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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
On-The-Record Presentation

July 27, 2001
Jefferson City, Missouri
Volume 3

In the Matter of the Application of)
Kansas City Power & Light Company)
for an Order Authorizing its Plan to) Case No. EM-2001-464
Reorganize Itself into a Holding)
Company Structure.)

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

KELVIN SIMMONS, Chair,
SHEILA LUMPE,
CONNIE MURRAY,
STEVE GAW,
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR
ASSOCIATED COURT REPORTERS, INC.

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1 APPEARANCES:

2 WILLIAM RIGGINS, Attorney at Law
Kansas City Power & Light Company
3 1201 Walnut
Kansas City, MO 64141-9679
4

5 JAMES M. FISCHER, Attorney at Law
Fischer & Dority
101 Madison, Suite 400
6 Jefferson City, Missouri 65101
(573) 636-6758
7

8 FOR: Kansas City Power & Light

9 PAUL A. BOUDREAU, Attorney at Law
JAMES C. SWEARENGEN, Attorney at Law
Brydon, Swearengen & England, P.C.
10 312 East Capitol
P.O. Box 456
11 Jefferson City, Missouri 65102-0456
(573) 635-7166
12

13 FOR: UtiliCorp United, Inc.

14 DUNCAN KINCHELOE, Attorney at Law
2407 West Ash
Columbia, MO 65203
15

16 FOR: Missouri Joint Municipal Electric
Utility Commission.

17 MARK W. COMLEY, Attorney at Law
Newman, Comley & Ruth
18 601 Monroe, Suite 301
P.O. Box 537
19 Jefferson City, Missouri 65102
(573) 634-2266
20

21 FOR: City of Kansas City.
County of Jackson.

22 LISA C. LANGENECKERT, Attorney at Law
720 Olive Street, Suite 2400
23 St. Louis, MO 63101
(314) 345-6441
24

25 FOR: Missouri Energy Group.

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1
2 RUTH O'NEILL, Legal Counsel
3 P.O. Box 7800
4 Jefferson City, Missouri 65102-780
5 (573) 751-4857
6
7 FOR: Office of the Public Counsel
8 and the Public.
9
10 STEVEN DOTTHEIM, Chief Deputy Counsel
11 P.O. Box 360
12 Jefferson City, Missouri 65102
13 (573) 751-3234
14
15 FOR: Staff of the Missouri Public
16 Service Commission.
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18
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1 P R O C E E D I N G S

2 JUDGE THOMPSON: We're here in the matter of
3 the application of Kansas City Power & Light Company for an
4 order authorizing its plan to reorganize itself into a
5 holding company structure, Case No. EM-2001-464. My name is
6 Kevin Thompson. I'm the Regulatory Law Judge assigned to
7 preside at this matter.

8 We'll go ahead and take oral entries of
9 appearance at this time, beginning with the Company.

10 MR. FISCHER: Your Honor, let the record
11 reflect the appearance of James M. Fischer, Fischer &
12 Dority, PC, 101 Madison Street, Suite 400, Jefferson City,
13 Missouri, and William G. Riggins, Kansas City Power & Light
14 Company, 1201 Walnut, Kansas City, Missouri 64141, appearing
15 on behalf of Kansas City Power & Light Company, Great Plains
16 Energy, Incorporated and Great Plains Power, Incorporated.

17 JUDGE THOMPSON: Thank you, Mr. Fischer.
18 Could we hear from Staff?

19 MR. DOTTHEIM: Steven Dottheim and Dennis L.
20 Frey, Post Office Box 360, Jefferson City, Missouri 65102,
21 appearing on behalf of the Staff of the Missouri Public
22 Service Commission.

23 JUDGE THOMPSON: Thank you, Mr. Dottheim.
24 Public Counsel?

25 MS. O'NEILL: Good morning. Ruth O'Neill, the

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1 Office of the Public Counsel, representing the Office of
2 Public Counsel and people of Missouri, P.O. Box 7800,
3 Jefferson City, Missouri 65102. I also have present with me
4 here today Ryan Kind from our office, Chief Economist, who
5 would be available if the Commission has any questions for
6 him.

7 JUDGE THOMPSON: Thank you very much,
8 Ms. O'Neill.

9 Some of the intervenors, or perhaps all of
10 them, are present. Why don't we begin on that side and work
11 our way over.

12 MR. COMLEY: Mark W. Comley on behalf of the
13 City of Kansas City and the County of Jackson. My address
14 is 601 Monroe Street, Suite 301, Jefferson City, Missouri.

15 JUDGE THOMPSON: Thank you, Mr. Comley.
16 Mr. Boudreau.

17 MR. BOUDREAU: Appearing on behalf of the
18 Empire District Electric Company and UtiliCorp United, let
19 the record reflect the appearance of Paul A. Boudreau, law
20 firm of Brydon, Swearngen & England, Post Office Box 456,
21 Jefferson City, Missouri.

22 JUDGE THOMPSON: Thank you, Mr. Boudreau.
23 Mr. Kincheloe.

24 MR. KINCHELOE: Duncan Kincheloe for the
25 Missouri Joint Municipal Electric Utility Commission,

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1 2407 West Ash, Columbia, Missouri, 65203.

2 JUDGE THOMPSON: Thank you, sir.

3 MS. LANGENECKERT: Lisa Langeneckert appearing
4 on behalf of the Missouri Energy Group, 720 Olive, 24th
5 Floor, St. Louis, Missouri.

6 JUDGE THOMPSON: Thank you very much. Are
7 there any other intervenors present?

8 Very well. We're here today in response to an
9 Order and Notice issued by the Commission on July 17, 2001.
10 In that Order and Notice, the Commission directed the
11 parties to address these matters at the on-the-record
12 presentation set for today.

13 These matters are whether or not there are
14 plans by KCPL or one of its affiliates or subsidiaries to
15 construct a generating plant at Weston Bend, and if so, how
16 long these plans have existed. In addition, the parties
17 were directed to be prepared to advise the Commission as to
18 why this project was not mentioned at the prior
19 on-the-record presentation held on July 5th, 2001, and also
20 whether or not this omission constituted a breach of the
21 duty of candor to the tribunal.

22 It is further expected that all other and any
23 other material issues with respect to the plan proposed by
24 Kansas City Power & Light and its affiliates which is before
25 the Commission in this matter will be discussed at this

1 time.

2 The purpose of this on-the-record presentation
3 is simply to reopen the record to determine whether there is
4 relevant and material information concerning the Company's
5 application which the Commission has not yet received and
6 has not yet had an opportunity to consider.

7 Therefore, Mr. Fischer, we will turn the
8 proceeding over to you at this time.

9 MR. FISCHER: Thank you, your Honor. Good
10 afternoon and may it please the Commission?

11 Thank you very much for the opportunity to
12 appear before you today to further address your questions
13 and concerns regarding the First Amended Stipulation &
14 Agreement we filed in this case, particularly additional
15 matters that have been raised by a July 12 article in the
16 Kansas City Star entitled Power Plant Near Weston
17 Envisioned.

18 On Tuesday of this past week, the company
19 filed the affidavit of Chris Giles which discusses the
20 background of the Weston Bend No. 1 plant project, including
21 about six press releases related to that project going back
22 to February 6th of 2001.

23 Chris explains that the Weston Bend project is
24 in the very earliest stages of its development, that it's
25 not intended or needed to serve KCP&L's retail ratepayers,

1 and that, if it's built at all, it will supply capacity and
2 energy in the competitive wholesale market.

3 He's available today to elaborate on his
4 written statements and to answer any specific questions you
5 might have. I hope, though, that his written statements
6 have provided you with a good deal more information about
7 this project than what you had at the last on-the-record
8 session.

9 I'd like now, though, to turn to what I
10 consider to be the more serious matters that are brought up
11 by the Order and Notice.

12 First, though, I would like to apologize to
13 the Commissioners on behalf of my clients. I would like to
14 apologize for allowing you to be surprised by news that
15 there might be a coal-fired power plant being built in
16 Missouri that you were -- that you were not properly
17 apprised of. We should have never allowed that to happen.

18 Even though Great Plains Power Company is
19 operating in a competitive unregulated wholesale market, we
20 should have kept you better informed about the possibility
21 that Great Plains Power was considering reviving the old
22 concept of a coal-fired plant near Weston, Missouri, and for
23 that oversight I believe we need to apologize to the
24 Commission.

25 I'm personally embarrassed by that oversight

1 because I can remember what it felt like to be a
2 Commissioner and be surprised by news of something that I
3 was not aware of but I felt I should have been. Perhaps it
4 was because of the strong ex parte rule in Missouri that
5 prohibits the Staff and other parties from communicating
6 directly with the Commission about substantive matters that
7 are pending before the Commission, or perhaps it's because
8 the regulated entities didn't always fully appreciate the
9 need to keep the Commissioners, their regulators, apprised
10 of important information that affected the company or their
11 ratepayers, but for whatever reason, I often felt that I was
12 the last one in the hearing room to know about important
13 information that affected our regulated companies or the
14 ratepayers.

15 And it was a horrible feeling to receive
16 questions from the press or the General Assembly or the
17 general public about matters that I thought I should have
18 been informed about but wasn't.

19 With the benefit of 20/20 hindsight, I can now
20 see that we unintentionally allowed the Commissioners to be
21 surprised by the news that KCP&L's unregulated subsidiary
22 was reviving the old concept of building a coal-fired power
23 plant near Weston, Missouri.

24 Although Great Plains Power made no secret of
25 its plans, it in fact wanted the whole world to know about

1 it, especially those potential wholesale customers that
2 might be interested in buying power from the plant or our
3 unregulated competitors that are thinking about building
4 competing power plants in the same region, no one
5 specifically brought that subject to your attention, and I
6 apologize for that oversight.

7 Although it never crossed our minds that
8 anyone would link the Weston project to the Company's
9 application to set up a holding company in this proceeding,
10 it obviously was important information to you whether it --
11 whether we connected it to this case or not.

12 And with the benefit of hindsight, I believe I
13 also made a mistake at the last on-the-record proceeding by
14 simply trying to address the two questions that were
15 contained in the June 25th Order and Notice, those being the
16 unconditional -- or the conditional waiver of UtiliCorp and
17 Empire to their right to a hearing and the question related
18 to the CTs, the combustion turbines.

19 Although I remember encouraging the Commission
20 to ask questions regarding the Company's future plans and we
21 did discuss the Company's plans to acquire five combustion
22 turbines, no one asked any questions regarding the Company's
23 thoughts about the unregulated wholesale generation market
24 or KCP&L's long-term need for base load capacity.

25 With the benefit of hindsight, I now wish that

1 I had asked those questions of the Company representative,
2 because they certainly would have been happy to answer those
3 questions for you. We should have discussed and elaborated
4 upon the fact that Great Plains Power Company has every
5 intention of being a top-notch competitor providing capacity
6 and energy in the wholesale market in this area.

7 We should have elaborated upon the fact that
8 Great Plains Power intends to offer capacity and energy to
9 interested buyers in this region and hopes to eventually
10 construct several coal-fired plants in this area to serve
11 the wholesale market and not necessarily KCP&L's retail
12 customers. Unfortunately, we didn't provide you with that
13 information.

14 The Order and Notice also asked the parties to
15 explain why the Weston Bend project was not mentioned at the
16 last on-the-record conference held on July 5th. As Chris
17 Giles' affidavit explains, the answer is it never crossed
18 our minds that anyone would link the Weston project with our
19 holding company application in this proceeding, and,
20 unfortunately, no one asked any questions that led us to a
21 discussion about that topic, and I wish they had.

22 In our presentation -- or in our preparations,
23 excuse me, for that on-the-record presentation that morning
24 on July the 5th, our regulatory team never even discussed
25 that topic, and we certainly didn't conspire to keep that

1 information from the Commission or the rest of the world.

2 In any event, I want to again extend KCP&L's
3 apologies for its failure to keep the Missouri regulators
4 apprised of the possibility that there may be coal-fired
5 power plants being build in Missouri in the wholesale
6 market.

7 I'm also very certain that any of the KCP&L
8 representatives that are here today will gladly answer any
9 and all your questions regarding this plant or any of their
10 plans or anything else that you believe that's pertinent to
11 this Stipulation & Agreement.

