

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

In the Matter of the Future Supply, Delivery and Pricing of the
Electric Service Provided by Kansas City Power & Light
Company

Case No. EW-2004-0596

FILED

OCT 13 2004

Missouri Public
Service Commission

ON-THE-RECORD CONFERENCE

JEFFERSON CITY, MISSOURI

SEPTEMBER 29, 2004

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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

In the Matter of the Future)
Supply, Delivery and Pricing)
of the Electric Service) Case No. EW-2004-0596
Provided by Kansas City)
Power & Light Company.)

On-the-Record Conference

September 29, 2004

Jefferson City, Missouri

LEWIS MILLS, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE
STEVE GAW, Chairman
CONNIE MURRAY
ROBERT M. CLAYTON, III
JEFF DAVIS
LINWARD "LIN" APPLING,
COMMISSIONERS

Reported by Celena D. Moulton, RPR, CCR

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1 JUDGE MILLS: We're on the record in case
2 EW-2004-0596. I scheduled this really to bring me and
3 the commissioners up-to-date on what you all have been
4 up to, what's been going on, where you are, where you
5 think you're going, and perhaps from my perspective,
6 what you expect the Commission to do about all of this.

7 With that, I'm basically going to go to KCPL
8 first and ask them to address those sort of general
9 questions, then the staff, then public counsel, then any
10 other entities that are involved that want to comment on
11 the status, the progress and the ultimate destination.

12 Any questions about what we're here for, how
13 we're going to proceed? Great. Well, let's get started
14 then. For Kansas City Power & Light, Mr. Fischer, are
15 you going to take the lead here?

16 MR. FISCHER: I've actually asked one of our
17 principals to put together a status report for you,
18 Chris Giles. And if it would be appropriate, I'd like
19 him to come up to the podium and give that report.

20 JUDGE MILLS: And since you mentioned the
21 podium, we are webcasting this and capturing a video of
22 it. So if anybody is planning to say more than a few
23 words, please come up to the podium. And even if you
24 are planning to only make a very brief answer, you do
25 need to speak into a microphone so we can capture your

1 words for posterity.

2 Mr. Giles, go ahead.

3 MR. GILES: Good morning, Judge Mills. I
4 appreciate the opportunity to give you an update. As
5 you recall, we met on July 21st with the Commission in a
6 pre-hearing conference. We presented our strategic
7 intent, our planning initiatives of KCPL, which included
8 new coal generation, wind generation, environmental
9 upgrades, distribution expenditures and customer
10 programs, including demand response, energy efficiency
11 and affordability.

12 And subsequent to that meeting on July 30th,
13 all of the parties met and decided to divide into two
14 teams. Team A, for lack of a better term -- we called
15 them team A and team B.

16 Team A evaluated the investment strategy,
17 the strategic intent. And team B evaluated the
18 financial aspects of a potential regulatory plan.

19 The two teams were chaired, one by
20 Commission Staff, Bob Shodenberg, chaired the team B.
21 Team A, Tim Rush from the company chaired that team, and
22 vice-chairs, the company and the staff were also
23 included on those two teams.

24 We've met on numerous occasions since then.
25 The team B actually -- or team A, pardon me, actually

1 broke into a subcommittee to specifically look at
2 affordability, energy efficiency programs.

3 We've had tremendous cooperation from all
4 the parties throughout the process. We've made a number
5 of presentations. Others have made presentations, as
6 well, during the workshop meetings.

7 Just to give you an example, presentations
8 on the team A included our demand forecast,
9 distribution, automation and asset management,
10 environmental, supply generation, demand response
11 programs and affordability and efficiency.

12 Missouri Department of Natural Resources,
13 particularly, Anita Randolph and Brenda Wilbers, have
14 been very active and supportive of energy efficiency
15 programs, and actually made a presentation, as well.

16 So where are we? We have a number of data
17 requests that we continue to respond to. We are in the
18 process now of evaluating in our integrated resource
19 planning model the efficiency programs that have been
20 somewhat consensually developed in the team A meetings.
21 We have a meeting scheduled for this afternoon with all
22 the parties.

23 And in this meeting, we're going to make two
24 additional presentations, one on Chapter 100 text, the
25 economic development tax incentives, one on the holding

1 company and its relationship to KCPL and its
2 subsidiaries.

3 And, finally, this afternoon, the company
4 will present, more specifically, or at least as
5 specifically as we can at this point, what we expect in
6 a regulatory plan.

7 The next meeting that's been scheduled
8 jointly of team A and team B will be on October 12th.
9 And at that meeting, it's anticipated that all the other
10 parties will indicate what they would like to see come
11 out of this process. The case is currently in a
12 workshop docket and we understand that that's not a
13 docket that's conducive to getting a Commission order.

14 And we anticipate that sometime at the end
15 of October, early November, we will reach consensus
16 among all the various parties, bring a stipulation and
17 agreement to the Commission. We anticipate we would
18 file that as part of an ER docket.

19 And the other thing I want to add is that we
20 are, from now on, at the point that we are today,
21 entering a pretty sensitive situation where very --
22 excuse me -- very much confidential type information as
23 far as potential negotiations on a stipulation of
24 agreement.

