

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3

4

5

6

TRANSCRIPT OF PROCEEDINGS

7

On-the-Record Conference

8

January 18, 2005  
Jefferson City, Missouri  
Volume 3

9

10

11

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

14

15

LEWIS MILLS, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.

16

17

CONNIE MURRAY,  
STEVE GAW,  
18 LINWARD "LIN" APPLING,  
COMMISSIONERS.

19

20

21

REPORTED BY:

22

KELLENE K. FEDDERSEN, CSR, RPR, CCR  
MIDWEST LITIGATION SERVICES

23

24

25

## 1 APPEARANCES:

2 JAMES M. FISCHER, Attorney at Law  
3 Fischer & Dority  
4 101 Madison, Suite 400  
Jefferson City, MO 65101  
(573) 636-6758

5 WILLIAM RIGGINS, Attorney at Law  
6 Kansas City Power & Light Company  
1201 Walnut  
7 Kansas City, MO 64112

8 KARL ZOBRIST, Attorney at Law  
Blackwell, Sanders, Peper, Martin, LLP  
2300 Main Street, Suite 1100  
9 Kansas City, MO 64113  
(816) 983-8171

10 FOR: Kansas City Power & Light Co.

11 DEAN L. COOPER, Attorney at Law  
12 Brydon, Swearingen & England, P.C.  
312 East Capitol  
13 P.O. Box 456  
Jefferson City, MO 65102-0456  
14 (573) 635-7166

15 FOR: The Empire District Electric Co.  
16 Aquila, Inc.

17 MARK W. COMLEY, Attorney at Law  
Newman, Comley & Ruth  
601 Monroe, Suite 301  
18 P.O. Box 537  
Jefferson City, MO 65102  
19 (573) 634-2266

20 FOR: City of Kansas City.

21 SHELLEY WOODS, Assistant Attorney General  
P.O. Box 899  
22 Supreme Court Building  
Jefferson City, MO 65102  
23 (573) 751-3321

24 FOR: Missouri Department of Natural  
25 Resources.

1 DIANA VUYLSTEKE, Attorney at Law  
Bryan Cave, LLP  
2 211 North Broadway, Suite 3600  
St. Louis, MO 63102  
3 (314)259-2543

4 FOR: Missouri Industrial Energy Consumers.

5 STUART CONRAD, Attorney at Law  
Finnegan, Conrad & Peterson  
6 3100 Broadway  
1209 Penntower Officer Center  
7 Kansas City, MO 64111  
(816)753-1122

8 FOR: Praxair, Inc.

9 LISA C. LANGENECKERT, Attorney at Law  
The Stolar Partnership  
10 911 Washington Avenue  
St. Louis, MO 63101-1209  
11 (314)641-5158

12 FOR: Missouri Energy Group.

13 JOHN B. COFFMAN, Public Counsel  
P.O. Box 2230  
14 200 Madison Street, Suite 650  
Jefferson City, MO 65102-2230  
15 (573)751-4857

16 FOR: Office of the Public Counsel  
17 and the Public.

18 DANA K. JOYCE, General Counsel  
STEVEN DOTTHEIM, Chief Deputy General Counsel  
19 NATHAN WILLIAMS, Associate General Counsel  
P.O. Box 360  
20 200 Madison Street  
Jefferson City, MO 65102  
21 (573)751-3234

22 FOR: Staff of the Missouri Public  
23 Service Commission.  
24  
25

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

2 JUDGE MILLS: Good morning. We're here  
3 this morning for an on-the-record status conference. I  
4 set this proceeding because the parties have been off on  
5 their own doing whatever it is they've been doing for  
6 several months now without anything in the record  
7 reflecting what has been talked about, who's been meeting,  
8 what progress has been made. So this is simply an  
9 opportunity for me to get some input and for the record in  
10 this case to be updated as to what's been going on, where  
11 discussions stand and what happens next.

12 So I think when we did this last at the end  
13 of September, I had KCPL go first, and I think I'll  
14 probably do that again and then hear from the other  
15 parties in roughly the same order. But in case any of you  
16 are -- don't remember or haven't been thinking about what  
17 happened then, let me just sort of -- in addition to the  
18 general types of information about what's been going on  
19 and where you-all anticipate going, let me just sort of  
20 refresh your memory about what the status apparently was  
21 at the end of September when we met.

22 And at that time KCPL anticipated reaching  
23 a consensus among all the parties at the end of October or  
24 early November and bringing a Stipulation & Agreement to  
25 the Commission. Of course that hasn't happened, at least

1 yet, and I don't -- one of the things I'll be interested  
2 to hear is whether that is still KCPL's hope and/or  
3 intention. Also, there was an indication on the record  
4 that that very day that the status conference was being  
5 held that the participants in the case would be hearing  
6 from Kansas City Power & Light exactly what it was that  
7 the regulatory plan consisted of, and so I'd like the  
8 record to reflect, not in huge detail, but at least a  
9 general outline of what that regulatory plan looks like  
10 and what the other parties' reactions to it have been.

11 And I think that's -- that's just the  
12 general sort of information I'd like to get on the record  
13 this morning. Are there any questions about the way we're  
14 going to proceed or any other matters that we need to take  
15 up on the record before hearing from the participants?

16 (No response.)

17 JUDGE MILLS: I'll note for the record that  
18 shortly before we convened this morning, and I assume  
19 everyone here or most people here have gotten a copy, but  
20 Praxair filed a motion suggesting that, as much fun as  
21 everyone has had, it's time to end these proceedings and  
22 move into a different format. I have -- Mr. Conrad has --

23 MR. CONRAD: Copies are here, Judge.

24 JUDGE MILLS: -- a number of copies for  
25 anyone who would like a copy that hasn't received one yet.

1                   Okay. With that, let's move on, and as we  
2 did at the last on-the-record presentation, all of this  
3 proceeding is being captured to disk, and I think it will  
4 be preferable if anyone is going to speak for more than a  
5 word or two to step up to the podium and make their  
6 presentation or their statement from there. And even if  
7 you do have just a word or two to interject, you need to  
8 make sure that you speak into a microphone so that that is  
9 captured.

10                   Okay. For KCPL, Mr. Fischer?

11                   MR. FISCHER: Yes, your Honor. You need  
12 appearances or do you want to go ahead and --

13                   JUDGE MILLS: I think I'm going to hear  
14 from everybody who wants to participate and will come up  
15 to the microphone. You can make your appearance as you  
16 come forward. I don't think I'll go around and do  
17 appearances separately.

18                   MR. FISCHER: Good morning. My name is  
19 Jim Fischer for the record, and I represent Kansas City  
20 Power & Light in this proceeding. And also appearing with  
21 me today are Carl Zobrist and Bill Riggins for the  
22 company. We also have Tim Rush and Chris Giles in the  
23 audience, and they've been very, very involved in the  
24 substantive issues in this docket and may be helpful to us  
25 if we need to answer some questions.

1                   The purpose of this on-the-record status  
2 conference as I understand it is to provide you with a  
3 brief update on the status of the docket. It's not KCPL's  
4 intention to go into the substantive issues in the docket,  
5 which by their nature now constitute the basis for  
6 confidential settlement discussions that are still ongoing  
7 among the company, Staff, Public Counsel and the other  
8 participants in the docket. These confidential settlement  
9 discussions have been productive and are scheduled to  
10 continue on January 24th and 25th of next week. However  
11 we do not believe it's appropriate to discuss the  
12 confidential settlement discussions at this time.

13                   As the Commission knows, the docket has  
14 been open since May 6th of 2004, when KCPL filed its  
15 application to establish an investigatory docket and  
16 workshop process regarding Kansas City Power & Light  
17 Company. In its application, KCPL requested that the  
18 Commission issue an Order opening an investigatory docket  
19 regarding the future supply and pricing of electric  
20 service provided by KCPL, and authorizing the use of the  
21 Commission's workshop process to address certain issues  
22 related to the future supply and pricing of electricity  
23 for KCPL and its customers and any other issues impacting  
24 KCPL that might arise from discussions among the parties.

25                   On May 25th, 2004 the Commission issued an

1 Order directing notice and setting an intervention  
2 deadline in Case No. EO-2004-0577. Several interested  
3 parties, including the Missouri Department of Natural  
4 Resources, Aquila, the Empire District Electric Company,  
5 the City of Kansas City, Missouri, Concerned Citizens Of  
6 Platte County, Praxair, Inc., the Missouri Industrial  
7 Energy Consumers and the Missouri Joint Municipal Electric  
8 Utility Commission filed applications to intervene in  
9 EO-2004-0577.

10                   The Commission granted the company's  
11 request to open a docket and chose to convene a workshop  
12 process in Case No. EW-2004-0595 to consider the issues in  
13 this case and, of course, that's the docket we're here  
14 today to discuss. Subsequently the Missouri Energy Group,  
15 the Sierra Club and AmerenUE participated in the workshops  
16 conducted in this proceeding.

17                   KCPL has greatly appreciated the  
18 willingness of the Staff, Public Counsel and the other  
19 participants to devote time and resources to this  
20 proceeding. We know this collaborative effort has taken  
21 time from other matters, and we believe that the parties  
22 have approached this collaborative process in a very  
23 constructive manner, and we want to publicly thank them  
24 for participating in the workshop process.

25                   The broad policy issues presented in this



25 A prehearing conference was held in this

1 docket on June 30th, 2004. A series of presentations and  
2 workshops were held on June 21st, June 30th, July 21st,  
3 July 30th, August 10th and 11th, August 19th, August 24th  
4 through the 26th, September 7, September 15, September 29  
5 and October 29, 2004. Other informal meetings with the  
6 Staff, Public Counsel and the other participants in this  
7 docket were also conducted at which KCPL made  
8 presentations and answered questions. Discovery requests  
9 have also been issued by the Staff and other parties, and  
10 responses have been provided by KCPL.

11                   During the course of these proceedings,  
12 KCPL has provided Staff, Public Counsel and the other  
13 participants the following information, among other  
14 things: A description of KCPL's proposed efficiency,  
15 affordability and demand response programs, KCPL's 10-year  
16 generation and load forecasts, a description of KCPL's  
17 proposed distribution and transmission infrastructure  
18 programs, a description of all the power supply  
19 alternatives considered by KCPL to meet its future load  
20 requirements, and a description of environmental  
21 investment considered by KCPL to be necessary for the  
22 future.

23                   The workshop itself was organized into two  
24 teams. The Team A reviewed integrated resource planning  
25 related issues, including load forecasting, generation

1 planning, demand side management, environmental issues and  
2 distribution and transmission technologies. A subteam  
3 within Team A reviewed affordability, efficiency and  
4 conservation programs.

5                   Team B reviewed the financial issues  
6 associated with KCPL's various plans, including  
7 maintaining KCPL's current investment grade ratings on its  
8 securities. These teams were led jointly by KCPL and  
9 Staff representatives. We'd also like to particularly  
10 thank again Bob Schallenberg, Lena Mantle and the Office  
11 of the Public Counsel for taking lead roles on these team  
12 efforts.

13                   The Missouri Department of Natural  
14 Resources has also been very engaged in the process, and  
15 we'd like to thank Anita Randolph and Brenda Wilbers  
16 particularly for their participation and contributions to  
17 these discussions. Other participants have also been very  
18 involved in our discussions, and I want to publicly thank  
19 all participants for attending our workshop meetings to  
20 discuss these issues.

21                   Since the last formal workshop meeting was  
22 held, the company, Staff, Public Counsel and other  
23 participants have had ongoing confidential settlement  
24 discussions in an effort to resolve the issues presented  
25 in this case. As I mentioned earlier, these confidential

1 settlement discussions are scheduled to resume next week.

2                   From KCPL's perspective, the dialog that  
3 has occurred in the workshop process has been very helpful  
4 and constructive. We believe the Commission's workshop  
5 process has worked very well to facilitate the exchange of  
6 a vast amount of information and dialog regarding the  
7 complex issue that will affect KCPL's future energy supply  
8 plans and regulatory needs.

9                   There's also been a vast amount of  
10 confidential information exchanged pursuant to the terms  
11 of the Commission's Protective Order in this proceeding.  
12 In order to afford the continued confidential treatment of  
13 this information during our continuing settlement  
14 discussions, KCPL believes that the EW docket should  
15 remain open until those confidential settlement  
16 negotiations have continued -- or have concluded.