12 Finally, let me address the final question
13 that is included in the Order and Notice. That's a question
14 that I believe is properly directed to KCP&L's legal counsel
15 in this matter, and that question was whether this omission
16 constituted a breach of the duty of candor to the tribunal.

17 Your Honor, I must say I was personally taken
18 aback whenever I saw that question in the Order. I've
19 interpreted that question as a reference to Rule 4 of the
20 Code of Professional Responsibility. In Section 3.3 candor
21 toward the tribunal states, A lawyer shall not knowingly
22 make a false statement of material fact or law to a tribunal
23 or fail to disclose a material fact to a tribunal when
24 disclosure is necessary to avoid assisting a criminal or a
25 fraudulent act by the client.

1 Rightly or wrongly, I've interpreted that
2 suggestion as a suggestion that counsel for the Company in
3 this proceeding may have violated our ethical and
4 professional responsibilities to this Commission.

5 With all due respect to the Commission, in
6 light of the very seriousness of that particular suggestion,
7 I feel I must take strong exception to the suggestion that
8 Bill Riggins or I or anyone else on our legal team may have
9 violated our ethical or professional responsibilities to
10 this tribunal.

11 Bill Riggins, who is the General Counsel of
12 Kansas City Power & Light Company, formerly was the counsel
13 for the Citizens Utility Ratepayer Board in Kansas, which is
14 the equivalent of the Office of the Public Counsel in
15 Missouri. And as I've mentioned, I had the privilege of
16 serving as a Commissioner at one point and many years ago
17 served as the second Public Counsel of the State of
18 Missouri.

19 I say that only because Bill and I both have a
20 great deal of respect for this institution and for the
21 regulatory process. We know that the Commissioners, the
22 Regulatory Law Judges, the Staff, the Public Counsel all
23 have difficult and challenging jobs dealing with the very
24 complex issues related to the regulated industries, and we
25 take very seriously our professional responsibilities and

1 obligations to the Commission. We also know that it's
2 difficult to repair those relationships once they are
3 tarnished.

4 Kansas City Power & Light Company has also
5 respected the important role of the regulatory bodies with
6 whom it interacts at both the state and the federal levels.
7 The Company knows the importance of open communication with
8 the Commission, with the Staff and with the Public Counsel.

9 In this case, the existence of a proposal to
10 develop a coal-fired power plant near Weston, Missouri was
11 not something we attempted to hide from the Staff, the
12 Public Counsel or the Commission. And, in fact, we
13 previously discussed the concept of a coal-fired plant with
14 members of your Staff and the Public Counsel, although
15 certainly not all members of the Staff or Public Counsel
16 were privy to all those discussions.

17 In this proceeding it appears to us that the
18 Commission believes we dropped the ball by not discussing
19 the Weston Bend project. Chris Giles has explained the
20 background of the plant, and both he and I have explained
21 why we didn't discuss that at the last on-the-record
22 proceeding, and I hope that information will somewhat
23 rectify the situation.

24 As I've said, I regret now that we didn't keep
25 the Commissioners better informed about the possibility that

1 there might be a coal-fired plant near Weston, but frankly,
2 we didn't recognize that anyone would link the existence of
3 a concept of a coal-fired plant in the wholesale market with
4 our application to create a holding company in this
5 proceeding.

6 From our perspective, the existence of the
7 Weston Bend project is not -- is not a material fact that
8 needs to be considered in this proceeding. And as Chris
9 Giles explains in his affidavit, the concept of the Weston
10 Bend project should not be linked in any way to the holding
11 company application.

12 Your Honor, I'd be happy to answer any of your
13 questions regarding the duty of candor or the information
14 that I've presented today. I'd also be very happy to call
15 Chris Giles to sponsor his written affidavit and allow him
16 to answer specific questions about your -- about the Weston
17 Bend project or anything else that might be considered to be
18 pertinent information by this Commission.

19 JUDGE THOMPSON: Thank you, Mr. Fischer.
20 Chairman Simmons.

21 CHAIRMAN SIMMONS: Good afternoon, sir.

22 MR. FISCHER: Good afternoon.

23 CHAIRMAN SIMMONS: Thank you for being here.
24 The first thing that I'd like to say is that I appreciate
25 you coming to this Commission and I appreciate your remarks.

1 Being a former Commissioner, I have a great deal of respect
2 for this process, these Commissioners and the job that we
3 have to do, people that have come along this path before,
4 and I just want to say I appreciate you having the candor in
5 which to express the apology that you gave to us as it
6 relates to your client and as you also gave us your apology.
7 Thank you for that.

8 MR. FISCHER: Thank you for allowing me to
9 come back.

10 CHAIRMAN SIMMONS: The other thing is, as you
11 know, you mentioned earlier as a former Commissioner, a lot
12 of what we do in making our decisions, we are looking at the
13 record in order to make those decisions. And in cases where
14 there's a Stipulation & Agreement, we are trying to discern
15 from that record all the possible information that we can.
16 I'm telling you nothing new.

17 So when all of the information or some of the
18 information or our perception of some of the information is
19 not with us, as you alluded to earlier, there is some alarm
20 about that. And I can say at least for myself that I want
21 to have all of the information or what we believe or what we
22 perceive as being relevant to the decision that we have to
23 make.

24 Having said that, you in your remarks have
25 approached some of the questions that I have lined out here,

1 and some of those may have been answered. Other questions I
2 still have, and I would like for those questions to again be
3 a part of the record, so that maybe if I need to clarify
4 then I can do that at this time. So some of those questions
5 I will reiterate that, but I know that you have given an
6 answer.

7 The first thing, and you will have to say
8 whether you're going to answer these questions or whether
9 Mr. Giles is going to answer these questions or Mr. Riggins,
10 I'm not aware of, but I do have that. And I would also
11 offer this. My questions today will not be just to you, the
12 Company, but I may have questions for our Staff and I may
13 have questions for other parties that are -- were parties to
14 this case.

15 And I guess the first one that I would start
16 with in my line of questioning, and you tell me whether
17 you're going to do that or you're going to have someone
18 else, and your Honor, I don't know if we need to swear them
19 in or what, but let me know how we need to proceed.

20 When we talk about the building of a
21 coal-fired plant, and that was again one of the bits of
22 pieces of information that were in the public domain, I
23 guess I wanted to know, when did the Company begin to
24 discuss the building of a very large coal-fired plant as the
25 one that we've heard of that will be at Weston Bend? Could

1 you give me a year?

2 MR. FISCHER: Yes, your Honor. The original
3 concept began in 1993 with the Iatan II project, which I
4 began working on personally from a legal standpoint about
5 that time. The more -- Chris Giles can give you specific
6 dates, I think, on the -- on when it was changed somewhat
7 and called Weston Bend I.

8 The first press release that was released
9 related to that plant project occurred February 6th, 2001.
10 I believe there were six additional news releases that were
11 attached to Chris' affidavit that discusses in one way or
12 another the Weston Bend project.

13 The name itself, though, the name Weston Bend
14 probably didn't come into existence until May or June of
15 this year, and that may have been as much as anything else
16 what surprised folks about the announcement because we
17 certainly had been working on that concept for a long time.

18 The more recent -- in about the 1996 time
19 frame, the Iatan II project died down. There wasn't as much
20 interest in the marketplace, and it's only been more
21 recently that that concept has been revived, and I would
22 suggest to you that it was in early 2001 that that project
23 has been truly revived under the new concept and the new
24 name.

25 CHAIRMAN SIMMONS: Now, Mr. Fischer, you have

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1 talked about and it has been placed in the record with
2 Mr. Giles' filing, you gave us the press release information
3 that showed us that some of these discussions have been
4 going on for quite some time as it related to either Weston
5 Bend or other discussions, that you've got press releases
6 that go back to April.

7 Any particular reason why that wasn't a part
8 of the record or given to Staff or the other parties as it
9 related to those issues?

10 MR. FISCHER: I don't think there was a
11 particular reason, your Honor. I think we probably
12 inappropriately assumed that the parties were aware of that.
13 We discussed -- I'd like to call Chris Giles to the stand to
14 talk about the facts around those discussions if you're
15 interested.

16 But we did discuss the concept of coal-fired
17 plants at Weston with the Public Counsel and Staff, and
18 certainly we've been talking about that concept with
19 potential wholesale customers and other parties for some
20 time, but I don't recall that we ever handed any of the news
21 releases to the Staff or Public Counsel. But as I mentioned
22 in our statement, we frankly didn't realize that that would
23 be linked to this holding company proceeding.

24 Certainly the Great Plains Power is identified
25 in the application and our discussions and in the technical

1 workshops that have preceded this as a competitive provider
2 of wholesale power, and it's our intention to be a top-notch
3 competitor that we'll provide that in a number of different
4 ways.

5 CHAIRMAN SIMMONS: At this point in time,
6 you've brought up that issue about having those discussions
7 with our Staff and the Office of Public Counsel. I guess
8 that just makes me want to ask that question to the Staff
9 and the Office of the Public Counsel. Did they not feel
10 that that information should have been placed in the record
11 and come before the Commission?

12 MR. FISCHER: Your Honor, maybe I should also
13 elaborate. We didn't go through the process here of filing
14 elaborate prefiled testimony, and that kind of information
15 may have been in other cases laid out in the prefiled record
16 where you would have had more information in front of you.

17 We certainly take full responsibility for not
18 apprising this Commission of whatever information you need
19 in order to fairly consider the Stipulation & Agreement, and
20 it's not, my intention by mentioning Staff and Public
21 Counsel to in any way suggest that they had a
22 responsibility.

23 We had the responsibility to make sure that we
24 supported our application with the information that you
25 might need to understand all the issues, and we are the ones

1 that want to answer whatever questions you might have. And
2 I don't want to put any Staff or Public Counsel person on
3 the spot in any way.

4 CHAIRMAN SIMMONS: I understand. Again, I
5 just want to know from the Staff's perspective and from the
6 Office of Public Counsel, you recall having those
7 discussions, and would there have been a reason as to
8 whether you thought that it was not material for this
9 Commission to have that information? And whether it be
10 Staff or OPC, you could answer that. Depends on -- you can
11 you do it from there without shuffling.

12 MR. DOTTHEIM: Chair Simmons, I believe the
13 Staff, once we had an opportunity to review, for example,
14 the press releases, I believe that the lack of the provision
15 of the information regarding Weston Bend I, that is that
16 particular site and name, not being brought to the Staff's
17 attention specifically -- and I can't speak on behalf of all
18 Staff members. There are Staff members who are here today,
19 Dr. Proctor, who might address that question, others who may
20 have known various items of information relating to that
21 project.

22 But I don't believe that the Staff was aware
23 again of the particular site and name until the July 12
24 article in the Kansas City Star. The press releases that
25 are attached to Mr. Giles' affidavit, the June 25 press

1 release is the first that specifically names, as I read
2 those press releases, the Weston Bend I location.

3 As Mr. Fischer has indicated, in the early
4 '90s for a number of years Kansas City Power & Light
5 discussed with the Staff and I believe even the Commission
6 the possibility of construction of Iatan II. As I
7 understand the Weston Bend I unit, it is not on the Iatan
8 site where I believe Iatan II would have been constructed.

9 The other press releases, that is the earlier
10 press releases than June 25 that are attached to Mr. Giles'
11 affidavit, I don't believe make any specific reference to
12 the name Weston Bend I. Some of the -- some of the press
13 releases make reference to Iatan.

14 The fact that there was a press release on
15 June 25, which was some time before the July 5th
16 on-the-record presentation, I believe caused Kansas City
17 Power & Light to assume that the Staff was aware of in
18 particular the Weston Bend I location and the information
19 that was contained in the press release.

20 CHAIRMAN SIMMONS: And are you saying that you
21 weren't aware of the June 25?

22 MR. DOTTHEIM: That is correct. There's no
23 set procedure where Kansas City Power & Light, as I
24 understand it, make those press releases available to the
25 Commission or the Staff. It's my understanding that some

1 companies will provide press releases on a possibly
2 irregular basis, but none necessarily provide all copies.

3 As a consequence, unless a member of the Staff
4 or members of the Staff are monitoring the Kansas City Power
5 & Light website where the press releases are posted, the
6 Staff is not necessarily aware of the information.

