BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Status Conference

October 7, 2010

Jefferson City, Missouri

Volume 3

In The Matter Of The Application)
Of Kansas City Power & Light   )
Company For Approval To Make   )File No.ER-2010-0355
Certain Changes In Its Charges)and ER-2010-0356
For Electric Service To Continue)
The Implementation Of Its   )
Regulatory Plan   )

RONALD D. PRIDGIN, Presiding
   SENIOR REGULATORY LAW JUDGE
NANCY DIPPELL,
   DEPUTY CHIEF REGULATORY LAW
   JUDGE

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1   JUDGE PRIDGIN: Good afternoon. We're on

2 the record. This is the status conference hearing in

3 the Case No. ER-2010-0355 and 2010-0356. I'm Ron

4 Pridgin; I am the regulatory law judge in the 0355

5 case or KCP&L case. And we have Judge Dippell for

6 the 0356 case.

7   I would like to get entries of appearance

8 from counsel, and I think I just heard some people

9 buzz in on the telephone. If you have just entered

10 the phone bridge, could you please identify

11 yourself?

12   MR. BRUDER: I'm Perry Bruder, I'm from

13 the Federal Executive Agencies.

14   JUDGE PRIDGIN: Mr. Bruder, thank you.

15   MR. BRUDER: Thank you.

16   JUDGE PRIDGIN: And, Mr. Bruder, I guess

17 since -- could you go ahead and enter your appearance

18 while I'm thinking of it please.

19   MR. BRUDER: United States Department of

20 Energy and Federal Executive Agencies in Case Docket

21 No. 2010-0355. Arthur Perry Bruder, 1000

22 Independence Avenue Southwest, Washington, D.C.

23 20024.

24   JUDGE PRIDGIN: Mr. Bruder, thank you.

25   Has anyone else joined the phone bridge

1   here in the last five minutes or so? All right,

2   thank you.

3   Let me get entries of appearance for

4   those who are appearing in Jefferson City, starting

5   with the companies please or the company.

6   MR. STEINER: Roger W. Steiner appearing

7   for Kansas City Power & Light Company, address is on

8   the -- was given to the court reporter. And I'll let

9   Mr. Fischer enter his appearance.

10   MR. FISCHER: James M. Fischer, Fischer &

11   Dority, PC, 101 Madison, Suite 400, Jefferson City,

12   Missouri.

13   JUDGE PRIDGIN: Mr. Steiner, thank you;

14   Mr. Fischer, thank you.

15   On behalf of the staff of the Commission

16   please.

17   MR. DOTTHEIM: Steven Dottheim, Jaime

18   Ott, Nathan Williams appearing on behalf of the State

19   of Missouri Public Service Commission, Post Office

20   Box 360, Jefferson City, Missouri 65102.

21   JUDGE PRIDGIN: Mr. Dottheim, thank you.

22   It might go faster if we go by name instead of the

23   client. I'll make fewer mistakes.

24   Mr. Mills?

25   MR. MILLS: Yes. On behalf of the Office

1 of Public Counsel and public my name is Lewis Mills.

2 My address is Post Office Box 2230, Jefferson City,

3 Missouri 65102.

4   JUDGE PRIDGIN: Mr. Mills, thank you.

5   Mr. Woodsmall?

6   MR. WOODSMALL: Thank you. Appearing on

7 behalf of Praxair, Midwest Energy Users Association

8 in the 0355 case and Ag Processing and SIEUA in the

9 0356 case, David Woodsmall with the firm of Finnegan,

10 Conrad & Peterson.

11   JUDGE PRIDGIN: Mr. Woodsmall, thank

12 you.

13   Mr. Lumley?

14   MR. LUMLEY: Thank you, Judge. Carl

15 Lumley appearing for Dogwood Energy, LLC in both

16 cases, address on file.