25 Today with me is, as you know, Jim Fischer,

1 Karl Zobrist and Bill Riggins. That's a quick overview.
2 I'd be happy to answer any questions or any questions
3 you want to direct to counsel.

4 JUDGE MILLS: No. I think that's fine for
5 now. I think I'll go to the Staff of the Commission
6 next to get their perspective.

7 MR. DOTTHEIM: Good morning. I'm Steve
8 Dottheim, representing the staff of the Commission,
9 attorney -- I'm an attorney in the General Counsel's
10 Office, as I think most everyone, or everyone in the
11 hearing room knows this morning.

12 As far as the presentation that Mr. Giles
13 just made on behalf of Kansas City Power & Light, I
14 don't know that I really would quarrel with much of what
15 he said, other than, in particular, I think he's
16 expressed Kansas City Power & Light's hope and goal of
17 reaching some consensus and bringing a stipulation and
18 agreement to the Commission by the end of October.

19 I don't know that there is any consensus yet
20 as to a regulatory plan. In particular, this afternoon
21 the participants will see, presumably, Kansas City Power
22 & Light's regulatory plan for the first time.

23 For the most part, what the proceedings have
24 involved is Kansas City Power & Light's effort to
25 convince the parties that a regulatory plan is needed

1 without producing a regulatory plan for the parties to
2 see.

3 But, again, it's our anticipation that we
4 will be seeing a regulatory plan from Kansas City Power
5 & Light this afternoon. And the parties will be
6 responding on October 12.

7 It's the Staff's expectation or plan to
8 submit a report to the Commission by the end of October
9 regardless of whether there is some consensus regarding
10 the regulatory plan to which the Staff ascribes or not.
11 Regardless of whether there's a stipulation and
12 agreement, the Staff plans to submit a report to the
13 Commission by the end of October.

14 One of the things that the -- a key item, or
15 a key item that really has not been addressed to this
16 point, and, in part, because we haven't seen the KCPL
17 regulatory plan, is whether there are any legal
18 infirmities with what KCPL proposes.

19 KCPL has presented to the participants an
20 indication, a clear indication that Kansas City Power &
21 Light sees rate increase cases -- or excuse me -- rate
22 increases, not rate increase cases, but rate increases
23 as part of the regulatory plan.

24 And, again, the legal issues, potential
25 legal issues have not been addressed, such as Section

1 393.135 regarding electric utilities not being
2 authorized to recover end rates, construction costs for
3 generating facilities until those facilities are fully
4 operational and used for service.

5 The Staff has attempted to operate as a
6 facilitator itself in the process. As Mr. Giles
7 indicated, I believe one of the teams was facilitated
8 by, in particular, Bob Shallenberg, the team B, which
9 was addressing financial aspects.

10 Team A was addressing resource matters. And
11 as Mr. Giles indicated, there is a subgroup addressing
12 affordability and efficiency programs. And pretty much
13 what's been accomplished in the -- in that subgroup,
14 subcommittee, is something apparently one might describe
15 as a universe of possible programs. That's about as far
16 as it's gone. There has been no critical analysis made
17 of the programs themselves. So that's something that
18 hopefully is still in the offering.

19 Mr. Giles, I think, also mentioned that the
20 Staff has submitted to the company data requests. There
21 are a number of data requests that are still
22 outstanding. We plan to talk with the company today
23 regarding those data requests that are still outstanding
24 and what our needs are on the present time frame.

25 But regardless of the responses to the data

1 requests, what we receive and what may be -- what may
2 remain open, we still plan to submit a report to the
3 Commission by the end of October.

4 JUDGE MILLS: Well, before you step down,
5 let me ask you a couple questions. One is -- well,
6 first of all, it seems as though this status conference
7 may be inappropriately scheduled. I have just -- I have
8 been getting notices of all the workshops that have been
9 going on. I assumed that you all got to the point where
10 you knew what the regulatory plan was.

11 Do you believe it would be appropriate to
12 have another status conference after what I would say is
13 one of the major parameters of the cases is known?

14 MR. DOTTHEIM: Yes. And hopefully that will
15 be known by the end of today. As far as another status
16 conference, I don't know whether it makes much sense to
17 schedule a status conference before October 12 when the
18 various participants are going to respond and offer what
19 they would like to see in a regulatory plan, or even if
20 they think a regulatory plan is possible.

21 So sometime after October 12. Now, of
22 course, these meetings have been open to the public.
23 The one this afternoon is also open to the public, as is
24 the one on October 12th. So if any of the commissioners
25 or Judge Mills yourself would like to sit in, that, of

1 course, is possible.

2 One thing I intended to mention that I
3 almost forgot, and that is the Kansas Corporation
4 Commission. Kansas City Power & Light, and I don't know
5 that Mr. Giles addressed this, but Kansas City Power &
6 Light has also been meeting in Kansas on the very same
7 matters.

8 For meetings, we have attempted at each
9 meeting to have a speakerphone and send out to anyone
10 who is interested the telephone port number so that they
11 could phone in. And we've had participation from the
12 Kansas Corporation Commission Staff, I believe. Also, I
13 believe the Kansas counterpart to the Missouri Office of
14 Public Counsel, the Kansas Citizens Utility Rate Payers
15 Board, KURPB, and I think we've had other participation
16 from individuals or entities in Kansas.