7 CHAIRMAN SIMMONS: Mr. Dottheim, if you would
8 have received that information and you were made aware, do
9 you believe that Staff would have placed that in the record
10 and would that have been material, in your opinion, to the
11 record?

12 MR. DOTTHEIM: I don't believe that it would
13 have been material to the record for this particular case,
14 and as a consequence, I don't believe that if it had been
15 brought to my attention that I would have made certain that
16 the Commissioners were aware of it.

17 It's my understanding that even though the
18 press release was issued on June 25, I don't know -- I'm
19 under the impression that it was not reflected in the Kansas
20 City Star. So as a consequence, a source of information
21 which is available to Staff and the Commissioners on a
22 regular basis I believe did not have that information
23 reported.

24 Now, that may be the issue as to whether
25 Kansas City Power & Light or all of the utilities regulated

1 by the Commission should be providing to the Commission on a
2 regular basis those materials which they consider to be
3 important enough to place in press releases.

4 CHAIRMAN SIMMONS: Mr. Dottheim, let me ask
5 you this question. If there was a power plant built of this
6 magnitude, even if it was an unregulated plant, would this
7 Commission have oversight as it relates to the safety of
8 that plant?

9 MR. DOTTHEIM: In this particular case, if
10 it's being built as an EWG, which I believe it is, the
11 Commission would not have safety oversight over that plant.
12 I don't believe offhand that the statutes provide for the
13 Commission's jurisdiction over the safety of an exempt
14 wholesale generator and independent power production
15 facility.

16 CHAIRMAN SIMMONS: Okay.

17 MR. DOTTHEIM: Now, Commissioner, if I might,
18 I'm sorry to interrupt, and I believe this is reflected in
19 Mr. Giles' affidavit, that there were a number of wire
20 services that picked up on the June 25 press release. At
21 least one member of the Staff saw a Reuters article and by
22 use of e-mail has sent to a number of members of the Staff
23 one paragraph. It may have been the only paragraph that
24 that person was aware of, and that was sent by e-mail on
25 June 28.

1 That one paragraph, which I could read, does
2 not specifically name Weston Bend I. The paragraph says,
3 the headline is, KCP&L unit plans to build central U.S. coal
4 plants, San Francisco, June 26, (Reuters). Great Plains
5 Power, Inc., a generation subsidiary of Kansas City Power &
6 Light Company, KCP&L, signed a Memorandum of Understanding
7 with Babcock & Wilcox to develop and build up to five power
8 plants in the central U.S. in the range of 500 to 900
9 megawatts each, a Great Plains Power spokesman said Tuesday.

10 One or two days before the on-the-record
11 presentation on July 5 this e-mail was brought to my
12 attention, and on the day of the on-the-record presentation
13 I approached Kansas City Power & Light and inquired whether
14 the Reuters article was correct or whether it was in error,
15 because it was my understanding that although there was a
16 reference to five power plants, the reference was to five --
17 to five 500 to 900 megawatts for each of the power plants.

18 And I was advised by Kansas City Power & Light
19 that the news item was correct, that it was not, as I was
20 inquiring, the five combustion turbines that was a part of
21 the Stipulation & Agreement respecting the restructuring of
22 Kansas City Power & Light.

23 So shortly before we went on the record, I was
24 told based on my inquiry that Kansas City Power & Light with
25 Babcock & Wilcox had entered into a Memorandum of

1 Understanding to develop and build up to five 500 to 900
2 megawatt power plants, but I was still unaware at that time
3 of the Weston Bend I location.

4 But again, having been apprised of that, maybe
5 I should have brought that to the Commission's attention,
6 but obviously I did not.

7 CHAIRMAN SIMMONS: Ms. O'Neill, you were going
8 to have remarks?

9 MS. O'NEILL: Yes. Yes, Chair Simmons. First
10 of all, although my office through other discussions with
11 KCP&L were aware that there had been some revival of this
12 concept of the coal-fired plant outside of the discussions
13 we were having in the application, those discussions did not
14 take place with anybody from Public Counsel's office in
15 connection with this application. It was our understanding
16 that that concept was still in the planning stages and it
17 was not linked in any way to this application.

18 Also, we understood the Company had this
19 interest in eventually building a nonregulated coal-fired
20 merchant type plant through public information and through,
21 as I said, some other discussions between the Company and
22 members of the Office of Public Counsel. I think Mr. Kind
23 partook in some of those discussions.

24 But again, that was not considered to be part
25 of the application process or any negotiations in this case.

1 In this case, our focus was, to the extent we were able to
2 negotiate a Stipulation & Agreement in this matter, was to
3 see that the customers of the regulated utility were
4 projected, and this other project which is now called Weston
5 Bend was not necessary -- or necessarily a part of what was
6 indicated as needed to serve KCP&L's forecasted growth for
7 its customer load for its regulated utility.

8 Basically, our understanding was that this was
9 separate and apart from the discussions that we did have
10 with the Company regarding the five CTs that are discussed
11 in Part 9 of the Amended Stipulation & Agreement. Three of
12 those CTs are what we believe was necessary based on our
13 discussions with the Company to take care of the needs,
14 generation needs for the regulated utility's customers, and
15 that's where we were focused in the proceeding.

16 Again, I don't believe the name Weston Bend
17 came up, and again, I think Mr. Fischer indicated that that
18 name didn't actually attach to the project until sometime in
19 May or June of this year. But we had some awareness of this
20 as part of basically a nonregulated business plan that they
21 had separate from the issues that were contained in the
22 application.

23 Now, if we had gone to the point where we
24 filed testimony, I'm confident that Mr. Kind would have
25 taken whatever steps are necessary to find out the latest on

1 that, and if we thought it was important or relevant to the
2 Commission's understanding of this, and there's a good
3 chance we would have, that would have been included in
4 testimony.

5 But as we negotiated, the important thing for
6 us was to make sure that those generation needs for the
7 regulated utility would continue to be met in a way that was
8 not going to be detrimental to its customers, and that was
9 the line that we carried the negotiations on, and this plant
10 didn't really enter into those discussions.

11 CHAIRMAN SIMMONS: Thank you. I have one last
12 question, and it'll probably be to you, Mr. Fischer.

13 MR. FISCHER: Yes, your Honor.

14 CHAIRMAN SIMMONS: Because you spoke of a
15 newspaper article, and I believe that with what Mr. Giles
16 has filed, he basically said that that newspaper article was
17 erroneous and I guess that the article linking, as you would
18 suggest earlier, of the proceeding that was before us and
19 your plans to either build or not build on Weston Bend I,
20 that that was erroneous. Could you explain to me what was
21 incorrect about that particular article?

22 MR. FISCHER: Yes, your Honor. If you turn to
23 the affidavit and the Attachment No. 1 to the affidavit,
24 that includes the article from the Kansas City Star, power
25 plant near Weston envisioned. If you turn to the second

1 page, there are two columns.

2 CHAIRMAN SIMMONS: Yes.

3 MR. FISCHER: And I guess with all due respect
4 to the Kansas City Star and the good relationship we've
5 enjoyed with them, I just would point out that the very top
6 paragraph on that second column where it says, Great Plains
7 is waiting for approval to operate as a deregulated entity.
8 The Missouri Public Service Commission could vote as early
9 as today on the issue. If it gives its approval, Great
10 Plains would not have to seek the Commission's okay to build
11 the new plant. It's our impression that those statements
12 are incorrect in a number of ways.

13 First of all, Great Plains is not waiting for
14 approval to operate as a deregulated entity. It already is
15 a deregulated entity and has the power to build Weston
16 Bend I without the approval of this particular Public
17 Service Commission unless there is some transfer of public
18 utility property that is implicated by the construction of
19 that program.

20 Secondly, the Missouri Public Service
21 Commission was not voting on that day on that issue because
22 it was not before the Commission.

23 And finally, there was nothing about the
24 approval of the holding company application in this case
25 that would be implicated or would implicate the question,

1 the legal question of whether the Commission had any
2 jurisdiction to approve one way or the other the
3 construction of Weston Bend. It was for those basic reasons
4 that we felt that paragraph had some erroneous information
5 in it.

6 CHAIRMAN SIMMONS: Thank you, sir. Your
7 Honor, that's all the questions I have.

8 JUDGE THOMPSON: Thank you, Chairman Simmons.
9 Commissioner Murray.

10 COMMISSIONER MURRAY: Thank you. First I'd
11 just like to take the opportunity to make a couple of brief
12 statements, the first one being that I regret very much if
13 there was any language that went out in an Order from this
14 Commission that suggested any wrongdoing on the part of
15 counsel or any of the parties in this proceeding.

16 And the second statement would be that I do
17 not believe it is appropriate for newspaper articles to be
18 the subject of proceedings before the Commission, and that I
19 would find it unfortunate if the Commission were to perceive
20 as being reliant upon articles in the media or even press
21 releases from the utilities that we regulate.

22 And then I have a question, and that question
23 is, in regard to the Motion for Expedited Treatment that was
24 filed, that motion stated that we needed to approve the
25 First Amended Stipulation & Agreement no later than

1 July 12th, and I would like to know the status because of
2 the fact that it is July 27th, I believe, and that has still
3 not been approved.

4 MR. FISCHER: Yes, your Honor. First of all,
5 I appreciate your statement and your comments very much.

6 Regarding the status, the timetable is no
7 longer in effect. We are hoping to get an Order from the
8 Commission as soon as reasonably possible. We were hoping
9 to have an Order from the Kansas Corporation Commission in
10 the near future, but it's my perception that we could have
11 an Order from the Commission in Kansas City probably next
12 week.

13 But at this point we would just ask that you
14 take the information that you have in the record into
15 consideration and issue your Order as soon as you are
16 comfortable doing so, and we would ask that it be done as
17 soon as possible.

18 But at this point we no longer have a closing
19 date that is definite or any commitment by the
20 New York Stock Exchange to change the name of our company
21 for trading purposes.

22 COMMISSIONER MURRAY: So the opinion letter
23 that was to be provided to the SEC no later than July 17,
24 has that date been postponed then?

25 MR. FISCHER: Yes, your Honor. We're still

1 going to have to give an opinion letter, but that was
2 premised and a closing of, I believe, August the 9th, which
3 is no longer in effect.

4 COMMISSIONER MURRAY: That's all the questions
5 I have. Thank you.

6 JUDGE THOMPSON: Thank you, Commissioner
7 Murray. Commissioner Lumpe.

8 COMMISSIONER LUMPE: Just to follow up on
9 that, Mr. Fischer, at this point you do not have the
10 permission from the Kansas Corporation yet either, so both
11 of us are behind as it were?

12 MR. FISCHER: Your Honor, we informed the
13 Commission within hours of the time that the vote was
14 rescinded in Missouri. I think we may have already informed
15 someone that we thought we had the Missouri Order, but we
16 quickly called them and indicated that that did not occur,
17 and I believe based upon that they have also delayed their
18 process.

19 COMMISSIONER LUMPE: All right. I just wanted
20 to determine that we weren't the only one holding you up on
21 that SEC deadline.

22 MR. FISCHER: We also needed SEC's approval as
23 well.

24 COMMISSIONER MURRAY: Okay. And I think it's
25 been answered as you pointed out in the newspaper article.

1 GPP as an unregulated subsidiary of KCPL could have built
2 the plant without our approval anyway?

3 MR. FISCHER: Your Honor, that's our belief.
4 KLT was the unregulated subsidiary that was planning to
5 build Iatan II at one point during the '90s, and depending
6 upon what common facilities might have been involved in
7 Iatan II, it would have been probable that we would have
8 needed some regulatory approval.

9 In the case of Weston Bend I, we don't believe
10 there are going to be common facilities that will need to be
11 used nor transferred, but at this early stage of the
12 development things could change. We don't believe we're
13 going to need any regulatory approval.

14 Certainly Great Plains Power Company, unless
15 it was using some utility assets, would not need the
16 approval of this Commission to build a plant.

17 COMMISSIONER LUMPE: And KCPL does not have to
18 buy power from that plant, that unregulated plant? They
19 could if they wished to have an arrangement with them, but
20 they do not have to and GPP does not or that Weston plant
21 would not have to sell to KCPL, would it?