17   JUDGE PRIDGIN: Mr. Lumley, thank you.

18   Mr. Wagner?

19   MR. WAGNER: Robert Wagner, pro se

20 intervenor on 355 and 356. My address is 9005 North

21 Chatham, Kansas City, Missouri.

22   JUDGE PRIDGIN: Mr. Wagner, thank you.

23   Mr. Cooper?

24   MR. COOPER: Dean L. Cooper appearing on

25 behalf of Southern Union Company doing business as

1 Missouri Gas Energy.

2   JUDGE PRIDGIN: Mr. Cooper, thank you.

3   Mr. Swearengen?

4   MR. SWEARENGEN: James C. Swearengen for

5 The Empire District Electric Company. I made a

6 written entry of appearance.

7   JUDGE PRIDGIN: Mr. Swearengen, thank

8 you.

9   Have I missed anyone?

10   JUDGE DIPPELL: I'll just note that we

11 did have a few people email and call in to be excused

12 and that was Mr. Coffman, Ms. Mangelsdorf on behalf

13 of Department of Natural Resources and Mr. Healy on

14 behalf of the municipals and Mr. Lowry on behalf of

15 Union Electric.

16   JUDGE PRIDGIN: All right. With that,

17 I'm trying to kind of recall basically where we are

18 on the case. I believe we got a true-up filing from

19 KCP&L yesterday stating they did not wish to adjust

20 the true-up date. I think we got a monthly report

21 from Staff recently, and I don't know if there's

22 anything that the parties would want or need to bring

23 to our attention as far as discovery matters,

24 procedural matters. Anything you need to inform --

25 Mr. Dottheim?

1   MR. DOTTHEIM: Yes. On a procedural

2   matter if I could refer the -- the Bench to the

3   Commission's order of July 7, 2010, the order titled,

4   Order Regarding Construction and Prudence Audits, it

5   is paragraph seven. The first certain -- the first

6   sentence -- there are two sentences: Copies of all

7   data requests, interrogatories, requests for

8   production of documents, notices of depositions,

9   depositions by written questions, or any other

10   discovery device already issued by the parties in

11   these matters shall be filed immediately in these

12   files. The second sentence is, Copies of any data

13   requests, interrogatories, requests for production of

14   documents, notices of depositions, depositions by

15   written questions, or any other discovery device

16   employed by any party after issuance of this order

17   shall be filed on the same date it is issued.

18   The Staff has not literally filed, for

19   example, data requests in file number ER-2010-0355 or

20   file number ER-2010-0356. The Staff has proceeded as

21   it has previously in other cases by putting into

22   EIFS in the data request facet --

23   MR. BRUDER: Sorry to interrupt, this is

24   Perry Bruder. I'm not able to hear. Can we get the

25   mic a little closer to Mr. Dottheim?

1   JUDGE DIPPELL: Yes, yes.

2   MR. BRUDER: Thank you.

3   JUDGE DIPPELL: Let's try moving the

4   phone back down on the witness table. It seemed to

5   maybe pick up everybody's voice a little better

6   there.

7   MR. DOTTHEIM: The Staff has been

8   submitting into EIFS data requests that it has issued

9   in the 0355 and the 0356 case and has been placing --

10   or the company has been placing into EIFS responses

11   in 0355 and 0356 into EIFS. So the materials

12   relating to Staff data requests have not literally

13   been filed in the case.

14   Also I would -- I would note because of

15   the first sentence in paragraph seven and also since

16   the order of the Commission dealt with the

17   construction and prudence audits, the Staff did not

18   literally take all data requests that previously had

19   been issued relating to Iatan 1 and Iatan 2 and

20   either submit them into EIFS for the 0355 and the

21   0356 case or literally file them into EIFS for the

22   0355 and the 0356 case.

