend to every conceivable source of corporate
12 malfeasance. Those powers do not, however, clothe the
13 Commission with the general power of management incident
14 to ownership. The utility retains the lawful right to
15 manage its own affairs and conduct its business as it may
16 choose as long as it performs its legal duty, complies
17 with lawful regulation and does no harm to public welfare.

18 And that's citing a string of cases that
19 apparently go back to 1930. Do you think that's still
20 good law?

21 MR. DOTTHEIM: I think that is, and what
22 literally that passage means is open to question. It's
23 how it's interpreted to each fact situation is for
24 determination to that situation. I don't think -- as a
25 broad statement, I think that's good law, but then it has

1 to be applied to each individual situation.

2 COMMISSIONER DAVIS: Okay. So let's look
3 at this situation here. In this instance, is KCP&L, are
4 they not performing a legal duty?

5 MR. DOTTHEIM: Yes.

6 COMMISSIONER DAVIS: Okay. And what legal
7 duty are they not performing, Mr. Dottheim?

8 MR. DOTTHEIM: Well, I think that the
9 question is, are they performing their legal duty of
10 providing safe and adequate service at just and reasonable
11 rates, and I interpret adequate service as reliable
12 service which involves planning. So I believe it
13 encompasses things such as including now the renewable
14 energy standards.

15 So I believe the 32 combustion turbines,
16 the action that KCPL is contemplating falls within the
17 purview of the various statutes that empower the
18 Commission, including 393.190.

19 COMMISSIONER DAVIS: Okay. Is KCP&L in
20 compliance with the renewable energy standard at the
21 present moment?

22 MR. DOTTHEIM: At the present moment, I
23 believe they are.

24 COMMISSIONER DAVIS: Are they -- any other
25 lawful regulation that they're violating in this regard

1 that you're aware of, Mr. Dottheim?

2 MR. DOTTHEIM: Offhand, no, none that I'm
3 aware of.

4 COMMISSIONER DAVIS: Is the public welfare
5 being harmed?

6 MR. DOTTHEIM: That's a question that I
7 think is at issue.

8 COMMISSIONER DAVIS: So you're saying that
9 the public welfare is being harmed by this transaction or
10 that it may be being harmed by this transaction and that
11 you don't know?

12 MR. DOTTHEIM: I don't know, and that's why
13 the Staff has submitted data requests to the company so
14 that the Staff can make a determination regarding the
15 transaction that's proposed.

16 COMMISSIONER DAVIS: Okay. And from
17 hearing here earlier that the responses were due on, I
18 believe, the 23rd and the 28th, does that mean that those
19 data requests were served on the, what is it, the 3rd and
20 the 8th? Don't they have 20 days to respond?

21 MR. DOTTHEIM: Yes.

22 COMMISSIONER DAVIS: And Mr. Dottheim,
23 Mr. Williams, I mean, I'm going to go back to the point
24 that you felt so vehemently about, Mr. Dottheim, that
25 KCP&L ought to be asking for permission and apologizing

1 for not asking for permission when they should have known
2 that you would assert jurisdiction, and that is --

3 MR. DOTTHEIM: No, Commissioner. I'm sorry
4 to interrupt you. I was saying that they should
5 apologize, if they didn't think they needed to ask for
6 Commission authorization, then they should have at least
7 kept the Commission apprised of what --

8 COMMISSIONER DAVIS: Of their intentions?

9 MR. DOTTHEIM: -- of their intentions.
10 And, therefore, the Commission -- Commissioners would have
11 been aware and the Commissioners -- if the Commissioners
12 themselves thought that --

13 COMMISSIONER DAVIS: We could have said,
14 hey, we want to open up a docket and look at this?

15 MR. DOTTHEIM: Yes. So as to in part
16 address -- in large part address the situation, if the
17 Commissioners thought the Staff was wrong, if the Staff
18 thought that KCPL did not need Commission authorization
19 but the Commissioners believed that KCP&L did, then the
20 Commissioners would have an opportunity to tell that to
21 KCPL before the transaction occurred.

22 COMMISSIONER DAVIS: Okay.

23 MR. DOTTHEIM: Because ironically,
24 Commissioner, what we've gotten into this is, in this
25 transaction here, where KCPL went to a public utility

1 holding company structure, I mentioned an on-the-record
2 presentation. I'm quite sure Mr. Fischer will recall,
3 there was an additional on-the-record presentation because
4 after the First Amended Stipulation & Agreement was
5 issued, there appeared an article in the Kansas City Star
6 where, if my memory serves me correctly, Great Plains
7 Power announced, which was KCPL's unregulated generating
8 subsidiary, was going to develop West Bend 1, which is now
9 Iatan 2. And the Commissioners had not been advised that
10 Great Plains Power was going to develop this unregulated
11 base load generating facility, and the Commissioners
12 issued an order ordering KCPL in for an on-the-record
13 presentation to explain why when KCPL was in for the
14 on-the-record presentation on EM-2001-464, why KCPL had
15 not told them that Great Plains Power was going to
16 announce that they were going to be developing this base
17 load generating facility at West Bend, Missouri, which in
18 essence is Iatan.

19 COMMISSIONER DAVIS: Iatan 2.

20 MR. DOTTHEIM: Yes. So there was a
21 subsequent on-the-record presentation where KCPL,
22 Mr. Fischer, Mr. Riggins, I don't recall -- Mr. Giles was
23 present for the first on-the-record presentation. I don't
24 recall if he was present for the second one. But KCPL
25 apologized profusely for not having kept the Commissioners

1 that. I don't -- the Commissioners I recall expressed
2 their concern about not being kept apprised, and I believe
3 KCPL indicated at the time that they did not need -- that
4 KCPL itself did not need the generation at that time from
5 West Bend 1, and then ultimately, of course, what occurred
6 was the KCPL regulatory plan.