17                   There's still work to be done among the  
18 parties to reach a consensus on the issues and present our  
19 recommendations to the Commission for its consideration.  
20 Indeed, KCPL wants to make clear to the Commission that  
21 these confidential settlement discussions will be  
22 continuing among the parties. We also believe that any  
23 ultimate settlement of the issues would be more  
24 appropriately addressed in a new docket in which a  
25 Stipulation & Agreement among the parties could be

1 reviewed and hopefully approved by the Commission.

2                   We're hopeful that the confidential  
3 settlement discussions on January 24th and 25th will  
4 continue to be productive. However, we have not reached  
5 any agreements at this point to present to the Commission  
6 and, Judge Mills, it's not the company's desire to  
7 establish a specific deadline for doing that. It's our  
8 desire to conclude those discussions as early as possible,  
9 but we haven't established any specific deadline for  
10 presenting a Stipulation & Agreement to the Commission.

11                   We do not want to delay the process,  
12 however, particularly since the construction of a  
13 coal-fired power plant, which is one of the options being  
14 reviewed by the participants, will take a number of years  
15 to complete.

16                   One of the focuses of the docket has been  
17 on the regulatory plan that will be needed to adequately  
18 address the comprehensive undertakings being considered by  
19 KCPL. Certainly KCPL's workshop and comprehensive plan  
20 have been much broader than merely considering the  
21 construction of new coal-fired capacity.

22                   This process has also spent significant  
23 time addressing the potential construction of wind  
24 generation, environmental investments, transmission and  
25 distribution infrastructure, and KCPL's demand response

1 efficiency and affordability programs. These regulatory  
2 plan discussions have been specific to KCPL and its  
3 financial situation and the expected needs of KCPL for the  
4 future.

5 KCPL's also in the process of discussing  
6 its plans for new capacity with other interested parties  
7 who may have a desire to enter into agreements to  
8 participate in the construction of a new coal-fired plant.  
9 No agreements with other partners have been reached at  
10 this point.

11 It's certainly possible that one or more of  
12 the potential partners in the construction of new  
13 coal-fired capacity may include companies under the  
14 jurisdiction of the Commission. If that should occur,  
15 KCPL would anticipate that regulatory plans may need to be  
16 developed to address the specific regulatory needs of  
17 those companies.

18 Given the success of the workshop  
19 proceeding in this docket, KCPL would encourage the  
20 Commission to consider other workshop proceedings or  
21 similar collaborative efforts to address the regulatory  
22 plans of other potential partners in a new coal-fired  
23 plant in Missouri. These workshop proceedings could  
24 certainly build upon the discussions that have been  
25 conducted in KCPL's case, and our discussions may

1 facilitate expeditious development of regulatory plans in  
2 separate workshop proceedings for other potential partners  
3 in Missouri coal-fired plants.

4 KCPL believes, however, that the  
5 consideration of KCPL's regulatory plan should not be  
6 delayed by the need of other companies to develop their  
7 own company-specific regulatory plans.

8 I hope this summary has provided the status  
9 update the Commission desired. As I mentioned earlier, I  
10 have several KCPL representatives with me today, and we'd  
11 be happy to address your questions. We greatly appreciate  
12 the Commission's continuing interest in this proceeding,  
13 and we would look forward to your questions.

14 I would also note in closing, I had not  
15 seen Mr. Conrad's motion, and I wasn't really prepared. I  
16 haven't read it. We will address that at a future time.

17 JUDGE MILLS: Thank you. Before you step  
18 down, Mr. Fischer, let me see if there's questions from  
19 the Bench. Commissioner Murray?

20 COMMISSIONER MURRAY: Not at this time,  
21 thank you.

22 JUDGE MILLS: Commissioner Gaw?

23 COMMISSIONER GAW: I'll wait until  
24 afterwards.

25 JUDGE MILLS: Thank you.

1 MR. FISCHER: Thank you very much.

2 JUDGE MILLS: I think we'll move next to  
3 the Staff of the Commission. Mr. Dottheim?

4 MR. DOTTHEIM: Thank you, Judge Mills. For  
5 an entry of appearance, Steven Dottheim, Dana K. Joyce,  
6 Nathan Williams, P.O. Box 360, Jefferson City, Missouri  
7 65102, appearing on behalf of the Staff of the Missouri  
8 Public Service Commission.

9 Throughout this process the Staff has  
10 attempted to serve a facilitator's role, and the process  
11 has been ongoing, as indicated by Mr. Fischer. There have  
12 been regular meetings, entire groupings of the  
13 participants, and in certain instances KCPL has preferred  
14 to meet individually with the participants.

15 It should be clear that although there are  
16 negotiations occurring at the present time, from the  
17 Staff's perspective nothing is imminent in the way of the  
18 filing of a Stipulation & Agreement. There is such a  
19 document that KCPL has produced, and others are having  
20 input respecting, but again, I'd like to make clear  
21 that the fact that there is a document denominated  
22 Stipulation & Agreement is not an indication that there is  
23 a filing imminent with the -- with the Commission.

24 Previously in September the Staff indicated  
25 concern that Empire and Aquila, which had been



1 participating in the EW docket, continue to do so and that  
2 KCPL engage in serious negotiations or serious discussions  
3 with Empire and Aquila. The Staff has the same continuing  
4 concerns and believes, as Mr. Fischer indicated, that  
5 regulatory plans are very likely the route that both  
6 Empire and Aquila should be considering or attempting to  
7 effectuate if they desire to participate in the KCPL base  
8 load generating unit that is in large part the subject  
9 matter of this EW docket.

10                   When we last met in September, the Staff  
11 indicated that the participants had yet to receive a  
12 regulatory plan from KCPL. It was thought that later that  
13 day the parties -- excuse me -- the participants would  
14 receive a draft regulatory plan. That did not occur.  
15 That did not occur for some time after that. There is now  
16 a draft regulatory plan that the participants are  
17 reviewing.

18                   I think that concludes my opening comments  
19 for the Staff, and of course, we will endeavor to answer  
20 any questions that the Commissioners and Judge Mills, that  
21 you might have.

22                   JUDGE MILLS: Questions from the Bench.  
23 Commissioner Murray?

24                   Commissioner Gaw?

25                   COMMISSIONER GAW: Briefly. Thank you,

1 Judge.

2 Mr. Fischer said that he had not had a  
3 chance to look at Mr. Conrad's filing. I'd ask you if you  
4 could respond to that as well?

5 MR. DOTTHEIM: I have not had an  
6 opportunity to review Mr. Conrad's filing. I just  
7 obtained a copy of it from Mr. Conrad. He did bring in  
8 copies into the hearing room. So this item has been a --  
9 and I know Mr. Conrad will address this -- has been a  
10 major concern of his clients. The Staff appreciates that.  
11 The Staff has attempted to be attuned to those concerns.

12 Mr. Fischer has indicated that KCPL would  
13 prefer to keep the EW docket open, I think in particular  
14 because there is a Protective Order in the presently  
15 pending EW docket. Of course, that doesn't mean there  
16 couldn't be another docket also with a Protective Order of  
17 the Commission. The Staff is interested in whatever  
18 process might further the consideration of the matters  
19 that KCPL has raised.

20 But again, I haven't had an opportunity to  
21 review Mr. Conrad's filing, so I'd -- would wish not to  
22 attempt to address it without literally having reviewed  
23 it. Maybe Mr. Conrad might summarize it when he has an  
24 opportunity to make his presentation to the Commissioners  
25 and RLJ.

1                   COMMISSIONER GAW: I think Mr. Conrad's  
2 point is that the usefulness of this docket is over and  
3 that it's time to move on to some other docket within  
4 the -- within the Commission, and I guess my question is,  
5 and he can -- he can speak for himself, but my question is  
6 whether or not moving to a different docket raises any  
7 issues that are problematic from a procedural standpoint  
8 or positioning standpoint of the parties that would  
9 suggest to the Commission that there are reasons that we  
10 might need to think about before making a decision in that  
11 regard.

12                   And I guess what I'm referring to is  
13 whether -- what kind of a docket we would be moving to,  
14 and I don't know whether that would include something  
15 regarding rates and who would be the moving party in that  
16 regard. There are issues out there I would assume that  
17 may cause some people to have some degree of concern about  
18 how that docket is framed, and I'm not -- I'm specifically  
19 not trying to get too specific here for fear I will raise  
20 some of those problems in advance of people thinking about  
21 them too much, although at least from my standpoint,  
22 having not thought about them too much, perhaps I  
23 shouldn't raise, let me say it that way.

24                   But if you have something to add to that,  
25 Mr. Dottheim . . .

1                   MR. DOTTHEIM: Yes. I think Mr. Fischer  
2 indicated that negotiations are occurring, and I've  
3 indicated that there's a draft Stipulation & Agreement.  
4 Mr. Conrad and Mr. Coffman can speak for themselves, but I  
5 think previously they in particular have expressed concern  
6 about the EW format, its correctness or incorrectness for  
7 handling negotiations amongst parties. Of course, in the  
8 EW docket there aren't parties; there are participants.

9                   COMMISSIONER GAW: Right.

10                  MR. DOTTHEIM: There is regardless a  
11 Protective Order, but at the same time, at one point  
12 various of the Commissioners attended some of the  
13 meetings, and also the personal advisors of some of the  
14 Commissioners, and I think as we've moved into the phase  
15 where there are negotiations -- and other participants  
16 might not characterize what has occurred or is occurring  
17 as negotiations, but as we've moved into a more  
18 substantive nature of the discussions, the concern of the  
19 format of the EW docket where there are Commissioners,  
20 there are parties, there are participants, it's open, it's  
21 open to the public, those are concerns that have been  
22 raised, and from the Staff's perspective those are real  
23 concerns.

24                  COMMISSIONER GAW: And I understand what  
25 you're saying. My inquiry really goes to whether or not

1 the parties have -- I'm looking for Mr. Fischer, too, and  
2 just can't see him -- but whether there's been a  
3 discussion about the form of a contested docket and  
4 whether that is -- that's still up in the air or not. And  
5 I'm not really trying to get you to tell me if you're  
6 still in discussion about it, because I don't want to  
7 cause an argument here at this point. I'm not prepared to  
8 analyze that discussion yet.

9 Mr. Fischer?

10 MR. FISCHER: Certainly. We have had  
11 discussions about what is the appropriate format for  
12 providing the Commission, for example, a Stipulation &  
13 Agreement in the event that we reach one. And it's our  
14 thought at KCPL that we would be filing in a separate  
15 docket, which would be more like ones that you have had in  
16 the past where you've actually reviewed stipulations and  
17 agreements and approved them.

18 We thought it would be more appropriate to  
19 do in a new docket, perhaps an EO docket if that's the  
20 appropriate kind of format, and then you could -- you  
21 might have, for example, a stipulation that would be  
22 supported by testimony, and other parties could also file  
23 testimony in support or in opposition, I suppose, if they  
24 didn't agree with that.

25 COMMISSIONER GAW: Well, is it difficult

1 from the parties' standpoint to open that docket prior to  
2 a stipulation being entered into?

3 MR. FISCHER: From our perspective, because  
4 we don't know what the stipulation ultimately will say and  
5 what the plan will be that the parties are able to agree  
6 to, we do find it problematic to know what kind of docket  
7 like that to open earlier than filing the stipulation. In  
8 our previous earnings reduction cases, generally that has  
9 been opened whenever the stipulation was filed, and that's  
10 the model that we were thinking we should follow here.

11 COMMISSIONER GAW: I see. I see Mr. Conrad  
12 seems to -- he appeared to be shaking his head,  
13 disagreement. I'm -- I'll just wait 'til he gets a  
14 chance. But does Staff have a problem with moving to a  
15 contested docket before there's a stipulation, or have you  
16 thought about it yet?

