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COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

Status Conference

March 28, 2017
12:59 p.m. - 1:42 p.m.

Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky

Lisa Larson, FCRR, RPR
Federal Certified Realtime Reporter

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A P P E A R A N C E S

PUBLIC SERVICE COMMISSION COUNCIL MEMBERS:

Michael J. Schmitt, Chairman
Robert Cicero, Vice Chairman
Daniel E. Logsdon, Jr.

1 MR. SCHMITT: This is, for the
2 record, the Kentucky Public Service
3 Commission. My name is Michael Schmitt. I
4 am Chairman of the Commission. Seated to my
5 right is Robert Cicero, the Vice Chairman,
6 and to my left Daniel Logsdon, who is a
7 commissioner.

8 We're here this afternoon pursuant
9 to a motion filed by Kentucky Utilities
10 Company and Louisville Gas and Electric
11 Company originally for an informal conference
12 to discuss procedures, concerns that might
13 exist relative to potential settlement or
14 agreement negotiations between Kentucky
15 Utilities Company and Louisville Gas and
16 Electric Company and the intervenors in the
17 case relative to the two utility company's
18 applications for an adjustment of electric
19 rates, electric and gas rates, and public
20 convenience and necessity.

21 The Commission originally, I guess
22 as soon as we got the motion, decided that it
23 would be in the interests of all the parties
24 to sustain it. We did. Thereafter, the
25 Attorney General filed an objection because

1 it was going to be a conference with everyone
2 invited but might not be subject to --
3 someone might consider it to be a closed
4 meeting. So what we have done is we then
5 simply changed the order and made it public.
6 So everything that is said here is on video,
7 being streamed live. And, of course, at
8 least an outline of a partial transcript will
9 be prepared, if anyone wants it later.

10 So, Mr. Riggs, you filed a motion.
11 I don't know. There are a lot of people
12 here. Perhaps the best way to start is to
13 ask each attorney who is here to stand,
14 identify himself, co-counsel, and the client
15 that he or she represents. I understand
16 there may be people attending by telephone;
17 is that correct?

18 MR. RIGGS: Your Honor, that's true
19 as well. And I'm looking out, and there are
20 other counsel/attorneys that are here that
21 represent, I guess, utilities or other
22 parties that are not a part of the
23 proceeding. So...

24 MR. SCHMITT: Well, we don't need
25 to have people who are not part of the

1 proceeding, would like to be spectators that
2 is fine, but just the parties, the attorneys
3 and the parties who are participants in the
4 case.

5 MR. RIGGS: Correct.

6 MR. SCHMITT: Okay. Mr. Riggs, can
7 we start with you?

8 MR. RIGGS: Yes, sir. Thank you.
9 Kendrick Riggs with the firm of Stoll Keenon
10 Ogden, appearing for Louisville Gas and
11 Electric Company and Kentucky Utilities
12 Company. Appearing with me is Ms. Allyson
13 Sturgeon, senior corporate counsel with LG&E
14 and KU services company for both utilities.

15 MR. SCHMITT: Okay. Mr. Childers,
16 you are next, so we'll go with you.

17 MR. CHILDERS: Thank you,
18 Your Honor. Joe Childers with Joe Childers
19 and Associates. I'm appearing on behalf of
20 Sierra Club and several individual
21 intervenors. I have co-counsel, who are not
22 present, Casey Roberts and Matthew Miller.
23 And that's all I have to say today.

24 MR. SCHMITT: Thank you. Kent.

25 MR. CHANDLER: Good afternoon.

1 Kent Chandler and Larry Cook on behalf of the
2 Kentucky Attorney General's Office.

3 MR. SCHMITT: Yes, ma'am.

4 MS. KYLER COHN: Good morning.
5 Jody Kyler Cohn on behalf of Kentucky
6 Industrial Utility customers. My co-counsel
7 in the case are Michael Kurtz and Curt Bane,
8 but they are not here today.