7 COMMISSIONER DAVIS: Right. That's how I
8 remember. That was kind of the birth of the regulatory
9 plan was there was a stip where they -- everybody agreed
10 to do a --

11 MR. DOTTHEIM: I think the Commission --
12 I'm sorry for interrupting. I think the Commission
13 clearly indicated that as far as for KCPL itself, the
14 Commissioners were interested in generation that KCPL
15 would own itself as opposed to purchasing through a
16 purchased power contract, for example, from West Bend 1,
17 and then, again, ultimately KCPL came in and opened up a
18 docket --

19 COMMISSIONER DAVIS: All right.

20 MR. DOTTHEIM: -- that eventually led to
21 the KCPL regulatory plan.

22 COMMISSIONER DAVIS: Got it. All right. I
23 guess, Mr. Dottheim, let me go back to another -- another
24 issue that's only tangentially related. How often do you
25 see -- in the past six months, how often have you seen

1 Mr. Fischer?

2 MR. DOTTHEIM: In the last six months, I've
3 seen Mr. Fischer rather regularly.

4 COMMISSIONER DAVIS: I mean, that's what I
5 thought. Okay. So from the e-mail from, you know, from
6 Mike Taylor on November 25th to the notice that, you know,
7 Staff somehow objected, you know, in May 25th or
8 apparently there was maybe a meeting some two or three
9 days before, I mean, did you or Mr. Williams just never
10 think to say, hey, Mr. Fischer, I think you better come
11 over here and ask jurisdiction because -- ask for
12 jurisdiction to sell these turbines?

13 MR. WILLIAMS: Commissioner, in the past
14 utilities, including Kansas City Power & Light Company,
15 have issued RFPs for the purposes of getting information
16 for pricing for doing evaluations for their integrated
17 resource plans and other purposes. There was nothing --
18 this wasn't the only request for proposal that was
19 included in that e-mail. There was another one that had
20 numerous alternatives in it. There was nothing in that
21 e-mail that highlighted to the Staff that the company was
22 looking at going down a particular path.

23 MR. DOTTHEIM: Or that anything was
24 imminent, truly imminent.

25 COMMISSIONER DAVIS: Okay. So you're

1 saying when you found out it was imminent, then you said,
2 hey. Okay.

3 MR. DOTTHEIM: Yes.

4 COMMISSIONER DAVIS: All right.

5 MR. WILLIAMS: We immediately raised the
6 question whether they were going to seek jurisdiction.

7 COMMISSIONER DAVIS: And that's what I'm --
8 that's what I'm trying to get to. All right.

9 MR. DOTTHEIM: And when I say it's not --
10 again, I apologize for interrupting. It's not -- it's not
11 that it was literally imminent, that KCPL was truly moving
12 on the project.

13 COMMISSIONER DAVIS: Right. All right.
14 Mr. Fischer, you want to respond to any of that?

15 MR. FISCHER: Well, sure. My sense was
16 that it was at the CEP meeting where Mr. Schallenberg
17 expressed his sense that Staff often preferred steel in
18 the ground rather than PPAs that generated two days later
19 their letter from Mr. Williams suggesting that maybe we
20 should come in and ask for juris-- ask for permission.

21 And I would just correct the record that it
22 was five days ago that we got the series of DRs from the
23 Staff, late on a Friday afternoon, last Friday is whenever
24 they were hand delivered to me. So --

25 COMMISSIONER DAVIS: Okay. Now,

1 Mr. Fischer, I've got to ask this question.

2 MR. FISCHER: Yes, sir.

3 COMMISSIONER DAVIS: In defense of
4 Mr. Schallenberg.

5 MR. FISCHER: Yes, sir.

6 COMMISSIONER DAVIS: I mean, I've been here
7 six years, and I must have been -- I mean, it must have
8 been the first few months when I met Mr. Schallenberg that
9 I got the definite and firm impression from
10 Mr. Schallenberg, and from the Staff here in general, that
11 there has always been a preference here amongst the Staff
12 that utilities should build their own generation as
13 opposed to leasing or PPAs for the -- for the express
14 reason that it's more economically efficient in that you
15 can always extend the useful life of the plant out past,
16 you know, the PPA date, and for instance, with the PPA,
17 after 20 years you have zero. You have nothing.

18 MR. FISCHER: Yes, sir. And I would
19 suggest again that that's the kind of decision that can be
20 reviewed in a ratemaking context. That would be the
21 appropriate place to do that. I'm not suggesting that
22 that -- well, I'll just leave it at that.

23 COMMISSIONER DAVIS: Okay. All right. So
24 you're just saying that the statute speaks for itself and
25 that, based on the statute, you should prevail?

1 MR. FISCHER: Yes, sir.

2 COMMISSIONER DAVIS: Okay. I've got just a
3 couple of more. Okay. In the Staff's response to your
4 application, they cited three cases. They cited the
5 EO-2005-156, the Aquila combustion turbines case. Those
6 were the -- and then they also cited EO-2010-211, which
7 was the Aquila service center, and then the HO-2007-419,
8 the Trigen coal contract as examples where the Commission
9 had asserted jurisdiction, you know, particular -- you
10 know, obviously the Aquila service center was at one time
11 was a building that was in service?

12 MR. FISCHER: Yes, sir.

13 COMMISSIONER DAVIS: The combustion
14 turbines, isn't that probably the most analogous case to
15 this one? Are you familiar with EO-2005-156?

16 MR. FISCHER: I'm not familiar with all the
17 facts of that case, I'm afraid.

18 COMMISSIONER DAVIS: Okay. Mr. Dottheim,
19 Mr. Williams, do you want to respond? I have a vague
20 recollection of that case. I have not gone back and
21 reviewed the record in that case.

22 MR. WILLIAMS: I remember it all too well.

23 COMMISSIONER DAVIS: Is that where they
24 sold some turbines that were laying around that they said
25 they needed to gen-- needed those turbines to generate

1 electricity?

2 MR. WILLIAMS: As I recall, it was in
3 connection with doing a Chapter 100 financing with the
4 City of Peculiar, and they actually transferred them
5 before the parties in that case had entered into a
6 Stipulation & Agreement.

7 And the Commission on two bases said it
8 didn't have jurisdiction, one being that those combustion
9 turbines were not being used to provide service, and the
10 other being that it was done as part of a Chapter 100
11 financing, not as an intentional transfer of all the
12 incidents of ownership to the -- the purpose of the
13 transaction was to get tax advantage, not to transfer all
14 the incidents of ownership from the utility company.