17 MR. DOTTHEIM: We haven't come up with a  
18 definitive position on that. Offhand, though, from the  
19 Staff's perspective, I don't know that moving to a  
20 contested docket would inhibit the discussions or the  
21 proceedings. It to some extent might help formulate  
22 matters from the perspective that there would be parties  
23 as opposed to participants, but still --

24 COMMISSIONER GAW: Yes.

25 MR. DOTTHEIM: But still I don't know if

1 the Commission would put any time limit on an intervention  
2 period. I mean, ultimately, given the nature of  
3 Commission cases, if there is some resolution that  
4 requires Commission action at the end because there is a  
5 Stipulation & Agreement as far as rehearings or appeals,  
6 the fact that there are parties doesn't necessarily mean  
7 that whatever would result wouldn't be challenged by some  
8 other entity. So -- but as far as what has been the  
9 experience of the participants, our experience has been  
10 with contested dockets as opposed to a workshop docket.

11 COMMISSIONER GAW: Sure. And I'm again  
12 anticipating that in response to Mr. Conrad's motion I'll  
13 hear some of these things thought out a little bit more  
14 later.

15 If his motion were granted, then you'd  
16 have, I assume, two choices to proceed, either by the  
17 filing of a contested docket or continue negotiations  
18 until you have some stipulation and then file something.  
19 And I'm curious about if you don't -- haven't formulated a  
20 position, don't try to speculate, and I know you wouldn't,  
21 but if you have, you know kind of where you are with that,  
22 give us some idea about which direction you would be going  
23 in, either in response to his motion or now. I don't  
24 care.

25 MR. DOTTHEIM: Again, not -- not having

1 read Mr. Conrad's motion, I think it would be premature  
2 for me to attempt to respond in a substantive manner,  
3 other than what I have already indicated. I think  
4 Mr. Fischer has given some indication just a couple of  
5 minutes ago about how in rate reduction situations  
6 investigations by the Staff, how that has been effectuated  
7 by the Staff seeking the opening of a docket.

8 Over the years there have been different  
9 experiences with the involvement of other entities in that  
10 process, how early they come in or how late they arrive on  
11 the scene. The Staff does view this situation as being  
12 unique, quite different from other situations, because  
13 what we're reviewing is not necessarily or is definitely  
14 not limited to a rate reduction situation. And from  
15 Staff's perspective, that alone would probably call for a  
16 contested case docket.

17 Something I might comment on that probably  
18 was obvious, and maybe I need not, and that was with  
19 Mr. Fischer's presentation he did not give a date by which  
20 the company anticipates filing a Stipulation & Agreement  
21 or reaching some resolution. I think every other time  
22 that we've met on the record that the company has  
23 indicated a specific date by which it anticipated that  
24 there would be the filing of a Stipulation & Agreement  
25 with the Commission.



1                   The other parties -- excuse me --  
2 participants I don't believe have been as sanguine as the  
3 company has been in the past about reaching those dates.  
4 I don't know if the fact that we didn't hear a date this  
5 morning is, at least from the Staff's perspective, a  
6 greater proximity to realism of where we are and what is  
7 likely to occur in the immediate future.

8                   COMMISSIONER GAW: I didn't hear a date  
9 either, Mr. Dottheim, but I also continue to hear from the  
10 company that the clock is ticking on trying to get a plant  
11 built. So I didn't take that there was any lessening of  
12 desire of the company to resolve the issue.

13                  MR. DOTTHEIM: That is correct. And as  
14 Mr. Fischer indicated, January 24 and 25, next Monday and  
15 Tuesday have been set aside for convening the participants  
16 again in this instance to have a two-day session,  
17 something more intensive than previously, and see what we  
18 might be able to accomplish.

19                  But again, I don't think anyone should  
20 expect to see a filing on Wednesday of next week of any  
21 Stipulation & Agreement. I think, again, nothing is  
22 literally imminent regarding that, although the  
23 discussions are continuing. And even with all the other  
24 matters that are pending before the Commission keeping the  
25 participants occupied, there's been a true effort to

1 continue to meet and continue the discussions.

2 COMMISSIONER GAW: Okay. Mr. Fischer, did  
3 you want to respond to my question about whether or not  
4 the company had -- and if the motion were hypothetically  
5 to be granted from Mr. Conrad to terminate this particular  
6 proceeding that we're conducting, you would prefer to have  
7 an immediate opening of a contested case or to wait until  
8 there was something to bring in front of the Commission,  
9 if you have a position?

10 MR. FISCHER: Your Honor, I think we'd like  
11 to visit about that.

12 JUDGE MILLS: That's fine.

13 MR. FISCHER: I think we have a continuing,  
14 first of all, desire to make sure that all the  
15 confidential information continues to be protected no  
16 matter what the forum is. Yes, that would be a primary  
17 concern. Just judging by the wanting to get this process  
18 done as soon as possible but not having a specific date  
19 for a stipulation, I think just allowing the parties to  
20 continue to talk without now slowing it down to start up a  
21 new docket might be a more expeditious way.

22 Certainly we want to work with the  
23 Commission and your processes however it is most  
24 appropriate. We do believe that a separate docket will  
25 initially -- will eventually be needed to consider the

1 Stipulation & Agreement when it is produced. And I think  
2 that's -- that's probably the most important part.

3 COMMISSIONER GAW: If you would, when you  
4 respond to Mr. Conrad's motion, please give us your  
5 general ideas on that, on the parties. And I'm not  
6 bringing the other parties into this discussion because  
7 they haven't been up to the podium yet. I would like to  
8 hear some responses when you do get up to the podium if  
9 you would, please.

10 And that's all I have, Judge. Thank you.

11 JUDGE MILLS: Thank you.

12 Commissioner Appling?

13 COMMISSIONER APPLING: Judge Mills, no  
14 further questions.

15 JUDGE MILLS: Thank you. Okay. Let's go  
16 to Public Counsel next.

17 MR. COFFMAN: May it please the Commission?  
18 I'm John Coffman with the Office of the Public Counsel,  
19 P.O. Box 2230, Jefferson City, Missouri 65102. I'm happy  
20 to appear here. My comments will be brief, given that  
21 there isn't a lot of substantive information that's in the  
22 public record at this point.

23 But I would like to very clearly reinforce  
24 what Mr. Fischer said, and that is that significant  
25 progress is being made on the regulatory issues that we've

1    been discussing.  Although a written document has only  
2    just recently been given to us, distributed, I believe,  
3    amongst the other parties, and there have been new issues  
4    cropping up as we go, but there has been significant  
5    movement from earlier positions.  And I think that  
6    everyone has been very engaged.  I want to make sure  
7    that's very clear.

8                   I also agree with Mr. Fischer that  
9    regulatory plans, the extent that -- I guess I don't know  
10   if we've done these before, but probably are more  
11   efficiently addressed on a company-specific basis.  Each  
12   of our electric utilities which are regulated by the  
13   Commission are very different for a variety of reasons.  I  
14   have not -- I'm not necessarily joining in Mr. Conrad's  
15   motion.  I have now read it, the motion to terminate the  
16   proceeding, although there's some things in there that I  
17   think I do agree with Mr. Conrad.

18                   There is some procedural awkwardness.  I  
19   think that's the way I would describe it.  One procedural  
20   matter that might be of particular interest to the  
21   Commissioners is whether or not Commissioners should be  
22   viewing settlement offers or settlement documents at this  
23   point and what that might mean about Commission  
24   participation in the future, potential recusal issues and  
25   so forth.

1                   This is somewhat difficult and awkward in  
2     that there have not been -- is not an affirmative proposal  
3     for relief that we are settling, so the issues tend to  
4     move into broad areas and move around. And thus far or  
5     lately the meetings with the parties have been more on an  
6     individual or just a few parties at a time. So we don't  
7     have meetings where everyone is in the room, and I don't  
8     think that is -- I think that is probably better to  
9     reaching more consensus.

10                  And the other, I think the direct issue  
11     that, Commissioner Gaw, that you've raised about what type  
12     of proceeding we need and whether there should be a  
13     contested case before a settlement would be proposed is  
14     something that I've been thinking about all along, and I  
15     tried to be up front at every one of these public meetings  
16     and every time that I've met with Kansas City Power &  
17     Light Company, and that is -- and this is, I think, maybe  
18     particular just to my office, and that is the Office of  
19     the Public Counsel is tasked by statute to represent the  
20     public interest with a particular focus on those utility  
21     consumers that don't have other types of representation,  
22     and these are members of the public who because of the  
23     confidential nature of this proceeding don't necessarily  
24     know what is at stake or what is going on, what's being  
25     discussed in this matter.

1                   And whereas most attorneys have a pretty  
2   clear ability to communicate with their clients, the  
3   extent that these are considered my clients, I'm somewhat  
4   of a loss to be able to really gauge the public sentiment  
5   in this matter. There have been a lot of public issues  
6   and the general idea of the need for generation capacity  
7   and environmental concerns and efficiency, affordability,  
8   there have been -- there has been a lot of information  
9   released to the public, but that is still a concern for  
10  me.

11                   The concern is whether if we were to reach  
12  an agreement, whether it would be within my -- the  
13  fulfillment of my duties to sign an agreement before that  
14  was made public. Now, the -- I have indeed signed an  
15  agreement to reduce rates for Kansas City Power & Light in  
16  the past, and it has been done, but I think -- and I would  
17  never say never, but it would be my expectation that there  
18  would be affirmative relief requested in a public  
19  document, and that would really be up to KCPL to choose  
20  how to propose that.

21                   That would be filed first and there would  
22  be some -- some manner of due process and opportunity for  
23  public comment before at least I would be expected to make  
24  a final decision on some settlement or some other reaction  
25  to that.

1                   But I guess my decision in that matter  
2     would be based on the extent to which consumer rights were  
3     affected, to the extent that consumer rates and consumer  
4     rights would be impacted by that offer. So if we're  
5     talking about a rate reduction and we have a considerable  
6     amount of information, that hasn't been a problem in the  
7     past, but it might just depend on exactly where we're  
8     going with the discussion of some sort of regulatory plan  
9     would be a consensus settlement.

10                   I think that's all I have at this time.

11     Any questions?

12                   JUDGE MILLS: Questions from the Bench.

13     Commissioner Murray?

14                   COMMISSIONER MURRAY: None at this time.

15                   JUDGE MILLS: Commissioner Gaw?

16                   COMMISSIONER GAW: No, thanks.

17                   JUDGE MILLS: Commissioner Appling?

18                   COMMISSIONER APPLING: No questions at this  
19     time.

20                   JUDGE MILLS: Let me see if I can get you  
21     to clarify. I think in September you sounded much more  
22     leaning towards the idea that you would request public  
23     hearings at some point, and from what you just said, it  
24     sounded to me as though you were more on the fence. Is  
25     that -- has your position evolved on that?

1                   MR. COFFMAN: Well, at this point I'm not  
2   sure what a public hearing -- if I requested a public  
3   hearing now, what that would be about. And part of my  
4   hesitancy to, I guess, ask that you support Mr. Conrad's  
5   motion to terminate the proceeding is I'm not really sure  
6   what forum we would be moving into. It seems as if that  
7   would be KCPL's decision to choose what relief they would  
8   be requesting and then -- and in that situation very  
9   likely I would ask that public hearings be held on  
10  whatever that relief was.

11                   Right now we're just engaged in  
12  discussions, and to the extent really substantive matters  
13  are discussed, it's all confidential. Seems as if the  
14  public hearing process in this docket might not generate a  
15  lot of informed commentary.

16                   JUDGE MILLS: Okay. Thank you.

17                   COMMISSIONER MURRAY: Judge, I do have a  
18  question. Mr. Coffman, Mr. Dottheim indicated that a  
19  Stipulation & Agreement had been proposed and was  
20  circulating among the parties; is that correct?

21                   MR. COFFMAN: I know that I've received  
22  one, and I believe other parties have, but it came from  
23  KCP&L. And I guess there have been some other language  
24  exchanges based on that, but I'm not sure exactly which  
25  participants have a copy of that or what version of that



1 document each participant has.

2 COMMISSIONER MURRAY: Okay. And you said  
3 something about the awkwardness of the working docket  
4 proceeding in terms of how much is appropriate for the  
5 Commissioners to participate and to view proposed  
6 settlement dockets. I'm not aware -- I'm not personally  
7 aware of a proposed settlement docket. I've not seen it.  
8 I've not participated. Is there a concern that  
9 Commissioners have seen it, have been participating?

