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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
Procedural Conference  
April 18, 2014  
Jefferson City, Missouri  
Volume 2

In the Matter of Kansas )  
City Power & Light )  
Company's Notice of Intent )  
to File an Application for )  
Authority to Establish a ) File No. EO-2014-0095  
Demand-side Programs )  
Investment Mechanism )

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

REPORTED BY:  
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1 P R O C E E D I N G S

2 (WHEREUPON, the procedural conference  
3 began at 10:00 a.m.)

4 JUDGE WOODRUFF: We're here for a  
5 conference in KCPL's application for approval of  
6 demand-side programs. It's Case No. EO-2014-0095,  
7 and we are here based on a request from Staff that  
8 we have this conference.

9 The first thing we need to do is take  
10 entries of appearance, beginning with KCPL.

11 MR. FISCHER: Judge, let the record  
12 reflect the appearance of Roger W. Steiner and  
13 James Fischer on behalf of Kansas City Power &  
14 Light Company. Roger's address is 1200 Main  
15 Street, 16th Floor, Kansas City, Missouri 64105,  
16 and my contact information is on the written entry.

17 JUDGE WOODRUFF: For Staff?

18 MS. HERNANDEZ: Good morning.  
19 Jennifer Hernandez, Akayla Jones and Nathan  
20 Williams, all appearing on behalf of Staff of the  
21 Missouri Public Service Commission. Our address is  
22 P.O. Box 360, Jefferson City, Missouri 65102.

23 JUDGE WOODRUFF: For Public Counsel?

24 MR. MILLS: On behalf of the Office  
25 of Public Counsel and the Public, my name is Lewis

1 Mills. My address is Post Office Box 2230,  
2 Jefferson City, Missouri 65102.

3 JUDGE WOODRUFF: Anyone here for  
4 Renew Missouri?

5 MR. LINHARES: Yes, Judge. Andrew  
6 Linhares, 910 East Broadway, Suite 205, Columbia,  
7 Missouri 65201 -- 653 -- I'm sorry -- 65201.

8 JUDGE WOODRUFF: Thank you. For  
9 Ameren Missouri?

10 MS. TATRO: Wendy Tatro, 1901  
11 Chouteau Avenue, St. Louis, Missouri 63103.

12 JUDGE WOODRUFF: For the Division of  
13 Energy?

14 MR. KNEE: On behalf of the Division  
15 of Energy, Jeremy Knee and Ollie Green. Address is  
16 P.O. Box 1157, Jefferson City, Missouri 65102.

17 JUDGE WOODRUFF: For Empire?

18 MS. CARTER: Diana Carter with  
19 Brydon, Swearngen & England for the Empire  
20 District Electric Company.

21 JUDGE WOODRUFF: For Sierra Club?

22 MR. ROBERTSON: Henry Robertson,  
23 Great Rivers Environmental Law Center, 705 Olive  
24 Street, Suite 614, St. Louis, Missouri 63101. Also  
25 representing NRDC.

1 JUDGE WOODRUFF: Okay. For

2 Brightergy?

3 MR. HINDERKS: Good morning. Carson

4 M. Hinderks of Smithyman & Zakoura. Our address is

5 7400 West 110th Street, Suite 750, Overland Park,

6 Kansas 66210.

7 JUDGE WOODRUFF: MC Power? Anyone

8 from MC Power?

9 (No response.)

10 JUDGE WOODRUFF: MIEC?

11 MR. WEISKOPF: This is Dave Weiskopf

12 from NRDC, 20 North Wacker Drive, Suite 1600,

13 Chicago, Illinois 60606.

14 MS. TAUBER: And this is Jill Tauber,

15 also with the Sierra Club, 1625 Massachusetts

16 Avenue NW, Suite 702, Washington, DC 20036.

17 JUDGE WOODRUFF: Okay. Was anyone

18 here for MIEC? No. And Mr. Woodsmall sent me an

19 e-mail from MECG and said he would not be here.

20 Is there anyone on the phone that I

21 missed?

22 (No response.)

23 JUDGE WOODRUFF: All right. Sounds

24 like we've got everybody.

25 Well, we're here at the request of

1 Staff, so I'll let Ms. Hernandez explain why we're  
2 here.

3 MS. HERNANDEZ: Sure. May I  
4 approach?

5 JUDGE WOODRUFF: You may.

6 MS. HERNANDEZ: I have some documents  
7 that I would like to use today.

8 MR. FISCHER: Judge, just to clarify,  
9 as I understand it, it is a procedural conference  
10 and not an evidentiary hearing.

11 JUDGE WOODRUFF: Correct. We're not  
12 going to swear anybody in. We're trying to figure  
13 out why we're here.

14 MS. HERNANDEZ: Good morning. Thank  
15 you again, Judge Woodruff, for scheduling this  
16 conference on such a short notice. And I do agree  
17 with Mr. Fischer that this is not the evidentiary  
18 hearing. That's not Staff's intent to discuss, you  
19 know, the matters and some of the pleadings, but we  
20 really think it is important to bring to the  
21 Commission's attention what Staff's role is in this  
22 case.