9 MR. SCHMITT: Okay. Thank you.
10 Are there other counsel or other parties or
11 intervenors in the audience? If so, please
12 stand and be sure you speak up so we can get
13 it on the record.

14 MR. DUTTON: Good morning,
15 Your Honor.

16 MR. SCHMITT: Okay. We'll start on
17 this side (indicating) and go to the back and
18 then go over to the other side, okay?

19 MR. DUTTON: Good morning,
20 Your Honor. I am Greg Dutton, here on behalf
21 of Louisville Metro. And I have with me
22 today Mike O'Connell.

23 MR. O'CONNELL: Mike O'Connell,
24 Jefferson County Attorney. And I think we
25 have a couple of other lawyers on the

1 telephone conference as well. Thank you.

2 MR. SCHMITT: Thank you.

3 MR. DUTTON: And I have with me as
4 well Ms. Laura Ross on behalf of the Kentucky
5 League of Cities.

6 MR. SCHMITT: Okay. You may be
7 seated. And then tell us, Ladies, who do you
8 represent?

9 MS. KILKELLY: Lisa Kilkelly. I am
10 with the Legal Aid Society. And I'm here
11 representing the Association of Community
12 Ministries. They are an intervenor in the
13 LG&E case. I have co-counsel, Eileen
14 Ordover, who is not here and she may call in.

15 MR. SCHMITT: Okay. Thank you.

16 MS. SKIDMORE: Good afternoon,
17 Your Honor. My name is Iris Skidmore, and I
18 represent the Community Action Council for
19 Lexington-Fayette, Bourbon, Harrison, and
20 Nicholas Counties. And we are an intervenor
21 in the KU case.

22 MR. SCHMITT: Okay. Thank you.

23 Yes, sir.

24 MR. HOWARD: Dennis Howard, II,
25 representing JBS Swift & Company. I do not

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have co-counsel, but I do have a representative from the company here today, who is Eric Vaughn. He wanted to come and make an appearance.

MR. SCHMITT: Thank you. Yes, sir.

MR. MALONE: Good afternoon, sir. My name is Matt Malone. I'm with the law firm of Hurt, Deckard & May in Lexington. And my address is 127 West Main. And I'm here on behalf of the Kentucky School Board Association. And I brought Mr. Wilhite with me as well.

MR. SCHMITT: Thank you. Okay. Yes, Mr. Gardner.

MR. GARDNER: Thank you, Your Honor. Jim Gardner and Todd Osterloh with Sturgill, Turner, Barker & Moloney. We represent Lexington-Fayette Urban County Government in the KU case. With us also is counsel David Barker, who is general counsel for the City of Lexington, Janet Graham, who is also counsel, but she is not here.

MR. SCHMITT: Thank you. Yes, sir.

MR. PARKER: Good morning, Your Honor. My name is Don Parker. I'm from

1 the law firm of Spilman Thompson & Battle. I
2 have on the phone co-counsel Carrie Harris.
3 We have another co-counsel, Barry Naum. We
4 are here for Wal-Mart.

5 MR. FITZGERALD: Tom FitzGerald,
6 representing the Metro Housing Coalition.
7 With me is Cathy Hinko, who is the director.
8 We are an intervenor in the LG&E case only.

9 MR. SCHMITT: Thank you.

10 MR. MOORE: I am Robert Moore with
11 Stites & Harbison, representing the Kroger
12 Company.

13 MR. SCHMITT: Okay. Ma'am.

14 MS. WINN: Cheryl Winn of Waters
15 Law Group. I represent AT&T. I have
16 co-counsel on the phone, Patrick Turner. And
17 I have with me Tony Taylor from AT&T.

18 MR. SCHMITT: Okay. Thank you.
19 Now, can people on the phone hear us? Is
20 there anyone on the phone who represents an
21 intervenor who was not identified earlier by
22 counsel present in the hearing room?