10 MR. COFFMAN: It was my expectation that  
11 Commissioners had not seen it, but I just -- I did not  
12 know. And no, I don't have a concern. I'm not aware of  
13 anything that would raise a concern about that.

14 COMMISSIONER MURRAY: Okay. Thank you.

15 JUDGE MILLS: Thank you. Thank you,  
16 Mr. Coffman.

17 Yes, Mr. Dottheim?

18 MR. DOTTHEIM: Some comments by  
19 Mr. Coffman, and again, I have not had an opportunity to  
20 read Mr. Conrad's filing of today. I'm not sure whether  
21 Mr. Coffman would be suggesting, but I would think this is  
22 where questions might arise. In rate reduction  
23 situations, the Commission has not provided, that I  
24 recall, customer notice or public notice. Usually the  
25 Stipulation & Agreement is filed with the Commission, or

1 if there is an excess revenues, excess earnings case filed  
2 by the Staff or by the Office of Public Counsel, there is  
3 not customer notice in the nature that is provided when a  
4 company files for rate increase, that is imprinting on  
5 bills or an insert in the mailing of bills for a certain  
6 month to provide notice of local public hearings.

7                   There is a question, and I won't go greater  
8 into detail, as to what is being discussed, whether that  
9 would be characterized as a rate increase in addition to  
10 possibly some form of a rate decrease, but over the  
11 regulatory plan, some may view that what is involved is a  
12 rate increase.

13                   And therefore, as a consequence the  
14 question might arise whether if the Commission were to  
15 follow its past practices, whether in addition possibly to  
16 local public hearings the Commission wants to consider  
17 something such as an imprinting on the bills or a bill  
18 insert, something of that nature in an attempt to get  
19 public reaction.

20                   That may also address what Mr. Coffman was  
21 describing. I'm not -- I'm not certain. Certainly he can  
22 answer that himself.

23                   MR. COFFMAN: Well, that is generally the  
24 type of issues I was discussing. There's a variety of  
25 things that could be in a regulatory plan. I don't know

1     that we can talk about them. But there may be a variety  
2     of things apart from a rate decrease or a rate increase  
3     that might be perceived to be affecting consumer rights or  
4     affecting future consumers' rights. And at least that  
5     would be something that would be addressed, but at this  
6     point we're not -- we don't have any agreement or any  
7     proposal before the Commission to debate exactly where  
8     the -- which way that would go.

9                     JUDGE MILLS: Thank you.

10                    COMMISSIONER MURRAY: Just a quick  
11     follow-up.

12                    Mr. Dottheim, I thought that it appeared  
13     that there was agreement -- pretty much agreement anyway  
14     that if we got to the point of the Commission approving a  
15     Stipulation & Agreement, that at least at that point there  
16     would be a docketed case and that there would be  
17     opportunity at that time to have public hearings or  
18     whatever would be required. Is that not correct?

19                    MR. DOTTHEIM: No. I think that's  
20     certainly probably what would be contemplated and  
21     certainly considered by -- by the Commission. Now,  
22     whether the Commission would want to go beyond that to  
23     provide notice to the ratepayers by again something as an  
24     imprinting on bills or --

25                    COMMISSIONER MURRAY: But that's all

1 possible in the later docket, is it not? I mean, why are  
2 we discussing that as an issue right now?

3 MR. DOTTHEIM: Because I thought it was  
4 relevant to the issues that Mr. Coffman was raising as far  
5 as public notice, and he hadn't at least addressed that in  
6 detail.

7 Also -- also, too, the experience of I  
8 think the Commission and the parties is with rate  
9 reductions. That is being discussed, and what is also  
10 being discussed is, some would characterize it as not  
11 necessarily being a rate reduction as being proposed by  
12 KCPL.

13 COMMISSIONER MURRAY: All right. I'm  
14 really not interested in those specifics. I'm just  
15 interested in the procedural matter of public notice and  
16 that kind of thing like that.

17 Mr. Coffman, isn't it possible that if a  
18 Stipulation & Agreement is presented and we have a  
19 docketed case addressing that, that all of those concerns  
20 will be addressed?

21 MR. COFFMAN: Yes, absolutely. And I think  
22 I might have confused matters in that I was not -- not  
23 just addressing that necessarily, but also addressing  
24 whether or not it would be appropriate for me as a public  
25 representative to be entering into a stipulation that

1 dramatically or significantly affected consumers before  
2 that was filed. So it's kind of a separate issue for me.

3 COMMISSIONER MURRAY: Thank you.

4 MR. DOTTHEIM: One last thing. There also,  
5 too, is case law. There's the, I think it's the State ex  
6 rel Jackson County case which indicates that ratepayers do  
7 not have a property interest in their current rates, which  
8 raises the question of whether even public notice is  
9 required. The Commission, at least in rate increase  
10 cases, does provide customer notice, regardless of what  
11 seems to be indicated by the State ex rel Jackson County  
12 case.

13 JUDGE MILLS: Mr. Fischer, did you have  
14 something to add?

15 MR. FISCHER: I'm just listening intently,  
16 your Honor.

17 JUDGE MILLS: Thank you. We'll move on to  
18 Mr. Cooper for Empire and Aquila.

19 MR. COOPER: Good morning. Dean Cooper  
20 appearing on behalf of the Empire District Electric  
21 Company and Aquila, Inc. this morning.

22 On September 29th, 2004 when this  
23 Commission held its last on-the-record presentation in  
24 this workshop, I voiced several questions that were on the  
25 minds of my clients. One, is Iatan 2 going to go forward?

1 That's their primary interest. If so, can Aquila and  
2 Empire participate, would they want to participate, and  
3 how would their investments be treated from a regulatory  
4 standpoint?

5                   Those are the things that are on their  
6 minds. At this point, the only one of those questions  
7 that's been answered, I believe, for Empire and Aquila is  
8 the third question. Empire and Aquila believe that  
9 participation in Iatan 2 as it's being discussed would be  
10 beneficial in that it appears that Iatan 2 would be a  
11 long-term cost effective option for the company's  
12 customers.

13                   The other questions I would say remain up  
14 in the air. This includes an important question, which is  
15 how Aquila and Empire's potential investment would be  
16 treated from a regulatory standpoint. In order to  
17 participate in Iatan 2 and to seriously negotiate any  
18 partnership agreements, Empire and Aquila need many of the  
19 same regulatory mechanisms that have been discussed in  
20 this workshop.

21                   Working towards this goal, Empire and  
22 Aquila have recently provided to Staff, OPC and KCPL  
23 proposed language to address Empire and Aquila's  
24 regulatory needs. Now, the timeliness of addressing those  
25 regulatory issues is extremely important. The companies

1 must be able to make a decision on a similar timeline with  
2 KCPL's process in order to have even the opportunity to  
3 participate in Iatan 2. Otherwise KCPL may have a reason  
4 to proceed with other parties or to build a smaller unit  
5 or maybe they have other options as well.

6                Empire and Aquila believe that they're in  
7 reasonable shape to move forward with discussion of  
8 regulatory issues at this time. For example, as you're  
9 aware, Empire has an ongoing rate case that has required  
10 Empire to answer extensive Data Requests concerning rates  
11 and planning and to undergo a complete and detailed audit.  
12 It is anticipated that the Commission will issue a  
13 decision by March of this year that will set Empire's  
14 rates on a going-forward basis.

15              Simultaneously Empire has participated in a  
16 detailed integrated resource planning process with the  
17 Commission Staff, the Office of the Public Counsel, and  
18 the Missouri Department of Natural Resources. As early as  
19 October of 2003, a capacity planning study was presented  
20 to the Staff, OPC and DNR which verified Empire's need for  
21 coal-fired generation. This is primarily related to the  
22 fact that Empire's purchased power contract with Western  
23 Resources for 162 megawatts of base load capacity from the  
24 Jeffrey Energy Center will expire on May 31st of 2010.

25              In addition, Empire presented information

1 in October of last year about 150 megawatts of wind  
2 generation which would be available for operation by the  
3 end of 2005. In December of last year, Empire announced  
4 that it had signed a 20-year contract to purchase energy  
5 generated at the 150 megawatt Elk River Wind Farm located  
6 in Butler County, Kansas.

7 In conjunction with its current rate case,  
8 ER-2004-0570, the stipulation has been signed and filed  
9 concerning Empire's participation in energy efficiency  
10 programs and a wind energy assessment study. If approved  
11 by the Commission, the energy efficiency programs will  
12 include a low-income weatherization program, change a  
13 light/change the world program, and appliance and HVAC  
14 rebate program and commercial energy efficiency audit  
15 program.

16 Aquila is similarly situated in that its  
17 rates -- it completed a rate case last year. Its rates  
18 were just effective in April 2004, and it also has been  
19 participating in a detailed IRP process with Staff and  
20 OPC.

21 Now, you may recall at the last  
22 on-the-record presentation, I also voiced several  
23 questions that were described as rhetorical for the  
24 Commission, but truly sought answers from the parties, and  
25 I guess some of these items have been discussed this



1 morning in prior comments.

2                   But these questions revolved around what  
3 mechanism should be used to address Empire and Aquila's  
4 regulatory needs related to a potential investment, should  
5 they be addressed as a part of this workshop, should the  
6 companies start their own workshops, should they be  
7 addressed in some other fashion. And frankly, on the  
8 heels of the last on-the-record presentation, Empire and  
9 Aquila received greatly divergent answers to these  
10 questions from significant players in this workshop.

11                   Now, as a result of that, on a  
12 going-forward basis my clients plan now to work the  
13 regulatory issues in two directions. First, as has been  
14 discussed, KCPL is suggesting ultimately opening another  
15 case at the close of this workshop proceeding that would  
16 substantively address the issues that have been raised in  
17 the workshop. Empire and Aquila would anticipate  
18 submitting testimony in any such case, supporting similar  
19 treatment among Missouri regulatory investor-owned  
20 utilities concerning key policy issues such as ROE,  
21 depreciation, amortization, fuel and purchased power  
22 recovery and other issues as they relate to major  
23 generation facility investment.

24                   To the extent that Empire and Aquila may be  
25 unable to address their regulatory issues in that case, it

1 will also be seeking to open their own cases in an attempt  
2 to move on a track that will allow them to be in a  
3 position to have the opportunity to negotiate, to  
4 participate in Iatan 2.

5                   And I would close again stressing that it's  
6 very important that ultimately those regulatory issues be  
7 finalized on a similar time frame so that, as I say, to  
8 the extent there is support for Empire and Aquila  
9 potentially being a part of this coal-fired process, that  
10 the timing will work out to provide them with the  
11 opportunity -- to provide the parties with the opportunity  
12 to potentially negotiate such participation.

13                   JUDGE MILLS: Thank you. Questions from  
14 the Bench. Commissioner Murray?

15                   COMMISSIONER MURRAY: I don't believe so,  
16 thank you.

17                   JUDGE MILLS: Commissioner Gaw?  
18 Commissioner Appling?

19                   COMMISSIONER APPLING: No questions.

20                   JUDGE MILLS: Thank you. We'll just kind  
21 of move across the way there and we'll go to Ms. Woods for  
22 DNR.

23                   MS. WOODS: Good morning, Commissioners,  
24 Judge. The Department is pleased in -- well, Shelley  
25 Woods, Assistant Attorney General, representing the

1 Missouri Department of Natural Resources, Post Office  
2 Box 899, Jefferson City, Missouri 65102.

3                   The Department is pleased in general with  
4 the discussions that have taken place thus far. We do  
5 continue to believe that the level of funding proposed for  
6 energy efficiency programs is not adequate, and we do have  
7 need of some additional information from KCP&L following  
8 the most recent exchange of information that took place.

9                   And that's pretty much where we feel that  
10 we are. I would agree with the other parties that there  
11 is no filing that is imminent, and that while unique, this  
12 has also been somewhat awkward probably because it is  
13 unique. If anyone has any questions for me . . .

14                   JUDGE MILLS: Questions from the Bench?

15                   COMMISSIONER GAW: None right now, thanks.

16                   JUDGE MILLS: Thank you. Mr. Conrad?

17                   MR. CONRAD: Good morning. May it please  
18 the Commission? Stu Conrad, Finnegan, Conrad & Peterson,  
19 Kansas City, Missouri, for Praxair.