15 COMMISSIONER DAVIS: Okay.

16 MR. WILLIAMS: There was a dissent in that
17 case by then Commissioners Gaw and Clayton that I have a
18 copy of if anyone wants to see that.

19 COMMISSIONER DAVIS: But doesn't the -- I
20 mean, doesn't the thrust of that case, I mean, isn't that
21 most analogous to this situation in that, you know, here
22 we have turbines that they are -- it's not for Chapter 100
23 purposes, but it's for, as it looked like Mr. Fischer was
24 saying, more of a cash flow concerns and maintaining their
25 credit metrics where they don't have to lay out the

1 capital right now, that instead they purchase for a term
2 of years, and then they have the option of buying the
3 plant back?

4 MR. WILLIAMS: I have not seen the
5 contract. All I've seen is the request for proposal that
6 the company submitted with its application. So I don't
7 even know what the terms of the transaction are, so I
8 can't speak to the merits of it. The question I
9 remember --

10 COMMISSIONER DAVIS: Okay. So you're
11 saying you've got to wait for the --

12 MR. WILLIAMS: And I think it's distinctive
13 from the 156 case at least on the fact that nobody's
14 purporting that this one's being done for some tax
15 advantage and that Kansas City Power & Light Company's
16 retaining all of the incidents of ownership.

17 COMMISSIONER DAVIS: Okay. I don't have
18 any further questions.

19 MR. MILLS: Commissioner, can I address a
20 couple of points that I have a different opinion than
21 Staff on?

22 COMMISSIONER DAVIS: Sure.

23 MR. MILLS: The first is the question of
24 the convenience -- certificate of convenience and
25 necessity and how that's relevant to this issue, and I

8 The second thing that I want to talk about
9 is I think that the whole analysis of Harline is sort of
10 leading you down the wrong path. It is true that Harline
11 says that the Commission doesn't have the right to manage
12 a utility, but with respect to certain classes of
13 property, the Commission has the authority and the
14 obligation to restrict sales of that property if the sale
15 would be detrimental to the public interest.

25 COMMISSIONER DAVIS: And you would agree

1 that 390, was it section 190, I can't remember if it's 386
2 or 393. 393.190 subsection 1 is the controlling?

3 MR. MILLS: Yes, absolutely.

4 COMMISSIONER DAVIS: And so then -- but
5 then you do agree with Staff that you think we should, you
6 know, basically bootstrap in the definition of electric
7 plant? No? No? Okay.

8 MR. MILLS: No. I think the discussion of
9 certificates of convenience and necessity is tangential at
10 best. I think the best you can get from that is that
11 there are cases that interpret the word necessary in a
12 different statutory section to mean not absolutely
13 essential, and I think that's useful to the interpretation
14 of necessary in 393.190.

15 COMMISSIONER DAVIS: Okay. So you're
16 saying that we're going to go from not being absolutely
17 essential to sitting out there --

18 MR. MILLS: Necessary or useful.

19 COMMISSIONER DAVIS: Well, I know, but
20 you're saying necessary or useful is, you know, sitting on
21 some railroad cross ties in the western plains of Kansas
22 in shrink wrap?

23 MR. MILLS: I'm saying it's a factual
24 question that you need an evidentiary record to decide,
25 and I don't have that record and you don't have that

1 record. But yes, I can see circumstances in which sitting
2 in the shrink wrap at the property where -- at or near the
3 property where they would otherwise be erected is
4 necessary or useful.

5 COMMISSIONER DAVIS: Okay. I might agree
6 with you there, depending on the circumstances. All
7 right. Thank you.

8 JUDGE WOODRUFF: Commissioner Kenney.

9 COMMISSIONER KENNEY: Bad being the low man
10 on the totem pole. Let me ask a threshold question. Who
11 owns all these turbines back here that are already
12 constructed on the land?

13 MR. BLANC: KCP&L.

14 COMMISSIONER KENNEY: So these 32
15 additional would be a part of this same wind farm or no?

16 MR. BLANC: No. Maybe a little history
17 might be valid. Enesco was a wind energy developer. They
18 basically got the land rights and the development rights
19 for up to 300 megawatts outside of Spearville, Kansas.
20 That was Enesco. We contracted with Enesco for Spearville
21 1 basically the first tranche, the first hundred
22 megawatts, and we ended up owning that.

23 And then where these turbines came from, we
24 were in negotiations with Enesco for the second tranche,
25 the second hundred megawatts, with the idea that we would

1 own and operate it, but that was the 2008 potential wind
2 project in our CEP, and that's when the financial markets
3 disintegrated.

4 We just said from a financial sense it
5 wasn't prudent to move forward with the project at that
6 time. And then through negotiations with Enesco to unwind
7 the extent to which that deal had progressed, we acquired
8 these 32 turbines and the development rights basically
9 just to preserve our options going forward.

10 COMMISSIONER KENNEY: So you have a new
11 deal with a new developer that's not Enesco?

12 MR. CURTIS: Correct. Enesco was a
13 responder to the RFP, but actually this entity Skyward was
14 a better proposal than the Enesco.

15 COMMISSIONER KENNEY: Are you at liberty to
16 discuss the particulars of the proposal? Is there any
17 reason that we can't discuss that?

18 MR. CURTIS: We could in-camera. That
19 would be confidential.

20 COMMISSIONER KENNEY: I have a couple
21 questions about that.

22 JUDGE WOODRUFF: At this point we will go
23 in-camera. In anyone -- if there's anyone around the room
24 needs to leave, look around and tell us. Looks like it's
25 mostly Staff people here.

1 (REPORTER'S NOTE: At this point, an
2 in-camera session was held, which is contained in
3 Volume 2, pages 68 through 71 of the transcript.)
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1 Judge WOODRUFF: We are back in regular
2 session.

3 COMMISSIONER KENNEY: Let me ask this of
4 KCP&L. Is the geographic location germane to this
5 analysis, whether we have jurisdiction, the fact they're
6 located in Kansas?

7 MR. FISCHER: I don't think so, no.

8 COMMISSIONER KENNEY: We can take that off
9 the table? The fact they're located in Kansas is
10 irrelevant to our analysis?