17 Kansas City Power & Light has indicated to
18 the participants that in order for there to be a viable
19 regulatory plan, there needs to be a regulatory plan
20 both in Missouri and Kansas. So the success of what
21 Kansas City Power & Light is presenting does not rely
22 solely upon entities in Missouri, it also relies on
23 entities in Kansas.

24 As a consequence, the Missouri Staff has
25 scheduled a meeting with the Kansas Corporation Staff in

1 Kansas City on October 8th, a week from this Friday. So
2 that's another factor.

3 And it wouldn't seem to make a great deal of
4 sense to schedule another on-the-record conference until
5 that meeting has concluded. And I think the other
6 regulatory entities, KURPB in Kansas and the Office of
7 Public Counsel in Missouri will be participating in that
8 meeting in Kansas City on October 8th.

9 JUDGE MILLS: Okay. I will ask you one more
10 question. Mr. Giles, I think, basically concluded that
11 as far as what is expected from the Commission in this
12 case is really very little. The parties don't
13 anticipate the Commission ordering anything to be done
14 or not done or approving any agreement in this case. Is
15 that your understanding, as well?

16 MR. DOTTHEIM: Generally, yes, from the
17 perspective that there is a subsequent case that is
18 expected by Kansas City Power & Light to be established,
19 wherein the Commission would approve a stipulation and
20 agreement reached by the participants in the presently
21 existing EW case.

22 JUDGE MILLS: Okay. And I think what
23 Mr. Giles was talking about, he was talking about
24 expecting to have a stipulation agreement. And I think
25 he used the word "hope". But I guess we'll have to see

1 how that plays out.

2 MR. DOTTHEIM: Yes. And maybe Mr. Giles
3 might expand upon that. But I think all participants
4 have tried to be open and tried to work and proceed
5 forward in attempting to address Kansas City Power &
6 Light's asserted need for a regulatory plan. And
7 everybody has tried, I believe, to maintain an update
8 approach to this. But the legal questions still remain.
9 Again, we haven't seen the details of a regulatory plan
10 yet, but we anticipate seeing that this afternoon.

11 JUDGE MILLS: Okay. Thank you. And,
12 Mr. Giles, let me ask you another question real quick --
13 and I don't want to, you know, make you do your
14 unveiling ahead of time.

15 But just for my enlightenment, how do you
16 define a regulatory plan? Is that just an agreement
17 among interested people about procedures that you're
18 going to take within existing Commission procedures? Is
19 this an idea that we're going to create some new kinds
20 of procedures and the parties are going to agree how
21 things are going to work? What exactly is a regulatory
22 plan, without going into any specifics?

23 MR. GILES: Well, let me first -- I'll
24 gladly answer that. Let me first indicate a response to
25 some of the things that Mr. Dottheim said. I didn't

1 mean to imply that everyone has reached consensus,
2 obviously, on a regulatory plan or even that we need a
3 regulatory plan.

4 We have, throughout the workshop process, in
5 all of our presentations, indicated fundamentally what
6 we're looking for out of this workshop, and ultimately
7 an agreement. And that is that these -- and I
8 categorize these investments as whatever we might end up
9 with consensus saying these are really the things we
10 should do in the next five years.

11 So first of all, we say we agree these are
12 the right investments to make and this is the right time
13 to do it. And then stepping back from that, we say,
14 well, we have a need to assure investors and customers
15 that we can do this over the next five years. And our
16 intent all along has been to provide some degree of
17 certainty on the rate increases that would be associated
18 with the investments.

19 So our idea of a regulatory plan, as
20 Mr. Dottheim indicated, is that we would have a
21 staggered or phased-in approach to rate increases during
22 this five-year period.

23 And we've not gotten to the point where -- I
24 agree with Mr. Dottheim. I don't believe, and I say
25 this often, I'm not a lawyer. But I don't believe this

1 is out of the bounds of anything the Commission hasn't
2 had precedent in doing in the past. The difference is
3 it's an increase. We have done these kind of things in
4 decrease cases.

5 The other difference is it's largely based
6 upon at forward-looking costs rather than historic
7 costs. That's a difference.

8 But even given all of that, we have enough
9 investment coming online during this five-year period
10 that we think we can come up with a plan that
11 essentially levelizes whatever those rate increases
12 might be over the five years and tie it to both our
13 credit ratios so that we stay sound on investment grade
14 credit, and tie it to investment plan and service.

15 So we're attempting to do something here
16 that, yes, is probably unusual. But I think there's
17 precedent that it could be done. I think the attorneys
18 will probably have many conversations about it.

19 JUDGE MILLS: So you're really thinking of a
20 whole -- a new kind of procedure? You're not talking
21 about a series of rate cases that the parties agree to
22 process quickly? It's just sort of modification of the
23 way we've done business? You're thinking about
24 something new?