23 MR. WERNER: Good afternoon.
24 Paul Werner of Sheppard Mullin on behalf of
25 the Kentucky Cable and Telecommunications

1 Association.

2 MR. SCHMITT: I'm sorry. We
3 couldn't hear. Can you speak up.

4 MR. WERNER: Yes. It is Paul
5 Werner on behalf of the Kentucky Cable and
6 Telecommunications Association.

7 MR. SCHMITT: Okay. Anyone else on
8 the phone who was not previously identified?

9 MS. MEDLYN: Yes. This is Emily
10 Medlyn. I represent the Department of
11 Defense and all other federal executive
12 agencies. And I believe local counsel,
13 Houston Parrish, is also on the line. And we
14 are in the LG&E case only.

15 MR. PARISH: Correct.

16 MR. SCHMITT: Anyone else?

17 MS. THERIOT: Yes. Janice Theriot.
18 And I'm local counsel for the Kentucky Cable
19 and Telecommunications Association.

20 MR. SCHMITT: All right. I assume
21 that, then, everyone who wanted to be here on
22 behalf of a client has checked in or
23 identified themselves for the purpose of the
24 record.

25 Mr. Riggs, it is your motion. And

1 I think Mr. Raff, our general counsel, has
2 stated or said that you might want to speak
3 or say something.

4 MR. RIGGS: Yes.

5 MR. SCHMITT: And I assume that it
6 is related to your motion.

7 MR. RIGGS: Yes, Your Honor.

8 MR. SCHMITT: Okay.

9 MR. RIGGS: May I proceed?

10 MR. SCHMITT: Yes, you may proceed.

11 MR. RIGGS: Thank you for
12 scheduling a hearing. We appreciate the
13 opportunity to be heard.

14 I would like to review the
15 Commission's settlement practices and
16 procedures that are used in the LG&E and KU
17 cases. And in doing so, though, at the
18 outset I want to make clear that the
19 companies are not here to argue that the
20 settlement procedures cannot be improved. I
21 do invite your views, and I ask for your
22 opportunity to respond to them on what, if
23 any, improvements can be made to the
24 Commission's settlement process that will
25 assist the Commission's view and approval of

1 any settlement or stipulation that might be
2 reached in this case.

3 Let me first address the procedural
4 steps of the case. LG&E and KU have
5 responded to almost 5,200 data requests,
6 counting the subparts. To date, there are
7 almost 50 witnesses, 49 to be precise, that
8 have filed testimony in this case.

9 In less than three weeks LG&E
10 and KU will file their rebuttal in this case.
11 And three weeks later a hearing is scheduled
12 by the Commission to commence. Once the
13 rebuttal testimony is filed, there are two
14 paths forward for the Commission for the
15 disposition of the case. On the one hand, it
16 is stipulation or settlement; on the other
17 hand, a full-blown hearing.

18 The settlement of the rate cases is
19 in the public interests as long as the
20 settlements are reasonable and are achieved
21 ethically and fairly. For more than ten
22 years the companies have resolved their rate
23 proceedings through the Commission settlement
24 process. Since 2004 LG&E and KU have
25 successfully resolved five base rate case

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filings, two ECR plan filings, and a change of control, the CPL change of control in the settlement process.

Settlements are very much part of the practice, of the regulatory practice before state commissions across the country. The trend began some ten years ago and it is standard practice. The Commission is not unique in this regard, and its settlement practices in comparison are some of the best. The primary benefits of settlement I think are well-known, to achieve certainty of the outcome and conclusion of the issues. There is no uncertainty or cost associated with appeals. It is a highly efficient process to the resolution of so many issues compared to a fully litigated case. It is cost effective for the parties in their investment in the outcome. And it can provide and has provided consideration that cannot be achieved through litigation. An example, there are the shareholder contributions that LG&E and KU make to low income groups that are over \$1 million a year. Another example are the DSM programs that were developed in

1 connection with one case for school boards
2 and their operations. Settlement discussions
3 facilitate good, trusting relations that
4 create a constructive environment with
5 efficient resolution of issues compared to
6 litigation. Litigation does not allow for
7 the development of solutions; it does not
8 promote the efficient resolution of the
9 issues.