23 And I know this is probably pretty  
24 obvious to everyone, but the Commission delegates  
25 its investigative powers to the Staff, and the

1 Staff's role in this case is to analyze the  
2 information and give a recommendation to the  
3 Commission which it can then use as it so desires  
4 to issue a Report and Order in cases.

5           And in the packet of documents that  
6 I've -- that all counsel have received and you  
7 should have there with you, there is a document  
8 that goes through all of the decision points that  
9 you being the administrative law judge assigned to  
10 this would have to make findings for. This is what  
11 the MEEIA statute requires the Commission make  
12 findings on.

13           And then also starting on page 3 and  
14 going to page 4 are all the points, technical  
15 points that Staff would like to have the ability to  
16 give specific recommendations to the Commission to  
17 aid that.

18           This has all come about, as stated in  
19 Staff's pleading which was filed on Tuesday, is  
20 that KCPL's testimony filed Monday evening is  
21 essentially supplemental direct. You'll have in  
22 front of you a copy of the surrebuttal testimony  
23 that Ms. Winslow filed as well as Mr. Rush on  
24 behalf of Kansas City Power & Light Company.

25           Staff has taken the opportunity to go

1 through those documents, and you'll see strike-  
2 throughs on information that we believe is  
3 settlement information that is improperly used in  
4 their testimony, as well as highlighted  
5 information.

6           The parties on the phone will see the  
7 highlights in yellow, but on the printed copies it  
8 appears as a light gray on some of the information.  
9 That is what Staff believes is new information  
10 presented in this round of testimony that should  
11 have been presented or -- should have been  
12 presented as either in the direct case or as --  
13 filed as supplemental direct on behalf of the  
14 company.

15           Staff's filing Tuesday brought up two  
16 points: Whether the testimony is proper, because  
17 it's our belief that a lot of it is settlement  
18 discussions which are confidential; but also, and I  
19 would stress more today, just that we need more  
20 time to respond.

21           Before we made our filing on Tuesday,  
22 we did call the company and try to work out an  
23 extension so that we would not have to bring this  
24 to the Commission, but we could not reach a  
25 resolution on any extension of time. So,

1 unfortunately, we did have to bring this to you for  
2 decision.

3           You also have in front of you a  
4 document I think will aid discussions. It's marked  
5 35 -- it's an e-mail discussion 3/5, 10 a.m.  
6 settlement conference agenda, and this comes from  
7 Mr. Steiner to the parties in this case.

8           And I have -- there are more slides  
9 to the PowerPoint presentation that I did not  
10 attach because those were marked for settlement  
11 purposes only, so I didn't want to disclose  
12 anything further than what Ms. Winslow included in  
13 her testimony.

14           But if you take the slides from  
15 Ms. Winslow's testimony and look at the PowerPoint  
16 that was provided, you'll see that the information  
17 on those slides is exactly the same except for the  
18 disclaimer at the bottom that says "for settlement  
19 discussions only."

20           As part of Ms. Winslow's testimony,  
21 Mr. Rush's testimony and as well as Mr. Steiner's  
22 pleadings stating that no extension of time is  
23 necessary, they all make the assertion that this  
24 information was available to the parties and that  
25 we could have analyzed it and responded to it in

1 our rebuttal testimony, but that, in fact, is  
2 false. It was marked for settlement purposes only.  
3 Staff cannot use or any other party cannot use  
4 information marked confidential for settlement in  
5 their testimony.

6 JUDGE WOODRUFF: So if I can  
7 interrupt for a moment.

8 MS. HERNANDEZ: Sure.

9 JUDGE WOODRUFF: Your concern then is  
10 that you've not had a chance to respond to it, not  
11 that it's necessarily improper to disclose it?

12 MS. HERNANDEZ: I think it is  
13 improper to disclose it, but some of the  
14 information may -- may revise the programs or the  
15 DSM in a more beneficial way or in some way that  
16 Staff seems -- would agree is more reasonable than  
17 what the company did in its direct filing.

18 So we are not taking a more  
19 aggressive approach at this time and asking the  
20 Commission to strike settlement discussions in the  
21 testimony. We would rather look at it and have the  
22 time to analyze it as a complete package and then  
23 give our recommendation to the Commission for its  
24 use in a Report and Order in this matter.

25 JUDGE WOODRUFF: Okay. I'm sorry to

1 interrupt you.

2 MS. HERNANDEZ: Oh, no. That's fine.

3 This is not a new instance when a company brings  
4 information to the Commission in surrebuttal  
5 testimony. There is an example that occurred a  
6 couple of years in Ameren Missouri's rate case  
7 where Mr. William Davis brought new information in  
8 his surrebuttal testimony recommending a different  
9 recovery mechanism for what they believed were lost  
10 margins due to their investment in demand-side  
11 programs.