22 MR. FISCHER: In fact, we don't intend to buy
23 any power from that plant, and in the event that KCPL did
24 indeed need power or want power from them, we would have to
25 come to this Commission under the law to obtain approval for

1 a purchase supply agreement between our affiliate and the
2 utility.

3 So in that eventuality, this Commission would
4 have jurisdiction to review that transaction and, just like
5 on the five combustion turbines, we would anticipate would
6 be on a cost basis.

7 COMMISSIONER LUMPE: All right. And if I read
8 Mr. Giles' testimony correctly, the first application that
9 you filed for would have transferred some regulated assets,
10 and under this particular proposal there is no transfer of
11 regulated assets. It would simply be building new assets of
12 its own?

13 MR. FISCHER: Yes, your Honor, there is
14 absolutely no transfer of assets from the regulated company
15 to the unregulated company as a part of this application.
16 In fact, the CT issue I guess is the only area that there
17 could possibly be any consideration, and as we've indicated
18 in paragraph 9, KCP&L will initiate a proceeding to have you
19 review that matter at the appropriate time in the event that
20 KCP&L was interested in having those CTs put in GPP.

21 COMMISSIONER LUMPE: And let me ask about our
22 affiliates transaction rules. If KCPL wanted to purchase
23 from GPP, its subsidiary, its unregulated subsidiary now,
24 would it be affected by our affiliate transaction rules and
25 would that change under this reorganization?

1 MR. FISCHER: It would be affected by the
2 affiliated transaction rules, and there would be no change
3 by the holding company application being approved.

4 COMMISSIONER LUMPE: So the same thing, the
5 same rules would apply?

6 MR. FISCHER: Yes. In fact, the Stipulation &
7 Agreement itself specifically commits KCP&L to agreeing to
8 follow those affiliated transaction rules.

9 COMMISSIONER LUMPE: Okay. I just have one
10 more question, and it may be for Mr. Giles, and it's on
11 page 8 of his statement where he talks about the benefits of
12 the formation of the holding company, and he mentions that
13 it would insulate the utility from the unregulated business
14 activities of KLT and increase shareholder value, and then
15 he talks about costs being more easily identified which
16 permits greater assurance that no subsidization occurs, and
17 that's where I'm sort of coming from in the affiliated
18 transaction. If you could explain to me how that
19 identification is clear in terms of subsidization.

20 MR. FISCHER: Perhaps that would be a good
21 reason to ask Chris to come forward and I could introduce
22 his statement into the record and he could answer those
23 questions for you.

24 COMMISSIONER LUMPE: All right.

25 JUDGE THOMPSON: Mr. Giles.

1 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)
2 (Witness sworn.)
3 JUDGE THOMPSON: Please take your seat and
4 spell your name for the court reporter.
5 THE WITNESS: Chris B. Giles, G-i-l-e-s.
6 JUDGE THOMPSON: Thank you, sir. Mr. Fischer.
7 CHRIS B. GILES testified as follows:
8 DIRECT EXAMINATION BY MR. FISCHER:
9 Q. Mr. Giles, for purposes of introduction of
10 your statement into the record, would you state again your
11 name and business address for the record.
12 A. Chris B. Giles. My business address is
13 1201 Walnut, Kansas City, Missouri 64141.
14 Q. By whom are you employed and in what capacity?
15 A. I'm employed by Kansas City Power & Light
16 Company as Senior Director of Regulatory and Risk
17 Management.
18 Q. Mr. Giles, did you cause to be filed in this
19 proceeding a statement of Chris B. Giles that was filed as
20 an affidavit that consisted of 11 pages with attached --
21 with, I believe, three attachments to it?
22 A. Yes, I did.
23 Q. Are the statements contained in your statement
24 correct and true to the best of your knowledge and belief?
25 A. Yes.

1 Q. And if I were to ask you to read that
2 statement today, would you change anything in that
3 statement?

4 A. No.

5 MR. FISCHER: Your Honor, then I would ask
6 that the statement of Chris B. Giles that was provided to
7 the Commission in written form on July 24th be perhaps
8 marked as an exhibit or at least introduced into the record
9 as you would see fit, and I would then ask Mr. Giles to
10 answer the question of Commissioner Lumpe.

11 JUDGE THOMPSON: Thank you very much,
12 Mr. Fischer. The document in question is already in the
13 case file as a pleading. Nonetheless, we will go ahead and
14 mark this as an exhibit, and we'll just mark this as Exhibit
15 No. 1, Kellene. And if there are no objections, we will
16 receive it, then, into the record. This document is
17 received into the record of this proceeding.

18 (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE.)

19 JUDGE THOMPSON: And I will further state to
20 counsel that if at any time counsel sees the need to
21 cross-examine, that you will let me know that you have that
22 desire. Is that understood?

23 MS. O'NEILL: Yes, your Honor.

24 JUDGE THOMPSON: Thank you. Please proceed.

25 BY MR. FISCHER:

1 Q. Mr. Giles, do you recall the question from the
2 Bench?

3 A. I do. I believe the question was what
4 additional -- or what provides additional assurance that
5 there will not be subsidization with the holding company and
6 how that compares possibly with the affiliate transaction
7 rule, I think is the question.

8 And the answer is that in a case of a
9 registered holding company, there's an additional
10 protection. True, the affiliate transaction rule would be
11 in place regardless of whether we had a holding company or
12 just a subsidiary of KCPL, would still be an affiliate
13 transaction.

14 But as a registered holding company, KCPL, GPP
15 and GPE are all under the regulation of the SEC, the
16 Securities and Exchange Commission. They have additional
17 requirements for additional reporting and cost tracking
18 above and beyond, and I shouldn't say necessarily above and
19 beyond, but separate from the affiliate transaction rule.
20 So there's actually two layers of protection. There's the
21 Commission's own rules and then there's the SEC's rules.

22 COMMISSIONER LUMPE: Thank you. That's really
23 all the questions I have. I appreciate understanding that.
24 Thank you.

25 JUDGE THOMPSON: Thank you, Commissioner

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1 Lumpe. Commissioner Gaw.

2 COMMISSIONER GAW: Thank you, Judge.

3 Mr. Fischer, thank you for coming today, and I appreciate
4 the fact that you're back for a second time. A lot of my
5 questions were answered the last time you were here.

6 I think that in light of the fact that you are
7 back, I'd like to take some time to explore some of the
8 issues that you brought up a little earlier about what GPP
9 is looking at long range and what KCP&L are looking at long
10 range and understanding better the makeup of GPP, because I
11 think if we had -- if I had followed on that track last
12 time, some of those questions might have been of help.

13 It seems to me that all of us were caught off
14 guard by the timing of and the substance of what was in that
15 article. Having it happen the same day that we were looking
16 at this case was a little disconcerting, I suspect, for
17 some.

18 MR. FISCHER: Your Honor, I can appreciate
19 that very much. I regret the timing of that. I wish we had
20 discussed the other aspects that I hope you'll bring up now.

21 COMMISSIONER GAW: Well, I may not do a very
22 good job of this, so feel free to supplement and it may be
23 of assistance. If I may, I think I'll direct these
24 questions to Mr. Giles, and if there are follow-ups then
25 that you would like to bring forward, I would welcome that.

1 MR. FISCHER: That's very appropriate from my
2 perspective. Thank you.

3 QUESTIONS BY COMMISSIONER GAW:

4 Q. Mr. Giles, tell me when, if you would, when GPP
5 came into existence, approximately.

6 A. Approximately --

7 Q. Not an exact date.

8 A. I want to say sometime around April.

9 Q. Of this year?

10 A. Of this year, you know, and I'm not sure.

11 MR. FISCHER: Perhaps I could direct the
12 Commission and the witness to the first page of the Amended
13 Stipulation, Footnote 1. There we talk about the Articles
14 of Incorporation for GPP being filed on February 26th of
15 2001. Correct me if I'm wrong, but I believe the GPP was
16 also filed the same time.

17 MR. RIGGINS: Excuse me. I can't give you the
18 correct -- or the exact date, Commissioner Gaw, but what I
19 can tell you is Great Plains Power was formed before we
20 filed our application in this case. If you'll look at the
21 application, we reference it as being already in existence
22 and it, in fact, was.

23 COMMISSIONER GAW: It was earlier this year to
24 be very general about it?

25 MR. RIGGINS: Yes. February would be my best

1 guess.

2 BY COMMISSIONER GAW:

3 Q. And Mr. Giles, does GPP currently have assets?

4 A. No. Generating assets, no.

5 Q. Assets of any kind?

6 A. Well, none that I'm aware of.

7 Q. Okay. Does it have employees?

8 A. It has employees, yes.

9 Q. And you-all please feel free to jump in here

10 if I get into some territory that's a problem on anything.

11 Can you tell me approximately how many

12 employees GPP currently has?

13 A. I can't say. It's minimal. I personally know

14 of only three, two or three.

15 Q. And their general responsibilities would be

16 what?

17 A. Their responsibilities, one is the president

18 of GPP, Steve Easley, and I believe he has an assistant by

19 the name of Floyd Penelton. There may be another one

20 involved by the name of David McCoy and another one John

21 Destephen. Basically what their function is right now is

22 they're out seeing if they can generate interest in this

23 plant.

24 Q. All right. And so would it also be correct to

25 assume that since the assets are minimal at best, the debts

1 at this point would be minimal as well?

2 A. Yes. I'm not aware -- you know, I know it's
3 minimal. We have spent -- we have recorded on the books
4 less than \$100,000 of total cost for the Weston Bend
5 project.

6 Q. When you say we, who has incurred that cost up
7 to this point in time?

8 A. Well it would be GPP.

9 Q. And where would they have gotten the money to
10 incur those costs, to pay for them?

11 A. That I'm not sure.

12 Q. Would it have come from an affiliate?

13 A. I would imagine it would have come from some
14 sort of a loan.

15 Q. From?

16 A. Either from an affiliate or from a bank
17 source, but I'm not familiar with it.

18 Q. In fact, the planning and the engineering and
19 all of the other things that would have had to have gone
20 into examining the building of this plant in Weston, since a
21 lot of that from the press releases that you have pointed
22 out would have occurred previously, I think I understood
23 that some of that was done by KLT, is that correct, or who
24 would have incurred the costs for those things?

25 A. No, it would not have been done by KLT. It

1 would have been done by KCPL employees that would have been
2 billing their time to GPP.

3 Q. And would that time have been paid back at
4 this point or would that be something for future -- for
5 future payments?

6 A. I don't know the financial transaction,
7 whether it's been paid or not.

8 Q. Okay. Do you have any idea about the -- I
9 assume you would not know the total cost of that up to this
10 point in time?

11 A. I attempted to get those costs yesterday, and
12 the system was not working properly, but it's minimal at
13 this point.

14 Q. Including all of the engineering work and
15 everything else that's been done on planning stages for the
16 plant?

17 A. Yes.

18 Q. Would be minimal?

19 A. Yes.

20 Q. And when you say minimal, less than what
21 amount is minimal to you?

22 A. I would say again less than 200,000.

23 Q. I believe I heard earlier that the
24 construction of the Weston Bend facility, that the
25 restructuring that is requested by this Commission is

1 irrelevant to the building of that facility. Is that
2 correct?

3 A. That's correct.

4 Q. So regardless of whether the Commission would
5 or would not approve this, that is not of concern in regard
6 to the building of that facility?

7 A. Well, when you say not a concern, it's the
8 best interest in my opinion and in KCPL's opinion that it be
9 constructing within the holding company structure. It's the
10 best structure for the building of the plant for all
11 concerned.

12 If the holding company structure is not
13 approved, KCPL intends to continue with its strategy to
14 build unregulated generation.

15 Q. Okay. I don't know if I got -- if I
16 understood that totally. My understanding was that this
17 construction is irrelevant to the proceeding that we have in
18 front of us. What I just heard you say is that that may not
19 be totally accurate. Am I misunderstanding you?

20 A. Yes.

21 Q. All right. Go ahead and explain that for me
22 again and maybe I'll --

23 A. What I was --

24 Q. -- understand it the second time.

25 A. What I was trying to say is that regardless of

1 whether the holding company is approved or not, KCPL intends
2 to continue to pursue unregulated generation.