25 MR. GILES: Right.

1 JUDGE MILLS: I'm going to go to Public
2 Counsel next.

3 MR. COFFMAN: Thank you. I appreciate the
4 opportunity to share our perspective of where we are in
5 this process. We have had a lot of meetings, as you've
6 heard. And my office has attempted to participate
7 meaningfully in every meeting and subgroup of this
8 process.

9 We have sent some data requests on both the
10 planning and forecasting side of the workshop, as well
11 as discovery that looks at the corporate financial
12 model, the cash flow issues, capital costs and other
13 financial issues that have been put forth by Kansas City
14 Power & Light.

15 The discovery process, I would say, is going
16 very well, even though some of our key questions have
17 not yet been answered and are still pending.

18 I wouldn't say that KCPL has objected in any
19 unreasonable way yet. And so I would say that it's
20 still a cooperative, ongoing process of trying to
21 understand where we are.

22 Maybe the most difficult thing about this
23 case is that despite all the meetings that we've had,
24 the discussions are still on a very general point. I
25 mean, we talk, as Mr. Dottheim said, about -- we have

1 been discussing about the whole universe of KCPL's
2 operations and future plans, and have yet to really pin
3 down exactly what KCPL is looking for in this case.

4 And I know that Mr. Giles has now made some
5 comments here that are consistent with what we've heard,
6 you know, privately, with where they want to go. In
7 other words, we know what KCPL's wish list would
8 probably look like, but they've yet to kind of
9 definitively put it down in a proposal that we could
10 really begin to work on. Supposedly that begins this
11 afternoon.

12 We are still in the process of trying to
13 understand exactly what we think of the adequacy of
14 current rates. The Staff is undergoing an audit to some
15 degree.

16 We are looking at a variety of aspects of
17 the current cost of service. But, yet, to really get to
18 a point where we could say that we had an idea of what
19 the current revenue requirement is underrecovering or
20 overrecovering. And that, I think, would be something
21 that we would definitely want to have a handle on before
22 we really started taking specific opinions.

23 Now, like Mr. Dottheim, we are very focused
24 on the law and the specific Statute 393.135, which was
25 passed by the voters of this state in 1976 and prohibits

1 recovery of work-in-progress; that is, things that are
2 not yet providing service yet. And that legal statute
3 seems to be a barrier to a lot of what KCPL wants. And
4 it is a real concern that we'll have to address going
5 forward.

6 And we would hope that any predetermination,
7 if you will, would be limited to things that are known
8 and measurable at this time and we would be very
9 specific about what was being determined.

10 As to some sort of agreement as to future
11 rates, that's probably even more challenging. As
12 Mr. Giles said, the closest thing that we have come to
13 that was I believe 1997, where there was some agreement
14 that was worked out before a case was even filed. It
15 was a small rate reduction that the parties were able to
16 agree to. And, of course, that did not involve any
17 future projections and was not a rate increase.

18 A couple of procedural issues that I think I
19 would like to describe to you in some way, and I hope
20 I'm being specific enough, but I think that because
21 we're in such an unusual situation with this workshop
22 case, these need to be addressed.

23 One is there are some very significant
24 impacts on the public that would result from what KCPL
25 is generally outlining here. And I think that as the

1 representative of the general public interest, I would
2 like to have the benefit of the public's input on this
3 plan.

4 And, typically, that would come after some
5 local public hearings and some general notice to the
6 public about what rate impacts are possible to occur.
7 And at this point, the rate impact information is
8 privileged or highly confidential.

9 So if local public hearings were scheduled
10 by the Commission at this point, I'm not sure they would
11 be very meaningful, because the public would not have a
12 full understanding of what this might mean to their
13 future budget and their future bills.

14 And yet, at this point, I think that the
15 anticipation is that we will be having some discussions
16 about settlements that affect those rate impacts before
17 the public is even aware.

18 So I'm just expressing that as a procedural
19 difficulty about when public hearings might be requested
20 and the challenges that I face in trying to represent
21 the general public when the general public, may not have
22 all the information of what is being proposed.

23 The second issue is kind of a conundrum in
24 that this case, we are beginning to straddle, I think,
25 what has been a fairly positive workshop process into

1 discussions that might lead to a presentation in a
2 future contested case.

3 And so I think what's being anticipated is
4 that proposals will be made this afternoon by KCPL.
5 October 12th, other parties will make their positions
6 known in some definitive way, and negotiations will
7 proceed on what has loosely been called a regulatory
8 plan.

9 If we are still in this workshop case that
10 is -- I guess anyone who signs a confidentiality
11 agreement may be able to participate in these
12 discussions, which are sort of, I guess, settlement
13 discussions. And that would include commissioners.

14 Typically, when settlement discussions are
15 occurring on some sort of a stipulation that might be
16 submitted to the Commission, all those discussions and
17 what is said in those discussions are privileged and are
18 not something that the parties anticipate would ever be
19 made public or even be available for the commissioners
20 to understand.

21 So it's an unusual situation in what I might
22 be able to say or might be able to propose will likely
23 be different than what I might be able to say or propose
24 in a settlement discussion where I had the understanding
25 that it would all be privileged information.

1 And I don't know exactly what to request at
2 this point. We're going to try to go forward and try to
3 be as engaged as we can. But I just wanted to alert you
4 to the fact that that is going to be settlement
5 discussions in a very unusual environment.