12 And while Staff did file a motion to  
13 strike in that instance, the matter was taken care  
14 of by allowing Staff time to file supplemental  
15 testimony to that new information in surrebuttal.

16 JUDGE WOODRUFF: But we didn't delay  
17 the hearing in that case, as I recall.

18 MS. HERNANDEZ: I'm sorry?

19 JUDGE WOODRUFF: We did not delay the  
20 hearing in that case. We just allowed additional  
21 supplemental testimony to be filed.

22 MS. HERNANDEZ: That is correct. But  
23 I would make a strong distinction from that case  
24 and this case is that that was just one issue.  
25 Whereas, when you look at the testimony that we've

1 went ahead and highlighted the information that we  
2 believe is new information, it's extensive. It's  
3 not something that a witness can put together a  
4 response. I believe in that case we did respond  
5 maybe two days before hearing.

6 But in our view, to give the  
7 Commission a complete picture and an accurate  
8 picture of the new information, that's something  
9 that we cannot complete before the hearing as now  
10 scheduled.

11 JUDGE WOODRUFF: And the hearing is  
12 now scheduled for being a week from Monday?

13 MS. HERNANDEZ: Correct.

14 JUDGE WOODRUFF: Anything else you  
15 wanted to add? Let me ask one more question.

16 MS. HERNANDEZ: Sure.

17 JUDGE WOODRUFF: There was a  
18 Nonunanimous Stipulation & Agreement filed late  
19 yesterday or this morning. I'm assuming Staff is  
20 going to oppose that?

21 MS. HERNANDEZ: We do intend at this  
22 time, although, like you said, it was filed last  
23 night, so we haven't had an opportunity to go  
24 through each point thoroughly yet. So we do intend  
25 to file a timely objection. What will be in that,

1 we're not exactly certain.

2 JUDGE WOODRUFF: I'm not asking you  
3 to make a decision right now. Under the regulation  
4 you have seven days to make that determination.

5 MS. HERNANDEZ: And I think that even  
6 goes to show that this case really is a moving  
7 target for the Commission's decision and even the  
8 parties in analyzing information, is that we went  
9 from the company's direct filing to what we view as  
10 new information in the, what they term surrebuttal  
11 testimony, we call it supplemental direct, and then  
12 now even a new position in the Nonunanimous  
13 Stipulation & Agreement by all parties that filed  
14 that document.

15 And I'll note that the parties that  
16 filed the document are the National Resource  
17 Defense Council, the company, Division of Energy  
18 and Renew Missouri. And all of those parties,  
19 besides the company, don't have an obligation  
20 necessarily or their agenda and their duties is not  
21 to necessarily look at the cost and always take  
22 cost into account. I'll let them define what their  
23 purpose is. But from an outsider looking in,  
24 that's what it appears to be.

25 And also, I'll -- going back to the

1 point where Staff hasn't had the opportunity to  
2 respond to all this new information, as I  
3 mentioned, it was marked confidential, so we  
4 honored that understanding.

5 But also when settlement discussions  
6 unfortunately ended and all the parties couldn't  
7 reach a unanimous agreement, we specifically asked  
8 the company, because we had worked through the  
9 first set of conferences, a lot of technical  
10 information, we knew that the programs could be  
11 changed, the DSIM could be changed in certain ways,  
12 and we asked whether the company intended to file  
13 an updated filing with the new information.

14 And they explicitly told the parties  
15 on that last settlement call that we should file  
16 our rebuttal based on the case that KCPL filed as  
17 direct with no modifications to anything in their  
18 direct. And so based on that understanding, based  
19 on honoring the confidential information, we filed  
20 our rebuttal based on the company's direct.

21 JUDGE WOODRUFF: Now, going back to  
22 the confidential information, you indicated you  
23 could not respond to that in the testimony; is that  
24 correct?

25 MS. HERNANDEZ: Correct.

1 JUDGE WOODRUFF: But you can still be  
2 reviewing it and considering how you might respond  
3 to it if -- at some point?

4 MS. HERNANDEZ: That in some -- in  
5 some regards is correct. We did have it in our  
6 possession. But a MEEIA case is not -- is even  
7 more complex than a rate case. In a rate case, you  
8 can almost make a determination on two things:  
9 What the revenue requirement is and what -- how  
10 you're supposed to divide that out between classes.

11 In a MEEIA case, you have to make  
12 specific findings according to the statute on  
13 different decision points, and then based on those  
14 different decision points, you then have to  
15 recalculate the numbers that would go into any  
16 recovery mechanism, your energy and demand savings  
17 targets, things of that nature. So --

18 JUDGE WOODRUFF: Let me ask also,  
19 since this is a MEEIA case and it has specific  
20 timelines in the regulation and I'm sure in the  
21 statute as well, but 120 days, which, in fact,  
22 we're already past based on the hearing for the  
23 company, or we soon will be past it, how does Staff  
24 anticipate dealing with those timelines?