23   What had previously happened and the

24   Staff was hoping to compound any confusion was that

25   when the Commission went from the 0089, that is the

1   ER-2009-0089 case and the ER-0-- excuse me, the

2   ER-2009-0090 cases, that is the 2009 KCP&L and GMO

3   rate cases, when those cases were closed in essence,

4   the Commission opened the EO-2010-0259 case. The

5   Staff had taken the data requests from 0089 case and

6   the 0090 case and entered them into EIFS in the 0259

7   case. So the Staff sought not to take those data

8   requests and the responses and then enter them into

9   the 0355 case and the 0356 case. They are in EIFS in

10   the 0259 case. The Staff had to renumber the data

11   requests and the data request responses from the 0090

12   case, but did not in essence do that for the 0089

13   case.

14   The Staff can put together and file an

15   actual tracking mechanism for -- to show how the

16   numbers on the data requests have changed from case

17   to case, but -- I'm sorry to go through all of this,

18   but I did at some point want to explain that the

19   Staff was not in literal compliance with the

20   Commission's July 7, 2010, order in the 0355 and the

21   0356 case.

22   And I think that there are other parties

23   that are not in literal compliance with the

24   Commission's order. And I don't know whether the

25   Commission literally intended what it ordered; and if

1 it didn't intend that, then I can only speak for the

2 staff, we're not in compliance with that section,

3 that paragraph seven in the Commission's July 7, 2010

4 order.

5   JUDGE DIPPELL: In I believe the last

6 status conference, we told you that was fine to hold

7 off, don't do anything further until we had clarified

8 that. Judge Pridgin and I have not had an

9 opportunity to actually issue an order clarifying

10 that.

11   MR. DOTTHEIM: Previously I had indicated

12 that regarding depositions that --

13   JUDGE DIPPELL: Right.

14   MR. DOTTHEIM: -- that happened, and I

15 did not go into this matter regarding the data

16 requests.

17   JUDGE DIPPELL: So with regard to

18 physically transferring them, I would say now at this

19 point that, no, you do not have to physically

20 transfer them from one case to another. I don't

21 believe Staff's time would be well spent providing a

22 chart of renumbering and so forth.

23   The goal is not to create more work for

24 the parties; the goal was to make sure that all of

25 the relevant information was accessible from all of

1 the various cases.

2   Now, Mr. Woodsmall had brought up also

3 that he had an issue at the last status conference

4 about the fact that the EO case was not in fact a

5 contested case and therefore not everybody was a

6 party and had an opportunity to cross-examine that

7 and wanted -- I believe the words in your motion for

8 clarification were to ask the Commission to make a

9 determination that they wouldn't rely on any of that

10 information. The Commission's not going to go that

11 far, but I will say that those documents in the

12 previous cases are just like documents in any other

13 previous cases or discovery in any other previous

14 cases. And therefore, if they're part of your

15 evidence in this case, you'll need to present them as

16 evidence and then they'll need to be able to be

17 cross-examined and withstand all of the other tests

18 of whether or not they're substantial and competent

19 evidence.

20   Mr. Woodsmall?

21   MR. WOODSMALL: So as we stand right now,

22 they are not part of the record. The record will

23 start brand new at the hearing?

24   JUDGE DIPPELL: Right. They are not part

25 of the evidentiary record.

1   MR. WOODSMALL: Okay.

2   JUDGE DIPPELL: They are part of the

3   files and the housekeeping just like any other. But

4   like I say, the point to that order was to make sure

5   that everyone had access to the various information,

6   not to create more housekeeping work and everything.

7   And certainly not to automatically enter things into

8   evidence that weren't -- had not been -- gone through

9   the proper channels for evidence.

10   MR. WOODSMALL: Okay.

11   JUDGE DIPPELL: So I hope that clarifies

12 that. If we still need to put out an order or notice

13 or something amending that order further, we can do

14 that.