6 So I don't know how to address that yet
7 while we're still in a non-contested case where even
8 Judges and commissioners are involved, and yet we're
9 discussing something that may yet be presented to the
10 Commission as a general settlement where all the
11 motivation and work behind it is usually not made
12 public.

13 So with those concerns, I think I would just
14 wrap up that we are certainly interested in engaging
15 KCPL in seeing if consensus can be reached, although I
16 would not want to leave the impression that I'm
17 optimistic that we can meet every point that Mr. Giles
18 laid out.

19 You know, the idea of some sort of an
20 understanding about future processes and future rate
21 increases, I think that is very possible. The idea that
22 I or maybe any other consumer interest would agree to
23 future rate increases down the road based on, you know,
24 things that may or may not yet occur is, I think, of a
25 great concern. It would be, I think, a very difficult

1 thing to agree to. We are certainly willing to talk
2 about it.

3 Also, the idea -- I would have to say it's
4 concerning that future rate increases or future rate
5 processes would be tied to credit ratings. To me, that
6 raises a real serious concern that rate making or rates
7 themselves would actually be delegated to some credit
8 rating decision or that the Commission would in some way
9 defer decision-making to credit agencies I think is a
10 real problem that we would need to address.

11 JUDGE MILLS: Do you think that might be a
12 part of the regulatory plan?

13 MR. COFFMAN: That's what Mr. Giles just
14 said.

15 MR. GILES: Might I clarify?

16 MR. COFFMAN: I don't --

17 JUDGE MILLS: Well, Mr. Giles, I think
18 Mr. Coffman was done. Let's be sure that he was.

19 MR. COFFMAN: I am done, unless you have
20 another question.

21 MR. GILES: I didn't mean to jump up so
22 quick. But I just wanted to clarify that we're not
23 basing rates on credit ratings going forward.

24 What we've been doing is we've established a
25 model where we've taken these investments, loaded them

1 into our base utility, typical normal operating capital
2 and normal end budgets, and then tried to determine what
3 level of rates would we need to maintain a certain
4 credit level.

5 So it's not like we would be changing those
6 rate levels over time. It would be fixed at a point in
7 time. And what that does is it basically lets the
8 return on equity fall out of that process, rather than
9 that being a driver of the process. It's a little
10 different concept. But, ultimately, you end up at just
11 about the same point.

12 JUDGE MILLS: Thank you. I'm just going to
13 sort of move around the room here. The Attorney
14 General's Office.

15 MR. MOLTENI: Thank you, Judge. And I just
16 want to clarify, I'm here today on behalf of the
17 Department of Natural Resources, not strictly the
18 Attorney General of the State of Missouri.

19 DNR's Energy Center feels that the workshop
20 has facilitated an excellent discussion about the role
21 of energy efficiency and future energy needs.

22 The Energy Center brought in Mr. Richard
23 Sadano of the Regulatory Systems Project, who was a
24 former commissioner with the Vermont Department of
25 Public Service. And Mr. Sadano shared information about

1 other States' regulatory approaches with the team A
2 subcommittee.

3 DNR feels that more discussion is needed to
4 ensure that sufficient energy efficiency investments can
5 have a significant impact on energy demand. And the
6 Energy Center recommends expanding the discussions. We
7 have started with this working group, looking at
8 regulatory rate-making approaches that you used in other
9 states, and considering options for all utilities to
10 invest in energy efficiency programs.

11 JUDGE MILLS: Thank you. Mr. Conrad.

12 MR. CONRAD: Well, since you asked, Judge, I
13 am here representing a company by the name of Praxair.
14 Praxair is a large industrial customer in the Kansas
15 City Power & Light service territory in Missouri. They
16 use a substantial amount of power and high-load factor
17 level.

18 Their interests are that power be reliable,
19 although they are able sometimes to accept interruption.
20 But, generally, they need power to make their products.
21 And they need that power available at rates that will
22 permit them to make those products and sell them in a
23 competitive market.

24 And the cost of power is a major driver to
25 the cost of their production. I say this not to argue

1 that case at this point, but simply to point out the
2 nature of their interest in this proceeding.

3 We have participated in this process. We
4 have found it to be useful. It has exposed the thinking
5 of KCPL. It has exposed their planning process. It has
6 exposed a number of areas in which we and other parties
7 are concerned as this goes forward.

8 All that having been said, I am aware under
9 the law of two ways that we make rates in this state.
10 One is called a complaint process that initiates a case
11 before the Commission, and which, in the past, in my
12 experience, utilities started to do that, complaining
13 that their rates -- their current rates were
14 insufficient.

15 It can also be initiated by the parties, as
16 Your Honor knows, both indirectly by the Commission, I
17 suppose, or by the Staff if it has reason to believe
18 that there's a significant overearning situation. The
19 other way is to file a suspension.

20 As far as I know, those are the only two
21 ways that the Commission has been given power by the
22 legislature. Being a creature of the legislature, it
23 can't just do what it wants to do. It has to work with
24 a number of the powers that have been given to the
25 legislature.