25 MS. HERNANDEZ: Sure. I think in

1 most cases we have had an agreement with the  
2 company to expand upon that 120 days. In this  
3 case, we have -- we've asked for a variance on that  
4 120-day timeline, and we have a procedural schedule  
5 now that does go past the 120-day deadline.

6 JUDGE WOODRUFF: Based on the  
7 agreement of all the parties?

8 MS. HERNANDEZ: Yes. Again, we're  
9 not trying to delay any implementation of programs.

10 JUDGE WOODRUFF: Let me ask a simple  
11 question. Does the Commission have the authority  
12 on its own or based on Staff's motion, only Staff's  
13 motion to extend that timeline further?

14 MS. HERNANDEZ: Well, there's already  
15 been a variance requested to go past the 120-day  
16 deadline. So how far you go past that I don't  
17 think is the question anymore because there's been  
18 a variance from that limit.

19 Now, it's -- I think you would rule  
20 on whether -- when a party files for an extension,  
21 you rule on whether you find that there's good  
22 cause to allow that extension.

23 JUDGE WOODRUFF: I'll give KCPL a  
24 chance to respond, Mr. Fischer or Mr. Steiner,  
25 whoever wants to respond.

1 MR. FISCHER: Judge, I can respond  
2 here in a moment. I wondered, though, if it might  
3 be more efficient, if there are any other parties  
4 aligned with Staff on this, that they could go  
5 forward and then I could answer all.

6 JUDGE WOODRUFF: Is there anyone else  
7 aligned with Staff? Mr. Mills.

8 MR. MILLS: Yeah, Judge. I don't --  
9 I think Ms. Hernandez did a very good job. I don't  
10 have anything that's new and different for  
11 Mr. Fischer respond to.

12 I fully agree with everything that  
13 Ms. Hernandez said, and, you know, to the extent  
14 that this significantly different proposal that  
15 came out in surrebuttal testimony imposes a burden  
16 on Staff in terms of resources and trying to  
17 address it in a timely way, it has the same impact  
18 on Public Counsel as well.

19 So we would be -- it would be very,  
20 very difficult for us to try and figure out exactly  
21 what this proposal is and try to get ready for a  
22 hearing just ten days away because there's so much  
23 that's new and it's essentially an entirely new  
24 MEEIA filing.

25 JUDGE WOODRUFF: Is anyone else

1 aligned with Staff and Public Counsel? I think  
2 several other people signed the Stipulation &  
3 Agreement, so I assume they're not aligned with  
4 Staff and Public Counsel.

5 All right. Mr. Fischer.

6 MR. FISCHER: Thank you, Judge. I  
7 appreciate calling the hearing today to talk about  
8 it. We filed an extensive response to the Staff's  
9 motion which I think still we would stand by today.

10 We would take fundamental difference  
11 of opinion, I guess, that this is a different MEEIA  
12 program or a different DSIM program that we've  
13 suggested in our surrebuttal.

14 What we have done is we've responded  
15 to the Staff and the Public Counsel's rebuttal  
16 testimony, and we accepted some of their criticisms  
17 and we've suggested that we could change programs  
18 based on their particular concerns. We have  
19 withdrawn one of the programs, the Home Energy  
20 Improvement Program, because Staff wanted that one  
21 ejected, had concerns, and we thought some of their  
22 criticisms were appropriate.

23 Regarding two programs, the Staff  
24 witnesses had suggested we'd been spending -- we  
25 would be spending too much money, substantial sums

1 on, and in response to that particular one, we have  
2 come back in our surrebuttal and said we would  
3 reduce the budgets of those two programs by about  
4 two-thirds. That's certainly appropriate  
5 surrebuttal to directly address the issues that are  
6 being raised by the Staff and the Public Counsel.

7 As far as -- I've had even less time  
8 than the Staff has had to look at the documents  
9 that were handed out today. But if I go to the  
10 highlighted testimony of Tim Rush on page 5, she  
11 goes through a number of things which she says are  
12 I think inappropriate surrebuttal, and I would  
13 again disagree.

14 If we go to, for example, the bottom  
15 of page 5, we're talking about the criticisms on  
16 the lighting. Those criticisms were brought up  
17 directly by Staff witness Stahlman at pages 29  
18 through 34 of his testimony, and if you go to  
19 page 13 and 15, he suggests that we didn't include  
20 the residential lighting program in the computation  
21 of the net shared benefit computation.

22 Then if you go to the next one, the  
23 analyzer program that they've highlighted, that  
24 again was brought up by Mr. Stahlman at pages 26  
25 through 27 of his testimony. And we indicated

1 there that we would cut the budget by two-thirds in  
2 order to address that concern.