11 MR. FISCHER: The Commission has, yeah, no
12 authority to issue a CCN, we talked about that, in Kansas,
13 but for purposes of this specific question, I don't think
14 it has any relevance.

15 COMMISSIONER KENNEY: Okay. 386.020.14
16 defines electric plant. Is this electric plant as defined
17 in 386.020.14?

18 MR. FISCHER: Commissioner, I think it is
19 arguable because it says used or to be used for. It could
20 possibly fall within that definition. And that was a
21 point that we distinguished in our application and in our
22 pleadings. The statute 190, which is the controlling
23 statute, does not use the term electric plant. It uses
24 franchises, works and system, and that was, we would
25 argue, you know, intentional.

1 If the Legislature had intended any
2 electric plant to be -- that was sold to be -- have to be
3 approved by the Commission, they would have used that
4 term.

5 COMMISSIONER KENNEY: So we have
6 franchise --

7 MR. FISCHER: System or works.

8 COMMISSIONER KENNEY: -- works and system.
9 And your contention is that that electric plant does not
10 subsume or encompass franchise, works, system?

11 MR. FISCHER: That's correct.

12 COMMISSIONER KENNEY: So franchise, works,
13 system. What is a franchise?

14 MR. FISCHER: It's not defined in the
15 statute. Franchise, of course, as we typically talk about
16 it is either a municipal franchise or a, some people use
17 the certificate of convenience and necessity as a, refer
18 to that as a franchise from the Commission. But it's
19 not -- that particular phrase, as Mr. Mills has said, has
20 not been interpreted, I don't think, by the courts.

21 COMMISSIONER KENNEY: What is works and
22 system then? Franchise, works, system.

23 MR. FISCHER: There is an argument that
24 this statute was not intended to be used for the sale of
25 assets but for the sale of the company system as a whole,

1 and that that's what this was really intended to do.

2 COMMISSIONER KENNEY: And works?

3 MR. FISCHER: I think it's a term that's
4 used together.

5 COMMISSIONER KENNEY: It says works or
6 system.

7 MR. FISCHER: Works or system, yes. It's
8 not defined either. It's not defined either that I know
9 of.

10 COMMISSIONER KENNEY: So you're saying that
11 there's a potential interpretation of 393.190 that it was
12 intended to refer to the sale of the entire company and
13 not individual components?

14 MR. FISCHER: That's right. Had they
15 intended --

16 COMMISSIONER KENNEY: If that's a
17 correction interpretation, then --

18 MR. FISCHER: Had they -- I'm sorry.

19 COMMISSIONER KENNEY: If that's a correct
20 interpretation, then this is -- what are we doing here?

21 MR. FISCHER: Well, that's one of the
22 questions. I mean, when you're talking about electric
23 plant, that would be a different animal than what we're
24 talking about here.

25 COMMISSIONER KENNEY: Could it be that

1 franchise, works and system were used in 393.190 because
2 it doesn't refer specifically just to electric utilities
3 but dealing with gas and water and sewer corporations as
4 well, and that the definition in 386.020 of electric plant
5 is just more specific?

6 MR. FISCHER: There's also definitions of
7 gas plant and water plant, I think, in the statutes.

8 COMMISSIONER KENNEY: In 386?

9 MR. FISCHER: Yes, sir.

10 COMMISSIONER KENNEY: Right. So the use of
11 franchise, works and system when you're speaking about gas
12 corporation, electric corporation, water corporation or
13 sewer corporation altogether in one sentence is intended
14 to apply to all of those different utilities as opposed to
15 electric plant, which specifically refers to electric
16 corporation?

17 MR. FISCHER: That's a reasonable
18 interpretation of that statute, but as I said, the court
19 does not specifically address that.

20 COMMISSIONER KENNEY: What leads you to the
21 analysis that 393.190 was intended to control the sale of
22 an entire work, an entire corporation?

23 MR. FISCHER: Well, whenever it talks about
24 system, that's a very broad term.

25 COMMISSIONER KENNEY: Is there a case

1 interpreting the statute in that way? Is there some
2 statutory history?

3 MR. FISCHER: There's not any case law that
4 I'm familiar with that specifically addresses that
5 definition, but Mr. Mills, maybe you know.

6 MR. MILLS: With all due respect to
7 Mr. Fischer, I think that's absurd, because the sentence
8 says the whole or any part of its franchise, works or
9 system. So I don't see any way that you can leap to the
10 conclusion that the whole or any part of it means just the
11 whole.

12 MR. FISCHER: That would be, for example,
13 if you were selling part of St. Joe versus the Missouri
14 Public Service piece of it, that would be a part of the
15 system.

16 COMMISSIONER KENNEY: Let's assume for the
17 sake of this argument that it's not referring to the
18 entire system but that it's referring to the sale of
19 assets and fixtures, assets themselves. What's the
20 purpose of 393.190 in requiring that type of approval
21 before you sell your assets? This is for anybody
22 actually. Why are you required to come in and ask for
23 permission before selling assets?

24 MR. MILLS: I'll jump in. The statute
25 doesn't say, but the case law makes it clear it's because

1 the Commission has the authority to preclude a utility
2 from selling any part of its franchise, works or system if
3 such sale would be detrimental to the public interest.

4 It's their property. You can't stop them
5 if it's indifferent or good for the public, but if it's
6 bad for the public, you have -- under the police power you
7 have the authority to say, no, you can't sell that even
8 though it's your property.

9 COMMISSIONER KENNEY: So in order for us to
10 be able to make such a determination, how would we make
11 such a determination?

12 MR. MILLS: Based upon evidence in the
13 record.

14 COMMISSIONER KENNEY: So if we decide that
15 these 32 wind turbines that are sitting in shrink wrap,
16 granted, are either electric plant for purposes of 386.020
17 or franchise, works or system for purposes of 393.190, we
18 have jurisdiction, then, would you concede that fact, and
19 then the determination becomes whether it's necessary or
20 useful?