15   Does that answer your questions,

16 Mr. Dottheim?

17   MR. DOTTHEIM: Yes, it does. Thank you.

18   JUDGE DIPPELL: Okay.

19   JUDGE PRIDGIN: And I don't know if the

20 parties have any other -- any other matters to bring

21 to the attention of the Commission. Mr. Wagner has

22 his hand up. And Mr. Dottheim --

23   MR. DOTTHEIM: I have one other matter,

24 but if Mr. Wagner wants to address something, that's

25 fine.

1   JUDGE PRIDGIN: Mr. Wagner?

2   MR. WAGNER: Yes. One of my -- as a pro

3   se intervenor, one of my data requests was marked

4   confidential, and the company's refusing to release

5   that, saying I need to hire counsel. I was wondering

6   if a pro se intervenor that has filed a nondisclosure

7   agreement, if that's appropriate or not.

8   JUDGE DIPPELL: I believe that that would

9   be a matter for you to bring to the Commission if you

10   believe that there is a data request that's not being

11   responded to in the matter that you believe it should

12   be.

13   Mr. Dottheim?

14   MR. DOTTHEIM: Maybe if Mr. Wagner can

15   elaborate as to what he means by the company won't

16   release it.

17   MR. WAGNER: Yes. On 9/24 I called and

18   spoke with Mr. Tim Rush about marking data request

19   number six, part of the answer as confidential. And

20   in speaking with him, he responded that the company

21   would not release that, that I would need to hire

22   counsel.

23   MR. DOTTHEIM: Meaning he won't provide

24   an answer? I'm still having --

25   MR. WAGNER: It was part of one of the

1 answers. He responded to part of it, and then he

2 said there's another publication available but it's

3 marked confidential.

4   MR. DOTTHEIM: And as a consequence he

5 won't provide the information or the publication that

6 is confidential?

7   MR. WAGNER: Correct.

8   MR. DOTTHEIM: And he won't provide it to

9 you without you -- without there being counsel

10 because the confidential material will only be

11 provided to counsel and not to you?

12   MR. WAGNER: Correct. But by definition

13 I am my own counsel, so I thought that was a little

14 confusing.

15   JUDGE PRIDGIN: I think that probably the

16 quickest way to try to answer your question is to

17 refer you to Commission rules on discovery disputes,

18 and that would be to basically set up a telephone

19 conference with the regulatory law judge, in this

20 case we have two of them. I don't know who -- I

21 don't recall which case, if you're in the 355 or 356

22 case; you're probably in 355.

23   MR. WAGNER: I'm in both.

24   JUDGE PRIDGIN: Okay. Then I don't know

25 if we jointly want to do one or one of us handle the

1 phone conference and see if we can resolve the

2 dispute that way before you file some sort of motion

3 to compel to try to get the discovery that you

4 believe you're entitled to.

5   MR. WAGNER: Thank you.

6   JUDGE PRIDGIN: Thank you.

7   And I'm sorry, Mr. Dottheim, you had

8 something else?

9   MR. DOTTHEIM: Yes. At the first monthly

10 status hearing I had indicated that the Staff will

11 want to ask the Commission for the appointment of a

12 special master. We haven't obviously filed anything

13 with the Commission. We will shortly.

14   We've had -- we have talked with the

15 company; we will continue to talk. We are going to

16 talk once we go off the -- off the record regarding

17 that. We are attempting to get ourselves -- or I am

18 attempting to get myself organized I guess for that,

19 and it has taken a while unfortunately and I

20 apologize.

21   But the Staff is -- is still very much

22 intent in going in that -- in that direction and I

23 think the regulatory law judges and the Commission

24 should expect something shortly.

25   JUDGE PRIDGIN: Mr. Dottheim, thank you.

1   JUDGE DIPPELL: Does that go along,

2   Mr. Dottheim, with the Kansas City Power & Light just

3   recently filed their marked up, highly confident--

4   highly confidential version of Staff's report, isn't

5   that correct? And will that -- does that go along

6   with that? One of the questions I wanted to ask was

7   do we need to set a deadline for Staff to respond

8   whether they agreed with that markup or?