3 Now, I'm not sure -- she slashed  
4 through the Opower, No. 3. That was a situation  
5 where the company's outside vendor Opower had  
6 brought new information to the table that we  
7 discussed at length during the technical  
8 conferences, and the company has -- has included  
9 that more accurate information in their -- in their  
10 surrebuttal testimony in the case.

11 I don't think they've struck through  
12 the fourth one, KWH going negative. That certainly  
13 came directly out of Mr. Stahlman's testimony. The  
14 average rate is another one that came directly out  
15 of Sarah Kliethermes' testimony. These are areas  
16 that we address. She brought it up on pages 16  
17 through 17 of her testimony.

18 The next one is the Home Energy  
19 Improvement Program, which we -- is the one that we  
20 had taken out of our suggested case at least on  
21 surrebuttal. It is included yet in the  
22 Nonunanimous Stipulation & Agreement that was filed  
23 last night, and we would support that Stipulation &  
24 Agreement.

25 But in direct response to the Staff's

1 concerns about that program, where Michael Stahlman  
2 suggested that that program should be rejected, we  
3 did in our surrebuttal testimony suggest that we  
4 would withdraw that in order to address the Staff's  
5 concerns.

6 Similarly on the net present value  
7 section there, Mr. Stahlman raised that question on  
8 page 13 of his rebuttal. And then the MPower, when  
9 you go down to that issue, Mr. Gross rejected the  
10 MPower program, and we've addressed that in our  
11 surrebuttal testimony directly in response to the  
12 Staff's testimony in that regard.

13 I don't think you're finding anything  
14 in the case that is new and different. It is just  
15 we have responded to criticisms that have been  
16 brought forward by the Staff and the Public  
17 Counsel's witness.

18 Ms. Hernandez also mentioned a, I  
19 think a document which she suggested was part of a  
20 confidential settlement, which we did have  
21 settlement discussions and -- but we didn't  
22 disclose in any of the surrebuttal testimony any  
23 proposal that was confidential or privileged that  
24 was brought forward by Staff, Public Counsel or any  
25 other party.

1                   We have now adopted as our case in  
2   the surrebuttal testimony suggestions that we made  
3   that we thought would resolve a lot of the issues,  
4   particularly about the lighting issue and some of  
5   the others that are mentioned there. But that is  
6   our right to come forward to make a recommendation  
7   in surrebuttal that would address those particular  
8   issues.

9                   Even though we did talk about a  
10   settlement, we weren't able to reach a settlement  
11   on those particular topics. There's nothing you're  
12   going to find that is a violation of or a  
13   disclosure of confidential settlement discussions,  
14   and we're certainly not using anything the Staff  
15   told us against them as a part of this  
16   presentation.

17                   Then as far as timing goes, it sounds  
18   like the Staff is wanting to have at least 30 days  
19   to look at what is in our surrebuttal testimony to  
20   respond. If you look at the procedural schedule  
21   that we all agreed to, the Staff was only giving  
22   the company 17 days from the time they filed their  
23   rebuttal for us to respond to their entire  
24   rebuttal, which we did.

25                   They've also listed -- they've also

1 handed out a list of issues that they seem to think  
2 are appropriate for I guess resolution by the  
3 Commission. This was due yesterday, I believe, and  
4 it wasn't filed.

5           If you go to Mr. Rogers' testimony,  
6 he lays out what he calls the most significant  
7 issues and Staff's concerns for each issue. Those  
8 were the four issues that the company included in  
9 its list of issues yesterday, and we believe those  
10 are certainly broad enough to encompass all of the  
11 issues that need to be addressed.

12           But I think fundamentally we would  
13 just take a strong position that this is  
14 appropriate surrebuttal, and in the event that the  
15 Staff wants to continue to challenge that position,  
16 the appropriate place to challenge that is in the  
17 hearing room where they can cross-examine the  
18 witnesses on what they've got included in their  
19 testimony. If there's something that's improper,  
20 you move to strike and I have the opportunity to  
21 respond and to ask the witnesses on redirect about  
22 that.

23           It's not appropriate to delay the  
24 hearing in this case, especially in a case where  
25 there's a statutory time period that the Commission

1 needs to decide the case by. It would,  
2 unfortunately, probably -- it would have a major  
3 impact on the ability of the company to go forward  
4 if we have to delay this again after we've already  
5 delayed it for four weeks.

6           And the reason for that is, one of  
7 the main purposes for the company to file this case  
8 was to get the GMO DSM programs on the same track  
9 and have KCPL's in the same time period. Well, the  
10 more time we take reviewing this matter, the  
11 less -- it shortens the period of the program that  
12 KCPL would have in effect, and that directly  
13 affects the amount of savings that the consumers  
14 are going to receive as a result of these energy  
15 efficiency programs, assuming that they're  
16 approved.

17           And the longer we take in the  
18 regulatory process, the less the savings to the  
19 consumer and less the sharing that occurs to the  
20 company.