21 MR. FISCHER: Yeah. I think the total
22 phrase there is important, necessary or useful in the
23 performance of the duties to the public, and that's --
24 this has not been used. It's never been in rates. We're
25 kind of in a regulatory limbo if you adopt --

11 But that makes it a legal interpretation of
12 that, of the applicability of 393.190 as opposed to a
13 threshold jurisdictional issue. Would you agree with me?

22 COMMISSIONER KENNEY: Whether it's included
23 in rates is dependent upon whether it's used and useful,
24 right? Right?

1 for service.

2 COMMISSIONER KENNEY: Fully operational and
3 used for service. That's a completely different analysis
4 than whether it's necessary or useful under 393.190. So
5 the fact that it's not used and operational for purposes
6 of inclusion in rates doesn't answer the question for us.

7 MR. FISCHER: No. The standard as you
8 pointed out is different in 190 as we've been talking.

9 COMMISSIONER KENNEY: So whether it's used
10 and useful for purposes of inclusion in rates isn't
11 germane to the analysis of 393.190, correct?

12 MR. FISCHER: Yes. I believe the narrow
13 standard that you need to look at is in the last -- is in
14 190, and it is useful or necessary in the performance of
15 its duties to the public.

16 COMMISSIONER KENNEY: I understand what
17 you're saying. I just want to be clear that what we're
18 talking about, used and useful analysis for inclusion in
19 rates isn't relevant to this discussion?

20 MR. FISCHER: I guess I would point you
21 here to this statute. This is what is directly on point.
22 I think whether it's relevant or not, I guess we've been
23 talking about it all day, but I think it's important that
24 we focus on the language of the statute.

25 COMMISSIONER KENNEY: All right. So we

1 will not focus on whether it's used and useful for
2 purposes of inclusion in rates. We'll focus on the
3 language in 393.190.

4 MR. FISCHER: That's what I would ask that
5 you do, yes.

6 MR. WILLIAMS: Commissioner Kenney, if I
7 may?

8 COMMISSIONER KENNEY: Yes.

9 MR. WILLIAMS: When I did a lot of research
10 regarding South Harper and the certificate case, what I
11 found is the courts didn't -- I mean, they'd look at the
12 specific language, but they looked at the act as a whole
13 and focused on it, because if you tried to pars each word
14 separately, you're not going to get anywhere. You have to
15 look at what the whole purpose of the act is whenever
16 you're looking at language, and you need to look at all of
17 the different sections in the act at the same time for
18 what illumination it provides on specific provisions that
19 you're looking at for a particular transaction that's
20 going.

21 Also, there's been talk about management.
22 That can be done in the context of the Commission
23 performing its review about whether or not to approve the
24 transaction. The Commission can say --

25 COMMISSIONER KENNEY: Which would be

1 secondary to determining whether we even have the ability
2 to review the transaction?

3 MR. WILLIAMS: That's what I was --

4 COMMISSIONER KENNEY: Staff hasn't taken a
5 position yet on the prudence of the transaction itself?

6 MR. WILLIAMS: No, we have not.

7 COMMISSIONER KENNEY: Hence, that's the
8 reason you sent out DRs. And isn't that what 393.190 was
9 designed for, so that we can make that determination?

10 MR. WILLIAMS: That's Staff's position.

11 COMMISSIONER KENNEY: Let me ask you this,
12 then. The last sentence that reads, nothing in the
13 subsection contained shall be construed to prevent the
14 sale or other disposition of a class property which is not
15 necessary or useful. When would that -- when would you
16 envision a circumstance in which that last sentence would
17 be contemplated or would be applicable? I guess this goes
18 back to the bag of bolts question.

19 MR. WILLIAMS: I haven't thought about it.

20 COMMISSIONER KENNEY: If we read 393.190 in
21 its most expansive, that last sentence is really useless.
22 Mr. Mills, any thoughts?

23 MR. MILLS: Well, I don't think -- I don't
24 think it's useless, but I do think you can get to the kind
25 of questions that Commissioner Gunn was asking earlier,

1 where do you draw the line? Obviously there must be some
2 classes of assets that are not to be considered franchise,
3 works or system necessary or useful in the provision of
4 service.

5 COMMISSIONER GUNN: Company cars.

6 MR. MILLS: Perhaps. There's got to be
7 some ability for the utility to be able to unload old
8 trucks without coming in to the Commission.

9 COMMISSIONER KENNEY: Or a service center
10 that doesn't directly generate electricity.

11 MR. MILLS: Possibly.

12 COMMISSIONER KENNEY: But that's the
13 example I think KCPL cited as sale of a service was a
14 non-operational service center that arguably was not
15 necessary and useful for the provision of service.

16 MR. MILLS: I think the question of whether
17 it's in this category or that category is necessarily a
18 factual question.

19 COMMISSIONER KENNEY: That part is factual.
20 Jurisdictional question not so much. All right.
21 Mr. Williams, you were going to say something?

22 MR. WILLIAMS: No. I mean, service center
23 came to my mind as well, but Staff was asserting they
24 still fell within the scope of the Commission determining
25 that if -- if those service centers had been sitting there

1 unused for some period of time, you might have had a
2 different position on those in terms of getting Commission
3 authority for the sale.

4 COMMISSIONER KENNEY: And KCPL's assertion
5 is we can examine that the prudence of the transaction in
6 some future rate case. Why is that not an adequate enough
7 protection to ensure that the transaction is in the public
8 interest?

9 MR. WILLIAMS: I believe Commissioner Gaw
10 called it the horse is out of the corral. It's -- we'd be
11 in the same position we were in with the South Harper and
12 the two imputed combustion turbines potentially. You've
13 got something that a party's promoting and the Commission
14 may adopt the position that's pretty far afield from
15 what's really happening in terms of how the company's
16 operating.

17 And the longer you perpetuate the
18 difference between reality and what you're saying the
19 company should have done, the further afield things
20 become. It's much better to have those more closely
21 aligned.

22 COMMISSIONER KENNEY: Mr. Mills?

23 MR. MILLS: I think it's in -- not only is
24 it an inadequate remedy, I think it's an unavailable
25 remedy. I think the AGP case about the St. Joe merger

1 basically says that you as a Commission cannot approve a
2 transaction that's a sale that's detrimental to the public
3 interest, and you have to make a specific finding about
4 all factors that may play into whether or not it's
5 detrimental to the public interest.