10 The other option is a full-blown
11 hearing with almost 50 witnesses. It is
12 likely to last two to three weeks. The
13 testifying experts and a number of the
14 counsel live and work in other parts of the
15 country. Scheduling will be a logistical
16 issue. In addition, briefs will be required,
17 adding additional time and expense to the
18 process. And any appeals and any uncertainty
19 associated with appeals also adds time and
20 expense and uncertainty to the process.

21 Yet, we understand that the
22 Commission has expressed some concerns about
23 the settlement process from the remarks at
24 the energy conference earlier this year in
25 January at the Chamber of Commerce energy

1 conference. The executive director made
2 comments about the Commission settlement
3 process just recently at the Kentucky
4 Industrial Utility Conference in Lexington.

5 LG&E and KU desire to understand
6 the Commission's concerns in this regard and
7 consider what can be done from a procedural
8 standpoint to address them. And before
9 asking the Commission to express those
10 concerns, I would like to take a brief moment
11 to review the settlement practices and
12 procedures as applied to LG&E and KU's cases
13 consistently over time and contrast them
14 with, perhaps, other experiences that the
15 Commission has had. There is a difference.

16 The settlement process for LG&E and
17 KU's cases has always been conducted here at
18 the Commission's offices and known as an
19 opportunity for all the parties to
20 participate. The Commission staff has always
21 been a participant in the settlement
22 negotiations. They attend, what I call, the
23 intervenor caucus. So you can imagine a
24 typical settlement conference where parties
25 meet and then they break to caucus among

1 themselves. Staff attends the intervenor
2 caucus and every one of its caucuses, but
3 does not meet separately with the companies.
4 Staff's participation is very constructive
5 and often provides essential Commission
6 input. If a settlement is reached or the
7 stipulation, if it is less than a unanimous
8 settlement, is reduced to writing and
9 submitted to the Commission along with
10 testimony for the Commission's review and
11 approval. This process includes both, as I
12 mentioned, unanimous settlement and
13 stipulations when the parties cannot agree.
14 Two examples of those are the 2004 rate cases
15 and the 2010 rate cases we had where the
16 Attorney General did not reach a settlement
17 and the parties signed the stipulation.

18 Now, in each of the Commission's
19 orders they evaluated those settlements over
20 this period of time. The Commission
21 acknowledged it conducted its own independent
22 analysis of the terms of the settlement. For
23 example, in the 2004 and 2010 orders, where
24 the Attorney General was not a party and
25 stipulated and presented their evidence, the

1 Commission's order sets forth the very formal
2 analysis of the stipulations, recommendation,
3 and terms. But in every order the Commission
4 has acknowledged it has done so and done its
5 own informal -- or, I'm sorry, formal
6 analysis of the issues presented.

7 At the hearing, the company
8 presents a witness to support the settlement
9 and all its witnesses -- presents all of its
10 witnesses. The Commission has advised the
11 company, through its counsel, which witnesses
12 it has questions for and the company has
13 brought every witness the Commission has
14 requested for any kind of questions the
15 Commission may have in that regard.

16 At the conclusion of that hearing,
17 the Commission has required all counsel that
18 have participated in the settlement
19 negotiations to take an oath and to, on the
20 record, the ethical conduct of the settlement
21 and specifically that there are no side
22 deals, all the consideration is within the
23 four corners of the document. The candor,
24 the duty of candor to the tribunal is fully
25 honored in each and every case.

1 Now, the rate case settlements
2 typically contain what's called a "black box
3 settlement" on the revenue requirement. They
4 also recommend the other essential elements,
5 which are revenue allocation, rate design.
6 Rates and terms and conditions are
7 specifically identified in the settlement
8 agreement.

9 MR. CHANDLER: Objection,
10 Your Honor. I think it is more than okay for
11 Mr. Riggs to talk about what has been in
12 settlements in the past. But insofar as he
13 is talking about what settlements may be
14 presented to the Commission, we have an
15 objection to that.