20                   I told the Judge this morning that I have  
21 the rep of being the only bull that brings his own china  
22 shop with him. That seems to have been the case thus far.  
23 But Commissioner Gaw put his finger on the thrust of our  
24 point. And in your motion -- and, Judge, it's not my  
25 intention to argue that this morning but simply to use

1     that as a point of reference for a brief praecipe of that.

2                     Praxair thinks this process that we have  
3     thus far been through has been of value. It has exposed  
4     the thinking process of KCPL. It has brought forth a lot  
5     of data, some useful. It has followed in some respects  
6     the track of an investigatory docket, but that's kind of  
7     where it stops. And I was struck this morning listening  
8     to the parties ahead of me talking about the public nature  
9     of this process, the information gathering nature of this  
10    process, yet if it's a public process, why are the  
11    Commissioners not involved?

12                    When I look back to the record on the 10th  
13    of -- or rather the 13th of October before your Honor, a  
14    statement was made by one of the representatives for KCPL  
15    that they were then going to be starting discussions of  
16    settlement that afternoon. Well, it's been very difficult  
17    for yours truly, and perhaps I'm naive, but it's been very  
18    difficult to identify which is a settlement discussion,  
19    when does the settlement discussion start, when does it  
20    stop, when does the confidential discussion stop, when  
21    does the confidential discussion start?

22                    One of the problems I had frankly in  
23    putting this motion together was to try to tippy-toe  
24    around the temptation to be highly specific in what I  
25    think is wrong. Had I done that, probably I would be in



1 minute. Who signs it? Who are the parties? You  
2 mentioned at the beginning of this proceeding this morning  
3 that it's a public process. How many members of the  
4 public do we have to get to sign the stipulation before we  
5 have a critical mass that we can bring in to the  
6 Commission but, oh, by the way not in this docket, but in  
7 some other docket which would be created and a stipulation  
8 inserted into?

9                   Here's another question with respect to the  
10 stipulation: What happens to dissenters? Let's say  
11 somebody who is a participant doesn't choose to sign.  
12 What rights do they have? In the settlement of a  
13 contested case proceeding, the Commission has specific  
14 rules for dealing with dissenters. And ironically those  
15 rules were patterned after a case that was brought by one  
16 of the counsel now for Kansas City Power & Light, who at  
17 that time was serving as Public Counsel, and was very  
18 concerned at that time that the public had a role and that  
19 the position that the Public Counsel had not be overridden  
20 by a small group who simply put forward a nonunanimous  
21 stipulation as we now call them.

22                   There is no process in an EW docket to  
23 handle a stipulation at all. On June 20, Judge Mills --  
24 and I quoted this on page 4, Judge -- if we get to a point  
25 in this case in which there are disputed issues that need

1 to be resolved by the Commission, those will have to be  
2 brought up in a different case, and any decision by the  
3 Commission would be based on a record in that case  
4 completely independent of any discussions in this case.

5                   So this case by definition, a W case, can't  
6 result in a Commission Order. And your Honor went on,  
7 there are no ex parte rules, there are no parties, there  
8 are no contested issues. It's an information gathering,  
9 information exchange, rather than a dispute resolution or  
10 a contested issue resolution case.

11                   There has been almost universal  
12 participation in this process with representatives that  
13 have at some times even indicated as they were attending  
14 the meeting that they didn't even have authority to be  
15 there. Hello.

16                   No. 2, who is a participant? Is it the  
17 individual, or is it the entity that supposedly that  
18 individual represents? So who signs? Who authorizes that  
19 signature? The concerned citizens of Platte County have  
20 an attorney. Presumably that attorney would sign or not  
21 sign for them. I'm not going to go get the president of  
22 Praxair. So I mean we have defined representation, but  
23 I'm not sure that that's universally true where you have  
24 an open-ended process that is basically an open door and  
25 say, all of you have information, come thou and share it

1 with us.

2                   And I've mentioned the stipulation issue,  
3 so I won't go over that. But I will mention, because it  
4 has been brought up, the confidentiality issue. I don't  
5 see -- we haven't proposed here a, you know, some kind of  
6 a target proceeding that this would go into. That's  
7 somebody else's job. My job here is to simply say to you  
8 that I think having sat through all these meetings or most  
9 of them, that we've come to the end of the useful life of  
10 this docket, and it needs to move on.

11                   And that is simply evidenced by the fact  
12 that what we're talking about now isn't even appropriate  
13 to be discussed in an EW docket. An EW docket is supposed  
14 to be open to the public, so why do we have confidential  
15 stuff in it? An EW docket surely should be an  
16 investigatory docket that the Commissioners could  
17 participate in, but here we stand up and say, we don't  
18 want you to participate in the settlement discussions.

19                   So what is it we're settling if we have  
20 no disputed issues, if we have no contested issues?  
21 That's -- this is basically -- and I've been trying to say  
22 this for four or five months, that it is as though we've  
23 sat down and said, okay, let's discuss for four or five  
24 months how we're going to rob the bank, and at the end of  
25 the day then we'll sit down and talk about whether it's



1 legal. And that's kind of the problem that we've gotten  
2 into. This is a -- this is a train wreck.

3 KCPL, bless their heart, has been away from  
4 the Commission for something like 20 years on a rate  
5 increase case. It's probably been longer than that since  
6 they've had a class cost of service case.

7 I can understand that paradigm. A paradigm  
8 has great power. To borrow from an example with my friend  
9 Steve McCovey, if we still maintained in this country a  
10 paradigm that bloodletting was the way to heal, we would  
11 be having sick sigma conferences on how to do efficient  
12 bloodletting, how to let blood faster and cheaper and let  
13 more blood in a shorter period of time.

14 But we've changed the paradigm.  
15 Their paradigm is that they don't want to deal with the  
16 Commission in a regulated way. I can't -- I can't condemn  
17 them wanting to stay away. I don't like audits myself.  
18 But all good things come to an end. And by the way,  
19 although it's been discussed here, there's been enough --  
20 I think that's already been discussed that the  
21 Commissioners can add two and two and probably come close  
22 to four. If you're talking about building a coal-fired  
23 plant, you are -- let's just say, you are probably not  
24 talking about a rate decrease. Without going into the  
25 numbers, it's probably a pretty safe assumption that

1    somebody at some point in time is going to be expected or  
2    is going to expect to be compensated for that investment.

3                    But the basic problem here is seeking to  
4    convert a working group process into some kind of a  
5    process that results in some kind of a settlement instead  
6    of a report, and then that somehow is transformed into a  
7    stipulation which we don't know yet who would sign because  
8    we don't have parties, and you won't have parties until  
9    you start that case, and parties are given an opportunity  
10   to intervene and demonstrate their interest, and then and  
11   only then we have parties.

12                   So you can have all sorts of people sign  
13   this thing, but it has no efficacy. And I don't know why  
14   that is such a difficult -- but as I said, you know,  
15   paradigms have great power.

16                   I've pointed out also -- I think  
17   Mr. Dottheim made reference to this, that it kind of puts  
18   the Commission Staff in an ambiguous position. God bless  
19   them, we don't have the resources to audit a utility. We  
20   don't have the resources to go into the utility's books  
21   and records and do what needs to be done in order to  
22   verify that they've, in fact, spent the dollars that they  
23   claim to do, that the dollars that they have spent have  
24   been prudently expended and to formulate a basis for  
25   rates. As far as I know, the Commission Staff is the only

1     entity in this state that has those resources.

2                     So my client supports that effort, and I  
3     think historically Mr. Dottheim would confirm that we have  
4     been strong supporters of the Staff being able to do an  
5     aggressive and a thorough job of audit because we cannot,  
6     and we have to depend on their ability, their hopefully  
7     unfettered ability to do that.

8                     And I have some sympathy for Mr. Dottheim  
9     and his position in this proceeding, because as he said,  
10    he served as a facilitator and his staff people have  
11    served as facilitators, but at the same time they not  
12    being naive see on the horizon that they're going to be  
13    involved in this in some other way at some other point in  
14    time. And that to me creates a tension for them that's  
15    difficult. They've handled it well, but it needs to come  
16    to an end.

17                    Judge, as I said, I haven't tried to  
18    hypothesize some receptacle docket. Mr. Fischer mentions  
19    seemingly the only concern that they have is continued  
20    confidential treatment for the information that they  
21    consider to be confidential. To me that's not a problem.  
22    We handled that actually in the last full rate case for  
23    this utility, which happened to involve Wolf Creek nuclear  
24    generating station, because for those of you -- so those  
25    of you who have forgotten but were there, we got up to the

1 operation of law date on that one, Mr. Dottheim, before we  
2 got through the hearing process.

3 And the company agreed to extend that date,  
4 but then we actually did a rollover case and rolled one  
5 docket into another, along with all of the confidential  
6 information and all of the confidential agreements. So  
7 that's not a problem. That's a drafting issue. That's a  
8 five-minute phrase in the boilerplate order to cover that.

9 I just think that we have carried this  
10 one -- while it's been a useful process, we have carried  
11 it as far as it can go, and it's time now to realize that  
12 what the company is seeking to do is put the cart before  
13 the horse, to get an agreement before they have a case to  
14 agree on, to get agreement to disputed issues before they  
15 have disputed issues identified, to get agreement to  
16 heaven only know what, seems to now masquerade under the  
17 idea of a regulatory plan.

18 And it's simply time to move from this  
19 docket into a more structured contested case proceeding,  
20 so we can identify who the parties are and that there are  
21 protections for those who may or may not agree with the  
22 particular direction, and there are mechanisms in place  
23 from the Commission's rules to do that.

24 I would submit to your careful  
25 consideration at the appropriate time that motion and

1 leave it there, Judge. Thank you.

2 JUDGE MILLS: Thank you. Questions from  
3 the Bench. Commissioner Murray?

4 COMMISSIONER MURRAY: Thank you.  
5 Mr. Conrad, is there anything that would prohibit an  
6 investor-owned utility, a regulated utility and Staff from  
7 discussing in private resource planning issues and  
8 arriving at an agreement that they would present to the  
9 Commission for approval at which time any interested party  
10 could intervene? Is there something that would prohibit  
11 that, just hypothetically?

12 MR. CONRAD: No. That has been done as a  
13 matter of fact before in the resource planning dockets.  
14 My eye fixes on a seal behind you, the first word of which  
15 is public.

16 COMMISSIONER MURRAY: And my question to  
17 you, is there anything that would prevent parties, even  
18 though we're talking about regulated utilities, from  
19 entering into private agreements that they then submit to  
20 us for public scrutiny?

21 MR. CONRAD: Well, but not -- who are the  
22 parties and who are all the interests? Would you amplify  
23 your example to flesh that out?

24 COMMISSIONER MURRAY: My first example was  
25 just a regulated utility and Staff. You could have other

1 examples such as two regulated utilities. You could have  
2 Staff, a regulated utility and Office of Public Counsel as  
3 the parties to the Stipulation & Agreement, which they  
4 would then submit to this Commission for approval. At  
5 that time any -- that is an open docket, and any other  
6 entity that wishes to intervene then becomes a party to  
7 that docket.

8 MR. CONRAD: And then what process would  
9 your hypothetical contemplate with respect to that second  
10 docket?

11 COMMISSIONER MURRAY: A proceeding in which  
12 we would address every contested issue in full.

13 MR. CONRAD: Including those that have been  
14 purportedly settled by the parties?

15 COMMISSIONER MURRAY: If there were an  
16 intervenor that were objecting, I think -- I'm thinking  
17 out loud here, but I'm thinking that it probably would  
18 have to be vetted in the open docket.

19 MR. CONRAD: And then what weight would  
20 your hypothetical accord that stipulation that had been  
21 brought in to you?

22 COMMISSIONER MURRAY: I don't know. And  
23 I'm asking you for your --

24 MR. CONRAD: Well, my understanding of the  
25 Fischer case, which addressed a somewhat analogous

1 situation, although that didn't contemplate an outside  
2 settlement that then was brought in, but if the spirit of  
3 that case holds, then that would have to be treated as a  
4 joint recommendation and accorded no more weight than any  
5 other proposal of any other party.