6 I think the court didn't quite go this far,
7 but I think the necessary implication of that case is, if
8 it is detrimental, you can't approve it. Regardless if
9 you think you have some sort of remedy farther down the
10 line, you can't approve it if it's detrimental.

11 COMMISSIONER KENNEY: Couldn't we make a
12 determination that the second sentence or the last
13 sentence rather in 393.190 applies, that this isn't
14 property that's necessary or useful in the performance of
15 KCPL's duties to the public, and basically not make a
16 determination one way or the other, let the sale go
17 through and then revisit it once they try to include any
18 of this in the rate base?

19 MR. MILLS: I think the point -- with all
20 due respect, I think the point of the last sentence has to
21 do with a purchaser in good faith and less to do with the
22 fact that it's setting out the converse of the first
23 sentence. The first sentence stands on its own, and so
24 there's no reason to repeat it, other than the fact that
25 you bring in to play here the question of what happens to

1 a purchaser in good faith.

2 COMMISSIONER KENNEY: So as not to be able
3 to go back and unwind that sale and punish that purchaser
4 in good faith?

5 MR. MILLS: Exactly.

6 COMMISSIONER KENNEY: I don't have any more
7 questions. I'm satisfied. Anybody else? Mr. Dottheim?

8 COMMISSIONER JARRETT: I do have --

9 COMMISSIONER KENNEY: Mr. Dottheim wanted
10 to say something.

11 JUDGE WOODRUFF: Let's go to Commissioner
12 Jarrett first.

13 MR. DOTTHEIM: In the AGP case that
14 Mr. Mills has cited on a couple of occasions was a -- was
15 a merger case involving -- the appeal was by AGP, AG
16 Processing of the Aquila acquisition of St. Joseph Light &
17 Power Company, and the Commission did not decide the
18 acquisition premium issue, and the Missouri Supreme Court
19 ruled that the Commission was required to decide the
20 acquisition premium issue even though that the Commission
21 in the context of a subsequent forthcoming rate case for
22 ratemaking purposes might or would decide the acquisition
23 premium issue. The Commission was required to decide the
24 reasonableness of the acquisition premium in the context
25 of the merger case.

1 JUDGE WOODRUFF: Commissioner Jarrett.

2 COMMISSIONER JARRETT: Yes. I just -- I
3 had just a couple of questions on a line of questioning
4 that Commissioner Gunn had, and I know that happened some
5 time ago, so our minds may be a little vague on it.

6 But I wanted to focus on the language in
7 393.190.1, necessary or useful in the performance of its
8 duty to the public. It had to do with whether the
9 necessary or useful language is forward-looking, I guess,
10 do we need to say it might be useful in the future?

11 Is there any -- is there any question that
12 the property at issue here is necessary or useful in the
13 performance of its duties to the public today, as we sit
14 here today in the present? Are those wind turbines
15 necessary or useful in the performance of KCP&L's duties
16 to the public?

17 MR. FISCHER: They are not necessary or
18 useful in the performance of the duties of KCPL to the
19 public today.

20 MR. MILLS: And I disagree with that. I
21 think they are. I think they are not used and useful, but
22 I think they are necessary or useful.

23 COMMISSIONER JARRETT: Why are they
24 necessary?

25 MR. MILLS: Necessary in the sense of not

1 absolutely essential as I discussed in the context of the
2 393.170 cases, but that they can be put to good use. That
3 makes them useful. Necessary not in absolutely essential
4 because, of course, they could go out and buy gas turbines
5 or buy something else, but they're necessary as a
6 reasonable way to achieve the ends needed.

7 COMMISSIONER JARRETT: As far as we know
8 today, KCPL is providing safe and adequate service with
9 the plant they have in force now?

10 MR. MILLS: Yes.

11 COMMISSIONER JARRETT: Do you foresee
12 anything in the immediate future other than some
13 catastrophe that would occur that would cause them not to
14 be able to provide safe and adequate service without these
15 wind turbines?

16 MR. MILLS: I think on almost any
17 circumstance the loss of any plant operating or soon to be
18 operating they'll be able to continue to provide service,
19 maybe not at the best price, but I think the way the grid
20 is interconnected, I think it's hard to come up with a
21 particular plant built or yet to be built that's
22 absolutely essential.

23 COMMISSIONER JARRETT: Again, absent any
24 catastrophe that might occur that we can't perceive today.
25 These turbines are not being used now?

1 MR. MILLS: That's correct.

2 COMMISSIONER JARRETT: How long would it
3 take to get them into service? I mean, there's no
4 contemplation that they're ever going to be put into
5 service any time soon.

6 MR. MILLS: I think there -- certainly KCPL
7 can speak to this better than I can, but there's certainly
8 the contemplation that they would have been -- at one
9 point that they would have been put in service within a
10 six months to a year time frame back in 2008. So I think
11 once a decision is made to put them in service, I think
12 it's a fairly short lead time for the wind turbines.

13 COMMISSIONER JARRETT: Okay. Any argument
14 that they're useful today?

15 MR. MILLS: I think they are useful.
16 Again, I think there's a different standard than used and
17 useful. I think useful means capable of being put to good
18 use.

19 COMMISSIONER JARRETT: Okay. So they're
20 capable of being put to use in your words six months to a
21 year from now if they started doing it today?

22 MR. MILLS: I think, yeah, at the outside a
23 year. I don't know how quickly they could possibly be put
24 to use if they started today.

25 COMMISSIONER JARRETT: Would they have to

1 seek any type of approval or authority in Kansas to start
2 construction on those?

3 MR. MILLS: I don't know.

4 COMMISSIONER JARRETT: Okay. When you say
5 that at some point they might -- might need to be used or
6 they might need to be -- they might be useful, how far do
7 we look out? Ten years? Twenty years? Fifty years?

8 MR. MILLS: No. I would say less than
9 that. I think in this case, you're talking about some
10 pieces of property that have been sort of on the verge of
11 getting put into service for the last couple of years, and
12 I think the urgency of the current application is because
13 KCPL wants to get -- wants to transfer them so they can
14 get rolling really quickly.