3 Q. Through GPP?

4 A. Through GPP. The only difference in that
5 scenario is that it will be constructed as a subsidiary of
6 KCPL, the electric utility, rather than through GPP as a
7 subsidiary of GPE, the holding company.

8 Q. Yes. But again, what you're saying then is
9 that our approval or disapproval is not a -- is not an
10 element of concern as far as your continuation of whatever
11 plans you currently have for GPP?

12 A. We will continue to pursue the strategy. What
13 I was saying, and I said this in my affidavit, it's better
14 in a holding company structure. It's better for the
15 customers. It's better for KCPL, GPE, and it's better for
16 the regulators. It insulates the utility from the risk
17 associated with building those plants.

18 It also adds value to GPE and KCPL because
19 investors will value the unregulated generation at a higher
20 multiple of earnings, for instance, under a holding company
21 structure than they will under KCPL the utility.

22 Q. And why is that, Mr. Giles?

23 A. They tend to look at the utility, unregulated
24 investments if the utility is the parent, they value it the
25 same as a regulated utility at a lower multiple. So by

1 splitting out into a holding company format, you hopefully
2 have ongoing value in each of the segments, which in this
3 case would be KLT, GPP and KCPL, and the sum of those values
4 would be greater for shareholders.

5 Q. Because?

6 A. Because the unregulated generation company
7 would be valued greater than it would under KCPL.

8 Q. I think I'm in a circle here. Get me out of
9 the circle for a moment. Why is it that they will -- that
10 they will value the structure at a higher amount if the
11 structure is under a holding company structure, and I'm
12 talking about investors now, than they would if it remained
13 under KCP&L?

14 A. They perceive under the utility the same value
15 as though it was a regulated earning utility.

16 Q. Why do they perceive that? That's a
17 conclusion. I want you to analyze it for me. Why do they
18 perceive that?

19 A. I don't know.

20 Q. If the structure is approved, then what
21 differences exist in regard to KCP&L's control over
22 electricity generated by GPP?

23 A. I didn't follow your question.

24 Q. What is the difference in KCP&L's control over
25 GPP's assets when it's a sister corporation as opposed to a

1 parent subsidiary relationship?

2 A. I don't think there's any difference.

3 Q. You don't?

4 A. No.

5 Q. You think KCP&L has just as much control as a

6 sister as it does as a parent?

7 A. I think so.

8 Q. Why do you think that?

9 A. Well, we have a subsidiary today, KLT, under

10 KCPL. KLT essentially operates separate from KCPL, and I

11 would not see on the generating side any difference of

12 whether KCPL were the parent versus GPP being the parent and

13 being the sister.

14 I guess what I'm really getting at is KCPL nor

15 GPP is going to necessarily control the generation of GPP.

16 GPP will be as independent from KCPL and KLT as KLT is from

17 KCPL today.

18 Q. KCP&L under today's structure owns 100 percent

19 of the stock of GPP?

20 A. That's correct.

21 Q. After this transaction, how much stock will

22 KCP&L own of GPP, if this structure were approved, this

23 proposal were approved?

24 A. They will own none. GPE will own all the

25 stock of KCPL and GPP.

1 Q. And GPP stock will be owned by, if this were
2 approved, GPE?

3 A. Yes.

4 Q. 100 percent of the stock; is that correct?

5 A. That's correct.

6 Q. And GPE is an unregulated -- is not a
7 regulated utility in Missouri?

8 A. That is correct.

9 Q. In your -- I don't know if it's in your
10 testimony here or if I read it somewhere else. Does KCP&L
11 have a position in regard to -- in regard to PUHCA, in
12 regard to whether or not it should continue to exist?

13 A. I'm not sure what that position is.

14 Q. You don't know if they have a position?

15 A. Well, we've had varying positions over the
16 years. I'm not sure that -- what the position is today.

17 MR. FISCHER: Your Honor, could I ask the
18 general counsel to answer that?

19 COMMISSIONER GAW: That will be fine.

20 MR. RIGGINS: I might be in a better position
21 to answer that than Chris, Commissioner Gaw. Let me start
22 out the answer by saying that we've become much more
23 interested in PUHCA recently than we were in the past
24 because of the fact that we are going, if this
25 reorganization is approved, to be a registered holding

1 company under PUHCA, which obviously we are not today.

2 That subjects us to a significant amount of
3 regulation that we are not subject to today. We think that
4 some of that regulation is reasonable and perhaps some of it
5 is anachronistic. But I think the important thing here is
6 that the commitments that we have made in the Stipulation &
7 Agreement in this case mirror those contained in the Public
8 Utility Holding Company Act, and they are not dependent upon
9 the Public Utility Holding Company Act for their existence.

10 So even if PUHCA were to go away, that does
11 not affect the commitments that we've made in the
12 Stipulation & Agreement in this case. Even though in many
13 cases they mirror the PUHCA requirements, they're going to
14 be there and we're going to be complying with them
15 regardless of whether PUHCA stays as it is today, goes away
16 completely, is changed or whatever.

17 COMMISSIONER GAW: And I appreciate your
18 intervening here, and I would ask Public Counsel and Staff
19 if they agree that all the protections of PUHCA are
20 contained in this stipulation if PUHCA were to go away
21 tomorrow?

22 MR. DOTTHEIM: I don't know that I would agree
23 with that. I don't think frankly I've looked at the
24 document from that -- from that perspective, but the -- as
25 I'm thinking now, the more I'm thinking about it, there are

1 protections dealing with agreements as to how KCPL would
2 proceed with affiliate contracts that are required to be
3 filed with the FERC and regarding contracts that are --
4 affiliate contracts that are required to be filed with SEC.

5 Now, I don't -- I don't know, and again, I
6 haven't thought about it, it's probably remiss on my part
7 for having not thought about it, as to the very question
8 you've asked because the real or seemingly real possibility
9 that PUHCA may be rescinded.

10 I think in discussions that the Staff has had
11 with Public Counsel, Public Counsel has raised the question,
12 which it might be argued that we haven't addressed in the
13 document, as to what if there is legislation in Missouri
14 rather than legislation at the federal level, what if there
15 was legislation at the -- in Missouri by the Missouri
16 Legislature which would pare back some of the jurisdiction
17 of the Commission.

18 Would KCPL take the position that the newly
19 passed legislation and if it's signed into law by the
20 Governor, if a new law would trump, so to speak, the
21 agreement that Kansas City Power & Light has entered into
22 and also to the question of, in any future legislation
23 session, would Kansas City Power & Light take a position of
24 seeking to obtain legislation which arguably would -- or
25 would definitely remove the Missouri Commission's

1 jurisdiction in part over Kansas City Power & Light? Would
2 Kansas City Power & Light argue that it is bound by the
3 Stipulation & Agreement or the new legislation prevails?

4 So those are good questions, very good
5 questions. Unfortunately, some of us didn't focus on that
6 at an earlier stage, and I don't know what Kansas City
7 Power & Light's response to that would be.

8 On occasion, I think frankly on occasion when
9 we remember, which is I guess a statement in itself, we see
10 if we can obtain language in the Stipulation & Agreement
11 that the utility that's the party to the Stipulation &
12 Agreement won't seek any legislation before the Missouri
13 Legislature seeking to revoke or arguably rescind portions
14 of the Stipulation & Agreement that they've entered into.

15 On occasion we'll find a company that's
16 willing to agree to that, but that, of course, doesn't
17 address what the rest of the electric industry might do
18 regardless of that.

19 COMMISSIONER GAW: Office of Public Counsel,
20 if I might, and then I'll come over there.

21 MR. RIGGINS: Thank you.

22 MS. O'NEILL: Yes, Commissioner. I'm not
23 prepared to sit here today, Commissioner Gaw, and tell you
24 that every requirement in PUHCA is in this Stipulation &
25 Agreement. However, we do believe that most of the major

1 issues related to PUHCA are covered in this agreement either
2 expressly or through the other conditions that we have in
3 the stipulation.

4 There are a number of provisions in the
5 Stipulation & Agreement that are designed to insulate the
6 customers of the regulated utility from any harm that could
7 result from any speculative or just more risky than
8 regulated business ventures that the unregulated parent or
9 sister affiliates may engage in, including an agreement that
10 KCPL customers are going to be held harmless if the
11 reorganization should result in a higher revenue requirement
12 for KCPL.

13 There's several financial conditions in the
14 agreement that are designed to protect the regulated
15 company's customers set out at pages 11 and 12. There's
16 also a lot of other provisions. Some of these track --
17 there's a number of provisions, some of which track this
18 Commission's affiliate transaction rules, some of which are
19 very similar to PUHCA provisions, and some of which may be
20 compromised language and not fully track some things because
21 this was a negotiated settlement and we did a little give
22 and take to get to a point where the parties all felt that
23 they could sign this in good faith and support this in good
24 faith.

25 COMMISSIONER GAW: KCPL?

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1 MR. RIGGINS: I agree with what Public Counsel
2 just said on that point, and I was probably a little
3 imprecise in my answer to your earlier question. I did not
4 mean to imply that all of the provisions in PUHCA were
5 incorporated into the Stipulation & Agreement, and
6 Mr. Dottheim pointed that out and that's true.

7 What I was trying to say was that we believe
8 that the key provisions of PUHCA that are designed to
9 project the customers of the regulated utility are
10 replicated in the Stipulation & Agreement. They are not
11 dependent upon the continued existence of PUHCA. We have an
12 obligation to continue to comply with those conditions
13 regardless of what happens to PUHCA.

14 And to follow up to a point that Mr. Dottheim
15 said, we would continue to take the position that we would
16 be bound by the provisions of the Stipulation & Agreement
17 even if various statutes at the state level were to change.

18 Now, if they were to change in such a way --
19 and it's difficult to hypothesize about how things might
20 change in the future, but if it were to change in a way that
21 made it improbable or put us in the position of having to
22 either break the stipulation or break the law, of course
23 that would be an issue, but I don't see that happening.

24 COMMISSIONER GAW: Thank you. Mr. Giles, if
25 you know, the funding for the building of the plant in

1 Weston for GPP, is that -- is that funding that might
2 possibly come from the affiliates of GPP, including KCP&L
3 and GPE?

4 MR. GILES: No. It's planned to be project
5 financed so that if we don't have the subscribers for the
6 power, the plant won't be constructed.

7 COMMISSIONER GAW: And you're anticipating
8 getting contracts signed for periods of time to help ensure
9 that that would be the case before the construction would
10 take place?

11 MR. GILES: That's correct.

12 COMMISSIONER GAW: I want to go back again to
13 Public Counsel and to Staff with this question. Do you
14 believe that this change in structure where we are moving an
15 entity that we have all discussed now twice is going to be a
16 generator of electricity on the wholesale market from a
17 subsidiary of KCP&L to a sister corporation, that that is
18 better for the public than the current structure that exists
19 with those -- with those two considering the fact that that
20 structure is irrelevant to the building of the new
21 generation that we've been talking about today?

22 And if there are positives and negatives that
23 go along with that, I'd like to hear your position on both
24 of those in regard to the public's interest, and I don't
25 know who wants to go first.

1 MR. DOTTHEIM: I don't know that there is a
2 benefit of having GPP under a holding company structure than
3 under the present structure. I don't know that the Staff
4 would agree with the statement that Commissioner Lumpe has
5 inquired respecting on page 8 of Mr. Giles' testimony about
6 KCPL being better insulated by the holding company structure
7 than by the -- than by the present structure.

8 The Staff has concerns, and out of those
9 concerns are the conditions that are in the Stipulation &
10 Agreement, and we attempted to address those as best we
11 could and do so cognizant of the changes that are occurring
12 in the utility industry and also cognizant of the standard
13 under Missouri law of not detrimental to the public
14 interest.

15 I think in many respects only time will let us
16 reflect on whether the holding company structure is as good,
17 better or frankly worse than the present structure. Again,
18 we've tried to build into the structure by the conditions in
19 the Stipulation & Agreement as many safeguards as possible.