1 Those powers have been restricted and,
2 actually, not by the legislature in this case. They
3 have been restricted by the people.

4 As a result of the nuclear cases, going back
5 that far, we have, what a couple of other parties have
6 referred to as Proposition 1, that was put in place a
7 number of years ago. I think it was 393.135, if I'm
8 correct. But I refer to it historically as Proposition
9 1. But it was put out by the people as an initiative.

10 That presents this process with multiple
11 difficulties. For our part, we have been waiting -- I'm
12 not sure how one waits with bated breath, but one has
13 been waiting with eager anticipation to see the
14 unveiling of the mechanism that KCPL proposes to select
15 a path around that, that issue.

16 I've asked, I think, from the very first
17 workshop how that was to be accomplished and got various
18 responses. So I'm hopeful today that we will have
19 something concrete about that.

20 I am encouraged, but I am at one level also
21 concerned about a statement that this process has
22 precedent. In my experience, it does not. There are
23 only those two ways, in my experience, to make rates.
24 And while you can ramp that process up a little bit with
25 some front-end loading, which I think is the basic

1 approach here, you still are left with those processes.
2 For example, there is no process in an EW case to even
3 do a stipulation. It's not a case. There's nothing to
4 settle.

5 Once you have an ER filing or an EC filing,
6 then I suppose you can deal with the stipulation. But
7 then you have the issues of a unanimous stipulation,
8 which the Commission has its own set of rules about.
9 And I, frankly, Your Honor, don't know how all that's
10 going to play out.

11 On behalf of my client, we're going to work
12 and try to achieve a result here that is mutually
13 acceptable, but I cannot guarantee that such will occur.

14 I think it has to start -- this has been a
15 good ramp-up, but hopefully we're going to get into some
16 of the nitty-gritty here, perhaps this afternoon or in
17 the next few weeks, that we can all begin to understand.

18 I would concur, frankly, although I find no
19 fault in your scheduling of this presentation session
20 today, because you didn't know. But I would concur with
21 much of what Mr. Dottheim suggested, that it probably
22 would be useful to have another one of these at a later
23 point in time.

24 Apparently after -- not only after what KCPL
25 files, but the parties have had an opportunity to react

1 to it, we've had an opportunity to go back and forth in
2 perhaps a meeting, and then come back before you.

3 I would also echo with respect to one
4 comment that Mr. Coffman made. It's not my prerogative
5 to invite you or the commissioners, nor to disinvite
6 you. But there is a concern. And that is this is
7 obviously going to turn into something that falls under
8 the heading of a contested case. And when it does that,
9 it also falls under the heading of the Constitutional
10 requirements, that the decision be supported by evidence
11 on the record.

12 I would, therefore, counsel that if the
13 commissioners or Your Honor wish to come to these
14 meetings, that you think about the impact that that
15 might have on subsequent proceedings, that you might
16 have to make a decision as a decision-maker based on
17 only the record in that case and not some other pieces
18 of data that have been heard in some of the process.

19 JUDGE MILLS: I'm mindful of that. And you
20 all realize that I have not been to any of those
21 workshops, and don't plan to.

22 MR. CONRAD: And I respect that. This is a
23 -- I characterized this type of proceeding at one other
24 time as neither fish nor foul. It's kind of an odd
25 process. There's nothing inherently wrong with it.

1 But when we know that it is being targeted
2 as what is either going to be an ER or EC case, that, to
3 me, would raise antennae that would at least counsel
4 some caution about that. And with that, if you have any
5 questions of me, I'll be happy to --

6 JUDGE MILLS: I have no questions. Thank
7 you. Ms. Vuylsteke.

8 MS. VUYLSTEKE: Thank you, Your Honor. I'm
9 here on behalf of Ford Motor and the Missouri Industrial
10 Energy Consumers. And I agree with everything that has
11 been said.

12 We think this is a beneficial process. We
13 are glad to be a part of it, and we think that all the
14 parties are really putting forth their best efforts in
15 the collaborative.

16 We don't have a position on the specific
17 issues because KCPL is still going to present its
18 regulatory plan, and we still are waiting for some
19 discovery responses which we understand will be provided
20 today.

21 With regard to some procedural issues and
22 the Commission's participation in the workshop, we share
23 the concerns and agree with the comments expressed by
24 Mr. Coffman and Mr. Conrad.

25 And with respect to the legal issues, we

1 think it would be appropriate at some point for the
2 Commission to address the legality of what it's being
3 asked to do. We don't think the legalities are clear at
4 this point, and the parties have not really been fully
5 heard on that yet.

6 And we think that whatever result comes out
7 of this case or a subsequent case, that it's important
8 that it's informed and that it balance the interest of
9 the company and the rate payers. And that's our primary
10 interest. Thank you.

11 JUDGE MILLS: Thank you. Ms. Langeneckert.

12 MS. LANGENECKERT: Thank you, Judge Mills.

13 I represent the Missouri Energy Group in this matter.
14 And, presently, none of our clients are on KCPL's
15 service. We are monitoring this as an interested party
16 just to see what comes out. We're interested to see
17 what KCPL proposes today. And we'll reserve comment
18 until after we see that and things move along.