15 So I think right now -- I mean, I think in
16 this case at least that the use is imminent and has been
17 for a while.

18 MR. WILLIAMS: If I may interject,
19 Commissioner Jarrett. I believe according to KCPL's
20 pleadings, they're going to have -- they're intending that
21 these wind turbines will be operating before the end of
22 this year.

23 COMMISSIONER JARRETT: Right. But that's
24 by another operator, not by KCPL?

25 MR. WILLIAMS: Correct.

1 COMMISSIONER JARRETT: I don't know if we
2 need to go in-camera or not. Commissioner Kenney had some
3 questions. I'll ask the question. You say if we need to
4 go in-camera.

5 Would the fact that Missouri prohibits CWIP
6 factor in to whether or not these should be sold or not or
7 whether KCPL should build their own wind farm?

8 MR. FISCHER: I don't think that's an
9 in-camera question, Judge. I think the company has looked
10 at its options, and they believe at this time the
11 purchased power agreement option is the best one for the
12 company and its ratepayers rather than owning this
13 particular wind farm.

14 And that's due to the fact that they can
15 maintain a financial cushion around their financial
16 metrics and ensure that they continue to be investment
17 grade rated. That's the essential business decision
18 that's made. Now, that's a decision that you can take a
19 look at if you'd like in the next ratemaking proceeding.
20 But as far as whether it's -- whether we have a CWIP
21 statute or not, I'm not sure that necessarily is directly
22 relevant.

23 COMMISSIONER JARRETT: And do you know, are
24 any -- is the buyer of these turbines, are they receiving
25 any stimulus money from the Federal Government?

1 MR. FISCHER: There is a grant, but I don't
2 know that it's part of the stimulus package.

3 MR. GRIMWADE: Technically the 30 percent
4 cash grant was allowed under the stimulus bill. It was
5 originally either a production tax credit or a 30 percent
6 tax credit as the statute was originally laid out, but the
7 stimulus bill did allow for a cash grant to stimulate wind
8 development.

9 COMMISSIONER JARRETT: So I guess my point
10 on that is, Chairman Davis talked about Staff's position
11 always being that it's better to have steel in the ground
12 rather than PPAs, but times are different today with
13 renewable standards and stimulus money and federal
14 subsidies, that that may not -- that rule may not hold
15 true always anymore, and it may be more prudent to do a
16 PPA rather than steel in the ground. Would you agree with
17 that?

18 MR. FISCHER: There's certainly
19 jurisdictions that take the position that PPAs are more
20 flexible than having a power plant with steel in the
21 ground. I think different jurisdictions and different
22 professionals have different opinions about that given the
23 market circumstances.

24 I think today, under the current market
25 circumstances, the company has made that decision that

1 using the PPA arrangement is a good way to get wind
2 development and we're in favor of that.

3 COMMISSIONER JARRETT: And given that,
4 given that it's more advantageous, would you say, then,
5 that Kansas City Power & Light owning those wind turbines
6 is necessary or useful in the performance of its duties to
7 the public?

8 MR. FISCHER: I would maintain that at the
9 present time that it is not necessary or useful.

10 COMMISSIONER JARRETT: It would only be
11 necessary or useful if Kansas City Power & Light was going
12 to put the steel in the ground and build them? That's
13 when it would be necessary and useful?

14 MR. FISCHER: I would suggest that the
15 present time it's not, even if they had some distant plan
16 to build at some point. Today those assets that are in
17 crates that can't produce any electricity, have never been
18 used, are not necessary or useful in the performance of
19 their duties.

20 COMMISSIONER JARRETT: You would disagree
21 with Mr. Mills that necessary or useful in the performance
22 of duties to the public is more of a present test and we
23 don't look forward to see whether it's capable of being
24 used?

25 MR. FISCHER: Yes, sir, that would be my

1 view.

2 COMMISSIONER JARRETT: Thank you. I have
3 nothing further.

4 JUDGE WOODRUFF: Commissioner Gunn.

5 COMMISSIONER GUNN: I apologize. I just
6 have a couple more questions. But to this question,
7 you're essentially asking us to make a legal determination
8 that these are not necessary or useful based on plain
9 language of the statutes; is that correct?

10 MR. FISCHER: We're asking you basically to
11 decline to assert any jurisdiction, to the extent you have
12 it, over this transaction and let the transaction go
13 forward.

14 COMMISSIONER GUNN: Lewis, before you leave
15 really quick, you're saying that that determination is
16 necessarily a factual one?

17 MR. MILLS: Yes.

18 COMMISSIONER GUNN: So that even -- maybe
19 even to determine whether we have jurisdiction, we need to
20 go through an on-the-record evidentiary hearing to
21 determine the facts to determine the legal question that
22 is being requested?

23 MR. MILLS: Yes. I think you have to at
24 least offer the opportunity for a hearing on that issue.

25 COMMISSIONER GUNN: And Staff and OPC are

1 making no assertions as to whether everything that Kansas
2 City Power & Light asserts about flexibility on PPAs and
3 all that other thing, you may accept all that as true at
4 the end of the hearing and not make -- and make a
5 determination not to oppose the sale?

6 MR. MILLS: That certainly is possible.

7 COMMISSIONER GUNN: Am I characterizing
8 that correctly?

9 MR. WILLIAMS: Yes.

10 COMMISSIONER GUNN: I have a question for
11 you that I don't want to -- but if you need to take a
12 break.

13 MR. MILLS: I have to get to the doctor in
14 ten minutes. I can take one more question.

15 COMMISSIONER GUNN: Let me ask a real quick
16 question. I apologize for this, but it goes back to the
17 AGP case and 393.190 and what you said about the good
18 faith purchaser. So part of Kansas City Power & Light's
19 assertion is that we can review this in a rate case. If
20 we either decline jurisdiction or say that the sale -- or
21 we approve the sale, okay, then in a rate case we decide
22 after looking at it that it wasn't a good idea. Under the
23 393.190 good faith purchaser, we can't unwind that
24 decision because -- because the statute basically says,
25 from a purchaser's standpoint -- what I'm asking is, with

1 the way that those two interact with that last sentence,
2 does that basically say, well, you can't do anything about
3 the purchase anyway because of the good faith provision of
4 the statute? So are we lessening the effect of reviewing
5 in a rate case once we make the determination that we
6 don't need -- we don't need to touch it or whether we
7 approve it?