9   MR. DOTTHEIM: No. This deals with the

10   Staff's discovery data request to the company,

11   documents that the company has asserted are covered

12   by attorney/client privilege or attorney work product

13   or documents that are covered by accountant/client

14   privilege or any other privilege that might be

15   recognized under Missouri statute.

16   JUDGE DIPPELL: Okay. What about the

17   Staff report markup, has Staff had any opportunity to

18   review that at this point?

19   MR. DOTTHEIM: The Staff traditionally

20   hasn't sought to challenge assertions by the

21   utility. That information is -- falls under either

22   the highly confidential or proprietary designation

23   unless the Staff truly believes it's a -- it's an

24   abuse. The Staff has traditionally chosen to

25   otherwise utilize its time.

1   The Staff at this time had not intended

2   to file anything in opposition to the designations

3   that the company had made regarding highly

4   confidential or proprietary regarding the Staff's

5   report filed on August 6th.

6   JUDGE DIPPELL: Okay, thank you.

7   JUDGE PRIDGIN: I don't know that I have

8   anything else. Do the parties have anything else?

9   Mr. Wagner?

10   MR. WAGNER: I've got one other question.

11   Regarding the Commission's motion for the public

12   hearings, there was a statement in there that the

13   interested parties could prepare a statement for the

14   public hearings, and I was trying to determine if

15   this is an oral statement or it's a written statement

16   or handouts that could be provided at the public

17   hearing. Just trying to get some more clarification

18   on if there's any procedure, anything to go through

19   to do that.

20   JUDGE PRIDGIN: I don't know -- and I'll

21   let Judge Dippell speak if she wants to. I don't

22   know if there's necessarily a right or wrong way to

23   do it. It's just more -- the public hearings are

24   obviously to get testimony from the public in the

25   format that generally the company and staff and

1 Public Counsel and then other parties, if they wish,

2 have the chance to listen to the public and answer

3 their questions, maybe tell the public what their

4 positions are on the different issues. And so other

5 than those broad guidelines, I don't know that

6 there's necessarily, you know, a preferred format or

7 right or wrong way to do anything.

8   JUDGE DIPPELL: I think we have required

9 the company and staff and Public Counsel to provide a

10 written document that is handed out at the beginning.

11 This is sort of a new process that the Commission has

12 started, but it seems to have worked well in the few

13 hearings that we've done it in.

14   And so that was -- as Judge Pridgin was

15 saying, I believe we lifted open the opportunity for

16 the other parties to do similar, but it was not

17 required. And also at the beginning of those

18 hearings, then someone from Staff and the company and

19 Public Counsel will physically be in front of the

20 room to answer questions before the testimony is

21 taken, just to try to get as many -- get as much

22 information out to the customers as possible.

23   And with that, everyone, I assume, saw

24 that an additional hearing was set after Wednesday's

25 order, another -- trying to get another hearing in

1   the Kansas City area that I believe that is the last

2   one that will be set unless something comes up.

3   JUDGE PRIDGIN: Anything further from the

4   parties? All right. Hearing nothing, if we can

5   just -- I'll ask Mr. Dottheim if you'll just

6   disconnect the call whenever you're done.

7   And if there's nothing further, we will

8   go off the record. Thank you very much.

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<div align="center">CERTIFICATE</div>

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2   I, Shelley L. Mayer, a Certified Court Reporter,

3 CCR No. 679, the officer before whom the foregoing

4 hearing was taken, do hereby certify that the

5 testimony which appears in the foregoing hearing was

6 taken by me to the best of my ability and thereafter

7 reduced to typewriting under my direction; that I am

8 neither counsel for, related to, nor employed by any

9 of the parties to the action in which this hearing

10 was taken, and further, that I am not a relative or

11 employee of any attorney or counsel employed by the

12 parties thereto, nor financially or otherwise

13 interested in the outcome of the action.

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16   _____

17   Shelley L. Mayer, CCR

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