21           So we would very much oppose any  
22 extension at this point. I think we properly  
23 responded in surrebuttal. It's not uncommon at all  
24 to correct numbers in rate cases and other  
25 proceedings whenever we know there are errors or

1 whenever we know there are concerns. We don't want  
2 to go to hearing on error problems. That's  
3 certainly what we spent, I think, ten technical  
4 sessions going through and trying to -- trying to  
5 resolve any issues like that.

6 The company's surrebuttal testimony  
7 is based upon what the current information is, and  
8 we believe the Commission needs to go forward on  
9 the basis of the record as it stands.

10 And then the other wrinkle is, we  
11 also now have a Nonunanimous Stipulation &  
12 Agreement which essentially approves, with some  
13 exceptions, with some tweaks, a lot of the original  
14 filing that was done by the company, and that's  
15 also in front of the Commission. That would be the  
16 resolution that the company would recommend.

17 If they don't -- if the Commission  
18 does not adopt that stipulation, then we in our  
19 surrebuttal testimony have gone through and made  
20 other substantive recommendations which would  
21 hopefully help to narrow the field even further.

22 But I'm going on at some length. If  
23 you have questions, I'd be happy to try to answer  
24 those, or if my co-counsel in Kansas City wants to  
25 add anything, appreciate that, too.

1 JUDGE WOODRUFF: Well, I do have a  
2 question. I'm looking at the regulation here, and  
3 it says, the Commission shall approve modifications  
4 acceptable to the electric utility or reject such  
5 applications for approval within 120 days of the  
6 filing. And that was extended by 30 days by  
7 agreement of the parties; is that correct?

8 MR. FISCHER: Yes.

9 JUDGE WOODRUFF: So if the -- if KCPL  
10 finds any modifications made by the Commission  
11 unacceptable, you can still withdraw this program;  
12 is that correct?

13 MR. FISCHER: That would be a very  
14 unfortunate result, but yes.

15 JUDGE WOODRUFF: I'm sure that's --  
16 everybody considers that would be unfortunate  
17 because apparently it's helpful to everybody, is  
18 that --

19 MS. HERNANDEZ: I don't know if we  
20 would go that far to say that it would be  
21 unfortunate. We are having serious doubts that  
22 this is cost effective for the customers.

23 JUDGE WOODRUFF: Then the Commission  
24 has the option of rejecting it.

25 MS. HERNANDEZ: Correct. And that

1 was our position in the rebuttal testimony, but  
2 then new information has been brought forward that  
3 even -- even if one was to agree with Mr. Fischer's  
4 statement that they haven't improperly used any  
5 settlement discussions, it was marked -- or they  
6 haven't disclosed any other party's settlement  
7 contributions, it was all marked settlement and we  
8 could not respond to it in our rebuttal.

9 JUDGE WOODRUFF: So again, you're  
10 looking at an opportunity to respond? That's what  
11 you want the 30 days for?

12 MS. HERNANDEZ: Right, to their new  
13 filing. And again, the nonunanimous stipulation  
14 does in itself present a new position statement if  
15 anyone was to object to that, which again Staff  
16 does intend to do so.

17 But I'm -- from a quick view today, a  
18 few hours last night and then early this morning,  
19 I'm not sure that all of the new positions are  
20 supported by evidence on the record, that would be  
21 introduced that the parties have filed.

22 JUDGE WOODRUFF: Well, that's  
23 something the Commission can decide at its -- at  
24 the evidentiary hearing. That's the purpose of it.

25 So let me ask Staff, what exactly are

1 you asking me to do today?

2 MS. HERNANDEZ: We would like an  
3 extension of 30 days. I guess now we would be  
4 analyzing the Nonunanimous Stipulation & Agreement  
5 and the positions in there. We have not yet  
6 received any DS-- more work papers to support any  
7 of the numbers that are in here. So we would need  
8 to do some discovery to make sure that we agree  
9 with the calculations that are being performed and  
10 agreed to in this document.

11 But 30 days, and then if the company  
12 would like some time to respond to whatever we  
13 would file, that's certainly their right to ask.

14 JUDGE WOODRUFF: Well, the regulation  
15 says you can't have that. It says 120 days, which  
16 has already been extended. And without the  
17 agreement of all the parties, I don't believe I  
18 have the authority to extend that any further. I  
19 mean, the regulation says what it says. So I can't  
20 give you that.

21 If the Staff wants more opportunity  
22 to present testimony at the hearing through  
23 additional direct or something, I can consider that  
24 as a possibility. I don't think I have the  
25 authority to extend the hearing date.

1 MS. HERNANDEZ: If I may, your Honor.

2 JUDGE WOODRUFF: Sure.

3 MS. HERNANDEZ: The Commission has  
4 already granted a variance from that.

5 JUDGE WOODRUFF: Yes. That was at  
6 the request of the parties.

7 MS. HERNANDEZ: Okay. So you've  
8 already modified the 120 days, is what my point is.  
9 And I think you can -- again, I've made this  
10 argument, and it sounds like you might be  
11 disagreeing with it, but it's Staff's belief a  
12 party can request an extension of time and then the  
13 Commission just needs to decide whether there's  
14 good cause.