20 And just going back to a prior question of
21 yours, Commissioner Gaw, and I think maybe Mr. Riggins has
22 addressed this when he addressed the matter of future
23 legislation that might be viewed by some as in conflict with
24 the Stipulation & Agreement, of course the Commission's
25 affiliated transaction rules, although not being challenged

1 by Kansas City Power & Light, are being challenged in the
2 Western District Court of Appeals by AmerenUE.

3 So there is the prospect of a judicial
4 decision, although there will be a judicial decision and
5 we're hopeful of what that will be, but again, there's no
6 certainly.

7 And not to digress or just to roam all over
8 the place, but even with the affiliate transactions rules,
9 affiliate transactions prior to the affiliate transaction
10 rules have been regulated by the Commission. Affiliate
11 transaction issues have appeared in cases for decades. And
12 even without the affiliate transaction rules, the Commission
13 has been affirmed in the Missouri courts on adjustments made
14 and questions as to the power of the Missouri Commission.

15 So in addressing the challenge to the
16 affiliate transactions rules, I don't want to leave the
17 Commissioners with the impression that at least that I have
18 some fear that the utilities regulated by the Commission are
19 free of any oversight by the Commission as it goes to
20 affiliate transactions if there are no affiliate transaction
21 rules.

22 MS. O'NEILL: Commissioner Gaw, I want to
23 start by saying that we also at Public Counsel don't
24 necessarily believe that by transferring to a holding
25 company structure in a vacuum that that necessarily is

1 something that automatically is good for customers of a
2 regulated utility. In fact, if we were to go back to square
3 one and there was no law or prior history on holding
4 companies in Missouri, I'm not sure that we would be coming
5 in here saying that we wanted a holding company structure to
6 be approved in this case.

7 However, we're in -- we were in the reality
8 that holding companies are legal. There are other public
9 utility holding companies in the state of Missouri, and we
10 went into our negotiations believing that it was likely that
11 some form of approval would come out of this application or,
12 if not this application, a similar one to KCP&L.

13 And with that in mind, and also in mind the
14 legal standard of no detriment to the public interest as
15 opposed to a benefit to the public interest, we entered into
16 negotiations and drafted language in this Stipulation &
17 Agreement that we do believe provides substantial
18 protections to the regulated utility's customers to the
19 extent that we can state that we do believe that there would
20 not be a detriment to the public interest approving the
21 application and adopting the terms in the Amended
22 Stipulation & Agreement.

23 Certainly we don't agree with that and we
24 don't ask the Commission to consider that PUHCA is there and
25 there will be no challenges in the future. Obviously, the

1 statements that have been made about PUHCA remain on PUHCA
2 remaining in effect as a law.

3 However, we also believe that KCPL and its
4 affiliates have negotiated in good faith with us, and we
5 believe that they're going to honor the commitments that
6 they've made in the Amended Stipulation & Agreement
7 regardless of any legislation, again assuming there's no
8 legislation that would make any of the provisions of the
9 stipulation illegal or unlawful. We believe that they want
10 to honor the terms of the agreement.

11 MR. FISCHER: Your Honor, could I ask
12 Mr. Giles to answer that question?

13 COMMISSIONER GAW: Yes. That will be fine.

14 MR. FISCHER: Mr. Giles, would you elaborate
15 on your statement in your affidavit that you believe that
16 the holding structure is a better structure and will
17 insulate customers and also upon the additional provisions
18 that we have agreed to in the stipulation that go beyond
19 current protections to customers?

20 MR. GILES: Yes. I don't recall the page
21 number exactly, but in my affidavit I point out that the
22 holding company structure contains several financial
23 safeguards that do not exist today.

24 If GPP were to remain a subsidiary of KCPL as
25 the parent, for instance, there's no assurance of an equity

1 floor. There's no assurance of an equity floor for GPP or
2 KCPL. There are a number of financial conditions contained
3 in both the Stipulation & Agreement and the Amended
4 Stipulation restricting the amount of investment GPP/GPE can
5 have. There's restrictions on the number of type of
6 businesses that will be allowed. There's no loaning of
7 money between the utility and unregulated affiliates.

8 None of those conditions exist today should
9 KCPL remain the parent of the unregulated generating
10 company. So all of those are conditions that KCPL willingly
11 agreed to in the Stipulation & Agreement. In exchange for
12 that, we also agreed to all the SEC requirements, and
13 whether those requirements are spelled out specifically in
14 the agreement, we're bound by them as long as PUHCA exists.

15 Once PUHCA is eliminated, if it's ever
16 eliminated, we will still be bound by all the conditions,
17 the financial conditions contained in the Stipulation &
18 Agreement.

19 You might ask, well, why? Why is KCPL willing
20 to do this? Again, I go back to the premise behind the
21 holding company, that unregulated generators are valued by
22 the investors at a higher multiple than a utility with a
23 generating company as a subsidiary. Investors perceive,
24 rightly or wrongly, that it's still a regulated utility
25 that's still limited to a regulated rate of return. They

1 don't have that perception in a holding company structure.

2 So that's the value for KCPL, and I think with
3 the conditions that we've agreed to, it also is a protection
4 for customers. And I'm reluctant to mention any other
5 utilities, but I can assure you that some utilities could
6 not have gotten into some of the conditions they're in under
7 such a structure.

8 COMMISSIONER GAW: I asked you about GPP. I
9 might ask you about GPE. I've got to get those two straight
10 here. GPE, does it currently have assets?

11 MR. GILES: GPE does not until the holding
12 company transaction closes.

13 COMMISSIONER GAW: So it doesn't have
14 employees or debt either?

15 MR. GILES: My understanding is -- and
16 Mr. Riggins may be able to answer this, but my understanding
17 is that until the actual holding company the transaction
18 closes, GPE does not have any assets.

19 MR. RIGGINS: I guess Chris saw me clutch for
20 the microphone, but I think I probably can answer that
21 question in a little bit more detail.

22 Great Plains Energy has already been
23 established, Commissioner Gaw. It is a shell corporation at
24 the moment. We were going to have to form it at some point,
25 obviously, and we went ahead and set it up as a legal

1 entity. The chairman and president and CEO is seated next
2 to me, and he is the only employee, if you will, at this
3 point of Great Plains Energy, and as a matter of fact -- one
4 secretary. I'm sorry.

5 COMMISSIONER GAW: Only one?

6 MR. RIGGINS: But as a matter of fact, if the
7 reorganization is approved and closed and GPE is a holding
8 company, it will not be permitted under SEC regulation to
9 directly own any assets itself. So it will only have
10 indirect ownership/interest of assets.

11 It will not -- it will have officers, but, for
12 example, the corporate, we don't anticipate that the
13 corporate and support functions will be at Great Plains
14 Energy. What I'm trying to say is it will essentially be a
15 shell after the reorganization as it is today. The only
16 difference is it will be on top instead of on the bottom.
17 That's the way the SEC wants it set up.

18 And I might also add that a reason we formed
19 Great Plains Energy when we did was that it allowed us to
20 make commitments in this case as well as in other regulatory
21 proceedings on behalf of Great Plains Energy as well as
22 KCPL.

23 COMMISSIONER GAW: That's all I have.

24 JUDGE THOMPSON: Thank you, Commissioner Gaw.

25 Any further questions from the Commission?

1 CHAIRMAN SIMMONS: One last question.

2 JUDGE THOMPSON: Chairman Simmons.

3 CHAIRMAN SIMMONS: I'd like to ask a question
4 to the Office of Public Counsel and Staff, and my question
5 is, with what you know today, is it still your position
6 today that the Stipulation & Agreement is still in the
7 public interest and that there is no detriment to the public
8 with this Stipulation & Agreement? Either one could answer
9 that, both of you.

10 MR. DOTTHEIM: Yes. At this time, based upon
11 what the Staff presently knows, we would still execute the
12 First Amended Stipulation & Agreement. I believe that it is
13 not detrimental to the public interest and would recommend
14 to the Commission that it approve Kansas City Power &
15 Light's application.

16 CHAIRMAN SIMMONS: Ms. O'Neill?

17 MS. O'NEILL: Yes. At this time we still
18 support the Amended Stipulation & Agreement as conditions
19 for approving this application. We believe that if the
20 Commission approves the application and adopts those
21 recommendations in the Stipulation & Agreement, that will
22 protect the customers of the regulated utility from any
23 adverse effects which might result from the holding company
24 restructuring initiative.

25 And just very briefly, a number of those

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1 conditions still require KCPL or one of the affiliates to
2 come to this Commission for approval of a number of
3 different types of transactions, and we believe that the
4 Commission's continuing oversight will ensure that there's
5 no detriment to the interest of the KCPL customers in any of
6 those transactions.

7 We've worked hard to make sure that there will
8 not be any detriment to the interest of the KCPL customers,
9 anything that would adversely affect the ability of KCPL's
10 customers to receive safe, reliable service at just and
11 reasonable rates. We believe that the Stipulation, Amended
12 Stipulation & Agreement does that, and would not act to the
13 detriment of public interest.

14 CHAIRMAN SIMMONS: Thank you. That's all the
15 questions I have.

16 JUDGE THOMPSON: Further questions from the
17 Commission?

18 COMMISSIONER MURRAY: Are there any of the
19 intervenors that still have positions on this also?

20 CHAIRMAN SIMMONS: I'm sorry. Thank you,
21 Commissioner Lumpe.

22 JUDGE THOMPSON: Mr. Kincheloe.

23 MR. KINCHELOE: Certainly for the Joint
24 Municipal Electric Utility we're comfortable with the
25 stipulation. I might also just affirm from my point of view

1 the accuracy of the characterization of the project that
2 we're talking about here to the issues in this case.

3 In notes that I have of a discussion with Mr.
4 Giles back in early May, after discussing some of the issues
5 in the case, I apparently inquired about the progress in
6 this project and he referred me at that time to Mr. Easley.
7 I think that's sort of how we all viewed it, I guess, sort
8 of a background, sort of a wallpaper, apparently to us but
9 not really considered relevant to what was going on in the
10 room. At least that was my understanding of it.

11 JUDGE THOMPSON: Any other intervenors?
12 Mr. Boudreau?

13 MR. BOUDREAU: I'll keep my comments short
14 because when I wax eloquent it just causes difficulties. I
15 will reiterate the position that I stated at the last
16 hearing, which is that my clients, though not signatories to
17 the Stipulation & Agreement, have no objection to it.

18 JUDGE THOMPSON: Thank you, Mr. Boudreau.
19 Mr. Comley.

20 MR. COMLEY: Thank you very much, Judge. I
21 think the City of Kansas City and County of Jackson are in a
22 similar situation. We're not signatories, but there is no
23 change in our position if we don't request a hearing about
24 it.

25 As far as the situation involving the plant, I

1 represent a client in this proceeding who has some
2 incorporated area in Platte County, and I think all of us
3 are experiencing somewhat of a winter in our economic
4 history, and the advent of a new plant in that area could be
5 a very nice shot for everybody. So we're looking forward to
6 that.

7 JUDGE THOMPSON: Thank you, Mr. Comley.
8 Ms. Langeneckert.

9 MS. LANGENECKERT: Missouri Energy Group also
10 has the same position that it had previously, no objection
11 to the stipulation.

12 JUDGE THOMPSON: Thank you very much. I have
13 a couple questions.

14 Mr. Fischer, I believe you described Great
15 Plains Power as being already an exempt generator; is that
16 correct?

17 MR. FISCHER: I don't think I used those
18 terms, your Honor. I think I tried to use the terms an
19 unregulated competitive provider of wholesale generation.

20 JUDGE THOMPSON: Thank you for correcting me.
21 Yet it has no generation assets; is that correct?

22 MR. FISCHER: That's correct.

23 JUDGE THOMPSON: At this time?

24 MR. FISCHER: At this time.

25 JUDGE THOMPSON: Now, again, am I correct in

1 my understanding that you said you could build the Weston
2 plant tomorrow, GPP could do so, without requiring any
3 approval from this Commission; is that correct?

4 MR. FISCHER: Yes, your Honor.

5 JUDGE THOMPSON: Would you have to seek
6 approval from any other state agency?

7 MR. FISCHER: I think one of the areas that
8 they have already begun some work in and probably that
9 \$100,000 has gone to some of the processing of permitting
10 for DNR type permits, environmental permits, and they've
11 also been doing some negotiating with the county officials
12 that would have similar kinds of concerns.