16 MR. RIGGS: I am not representing
17 what may be in the settlements in the future.
18 I'm talking about the settlement practices in
19 the past and what we have done in the past.
20 So...

21 We understand that the black box
22 approach may be a point of concern with the
23 Commission. That settlement approach is not
24 unique to this Commission. It is a practice
25 that is used in many regulatory jurisdictions

1 and has been used for many, many years. Why
2 has that been used? When you look at the
3 room and you look at the different interests,
4 you can quickly see that the room's
5 intervenors and the company have different
6 interests and different priorities in the
7 outcome of that. The black box approach is a
8 necessary part of the give and take of any
9 settlement, and the outcome on one issue may
10 have an indirect impact on the outcome of
11 another issue. The black box approach avoids
12 winners versus losers or an issue by issue
13 resolution that litigation requires and
14 allows the parties to find a resolution that
15 still comes to a point of resolution and
16 facilitates compromise and settlement.

17 The parties do have different
18 priorities. But as an example, historically
19 if a black box figure represents a figure,
20 there are different ways to -- for parties to
21 look at that figure and arrive at that
22 figure. The figure will likely be comprised
23 of an ROE at some point and various
24 adjustments to get to that. But those
25 scenarios, they are various scenarios that

1 can lead to that single number from a party's
2 particular perspective on that. And so by
3 not agreeing issue by issue but as to a black
4 box resolution, the parties are able to reach
5 to that point of recommendation for the
6 Commission's consideration. The key is
7 whether the overall result is within a zone
8 of reasonable based on the evidence of
9 record. The zone of reasonable is --
10 necessarily includes a range of outcomes.

11 MR. SCHMITT: How much more do you
12 have? Do you think we really need this
13 lecture?

14 MR. RIGGS: Your Honor, I
15 apologize. I don't mean to take your time,
16 and I do not mean to lecture. That has never
17 been my intention. So I ask for your
18 forgiveness, that if I have --

19 MR. SCHMITT: You don't need my
20 forgiveness. But I think we understand this.
21 Is there something more that you want to get
22 down to the bottom of? I mean, we understand
23 that all of the parties, the Kentucky
24 Utilities and LG&E, have an interest and they
25 have a duty to their shareholders and they,

1 as far as I know, provide good service and
2 they are entitled to a reasonable rate of
3 return. Each of the intervenors has their
4 own particular specific interest, and they
5 are entitled to pursue that interest. And I
6 can understand all of the reasons why the
7 parties want to get together, if they can,
8 and reduce the issues to the bare minimum and
9 to try to achieve an agreement, if possible.

10 But the Commission is the entity
11 that makes the final decision. And the
12 Commission is the only entity here in this
13 case or in any other that represents the
14 entire community as a whole. Each of the
15 others, the utilities and the intervenors,
16 represent specific defined interests. And,
17 but, the decision is ultimately up to us. We
18 don't have and have never expressed any
19 animus toward a settlement. What we have
20 done is said that we do not intend and will
21 not rubber stamp a settlement that we
22 receive. We will do our own inquiry. We
23 will ultimately make a decision that we think
24 is in the best interests of everyone,
25 including the utilities. Our history here

1 has been that there have been settlements or
2 attempted settlements where there have been a
3 black box and no information as to what the
4 basis for the settlement has been. And the
5 more information that can be provided to us,
6 the more likely it is that we will approve a
7 settlement.

8 On any settlement, we intend to
9 look at the facts and the evidence of the
10 case and come up with what we think is the
11 reasonable -- the right result, as best we
12 can do it. And if that coincides with a
13 settlement, that's fine; if it doesn't, we'll
14 try to tweak the settlement. If, in fact, we
15 can't do that and you don't agree after it's
16 over, we're going to have enough evidence in
17 the record to make a final decision within a
18 few days ourselves.