6                   So you would still then have a contested  
7 case. You would still then have the potential for a  
8 hearing, whatever processes went forward with that, and in  
9 effect you would have -- you would transform that limited  
10 stipulation of a limited number of parties as you've  
11 hypothesized into a joint recommendation of two or three  
12 potentially, a handful more, whatever you want to  
13 hypothesize, but presumptively not all of the parties in  
14 that case, so they would then have protections that the  
15 Commission's due process rules and that the due process  
16 rules of the State afford.

17                   COMMISSIONER MURRAY: So it would be like a  
18 nonunanimous stipulation and agreement in a contested  
19 matter?

20                   MR. CONRAD: Well, yeah, but I think -- it  
21 seems like it would start -- in your hypothetical at least  
22 you'd start at an earlier point in that process. In other  
23 words, you'd have to have some kind of a procedural  
24 schedule because you have to have an opportunity for those  
25 parties to build upon whatever was there.

1                   And I guess at the bottom line of that, the  
2   bottom of that process in Article 5, Section 18 of the  
3   Constitution that says that you have to have competent  
4   substantial evidence to support whatever order comes out  
5   of a contested case. And the court, I guess if they got  
6   to it, would have to evaluate whether that process had  
7   produced competent evidence.

8                   COMMISSIONER MURRAY: Okay. But just back  
9   to my original question, there's nothing illegal or  
10  improper about parties negotiating in private, is there?

11                  MR. CONRAD: If you cut your hypothetical  
12  back to that, absolutely not. In fact, Mr. Coffman and I  
13  have sat down several times, particularly in the context  
14  of the Empire case. Although we brought to you a joint  
15  recommendation, people seemed to be puzzled by it, and we  
16  sat down and talked that through ourselves. Ultimately we  
17  brought that to the Commission.

18                  COMMISSIONER MURRAY: Okay. I think that's  
19  all I have. Thank you.

20                  JUDGE MILLS: Commissioner Gaw?

21                  COMMISSIONER GAW: No.

22                  JUDGE MILLS: Commissioner Appling?

23                  COMMISSIONER APPLING: Mr. Conrad, good  
24  morning.

25                  MR. CONRAD: Good morning.



1                   COMMISSIONER APPLING: You know I'm a  
2 country boy. You know that, don't you? And my father  
3 used to --

4                   MR. CONRAD: I grew up close to a farm, not  
5 on it.

6                   COMMISSIONER APPLING: My father used to  
7 tell me all the time, if you don't know where you're  
8 going, any road will take you there. So in a short sound  
9 bite, a real short one now, I know you can get lengthy at  
10 times, but a short sound bite. Where do we go from here  
11 without throwing out all the hard work that has taken  
12 place so far in this case?

13                  MR. CONRAD: Well, I think the first thing  
14 you do is you get a recommendation from KCPL what it is  
15 they want to do. I think you need to tell them that  
16 this -- this would be my answer to your question. You  
17 need to tell them that this process has -- we've wrung all  
18 the juice out of this stone, and you now need to move  
19 something on. We can handle your confidentiality  
20 problems. We can handle all this rollover, but we need to  
21 get to a case where we have defined parties and defined  
22 interests for those parties. And we know who the --  
23 basically who the service is. That's a problem for this,  
24 who do I send it to?

25                  COMMISSIONER APPLING: How early on did you

1 register these concerns in the meetings that were had?

2 MR. CONRAD: I've raised them I think  
3 almost in -- in some form or another almost every meeting  
4 in this workshop process that we've had. I raised it at  
5 the very beginning of the process, and I believe Mr.  
6 Coffman raised it in the initial prehearing conference,  
7 which I was not able to attend. My law partner did.

8 So we have not -- you know, I've flown the  
9 flags and told them all along that I felt like this was --  
10 while it could be a useful process, it was not going to  
11 end in my view where they felt it was ending. There was a  
12 divergence in viewpoint.

13 I'm still happy and still amenable to  
14 having a report come out of this, some kind of a white  
15 paper that says, here are the issues, here's what A says,  
16 here's what B says, here's the minority view, but that  
17 doesn't seem to be our target.

18 COMMISSIONER APPLING: Thank you, sir.

19 JUDGE MILLS: Thank you. Thank you,  
20 Mr. Conrad.

21 Ms. Vuylsteke?

22 MS. VUYLSTEKE: May it please the  
23 Commission? Diana Vuylsteke for the Missouri Industrial  
24 Energy Consumers, law firm of Bryan Cave, 211 North  
25 Broadway, Suite 3600, St. Louis, Missouri 63102.

1                   I'd like to say in the first instance that  
2 we support Mr. Conrad's motion strongly, and I will just  
3 give our perspective on why we think that this docket  
4 should be terminated as well. I think that one of the  
5 important things that the Commission does is to make sure  
6 that when it makes a decision, whether it's a decision  
7 approving a Stipulation & Agreement or whether it's in a  
8 case where all the issues are completely contested, that  
9 the Commission is making sure that it is basing its  
10 decision on evidence, competent and substantial evidence  
11 from the whole record.

12                   Commissioner Murray talked about the  
13 parties' rights to agree privately and that -- actually,  
14 that probably is something that should be encouraged. We  
15 want various stakeholders to communicate with each other  
16 regarding direction and concepts.

17                   I think, though, something that's different  
18 about this case than just parties getting together and  
19 talking is that we have a docket that is established, and  
20 it is a workshop docket, but there's kind of a stamp of  
21 approval or imprimatur of the Commission's involvement in  
22 this matter.

23                   And the reason that's significant is  
24 because of how that could be used in the future. I  
25 certainly wouldn't want to be in a regime where a utility

1   wants something that could increase rates, maybe it's  
2   directly a rate increase, maybe it's a concept for a  
3   surcharge, maybe it is simply an expensive new generation  
4   that will need to be funded, and it could be Ameren, for  
5   example, and instead of going through a typical rate case  
6   which exposes them to examination and risk, they simply  
7   convene a workshop to talk about rates, then they develop  
8   a stipulation which some parties may agree to and some  
9   have not, that there hasn't been any evidentiary  
10   development or informational development in a disciplined  
11   way, and they throw a Stipulation & Agreement before the  
12   Commission and say, some parties have agreed to this.  
13   It's based on months and months of a workshop development.  
14   Approve it or don't approve it.

15                   Of course you're going to open a public  
16   docket to approve a Stipulation & Agreement. And yes,  
17   there's some protection, there may be some public notice  
18   associated with that, but it's not going to be the  
19   protections of a full case, all the protections that have  
20   been developed over, you know, decades, that protect  
21   parties, that help the Commission do its job, that set a  
22   procedure with a time frame with notice and opportunity to  
23   be heard.

24                   And one of the reasons the Commission is so  
25   willing, I think, to approve Stipulations & Agreements is

1 because they are based on that process. We know there's a  
2 rigorous process with much participation by all the  
3 parties before you get to the point of a stipulation.

4                   This new creative idea that KCPL has  
5 developed kind of -- I hate to use the pejorative word --  
6 it bypasses, it circumvents all of those processes, and so  
7 it's a new concept. It's almost a policy decision for the  
8 Commission. Is this the way that you want to decide very  
9 important, perhaps monumental issues for ratepayers and  
10 for companies based on a workshop and then a stipulation  
11 and then a perhaps perfunctory case?

12                   I would envision that KCPL did not start  
13 this workshop expecting much discussion and then an  
14 11-month case or a 12-month case or whatever it might  
15 be afterward. I think that the idea is that the  
16 Stipulation & Agreement proceeding that's envisioned would  
17 be relatively short and brief and wouldn't provide that  
18 full examination that the Commission has done in the past  
19 when it comes to issues of rate increases, et cetera.

20                   So these are the reasons that we think it's  
21 important that the workshop docket -- sure, it's been  
22 useful, but all these things could have been done in a  
23 regular contested case that KCPL could have proposed, and  
24 that that actually would have been, we think, now that the  
25 issues have developed, maybe a preferable procedure.

1   There's certainly plenty of time to do that now. We don't  
2   have an imminent stipulation, so that we don't see any  
3   downside at all to opening a formal contested case at this  
4   point. So I'd be happy to take any questions that you  
5   have.

6                   JUDGE MILLS: Thank you. Commissioner  
7   Murray?

8                   COMMISSIONER MURRAY: Ms. Vuylsteke, I  
9   believe that we have had some roundtables in which  
10  everybody has been invited to participate, and that  
11  there -- out of those -- and I may be remembering  
12  incorrectly where this idea came from, but it seemed  
13  to me that there was a lot of expression that prior to  
14  something -- matters becoming contested, it is to  
15  everyone's benefit if there can be more open communication  
16  prior to us just addressing things in a contested case  
17  fashion, which puts severe limitations particularly on the  
18  Commission itself.

19                   In general, do you think that -- do you  
20  agree with that concept or not?

21                   MS. VUYLSTEKE: I agree strongly with that  
22  concept, and I suspect the Commission has found it useful.  
23  I think in this case, though, we're dealing with something  
24  different than the types of issues that the Commission has  
25  explored in roundtables. The roundtables have been

1 generic, has been my experience -- and please correct me  
2 if I'm wrong, because I probably haven't participated in  
3 every roundtable. But they have been generic issues of  
4 the type that the Commission would not be called upon in a  
5 rate case or a contested case to decide specific to a  
6 company.

7                   And I think that's important because  
8 someone raised earlier the issue of problems with the  
9 Commission's involvement, for example. I think in any  
10 roundtable one of the purposes is to involve the  
11 Commissioners or their representatives to become educated  
12 so we can all become educated on issues.

13                   But in this case, let's say you have  
14 Commissioners going to workshops that are in actuality  
15 settlement negotiations on issues that can come before you  
16 on a contested case, and you've already heard from parties  
17 in a non-evidentiary setting regarding substantive issues  
18 that you later hear evidence on.

19                   I think that's an example or a test that  
20 demonstrates how this case is different from the open  
21 discussions in your roundtable. Because you have -- a  
22 Commissioner there can end up causing an ex parte or due  
23 process problem later on.

24                   COMMISSIONER MURRAY: Well, do you -- are  
25 you of the opinion that this particular workshop has been

1 a benefit at least to a point?

2 MS. VUYLSTEKE: I think it has been a  
3 benefit in the sense that information has been shared and  
4 there's been discussion. I think that the problem is that  
5 it could easily -- all these benefits could have better  
6 taken place in a contested case. In other words, the  
7 format wasn't the benefit. The workshop process procedure  
8 wasn't the benefit. The discussion was the benefit, and  
9 the danger -- you could have all these things go on in a  
10 contested case without the risk and dangers that you run  
11 into in a workshop, if that answers your question.

12 COMMISSIONER MURRAY: So your preference  
13 would have been a contested case from the beginning?

14 MS. VUYLSTEKE: That is correct. Although  
15 when this case started, we didn't know how the issues were  
16 going to develop. We didn't know exactly what KCPL's  
17 proposals were going to be, except in the most general  
18 way, and so at that point we didn't say, we think this  
19 should be terminated or ended. Of course, we all want to  
20 work together. We all appreciated KCPL wanting to come  
21 forward and talk to everyone, and so we certainly weren't  
22 going to be the ones to make a stink and cause a problem.

23 But you know, I think it took a while for  
24 these issues to develop to the point where these kind of  
25 issues should not be decided in a workshop. In fact, we



1 don't even think a stipulation should be developed in this  
2 kind of a setting. It should be developed in a rate case  
3 or a contested case setting.

4 COMMISSIONER MURRAY: Okay. Thank you.

5 JUDGE MILLS: Commissioner Gaw?

6 COMMISSIONER GAW: Ms. Vuylsteke, and I  
7 know your position here is a little bit different from  
8 Mr. Conrad's in regard to the impact on your client  
9 specifically by this case. At least that would be my  
10 understanding.