13 So yes, there are definitely much more other
14 types of approvals that will be needed if this plant comes
15 into existence.

16 JUDGE THOMPSON: Okay. And would that plant
17 require any federal approvals or permits?

18 MR. FISCHER: Depending on how it's
19 structured, your Honor. Bill, do you want to address that
20 directly?

21 MR. RIGGINS: Well, if you're talking in terms
22 of, for example, the FERC or the SEC, I think my answer
23 would be no. As Jim referenced, there is environmental
24 permitting work that needs to be done. How much of that is
25 related to state environmental issues and how much of it is

1 related to Environmental Protection Agency, I really
2 couldn't tell you.

3 But there will certainly be EPA involvement as
4 a result of numerous laws that the plant's going to have to
5 comply with that has nothing to do with its status as a
6 regulated or a nonregulated unit.

7 JUDGE THOMPSON: Okay. With respect to
8 section 386.310, the first subsection thereof which gives
9 this Commission supervisory power for safety purposes
10 over -- certainly over public utilities and perhaps over
11 other entities as well, is it your position that that
12 section would not extend to the Weston plant if it is ever
13 built?

14 MR. FISCHER: Your Honor, I haven't looked at
15 that section recently, but I think you probably put your
16 finger on the distinction that's important there.

17 I believe Chapter 386 does apply to public
18 utilities, and in the event that Great Plains Power would
19 build a power plant as an unregulated provider of wholesale
20 energy, it would not be a public utility under Missouri law
21 and, therefore, my advice would be that it is not part of
22 that safety jurisdiction.

23 JUDGE THOMPSON: Okay. Thank you. If I could
24 just say in closing that there's a famous line from the
25 movie -- Mr. Dottheim?

1 MR. DOTTHEIM: Yes. Judge Thompson, in
2 keeping with your order about bringing to the Commission's
3 attention things that maybe the Commission should be aware
4 of, I've got a document that was provided to the Staff by
5 the Office of the Public Counsel. I visited with the
6 Company about the document. I would, for fear of not
7 bringing matters to the Commission, I don't want this to
8 sound very ominous because I don't necessarily want it to
9 sound such, but I would like to distribute copies.

10 Maybe we should mark it as an exhibit and ask
11 Mr. Giles to explain a page in the document. He, I believe,
12 views that the item I'm going to direct him to is explained
13 at least in part in his affidavit, if not entirely in his
14 affidavit, but I'd like to give him an opportunity to expand
15 upon that.

16 JUDGE THOMPSON: By all means, Mr. Dottheim.
17 Would you please give Mr. Fischer an opportunity to view the
18 document in question.

19 MR. FISCHER: I've seen it, your Honor, and I
20 don't have an objection.

21 JUDGE THOMPSON: Okay. And how would you
22 characterize it?

23 MR. FISCHER: It is, my understanding, is a
24 part of a presentation, slides that have been reduced to
25 hard copy, and a text that goes along with it. It was a

1 presentation made by Mr. William Downey on May 24, 2001, on
2 behalf of Kansas City Power & Light Company at a meeting of
3 the Missouri Energy Task Force, the Governor's task force if
4 I understand correctly where the Commission does not have a
5 representative that sits on that task force.

6 JUDGE THOMPSON: Do you have sufficient copies
7 for the Commissioners?

8 MR. DOTTHEIM: Yes. And it's dawned on me
9 that I'm not sure I ran enough copies for the court reporter
10 and the attorneys.

11 JUDGE THOMPSON: If you can supply the
12 reporter with one, I think that that would certainly be
13 sufficient in this case.

14 MS. O'NEILL: And Mr. Dottheim, we have a
15 copy.

16 JUDGE THOMPSON: Perhaps you can make copies
17 available after this proceeding for counsel for the other
18 parties. We'll go ahead and mark this, Kellene, as Exhibit
19 No. 2.

20 (EXHIBIT NO. 2 WAS MARKED FOR IDENTIFICATION.)

21 JUDGE THOMPSON: Mr. Dottheim, you may
22 inquire.

23 CHRIS GILES, testified as follows:

24 CROSS-EXAMINATION BY MR. DOTTHEIM:

25 Q. Mr. Giles, you have a copy of what has been

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1 marked as Exhibit 2 in this proceeding?

2 A. Yes.

3 Q. Could you identify that document?

4 A. This is a hard copy of presentation slides
5 given by Mr. William Downey on May 24th, 2001 to the
6 Missouri Energy Task Force.

7 Q. And is there a text that follows the
8 reproduction of the slides?

9 A. There is a text that is attached.

10 Q. Do you recognize that document?

11 A. Yes. That is a summary of the presentation
12 that I actually put together and handed out at the Missouri
13 Energy Task Force meeting.

14 Q. Mr. Giles, I'd like to direct you to what I
15 believe is page 15, starting from the top of the sheets
16 working backwards. Unfortunately, for our purposes they're
17 not numbered.

18 JUDGE THOMPSON: Could you describe that page,
19 Mr. Dottheim?

20 MR. DOTTHEIM: Yes. I have at the top of the
21 page turned length-wise 2001 Update, and then there are
22 three bullet points. The first word for each bullet point
23 is respectively regulatory, legislative, and
24 organizationally.

25 THE WITNESS: Yes, I see that.

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1 BY MR. DOTTHEIM:

2 Q. Mr. Giles, you're familiar with the
3 information that's contained on that page?

4 A. Yes, I am.

5 Q. Do you consider any part of your affidavit as
6 addressing those matters in Exhibit 2?

7 A. I do. I believe the -- it begins on page 9,
8 the first full paragraph, and continues over to page 10, the
9 end of the first full paragraph, and that -- just to make
10 sure we get that, the last paragraph I'm referring to states
11 that, Under KCPL's application in this proceeding and the
12 First Amended Stipulation & Agreement, no existing
13 generation assets are affected and the Commission's
14 authority over all of KCPL's existing generation assets is
15 preserved. It is simply a request by KCPL to be allowed to
16 restructure itself into a holding company. That will be the
17 end section.

18 The beginning section I referred to begins on
19 page 9 and the paragraph begins, The electric utility
20 industry is in a state of transition. Portions of it
21 function in a competitive environment and portions in a
22 regulated environment. In Case No. EM-2000-753, KCPL filed
23 an application in May of 2000 to restructure and transfer
24 its existing generation assets to an unregulated subsidiary.

25 So beginning with that paragraph and ending

1 with the one I previously read, that covers, I believe, this
2 page that you referred to me in the presentation.

3 Q. Okay. And if I could refer you to the last
4 bullet point which states, Organizationally: Up and
5 running. Strategy, Move all generation assets to Great
6 Plains Power. Could you please provide an explanation of
7 that bullet point?

8 A. KCPL when we initially filed our application
9 to restructure and transfer assets, we subsequently withdrew
10 that case and decided not to transfer assets at this time.

11 What we have done internally, we have
12 restructured the company. Even though KCPL is still a
13 regulated vertically integrated utility, we now have a
14 delivery president and a generation president within the
15 utility. And we are operating today as separate business
16 units even though both are still regulated.

17 Our long-term goal, and when I say long-term,
18 I truly mean long-term, is to eventually support
19 competition, whether that be retail competition or wholesale
20 competition, and at that point would still have a strategy
21 to eventually have all generating assets separated from the
22 regulated utility.

23 Q. When you say long-term, could you place a
24 number of years on your use of the word instead of
25 long-term?

1 A. I can't really say. You know, it depends on
2 the situation, I mean, whether retail competition is
3 involved, whether it's simply wholesale competition.

4 And, you know, the whole concept of
5 competition is a long-term issue, and one of the problems or
6 one of the concerns that we had with the legislation as it
7 was amended in the last session is that there was no
8 transition involved in that legislation from a regulated
9 vertically integrated system to a deregulated generation
10 system. It's a very complex issue to deal with.

11 And as I said, it's still KCPL's long-term
12 strategy that all generation be in an unregulated generating
13 company and compete in the marketplace. Now, that's not to
14 say there aren't a number of complex issues to deal with,
15 and part of those complex issues has to be a policy from the
16 Legislature that sets some sort of transition from one form
17 to the other.

18 It's really no different in our mind than it
19 was three or four years ago when the transition was one of
20 from stranded costs to market, and today maybe that's
21 changed somewhat, but it's still an issue of transition, how
22 does one convert from the regulated rate of return model to
23 a competitive wholesale model, and it can't just be done in
24 a vacuum and it can't be done in a short time frame.

25 So when I say long-term, you know, depending

1 on the political situation, the rate of retail competition
2 throughout the country, the California situation, I don't
3 know that I can put a time frame on it. It may be several
4 years. It may be ten years. That's the best I can answer.

5 Q. Thank you, Mr. Giles.

6 MR. DOTTHEIM: Again, in having this document
7 marked as an exhibit and asking Mr. Giles several questions,
8 I don't mean to leave the Commissioners with the impression
9 that this document itself affects the Staff's view of the
10 First Amended Stipulation & Agreement. Even with this
11 document the Staff would again enter into the First Amended
12 Stipulation & Agreement.

13 It was a bit of information which, again, for
14 fear of the Commissioners not being fully apprised, the
15 Staff thought that it would bring the document to your
16 attention.

17 JUDGE THOMPSON: Thank you, Mr. Dottheim.
18 Were you going to move the admission of Exhibit No. 2?

19 MR. DOTTHEIM: Yes. I at this point move for
20 the admission of Exhibit No. 2.

21 JUDGE THOMPSON: Any objections?

22 MR. FISCHER: No objection, your Honor.

23 MS. O'NEILL: No, your Honor.

24 JUDGE THOMPSON: Hearing no objections,
25 Exhibit No. 2 is received and made a part of the record of

1 this proceeding.

2 (EXHIBIT NO. 2 WAS RECEIVED INTO EVIDENCE.)

3 JUDGE THOMPSON: We've been here for two
4 hours, and before I ask the other parties if they wish to
5 inquire, I think we will have to take a five-minute break
6 for the reporter if for no other reason. We'll be back in
7 five minutes.

8 (A BREAK WAS TAKEN.)

9 JUDGE THOMPSON: Mr. Dottheim, you're done; is
10 that correct?

11 MR. DOTTHEIM: Yes, Judge.

12 JUDGE THOMPSON: I think since we had some
13 actual cross-examination I need to go around the room.
14 Ms. O'Neill, do you have any questions?

15 MS. O'NEILL: I have just a few. Thank you,
16 your Honor.

17 JUDGE THOMPSON: Please proceed.

18 CROSS-EXAMINATION BY MS. O'NEILL:

19 Q. Mr. Giles, understanding that there is a
20 long-term corporate strategy where KCPL may be working
21 toward this goal of transferring assets, isn't it true that
22 under current Missouri law this type of transfer of assets
23 could not happen without Commission approval after full
24 review of all the matters affecting the public interest?

25 A. That's correct.

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1 Q. And you had mentioned a little bit about what
2 I think those of us who work in the regulatory area at least
3 call the GenCo bill that was pending for a while with the
4 Legislature this year; is that right?

5 A. Yes.

6 Q. And although in its final form KCPL did not
7 support that bill, isn't it fair to say that, as it was
8 initially conceived, KCPL did support that GenCo bill
9 regarding the removal of assets of an unregulated utility?

10 A. We supported the bill initially. Once we
11 withdrew our application to transfer assets, we continued to
12 support the bill but not actively. We did not testify on
13 the bill. We did not lobby for the bill.

14 We were still hopeful that at some point
15 through the amending stage that some form of policy
16 direction could come from that bill, and we did not believe
17 at the end of the day when -- I believe the bill we're
18 referring to was the Senate version of the bill. At the end
19 of the day the Senate version did not, we felt, provide
20 policy direction that we were looking for from the bill
21 either to the State or to the Commission, and at that point
22 we could not support it.

23 Q. Okay. And the policy direction in the bill at
24 that point was not something that you as a company could
25 support; is that correct?

1 A. That's correct.

2 Q. And you'd also mentioned earlier that one
3 problem that you may have had was that you felt that it
4 didn't provide for an adequate transition from regulation to
5 competition, but wasn't the legislation providing for
6 transition of some sort by transferring jurisdiction from
7 the Missouri Commission up to the FERC as far as over
8 generation, issues regarding generation?