19 JUDGE MILLS: Thank you. I think that
20 covers everybody that's in the front of the room. I'm
21 sure there are people further back that are concerned
22 citizens of Platt County, for example. If you wish to
23 be heard, please step forward then.

24 MS. STEWARD: I'm Elsa Steward representing
25 Concerned Citizens of Platt County and the Sierra Club

1 Ozark Chapter. We're opposed to the construction and
2 operation of this plant, and we feel that way for
3 several reasons, primarily, having to do with public
4 health and environment issues.

5 We're very concerned about increased air
6 pollution coming from the air emissions resulting from
7 the combustion of coal. One of those major pollutants
8 is mercury.

9 And by the company's own admission, there
10 are no existent technologies for reducing or completely
11 eliminating the mercury pollution. They can reduce it,
12 but they can't get it below certain levels. And we
13 maintain that the maximum levels they could achieve with
14 pollution controls would still be injurious to public
15 health.

16 And there are other toxins, as well, in the
17 air emissions. We're concerned about carbon dioxide,
18 which is the major greenhouse gas causing global
19 warming. That will also be released in large
20 quantities.

21 We're concerned, again, for the -- about the
22 issue of the landfilling of the fly ash, which is the
23 residue from the coal combustion, which, again,
24 according to the company's information, contains several
25 toxic metals and other hazardous chemicals.

1 And they are proposing that this be
2 landfilled in a flood plain area near the plant. We're
3 very concerned about that getting into the groundwater,
4 which is the source of drinking water for several of the
5 residents in the area.

6 Our clients are concerned about the overuse
7 of groundwater in quantities amounting to several
8 million gallons per minute. They're concerned about
9 depletion of the aquifers underneath these areas in an
10 area that's already vulnerable to drought conditions.
11 And there's also concern about the destruction of almost
12 50 acres of natural wetlands.

13 We feel that it is imprudent at this time
14 when pollution controls are not sufficient to be even
15 considering a coal-fired power plant, when we feel that
16 if maximum efficiencies were promoted by the company and
17 were achieved, that it would reduce or eliminate the
18 need for further power in the area.

19 We've also heard that the company may be, at
20 least in part, in a merchant capacity with this new
21 plant, and if so, would be selling a lot of this power
22 on the grid, which would result in the residents of this
23 area paying the environmental and health cost for the
24 generation of power that won't even be used by them or
25 their neighbors. So at this point, we would like to go

1 on record as being opposed to this plant.

2 JUDGE MILLS: It sounds like an agreement by
3 the end of the day is a little unlikely. Who else have
4 we got? Anybody else? Mr. Comely?

5 MR. COMELY: Very briefly, I think, I want
6 to applaud the company and the parties. The company
7 proposed a procedure by which, again, I think Mr. Conrad
8 mentioned. It gave us a glimpse into the planning
9 processes.

10 I'm here on behalf of the City of Kansas
11 City. From the city's point of view, it's an
12 opportunity to take a glimpse into a major employer's
13 process, an entity, a corporate citizen who are
14 providing a considerable amount of revenue for the city
15 budget. Also, an entity that is responsible for the
16 source of power for I think well over a million people
17 within the statistical area of Kansas City and for
18 citizens that are both corporate and individual.

19 So this is a very important part of a
20 process that I hope other companies will take heed to
21 and look into. I think other municipalities would
22 benefit from this process.

23 I know the city has participated. We have
24 had people with divergent interest within the city,
25 even. You can see that the organism of the city would

1 have a number of issues that it views. Economic
2 activity and environmental activity are both a focus
3 within the city itself.

4 Likewise, we're not in a position today of
5 saying anything positive about what our position -- what
6 the city's position would be. I think all of us are
7 waiting to see more about what the regulatory plan may
8 look like. And, again, it will require a great deal of
9 analysis in our own city departments before the city
10 could come forward in one way or another. I would like
11 to thank everyone for engaging us in this process. I
12 think it's been quite worthwhile.

13 JUDGE MILLS: Mr. Cooper?

14 MR. COOPER: Good morning. I'm here today
15 on behalf of Aquila and the Empire District Electric
16 Company. Both Aquila and Empire, I think, really have
17 four questions, four items of interest in this
18 proceeding. One is: Is IOTAN 2 going to go forward?
19 If it does, can they participate? Would they want to
20 participate if they can? And, lastly, how would
21 investments be treated from a regulatory standpoint?

22 On Empire's behalf, Empire believes that it
23 needs a balanced mix of resources to supply energy at a
24 fairly stable price to its Missouri customers.

25 It has presented in our IRP process to both

1 the Staff and the OPC that a 162 megawatt purchased
2 power agreement from a coal-fired unit will be expiring
3 in May of 2010, which will create a capacity need for
4 Empire at an appropriate time frame to potentially
5 participate in IOTAN 2.

6 And Empire believes that IOTAN 2 could be a
7 cost-effective long-term option for its customers.
8 These things being said, Empire obviously is interested
9 in the IOTAN 2 project.

10 Now, Empire does believe that it needs to
11 address its regulatory issues related to possible
12 participation, but is unsure at this time what the
13 appropriate mechanism is to do this effectively. Should
14 it address those as a part of this workshop? Should it
15 open its own workshop? Should it attempt to address
16 those issues in some other fashion yet to be named?