11 MS. VUYLSTEKE: Are you talking about  
12 whether my clients are customers of KCPL?

13 COMMISSIONER GAW: Yes.

14 MR. VUYLSTEKE: Ford is one of the largest  
15 customers.

16 COMMISSIONER GAW: So you are representing  
17 a customer in a similar situation then?

18 MS. VUYLSTEKE: Absolutely.

19 COMMISSIONER GAW: That stands corrected.  
20 I apologize. Let me ask you this: Are you in a position  
21 where in order to further advance any discussions or  
22 negotiations it would be important for you to in a  
23 contested case to request certain discovery that you have  
24 not been able to access or do you have -- have you thought  
25 about that?

1 MS. VUYLSTEKE: I am not aware of any  
2 information that we have not been able to obtain because  
3 this is a workshop. However, I would have no remedy -- I  
4 don't think that I would have an adequate remedy if I did  
5 not receive certain information. There's no duty on KCPL  
6 to provide information to me, and if I feel like  
7 information isn't adequate, I don't know what I would do  
8 about it, although I'm not complaining that KCPL hasn't  
9 been forthcoming, because I think they really have.

10 COMMISSIONER GAW: Would you be able to  
11 assess or have a remedy in the event that information was  
12 later discovered by you to have not been disclosed in  
13 your -- in information that you would have perhaps relied  
14 upon in assessing whether or not to sign a stipulation?

15 MS. VUYLSTEKE: I would say no. I think  
16 that's a major concern and one of the reasons why I don't  
17 think the Commission should take any comfort or reliance  
18 on this workshop process if a stipulation is presented to  
19 you. I don't think the Commission should say, well, this  
20 stipulation came out of months of workshops and,  
21 therefore, we should seriously consider approving it or  
22 there surely is enough evidence to base this on.

23 I don't think that the Commission should  
24 use this workshop or any of the information that developed  
25 out of it as a basis to approve the stipulation for that

1 point and that being a primary reason that you just  
2 described.

3 COMMISSIONER GAW: That's all I have,  
4 Judge. Thanks.

5 JUDGE MILLS: Thank you, Commissioner. And  
6 Ms. Vuylsteke, let me ask you a question that sort of  
7 springs to mind from that last exchange. Would you on  
8 behalf of your clients be signing a stipulation if one was  
9 forthcoming from this case?

10 MS. VUYLSTEKE: I would expect probably  
11 not, although I can't say, not having seen a final  
12 stipulation. I mean, I hate to be a naysayer before we  
13 have anything definite, but I suspect that we would not be  
14 signatories of a stipulation.

15 And I think the problem is again going back  
16 to due process in a contested case. You're going to have  
17 some people that are going to be excluded and what happens  
18 to them, and yeah, you can say, well, we're going to open  
19 a docket and then you get your chance for hearing. But  
20 then you've got a stipulation -- it's almost like shifting  
21 the burden of proof. It's like, well, we've got a  
22 stipulation that everyone's agreed to based on these  
23 months of negotiations, and I'm afraid that parties that  
24 object will end up really behind the eight ball, in a way  
25 that they wouldn't be in a typical nonunanimous

1 stipulation in a contested case.

2 JUDGE MILLS: Okay. Because I have a  
3 conceptual problem with your argument if you were planning  
4 on signing a stipulation and then urge us that your  
5 interests weren't adequately represented but yet you  
6 signed it anyway.

7 MS. VUYLSTEKE: No. No. I wouldn't  
8 anticipate that. But then again, I mean, I'm a little bit  
9 in a corner because we don't -- nobody wants to say, I  
10 would never sign this or, you know, before we've even  
11 gotten to that point, but I suspect we would not.

12 JUDGE MILLS: Okay. Thank you.  
13 Ms. Langeneckert?

14 MS. LANGENECKERT: May it please the  
15 Commission? My name is Lisa Langeneckert. I'm  
16 representing Missouri Energy Group. I am with the Stolar  
17 Partnership. Our address is 911 Washington Avenue,  
18 St. Louis, Missouri 63101.

19 I also support Mr. Conrad's motion. There  
20 is not much I think that I can add beyond what he and  
21 Ms. Vuylsteke already have added. I will note that we as  
22 the Missouri Energy Group came into this process later  
23 than most parties. We were informed that it was important  
24 for us to be involved because it may be difficult for us  
25 to participate if the horse was out of the barn, so to

1 speak, later on.

2                   From the time I participated, Mr. Conrad  
3 had indicated that he wanted this to be a contested case.  
4 And if there was no rush on KCPL's part, I could see where  
5 the workshop process would be advantageous and then we  
6 would go into the contested case when it came to the  
7 stipulation, but I think it's actually prolonged the  
8 process instead of shortening it. It has provided a lot  
9 of useful information for everyone, but I think in the  
10 long run it may end up taking more time if there are  
11 parties who come up later saying that they weren't  
12 participants and they are interested in now contesting the  
13 stipulation.

14                   JUDGE MILLS: Thank you. Questions from  
15 the Bench. Commissioner Murray?

16                   COMMISSIONER MURRAY: No, thank you.

17                   JUDGE MILLS: Commissioner Gaw?

18                   COMMISSIONER GAW: None, thank you.

19                   JUDGE MILLS: Is there anyone here  
20 representing either the Concerned Citizens of Platte  
21 County or the Sierra Club?

22                   MS. CLINE: Our attorney hasn't arrived on  
23 the train yet. I'm the chapter director for the Sierra  
24 Club.

25                   JUDGE MILLS: Is that Ms. Steward? She was

1 planning to attend and hasn't made it yet; is that  
2 correct?

3 MS. CLINE: Katie Henry.

4 JUDGE MILLS: Okay. Thank you. Is there  
5 anyone else that's represented that hasn't had a chance to  
6 speak who would like to?

7 Mr. Comley?

8 MR. COMLEY: May it please the Commission?  
9 My name is Mark Comley. I'm the attorney for the City of  
10 Kansas City, and since this is the rare opportunity I get  
11 to advertise, my address is 601 Monroe, Suite 301,  
12 Jefferson City, Missouri.

13 I have nothing to add about the comments of  
14 Mr. Fischer and Mr. Dottheim and Mr. Coffman. I think  
15 they've covered the procedures as I understand it, and  
16 representatives of the City that attended the meetings  
17 would so attest. But I want to make it clear that my  
18 understanding is there has been no bank robbery proposed  
19 in these proceedings, and none of the people that were  
20 representing the City at the time of these workshops  
21 reported to me there were any masquerades about what they  
22 were seeing.

23 I would say yes, that there has been  
24 somewhat of a paradigm shift. I think what KCP&L perhaps  
25 has shown is that procedures of the Commission are not as

1 inflexible so the parties can convene and address some  
2 very critical issues and try to reach some consensus  
3 before filing a contested case.

4 I wanted to tell you that all along in this  
5 process I envisioned that Kansas City Power & Light would  
6 ultimately file what would be considered to me at least a  
7 traditional type of case in which the participation by the  
8 public would be on the basis and on the scope that is  
9 normally associated with cases of this type.  
10 Mr. Coffman's constituency would be available for local  
11 hearings, et cetera. There would be some way for the  
12 Commission to have oversight just as it does in any  
13 contested case.

14 I don't feel like I'm really in this fight  
15 except I wanted to let the Commission know that, as far as  
16 municipal governments go, I think the City did appreciate  
17 the fact that the company saw fit to create some sort of  
18 proceeding which the Commission did with limited oversight  
19 in which a great deal of information was exchanged on some  
20 very important issues involving time, investment, and the  
21 future supply of energy in the area where the City has its  
22 own set of citizens to take care of.

23 And there has been a focus on what this  
24 proceeding could not do, but from what I've heard being  
25 said here, I think that there's been considerable proof

1     that something has been done and something is still  
2     ongoing, and to derail the process at this point, well,  
3     that may not be a worthy result.

4                     Another thing, I have no concern that the  
5     attorneys will abandon their clients' interests and  
6     precipitously sign a stipulation they do not agree to. I  
7     have no doubt that the Commission will bend to its duties  
8     and examine the stipulation in any contested proceeding  
9     with every degree of scrutiny that you have in the past  
10    and will comply with the processes that have been a part  
11    of this Commission's operations, well, for as long as I've  
12    been here, which is longer than 25 years.

13                    I think that we've witnessed a proving  
14    ground in which a great deal of very important and  
15    significant issues were raised, discussed, and are still  
16    being discussed, so that at some point you'll have a  
17    document perhaps in front of you in another docket that  
18    you can approve, reject, or send the parties back to do  
19    something more with. So at any rate, thank you.

20                    JUDGE MILLS: Thank you. Questions from  
21    the Bench. Commissioner Murray?

22                    Commissioner Gaw?

23                    COMMISSIONER APPLING: I think he's made  
24    his determination.

25                    JUDGE MILLS: Maybe he just had no answers.



1                   MR. COMLEY: We're in Jefferson City, and I  
2     can make some up. I didn't mean to go away from the  
3     podium too quickly. I'm sorry.

4                   JUDGE MILLS: I think you're fine. I don't  
5     think there are any questions for you. Thank you.

6                   Could I have the woman from the Sierra Club  
7     step forward to the microphone and identify herself,  
8     please. I don't think we caught that.

9                   MS. CLINE: My name is Carla Cline. I'm  
10    the chapter director for Missouri Sierra Club, and our  
11    address is 1007 North College, Columbia, Missouri.

12                  JUDGE MILLS: Thank you very much. Is  
13    there anything further?

14                  Mr. Fischer?

15                  MR. FISCHER: If it would be appropriate,  
16    your Honor, I just have a few comments. I wish I could  
17    take credit for the creative idea of having a workshop,  
18    because I think as all the parties have indicated, we have  
19    exchanged a lot of good information on a lot of very  
20    complex issues, and it has truly, truly been a  
21    collaborative process. I have seen my client's positions  
22    on issues move dramatically in response to the comments by  
23    Staff and Public Counsel, the Department of Natural  
24    Resources, and even Praxair, who apparently now wants to  
25    terminate the docket. It has truly been a collaborative

1 process and it has been a very good one.

2                   And we -- I have been through a lot of  
3 adversarial proceedings in my time around the Commission.  
4 I've been through a lot of cases where you file your case,  
5 you file your direct testimony and it turns out to be  
6 hundreds and hundreds of pages, you file your rebuttal  
7 testimony after an audit, you do your surrebuttal and you  
8 file your Briefs and you do your Reply Briefs and you do  
9 your oral arguments, and then you wait for the Commission  
10 to issue an Order.

11                   And then I've been on the side where you  
12 have to figure out where's the middle ground here, what do  
13 the parties really want, what's really in the public  
14 interest and how do you sort through all these adversarial  
15 proceedings, the ones that the lawyers love because they  
16 do get to participate a lot and cross-examine a lot of  
17 people. And then when you come down to trying to decide  
18 what is in the public interest, you try to find the middle  
19 ground, and sometimes that adversarial proceeding just  
20 doesn't produce what it takes. It's just not good to go.

21                   I wish I could take credit for the fact  
22 that this was a creative idea of KCPL, but, in fact, when  
23 KCPL filed its application in this case, we asked for an  
24 investigatory docket. We did want to use workshop  
25 proceedings or processes because we saw them work in other



1 reach a stipulation and agreement in this docket we would  
2 file, all the parties that could support it would sign it,  
3 I'm hoping. We've been hopeful from the beginning it  
4 would be a Unanimous Stipulation & Agreement, but to the  
5 extent it's not, I'm certainly familiar with one of the  
6 cases that the counsel mentioned. We would file testimony  
7 to support our Stipulation & Agreement and if someone  
8 wanted to take issue with that, they could file testimony  
9 in opposition and there would be a contested case which  
10 the Commission would then consider, based upon the  
11 evidence to support it, what is in the public interest and  
12 would render its decision based upon that evidence.

13 We're not trying to change that process.  
14 We're trying to shift paradigms. That word was used.  
15 Maybe that's what we've done. Maybe we did unknowingly  
16 because we were trying to work with the Commission's  
17 workshop process, but we feel that that's been a very good  
18 process.

19 I reiterate my concern that we don't want  
20 to lose our confidential treatment of all the information.  
21 I think that we can continue our negotiations, assuming  
22 the parties are willing to go forward to do so, and we can  
23 reach a stipulation which we would present to the  
24 Commission and support with -- support with testimony and  
25 you can ask whatever questions, and other parties, if they

1 have a concern, can take a different position.