9 A. Well, I'm not sure I'm following your
10 question.

11 Q. There was some transition. It was a
12 transition of moving authority for certain aspects of
13 generation out of the state commission's jurisdiction up to
14 the federal level; is that right?

15 A. Well, that's not the type of transition I'm
16 referring to. I'm referring more to a transition from a
17 regulated price to a competitive price. That's the
18 transition I saw that was missing.

19 Q. So the transition you were concerned about is
20 a different issue?

21 A. Right.

22 Q. Okay. Under this stipulated -- the Amended
23 Stipulation & Agreement in this matter, KCPL has agreed
24 that, at least in regard to the CTs that are mentioned in
25 the negotiated settlement, before any transfer of rights to

1 those CTs happens, KCPL will initiate a proceeding before
2 the Commission to address all issues related to the transfer
3 of the rights contained in the Memorandum of Understanding
4 which is referenced in this document?

5 A. Yes.

6 Q. And that further, prior to the transfer of
7 rights contained in that Memorandum of Understanding to any
8 entity other than GPP or GPE, you will provide timely notice
9 to Staff and Public Counsel relating to the transfer of
10 those rights; is that correct?

11 A. That's correct.

12 Q. And although the document reserves to all the
13 parties, including KCPL, the right to assert their
14 respective positions regarding how this matter should be
15 handled by the Commission, at least a proceeding will be
16 initiated before the Commission; is that correct?

17 A. That's correct.

18 Q. And certainly under current law, transfer of
19 any existing KCPL assets would have to come before the
20 Commission?

21 A. That's true.

22 Q. Whether that was to GPP or to some other
23 entity?

24 A. That's my understanding.

25 MS. O'NEILL: I don't have any further

1 questions.

2 JUDGE THOMPSON: Thank you, Ms. O'Neill. Is
3 Mr. Comley still here? Mr. Comley is gone. Mr. Boudreau?

4 MR. BOUDREAU: No questions. Thank you.

5 JUDGE THOMPSON: Mr. Kincheloe?

6 MR. KINCHELOE: No questions.

7 JUDGE THOMPSON: Ms. Langeneckert?

8 MS. LANGENECKERT: No questions.

9 JUDGE THOMPSON: Questions from the Bench,
10 Chair Simmons?

11 CHAIRMAN SIMMONS: No questions.

12 JUDGE THOMPSON: Commissioner Murray?

13 COMMISSIONER MURRAY: No questions.

14 JUDGE THOMPSON: Commissioner Gaw?

15 COMMISSIONER GAW: None.

16 JUDGE THOMPSON: Mr. Fischer, redirect?

17 MR. FISCHER: Your Honor, I really don't have
18 any redirect, but in that category of other material issues
19 that have not yet been disclosed, I've been trying to wrack
20 my brain to make sure we didn't miss any. There is one
21 matter that I want to add to that category.

22 Great Plains Power was about to issue a
23 Request for Proposals to determine whether the marketplace
24 is indeed interested in the Weston Bend project, and in
25 light of this proceeding we asked them to refrain from doing

1 that until after this proceeding was completed.

2 I'd like to let the Commission know that we do
3 intend to go forward with that Request for Proposal. I
4 don't know that it will be in the press, but if that was
5 reported, that's what it's about. We're just attempting to
6 find out whether there is interest in the wholesale market
7 for this power plant, and we intend to go forward with that.

8 The other question, I guess, in light of our
9 experience in this proceeding, we would like some direction,
10 if the Commission would care to give it to us, whether in
11 the future we should send press releases to Kevin Kelly's
12 office or to the Chairman's office or what's the appropriate
13 way to make sure that relevant information gets to the
14 Commissioners outside the record? And if at some point that
15 is appropriate to let us know a procedure, we'd be very
16 happy to comply.

17 JUDGE THOMPSON: That's a very good question,
18 Mr. Fischer, and I intend to address that. What we have
19 here is a failure to communicate, in the words of Paul
20 Newman in Cool Hand Luke. You all saw that coming, I know.

21 The Commission which is charged with making
22 these decisions only knows what is in the record. In the
23 case of those cases which are actively litigated in front of
24 the Commission, as several persons have alluded to today,
25 there is a great deal of testimony filed, there is

1 cross-examination which is engaged in and public hearings,
2 and a great deal of information is thereby brought to the
3 attention and brought to the knowledge of the Commissioners.

4 However, in those cases which are not actively
5 litigated, sometimes the amount of information made
6 available to the Commission is sparse. I believe that this
7 case represents an instance where more information could
8 have been provided and was not.

9 I'm certainly satisfied that this was not out
10 of any attempt to hide anything, and let me say, Mr. Fischer
11 and Mr. Riggins, that I'm certainly satisfied there was no
12 attempt to evade the duty of candor.

13 MR. FISCHER: Thank you, your Honor.

14 JUDGE THOMPSON: But you must understand that
15 the Commissioners are not able to discuss these things with
16 their staff. All the Commissioners know is what is in the
17 record, what is in that file.

18 Therefore, it is incumbent upon the Staff,
19 upon the Applicant and upon the Public Counsel to bring all
20 information relating to the matter to the Commission's
21 attention by filing it in the case. There is probably no
22 harm that can be done by filing too much information, but
23 there is harm that can be done by providing too little.

24 The Commissioners are sometimes in the
25 position of the seven wise men who are attempting to figure

1 out what an elephant is. They're blind folded or they're
2 blind and they're touching different parts of the animal and
3 it appears different to each of them.

4 If the information comes in in dribs and
5 drabs, then the Commission will not have the entire picture
6 that the Commission needs to discharge its statutory duty
7 and its obligation to the people of Missouri. So I would
8 simply close today by urging all of you to provide more
9 rather than less information for the Commission in the
10 future.

11 Mr. Dottheim.

12 MR. DOTTHEIM: Yes. On pain of prolonging
13 this but to address your statements, Judge Thompson, and
14 Mr. Fischer's suggestion about providing press releases, I
15 haven't discussed this with the Company or Office of the
16 Public Counsel, but -- and with a number of the
17 Commissioners being still relatively new, they may very well
18 be aware that there's a Chapter 22 in the Commission's rules
19 on resource planning, but they may not be aware that,
20 although those rules have not been rescinded and they go on
21 for a number of pages, the electric industry was granted a
22 variance back in 1999, I believe, as far as submitting
23 additional filings in compliance with Chapter 22, the
24 resource planning rules.

25 As part of that variance, the companies have

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1 agreed to make presentations semi-annually to the Office of
2 the Public Counsel and the Staff on items such as generation
3 and transmission resource plans, planned alternatives to
4 generation capacity additions, and any number of other
5 items.

6 Of course, it's always problematic with all
7 the dockets that may be open involving one or another
8 electric utility whether it would be possible to keep the
9 Commissioners apprised of these presentations and either
10 have them attend or somehow information be provided to the
11 Commissioners.

12 That's something that Kansas City Power &
13 Light and the Staff and the Office of the Public Counsel
14 might discuss to see if there is any value in trying to
15 fashion something that might keep the Commissioners more
16 apprised than they presently are even if they were to be
17 provided press releases.

18 JUDGE THOMPSON: Well, Mr. Dottheim, let me --
19 Mr. Fischer referred earlier to the strong ex parte rule in
20 Missouri, and that is absolutely the case. When I urge you
21 to provide information to the Commission, I mean that you
22 must do so formally in the form of filings in docketed
23 cases.

24 Press releases provided to Staff are great,
25 but that information can flow only from Staff to the

1 Commission in the form of formal filings which are done with
2 service to all parties and which are available for public
3 inspection unless properly classified as highly confidential
4 or proprietary. The same would go for resource planning
5 presentations.

6 MR. DOTTHEIM: Yes. And I don't know if
7 that's something that the Commissioners might be interested
8 in, but, of course, if there's a quorum it must be posted,
9 it must be an open meeting.

10 And, of course, presentations are made not
11 necessarily on a regular basis to the Commissioners in the
12 agenda, in the agenda room, and on occasion -- I don't know
13 that it's been done in this building since we've moved here,
14 but it used to be in the Truman Building that presentations
15 were made in one of the hearing rooms.

16 That may be a way of addressing a need for
17 information and seeing if a reasonable amount of time might
18 be scheduled on the agenda where a presentation could be
19 made to the Commissioners and anyone else from the public
20 who might want to sit in.

21 MS. O'NEILL: Judge Thompson, if I could just
22 interject because as Mr. Dottheim indicated he hadn't talked
23 to anyone at the Office of the Public Counsel.

24 We certainly agree and respect the fact that
25 this Commission only considers matters that are in the

1 record in a case that's before it and believe that it's very
2 important to continue with that practice, and we understand
3 that more information should be forthcoming.

4 And also in the full disclosure, and this is
5 going to be very short, I did not want to give the
6 impression that the Public Counsel was in favor of the GenCo
7 legislation that was debated in the last legislation session
8 by my questioning of Mr. Giles.

9 Frankly, we believe such a bill would not
10 protect consumers from potential adverse consequences of
11 transferring existing -- because transferring existing
12 generation assets out of rate base into an unregulated
13 generation company could have adverse consequences.

14 But I don't want to get into that. I don't
15 know that this is the appropriate forum to talk about
16 something that is now a hypothetical future bill.

17 I do in regard to how information like this
18 gets to the Commission, however, have an opinion, and that
19 is that certainly in a situation like this where there is a
20 case open, there's a docket open, certainly would not be
21 adverse to the company filing as a pleading a copy of the
22 press release with the Commission, and that may be the
23 easiest manner of doing that. I don't know if we're going
24 to solve that issue today either. That would be an option.

25 JUDGE THOMPSON: Thank you. Anyone else?

1 MR. FISCHER: Your Honor, I had just one other
2 matter that I forgot to mention. I had a question addressed
3 to me from Commissioner Murray and Commissioner Lumpe, I
4 believe, regarding the expected time line and approvals from
5 some other regulatory bodies. Could I ask the General
6 Counsel to more completely address that issue?

7 JUDGE THOMPSON: Yes, sir. Mr. Riggins.

8 MR. RIGGINS: Just briefly, your Honor, just
9 to provide you with a little bit more information about
10 where we are at in the regulatory approval process, and I
11 don't think we did this at the last on-the-record
12 proceeding, but it was our opinion that this reorganization
13 proposal required the approval of six different regulatory
14 agencies, you being one of them. And we filed all of those
15 applications, and I would like to give you the status of
16 each just briefly.

17 The Federal Energy Regulatory Commission
18 approved our application on March 23rd. We had to file
19 three applications with the Federal Communications
20 Commission because we had three different kinds of
21 communications licenses. The last of those applications was
22 approved on May 11th.

23 The Nuclear Regulatory Commission approved our
24 application on June 1st, and as referenced earlier, that
25 leaves this Commission, the Kansas Corporation Commission

1 and the Securities and Exchange Commission.

2 We published our SEC application, it was
3 published by the SEC I should say, with a public comment
4 period that expired in June, early June. There were no
5 public comments received, and the SEC staff has informed us
6 that the SEC is prepared to issue its order approving our
7 reorganization as soon as all of the other regulatory
8 approvals have been received.

9 And as Jim indicated earlier, the record is
10 closed in Kansas. Our understanding is that the Order has
11 been prepared and submitted, so we expect it soon.

12 We did recently cancel our proposed closing
13 date of August 9th, and the New York Stock Exchange was not
14 too pleased with us and basically told us, Don't schedule
15 another one until you're sure. So we have not scheduled
16 another closing date at this point, but obviously we would
17 like to move forward just as soon as we can.

18 Thank you.

19 JUDGE THOMPSON: Thank you, Mr. Riggins.
20 Anything else from anyone?

21 MR. FISCHER: And I would also like to just
22 thank the Commission for scheduling this on-the-record
23 proceeding as soon after the previous one as possible. It
24 was helpful to our company to move forward on whatever
25 basis. Thank you very much.

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1 JUDGE THOMPSON: Thank you, Mr. Fischer.
2 There being nothing further, this hearing will be adjourned.
3 WHEREUPON, the on-the-record presentation was
4 concluded.
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