15 And if we are going to hearing on the  
16 28th and 29th, we will do our best, but we will not  
17 have a complete analysis for the Commission.

18 JUDGE WOODRUFF: Well, in Staff's  
19 view, then, what is the purpose of the provision in  
20 the regulation that says we have 120 days?

21 MS. HERNANDEZ: I don't believe that  
22 was our position in putting that in there. I don't  
23 remember which party added the 120 days. It has  
24 been found in all of the MEEIA cases that it's much  
25 too aggressive of a schedule. It actually works

1 better if the company filed -- for example, like  
2 Ameren Missouri filed, was it a year before they  
3 intended to implement programs? It was a  
4 substantial amount of time before their  
5 implementation date of their DSM programs.

6 So it actually works out that if  
7 there is any reason, whether a party requests  
8 additional time, whatever the reason may be that  
9 there would be a delay, there is time built in for  
10 that. You know, the company has the right to file  
11 its pleading whenever it so chooses.

12 But KCPL has essentially backed  
13 itself into this argument that it's saying it needs  
14 to time itself with GMO as they picked the date of  
15 filing, essentially building in no additional time  
16 for any unforeseen circumstances.

17 So I would say we -- Staff did not  
18 put -- I guess recommend that 120 days. It was  
19 part of the Commission's rulemaking, so that's --  
20 we have to try to follow it.

21 JUDGE WOODRUFF: It's in the rule at  
22 this point. It doesn't really matter who --

23 MS. HERNANDEZ: Right. We have never  
24 been able to, in any of these MEEIA cases, process  
25 a case on that time schedule.

1 JUDGE WOODRUFF: Mr. Mills?

2 MR. MILLS: Just briefly, Judge. And  
3 I don't have the regulation in front of me, but I  
4 believe that there is a provision that allows the  
5 Commission to waive provisions of the regulation  
6 for good cause shown.

7 And I think that that allowance for a  
8 waiver is what allows the Commission to waive those  
9 provisions when the parties agree. It would also  
10 allow the Commission to waive on its own motion or  
11 on the motion of a party when it believes that good  
12 cause justifies such a waiver.

13 MR. FISCHER: Judge, I would point  
14 out, I think that's a statutory provision that does  
15 allow for an extension, but we are not willing to  
16 waive that.

17 JUDGE WOODRUFF: Give me the  
18 statutory citation.

19 MS. HERNANDEZ: 393.1075. I'm not --  
20 I can look real quick and see what subparagraph.

21 JUDGE WOODRUFF: Does anybody see it?

22 MS. HERNANDEZ: From a review of the  
23 statute, I can't find a time frame that's given.  
24 To Staff's understanding, it's just by rule that  
25 120 days.

1 JUDGE WOODRUFF: Mr. Fischer, do you  
2 have any --

3 MR. FISCHER: I don't have the  
4 statute in front of me, Judge. My memory was that  
5 it was also part of the statute. It's certainly  
6 part of the rule.

7 JUDGE WOODRUFF: It is certainly part  
8 of the rule. The rule is sufficient. Although it  
9 does say that we can grant a variance upon request  
10 for good cause shown.

11 All right. Anyone else want to be  
12 heard?

13 MR. MILLS: Just a thought that the  
14 Staff has requested 30 days and we support that,  
15 but I think from your point of view, that doesn't  
16 have to be an all or nothing thing. If you believe  
17 that some reasonable allowance for a slight delay  
18 in the hearing and the opportunity to file  
19 additional response is warranted, I think anything  
20 would be helpful from Public Counsel's perspective.

21 JUDGE WOODRUFF: Well, I'm not  
22 inclined to continue the hearing. I am willing to  
23 consider, and not necessarily today, but when we  
24 get to the hearing a possibility of additional  
25 direct testimony on the stand to address these

1 issues if that's warranted. And from what I've  
2 seen today, I don't know because I saw this about  
3 ten seconds before we went on the record. So I've  
4 not had a chance to review any of the details of  
5 the Staff's allegations about the testimony. So  
6 I'm not inclined to delay the hearing.

7 MS. HERNANDEZ: Can I just add, your  
8 Honor, that if we were to do live testimony at the  
9 hearing, there would still need to be additional  
10 time after that before the case was totally  
11 submitted to the Commission because there would --  
12 if you piece apart anything, anything whatsoever in  
13 this MEEIA case, there's going to have to be a  
14 recalculation of the numbers. So there would need  
15 to be some additional time built in.

16 JUDGE WOODRUFF: Or if the Commission  
17 were to agree with Staff, we can simply reject it?

18 MS. HERNANDEZ: Correct.

19 JUDGE WOODRUFF: In which case  
20 there's no need for any detail beyond that.

21 MR. FISCHER: On the other hand, you  
22 could accept the Nonunanimous Stipulation &  
23 Agreement of the parties that filed last night and  
24 you wouldn't have to do anything on that regard  
25 either except accept it.