17 JUDGE MILLS: I hope you're posing those as
18 rhetorical questions.

19 MR. COOPER: Well, certainly to you they are
20 rhetorical, Your Honor. But the company believes that
21 perhaps they're something other than rhetorical for some
22 of the other parties in this process. And we have
23 participated in the process up to this point. Mr.
24 Mertins and Mr. Tarter will be here today to be
25 available to discuss those types of issues.

1 Aquila's position is very similar. It has
2 an interest in IOTAN. It's not very far down the line
3 toward any partnership agreement at this point. It
4 believes it will need to have some discussions in terms
5 of regulatory impacts before it could get very far down
6 the line in terms of any sort of agreements. And it
7 believes that it and KCPL have some unique differences
8 in terms of regulatory plans that are different. One
9 will not fit the other, in all likelihood.

10 So Aquila has some issues in what the best
11 process it to address these issues. Mr. Gary Clemons is
12 here today on behalf of Aquila, and is also available
13 and hoping to discuss some of those issues.

14 JUDGE MILLS: Thank you. Anybody else? Does
15 anybody that has already spoken have additional
16 comments? Mr. Dottheim?

17 MR. DOTTHEIM: Thank you. I'd like to
18 address a number of items raised by some of the other
19 parties, and I'll be brief.

20 Mr. Coffman indicated that the Staff is
21 performing an earnings audit, revenues audit of Kansas
22 City Power & Light. And the Staff is. It's an
23 abbreviated audit. Nonetheless, the -- and part of the
24 data requests outstanding relate to that audit.

25 As part of the Staff's filing at the end of

1 October, the Staff would include the results of its
2 earnings revenue audit of Kansas City Power & Light. So
3 that would be in the matrix, also, of the Staff's
4 perspective.

5 Mr. Giles indicated that what Kansas City
6 Power & Light is proposing has been addressed previously
7 by the Commission. I think he acknowledged that it has
8 been done in rate decrease cases. I think it has always
9 been done in rate decrease cases.

10 There are any number of alternative
11 regulation plans that the Commission has authorized in
12 the last 15 years or so. Of course, there was the Union
13 Electric Company to (sic) experimental alternative
14 regulation plans. There was the Southwestern Bell local
15 modernization plan that ultimately came out of a rate
16 decrease case in 1989.

17 Subsequently, the Commission offered to
18 Southwestern Bell another or a continuation of this
19 local modernization plan in the context of a rate
20 decrease, and Southwestern Bell declined the offer from
21 the Commission.

22 And, ultimately, there was some subsequent
23 litigation regarding the Commission's rate decrease
24 report and order, and ultimately there was a stipulation
25 and agreement, which resolved the litigation, and did,

1 as my memory serves me, address local modernization in
2 the context of a rate decrease.

3 Of course, one statutory section that hasn't
4 been noted is Section 393.155, which was enacted by the
5 legislature respecting the Callaway and the Wolf Creek
6 generating units, permitting a phase-in of rate
7 increases.

8 But in those instances, and the
9 legislation -- excuse me -- or Section 393.155 was
10 subsequently amended to address the Grand Gulf
11 generating unit that was coming online for Arkansas
12 Power & Light.

13 Again, in each of those instances, that
14 involved generating utilities that are fully operational
15 and used for service. The phase-in only occurred after
16 the units were found to be fully operational and used
17 for service. The Staff certainly wouldn't have any
18 objection to local public hearings, as Mr. Coffman has
19 indicated. The Office of the Public Counsel would like
20 to engage in this process.

21 Also, too, the Staff is very glad that
22 Mr. Cooper has said a few things on behalf of Aquila and
23 Empire. The Staff is very concerned that Kansas City
24 Power & Light be very open regarding the IOTAN 2 unit as
25 far as possible participation by Aquila and Empire.

1 That is one thing that the Staff intends to
2 attempt to monitor on a going-forward basis and
3 something that the Commission might want to keep very
4 much in mind. Thank you.

5 JUDGE MILLS: Thank you. Anyone else?

6 Well, I appreciate everyone coming in today.
7 This has, to a certain extent, served the purpose that I
8 had in mind, which was to sort of bring me up to speed
9 about what you all were doing, where you were going.

10 I will give some serious thought to
11 scheduling another status conference in a few weeks to
12 hear if there's more progress.

13 From what both the Staff and Kansas City
14 Power & Light have said, it appears as though it's quite
15 possible that activity in this case will wind up in
16 about a month and move into a different phase of sort of
17 the process. So I'm not sure that it's -- I'm not sure
18 that it's critical for me to know where you are when
19 you're getting into the end game.

20 But it may be helpful for you all to have
21 the opportunity to go on the record and explain what's
22 been going on and how things are winding up. So
23 certainly if any party has an interest in doing
24 something on the record as we get toward the end of this
25 process here, you're more than welcome to ask for an

1 on-the-record conference. And as I said, I may do that
2 on my own. But I haven't quite decided that.

3 Anything else? Thank you again. And we're
4 off the record.

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