2                   And I think in the end this process that we  
3 have used is going to prove to be a lot more efficient  
4 than all these adversarial cases like the Wolf Creek case  
5 that was presented. I remember Mr. Dottheim after that  
6 case, he filed a thousand-page brief in that case. Now,  
7 given the complexity of the issues in this case, had we  
8 tried to do everything by an adversarial process, I don't  
9 have any doubt that some of us could have written a  
10 thousand pages about some of the issues. But when you're  
11 sitting on that side of the Bench, I think it's a lot  
12 harder to wade through kind of a process if we're talking  
13 about the lawyers being in an adversarial process.

14                   And I guess I would just reiterate, it's  
15 been a process that's worked so far. Obviously we're not  
16 to a conclusion. We would like to continue the process  
17 and see if we can't present to you a Stipulation &  
18 Agreement that you would find to be in the public  
19 interest.

20                   Just regarding a couple comments from  
21 Empire and Aquila, we would agree that regulatory plans  
22 need to be developed. What we don't want to have happen  
23 is have the regulatory plan of KCPL slowed down by the  
24 need to deal with regulatory plans of other companies that  
25 might want to participate.

1                   You-all are more familiar with the rate  
2 cases that Mr. Cooper mentioned. I'm not. We never  
3 participated in those, and we didn't participate in any of  
4 the IRP processes. I suspect there are many differences  
5 between the utilities in our state as there always has  
6 been.

7                   We would certainly be very interested in  
8 having the workshop process developed in a separate  
9 workshop proceeding and develop regulatory plans for our  
10 potential partners, because we want to have potential  
11 partners and we want to have them have the regulatory  
12 support that they need.

13                  What KCPL does not want to have happen is  
14 that after all this work of nine months, and if we're  
15 getting to a point where we can actually present a  
16 stipulation, that that process would need to be slowed  
17 down for us. But we certainly hope the Commission will  
18 put as much resources as you can feel comfortable and need  
19 to do into developing a plan that would support all of our  
20 investor-owned utilities that want to participate in this  
21 project.

22                  With that, I probably missed some things.  
23 I didn't feel like -- I was going to take exception to a  
24 couple of analogies, bank robberies, bloodletting, but I  
25 wasn't here to argue the motion. We can provide you

1 written response to the -- written response to the motions  
2 that were provided by Praxair. I do understand now they  
3 want to terminate this proceeding. I hope they don't want  
4 to terminate the effort to keep safe and adequate service.  
5 I can't believe that that would be the case.

6 So thank you very much. I appreciate it,  
7 and I'm certainly willing to answer questions. I've got  
8 Chris Giles here, Tim Rush, Bill Riggins. We're all able  
9 to answer your questions if you have any.

10 JUDGE MILLS: Thank you. The motion that  
11 we've all been sort of talking about and talking around  
12 was filed today, the 18th. Our rules provide normally  
13 that responses would be due in ten days, which would be  
14 the 28th. I don't see that -- given the current posture  
15 of this proceeding that there's any reason to require you  
16 to expedite your responses, so I'll look for responses  
17 from all the parties no later than the 28th to that  
18 motion.

19 Is there anything further we need to take  
20 up on the record this morning?

21 Commissioner Murray?

22 COMMISSIONER MURRAY: Mr. Fischer, if there  
23 were to come out of this workshop a Stipulation &  
24 Agreement that included other regulated entities and  
25 required some regulatory treatment for recovery for those

1 entities as well, are you contemplating that it would be  
2 possible to address the regulatory treatment of more than  
3 one entity at a time?

4 MR. FISCHER: That frankly is one of our  
5 major concerns, that it would be difficult to do that  
6 given the varying circumstances, the financial  
7 circumstances that exist among the companies. I --  
8 theoretically it's possible, I suppose, but just from a  
9 practical standpoint, we believe that separate tracks  
10 would be better, and the Commission Staff and Public  
11 Counsel -- and frankly we don't have -- we don't have some  
12 of the customer representatives from all the companies  
13 here either. We may have some that are parallel.

14 But that's one of our concerns, and I think  
15 theoretically you could do it, but I think from a  
16 practical standpoint it's just not a good idea. We would  
17 prefer to have separate tracks and, you know, use the  
18 discussions that we've had in this case as a vehicle to  
19 build on and get that done on a very expeditious manner,  
20 whatever we need to do to get these partners into the ca--  
21 into the project. And if -- you know, from a regulatory  
22 standpoint obviously there's going to be other issues out  
23 there from -- that aren't necessarily regulatory that we  
24 need to work through as well, and there may be other  
25 people out there that have an interest in a coal plant.



1 COMMISSIONER MURRAY: I'm just trying to  
2 think through this. If the agreement were to be  
3 conditioned upon, you know, various parties conditioning  
4 their joining in the agreement upon certain regulatory  
5 treatment, and then the Stipulation & Agreement were filed  
6 jointly by all of the parties that were a party to it, and  
7 then the Commission had the hearing and allowed  
8 intervenors, are you saying that we would only address the  
9 regulatory treatment for KCPL at that time?

10 MR. FISCHER: That's our preference. We  
11 don't think a cookie cutter approach on regulatory plan  
12 will work. We're investment grade rated right now and we  
13 hope to stay that way. I'm not sure that everyone in the  
14 state is in the same circumstances. And certainly we  
15 haven't had a recent rate case. Other parties have.

16 I think there's just a lot of differences  
17 that are out there that would keep us on a -- recommending  
18 that we have a separate track for similar regulatory plans  
19 for other participants, and frankly, at this point we  
20 don't know who might ultimately end up being a partner in  
21 that project.

22 COMMISSIONER MURRAY: Okay. Thank you.

23 JUDGE MILLS: Yes, Commissioner Gaw?

24 COMMISSIONER GAW: Thank you, Judge.

25 Mr. Fischer, I think that in the past in

1    regard to this case, I have used the term road map in  
2    asking for the parties to give us guidance about how to  
3    get to conclusions, and I'm going to use that phrase  
4    again. I'm looking for a way to deal with the issues in  
5    your responses to Mr. Conrad's motion that he has raised,  
6    in particular the concerns that result from the parties  
7    having negotiations on a -- on a settlement of a case that  
8    is open for Commissioners to view exchanges of information  
9    and becomes, it seems to me, somewhat at least awkward and  
10   perhaps problematic when you're dealing with those kind of  
11   discussions in an open docket or working docket case.

12                   And part of what I would like to see is  
13   whether or not -- if continuing under this docket is too  
14   problematic from the Commission's standpoint, what is the  
15   option to ensure that the concerns that you've raised  
16   about this case, the work that's gone into this case sort  
17   of falling off the edge or coming to -- not coming to  
18   fruition, how could the Commission develop a point, a  
19   process so that it translates into or transcends into  
20   another kind of case? And I'm looking for that --

21                   MR. FISCHER: We'd like to address that in  
22   our response, but I think initially, Judge, we would -- or  
23   Commissioner Gaw, we would -- we per-- the way we were  
24   seeing it is, we would file a stipulation among the  
25   parties which would be signed by counsel for individuals

1     that are supporting it, and that that would create the  
2     docket, the EO docket that would then be a contested case,  
3     and you would hear testimony and you would make the  
4     decision based upon that Stipulation & Agreement.

5                     COMMISSIONER GAW:   And I understand that.  
6     It just seems to me that on its surface it has this  
7     problem built into it, when we get into these exchanges  
8     and negotiations, that there should be some clear way of  
9     ensuring that Commissioners are not a part of that  
10    negotiation and are not in a position where they may be --  
11    may view those discussions.   And I want to ensure that we  
12    have something in place so that we don't get into those  
13    arguments at some point in time.

14                    I know the parties don't want to see that.  
15    It just strikes me that in a W case, if the discussions  
16    are under the umbrella of that W case, you get into the  
17    argument potentially that you are -- that you have  
18    Commissioners participating in the resolution of the  
19    matter that they might indeed have to hear.   And I don't  
20    want us to compromise what has in my view been at times a  
21    very positive docket and have it turned into an argument  
22    that -- about process that compromises our ability to  
23    resolve what's been -- what's in front of us.

24                    MR. FISCHER:   We want to work with the  
25    Commission on whatever the appropriate process is.

1                   COMMISSIONER GAW: I understand. I'm  
2 looking for that roadmap, so that we get to that point,  
3 and I -- I'm not sure whether in every case having a W  
4 docket like this is going to be appropriate. I'm speaking  
5 for myself only. It struck me at the beginning of this  
6 that we were going down a road here that was much  
7 different than what we had done in the past, and that to  
8 the extent that Commission involvement might assist in  
9 ensuring that that process continue, it was important for  
10 Commissioners to be there.

11                   In looking down the road and in regard to  
12 other cases, not involving this one, or perhaps  
13 tangentially involving this one, I'm not sure whether that  
14 should always be the case. We might need to see what  
15 ought to be done to develop a process where the parties  
16 that are participating feel that while in this case they  
17 have had -- perhaps they have a feeling that they've had  
18 access to information from KCP&L, that in other cases if  
19 they did not feel they had that same access, there would  
20 be some mechanism for them to get to get information that  
21 they --

22                   MR. FISCHER: And certainly in this case --

23                   COMMISSIONER GAW: -- want and other  
24 things.

25                   And I don't want to infer that this process

1 is going to be, and you've suggested to some extent I  
2 think this too, that we're not looking at this as the  
3 process going forward for every case that comes in front  
4 of us on this type of a situation, but we are at a point,  
5 it strikes me at this stage, where we need to figure out  
6 what the next step is procedurally and have that next step  
7 not interfere with what's gone on before.

8                   And I know that's what all the parties  
9 desire, and I think that we can make that step  
10 procedurally if all the parties discuss how to make sure  
11 that the ad-- that adequate protections are in place not  
12 to compromise the Commission in a decision-making process,  
13 if you assume that the outcome is one that does not --  
14 does not involve a signature by all of the potential  
15 parties in a contested case in this matter.

16                   MR. FISCHER: I would say the next step  
17 certainly is, we envision would meet on a confidential  
18 basis on January 24th and 25th and we will pursue or  
19 continue discussions of settlement of issues that are  
20 related to this. And to the extent you'd like to hear  
21 more from us, I think we'd like to file a response. We  
22 really --

23                   COMMISSIONER GAW: Yes. Again, I --

24                   MR. FISCHER: We want to work with the  
25 Commission to use the processes that are appropriate, and

1 as much as I'd like to take credit for creative ideas on  
2 some of these things, we're really just trying to work  
3 through these things and we've been happy with the  
4 results.

5 COMMISSIONER GAW: I think -- I think that  
6 it has been a very worthwhile endeavor. I don't -- but  
7 I'm trying to give you some feedback here --

8 MR. FISCHER: I appreciate that.

9 COMMISSIONER GAW: -- so that -- so that  
10 the parties can see some of the concerns that I personally  
11 have with where we are at the present time and in trying  
12 to figure out among yourselves how best to move forward.

13 MR. FISCHER: Thank you.

14 COMMISSIONER GAW: That's all I have,  
15 Judge.

16 JUDGE MILLS: Anything further?  
17 Commissioner Appling?

18 COMMISSIONER APPLING: No questions.

19 JUDGE MILLS: I'm sorry. Mr. Conrad?

20 MR. CONRAD: Mr. Fischer's comments remind  
21 me of a meeting perhaps some 20, 25 years ago that I  
22 attended in which Charles Stallon, who had been a  
23 Commissioner at the Illinois Commission and at that  
24 particular moment was on the FERC as a Commissioner and  
25 was not a lawyer and was an economist, but he made the

1 comment that -- he said, gosh, we understand what these  
2 problems are in regulating these pipelines and electric  
3 utilities at the FERC level and we know what we need to  
4 do, and if we could just get rid of this due process  
5 stuff, we could get it done.

6 JUDGE MILLS: Thank you. What a wonderful  
7 way to conclude this meeting. Is there anything further?

8 (No response.)

9 JUDGE MILLS: Thank you all for coming.  
10 I'll look forward to your responses to Mr. Conrad's  
11 pleading, and we are off the record.

12 WHEREUPON, the on-the-record presentation  
13 of this case was concluded.

14

15

16

17

18

19

20

21

22

23

24

25