1 JUDGE WOODRUFF: If the evidence  
2 supported.

3 MR. FISCHER: That's correct, if it's  
4 supported by the evidence, which we believe it  
5 clearly is.

6 JUDGE WOODRUFF: And, Mr. Fischer, as  
7 you very well know, of course, we have to still  
8 proceed with the hearing.

9 MR. FISCHER: Yes, definitely.

10 JUDGE WOODRUFF: Okay. Well, there  
11 is one other matter also, and that is the -- that  
12 Staff brought up, and that's the suspension of the  
13 tariffs, which were apparently agreed upon by  
14 everyone.

15 MR. FISCHER: Yes, Judge. We in our  
16 response indicated we have no problem extending  
17 that tariff by the 30 days. We have been talking  
18 about that. We just didn't get that letter in to  
19 the Commission, but we are willing to do that. We  
20 will do that forthwith.

21 JUDGE WOODRUFF: We have until  
22 May 9th, I believe, to do that. I can certainly  
23 suspend if that's necessary, but if you're going to  
24 do that, please do it before Wednesday of next  
25 week.

1 MR. FISCHER: Yes.

2 JUDGE WOODRUFF: Okay. And I'll take  
3 you on that representation.

4 MR. FISCHER: Thank you.

5 JUDGE WOODRUFF: Anything else?

6 MS. HERNANDEZ: I guess if we are  
7 sticking to the hearing on the 28th and 29th, we  
8 need to discuss the issues, filing of issues list  
9 and statement of positions.

10 I believe in the packet I gave you  
11 was an example of the issue list that was filed by  
12 all the parties in GMO's MEEIA case. And once  
13 again, if you accept the arguments of KCPL in this  
14 instance, that this is very similar to GMO, that is  
15 an example of the extensive issue list that would  
16 need to be filed before the Commission to have all  
17 of the decision points properly before the  
18 Commission to decide upon.

19 So there was somewhat of a  
20 mischaracterization of Mr. Rogers' testimony that  
21 those were just umbrella overarching issues, and  
22 each individual witness, Staff witness went through  
23 and analyzed more issues within their testimony.

24 So I guess what I'm asking is if you  
25 could direct us on when we should file a more

1 complete list of issues for the Commission's  
2 consideration.

3 JUDGE WOODRUFF: Well, the  
4 agreed-upon and ordered procedural schedule says  
5 that list of issues was to have been filed on  
6 April 16th, which would have been Wednesday. Staff  
7 did not file. I don't have a problem with that.  
8 And then statements of position are due on  
9 April 22nd, which would be next Tuesday.

10 If you can get your position, your  
11 statements of -- or your list of issues to us on  
12 Monday, that will be acceptable to the Commission.  
13 If anybody has a problem with that, let me know.

14 MS. HERNANDEZ: So you don't want it  
15 to be a joint?

16 JUDGE WOODRUFF: Well, if you guys  
17 can agree on it, that would be wonderful.

18 MS. HERNANDEZ. I don't know if we  
19 can even identify them honestly based on this new  
20 filing, but we will do our best.

21 JUDGE WOODRUFF: Well, do your best,  
22 and we'll proceed from there.

23 MR. FISCHER: Judge, I think we've  
24 already filed an issues list, and I believe Ameren  
25 has filed one as well. I think we can stand on

1 that. We can address our positions within the  
2 framework that Mr. Rogers has laid out in his  
3 testimony. So I don't think we should overly  
4 complicate this matter, and I'm afraid that having  
5 the kind of issues that the Staff is suggesting now  
6 is going to do that. But they can file what they  
7 want, and we'll try to respond in the way that we  
8 think is appropriate.

9 JUDGE WOODRUFF: Ultimately, of  
10 course, it's up to the Commission to decide what  
11 issues they'll hear as well. We can hear various  
12 proposals as to what the issues are.

13 Anything else anyone wants to bring  
14 up? Hearing nothing, then we are adjourned. Thank  
15 you.

16 (WHEREUPON, the procedural conference  
17 concluded at 10:43 a.m.)

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C E R T I F I C A T E  
STATE OF MISSOURI)

) ss.

COUNTY OF COLE )

I, Kellene K. Feddersen, Certified  
Shorthand Reporter with the firm of Midwest  
Litigation Services, do hereby certify that I was  
personally present at the proceedings had in the  
above-entitled cause at the time and place set  
forth in the caption sheet thereof; that I then and  
there took down in Stenotype the proceedings had;  
and that the foregoing is a full, true and correct  
transcript of such Stenotype notes so made at such  
time and place.

Given at my office in the City of  
Jefferson,  
  
County of Cole, State of Missouri.

\_\_\_\_\_  
Kellene K. Feddersen, RPR, CSR, CCR

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