8 MR. MILLS: I think it's two different
9 questions, whether you approve it or whether you decline
10 to look at it. If you approve it and later you figure out
11 you were wrong, you know, I think you can make adjustments
12 in the rate case, but you certainly can't undo the
13 transaction. If you decline to take jurisdiction --

14 COMMISSIONER GUNN: That would mean that it
15 was not necessary or useful.

16 MR. MILLS: That means that you will have
17 either explicitly or implicitly made a decision that it's
18 not necessary or useful, which may --

19 COMMISSIONER GUNN: Kick in the good faith.

20 MR. MILLS: It may, or that decision may
21 get appealed. We don't know. And who knows how that
22 would play out if the interim some transaction had
23 happened.

24 But with respect to an actual explicit
25 approval, then I don't think that last section of 393.190

1 comes in to play because you will have approved it based
2 upon a finding that it's not detrimental to the public
3 interest.

4 And I think that section really has to do
5 less with things like this where everybody's paying
6 attention to it and you're litigating it than to some
7 situation like you mentioned, like selling a couple of
8 cars out of the fleet. You know, the people that buy that
9 car don't want to later come back and say, oh my gosh, the
10 Public Service Commission didn't approve me buying this
11 car, so maybe I don't really own it after all.

12 COMMISSIONER GUNN: I don't think I have
13 anything else. I appreciate it. Sorry to keep you.

14 COMMISSIONER DAVIS: Before you leave,
15 Mr. Mills, you agree with me that 393.190 subsection 1,
16 that necessary or useful in the performance of its duties
17 refers back to the franchise, works and system phrase?

18 MR. MILLS: Yes. I think it's all one
19 phrase, and that's the --

20 COMMISSIONER DAVIS: Right.

21 MR. MILLS: The hard part is figuring out
22 exactly what does that mean.

23 MR. KEEVIL: Right. Okay. I don't think
24 I've got any more questions for you.

25 I want to go back to Mr. Dottheim now real

1 quick. Mr. Dottheim, you cite the definition of
2 electrical corporation -- or I'm sorry, electric plant,
3 and I notice in here that we have definitions for electric
4 plant, we have definitions for gas plant, we have
5 definitions for sewer system, water system. I mean,
6 here's my mental impression, is that the Legislature said,
7 franchise, works or system necessary or useful in the
8 performance of blah, blah, blah; that if they would have
9 wanted to say electric plant and intended that to be
10 anything to be used, then they would have said electric
11 plant, water plant, sewer plant, et cetera. Please
12 respond to that.

13 MR. WILLIAMS: If there was that kind of
14 clarity in the act, there would be a lot less litigation
15 and opportunities for attorneys.

16 COMMISSIONER DAVIS: But there is a line of
17 case law out there that says that, you know, we give words
18 their plain and ordinary meaning and that, you know, the
19 conventional meaning of that is we look to the definition.
20 And we don't look to the definition of works or public
21 works or system or distribution system as being that of
22 the statutory definition of electric plant as it's defined
23 here, do we?

24 MR. WILLIAMS: No, but you need to look at
25 what -- what the language is within the context of the act

1 and what the purpose of the entire act is.

2 COMMISSIONER DAVIS: Well, I'm looking at
3 the purpose of the entire act, but I'm also aware of the
4 canon of statutory construction that says specific
5 provisions trump general provisions. And I think what we
6 have here is a specific provision, is it not? I mean, you
7 may not like the interpretation of it.

8 MR. WILLIAMS: I think it's subject to
9 interpretation. We wouldn't be here debating it if it
10 wasn't.

11 COMMISSIONER DAVIS: Thank you, Judge.

12 JUDGE WOODRUFF: All right. Anything else
13 from the Commissioners?

14 I just have a couple questions for Staff.
15 And these are based on questions -- or assertions that
16 KCPL made in their application. First of all, the unused
17 wind turbine generators that are sitting out there in
18 Kansas, you don't disagree they've never been used?
19 They've never been used to provide service to KCPL
20 customers, do you agree with that?

21 MR. WILLIAMS: I don't have any reason to
22 disagree with that.

23 JUDGE WOODRUFF: The property rights
24 associated with the proposed wind farm also is something
25 that's going to come in in the future but it's never been

1 used in the past?

2 MR. WILLIAMS: I don't have any reason to
3 dispute that statement either.

4 JUDGE WOODRUFF: They also say that the
5 financing costs, property rights and turbines have never
6 been reflected in KCPL rates. Is that -- do you disagree
7 with that?

8 MR. WILLIAMS: I don't have any basis to
9 disagree.

10 JUDGE WOODRUFF: And when you say -- you
11 just don't have any information at this point?

12 MR. WILLIAMS: I don't have any reason to
13 believe those statements are incorrect, but I don't -- I
14 don't have any -- basically, I have the information in the
15 application.

16 JUDGE WOODRUFF: That's all I have. Thank
17 you. Well, I believe then we are finished with this
18 on-the-record discussion, and we will adjourn this and
19 we'll go upstairs.

20 MR. FISCHER: I'd like to thank the
21 Commission for giving us this time. Thank you.

22 WHEREUPON, the on-the-record discussion was
23 concluded.

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C E R T I F I C A T E

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STATE OF MISSOURI)
) ss.

4

COUNTY OF COLE)

5

I, Kellene K. Feddersen, Certified

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Shorthand Reporter with the firm of Midwest Litigation

7

Services, do hereby certify that I was personally present

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at the proceedings had in the above-entitled cause at the

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time and place set forth in the caption sheet thereof;

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that I then and there took down in Stenotype the

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proceedings had; and that the foregoing is a full, true

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and correct transcript of such Stenotype notes so made at

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such time and place.

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Given at my office in the City of

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Jefferson, County of Cole, State of Missouri.

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Kellene K. Feddersen, RPR, CSR, CCR

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