19 So I know that you say the black
20 box settlements are not -- they are not
21 unusual, and that's true. But I will point
22 out that since I've been here, and it's only
23 been, what, eight months, eight, ten months,
24 I have spoken to present and past utility
25 commissions and chairman's of commissions in

1 a number of states. And they all have
2 expressed concern and, basically, regret that
3 they approved without more investigation into
4 these settlements.

5 And I might say, Mr. Gardner is
6 here, who is a former member of this
7 Commission, a former chairman. And in a case
8 styled *Adjustment of Rates of Kentucky*
9 *American Water Company*, Case No. 2008-00427,
10 Mr. Gardner expressed his concern, filed a
11 dissenting opinion about a black box
12 settlement and was concerned that, basically,
13 while the parties thought it as fair to them,
14 the Commission can't always understand
15 whether it's reasonable and fair and just if
16 you don't have sufficient information.

17 And what I am saying is, is that we
18 are all in unanimous agreement that we are
19 not against settlements but we expect to have
20 information. And if we don't have that
21 information, we're going to look through the
22 record ourselves and try to put something
23 together to understand it and make a
24 decision. And I notice we had a settlement
25 agreement or stipulation and recommendation

1 in another case, and it was 41 pages long and
2 it was pretty detailed. But, obviously, as
3 you pointed out, there were at least a couple
4 of parts of it which there was, basically, no
5 information. At that point in time, we made
6 a couple of post-hearing data requests. And,
7 quite frankly, we didn't get the information
8 that we sought, and so we made our --
9 ultimately made our own decision.

10 In the stipulation and
11 recommendation, however, there were terms
12 that said, well, we may not call your
13 witness, we won't cross-examine if the
14 Commission asks if the Commission has a
15 hearing. And that's fine, because we'll
16 examine and our staff will examine witnesses.
17 But I did say at the Kentucky Chamber of
18 Commerce energy conference that if a party
19 does that, you do that at your peril. If we
20 have witnesses called here and a witness is
21 on the stand and you don't cross-examine and
22 you don't rebut a point, you know, we have
23 the ability to make a decision as to whether
24 that witness is credible or not or why didn't
25 you cross-examine when maybe you could have

1 or should have. And by the same token, when
2 one party forgives another party's witness.
3 Example, somebody says, well, the Attorney
4 General has a witness on return on equity.
5 And you say, well, we don't care, don't come.
6 When you don't cross-examine that witness, it
7 may be fine. But when the Commission reads
8 the testimony, we may wonder why you didn't;
9 you know, you leave it to the point where if
10 a decision is made on a record, as we say we
11 may do, okay, you leave yourself vulnerable.
12 Possibly.

13 And the only point we were trying
14 to make was, is simply that. You know, it is
15 your rate case, and the utility has the
16 burden of proving it. If you want to come in
17 and prove it, that's fine. You will get a
18 decision. If you don't or if you leave part
19 of it hanging out there, you know, that's
20 your decision, it is not ours. The truth is,
21 we don't care. We're here to decide a case
22 and be fair to the utilities and be fair to
23 everybody concerned. And in the process of
24 doing that, we're going to try to do our job,
25 whether we have to work weekends, nights,

1 holidays to do it. And the fact that it
2 serves some purpose of saving a few dollars,
3 in a \$200 million rate case doesn't bother
4 us. And it doesn't bother us that, you know,
5 that some interests that -- the shareholders
6 may contribute something or the Sierra Club
7 may get something, I mean, that's not our
8 concern. Our concern is to do what the
9 statute requires us to do and we intend to do
10 it, simple as that.

11 Now, we appreciate the fact that
12 Kentucky Utilities and LG&E has been, as far
13 as we know, always open in the past, willing
14 to come in here and settle. And we make all
15 of our facilities available to you and to the
16 other parties. And we have spoke about this
17 with Mr. Raff yesterday. If you all would
18 want to contact him about coming in and
19 coordinating, all that would be fine. The
20 problem is this, is we're now -- and you're
21 right, before we came down here I went to my
22 little conference room and I have 25 boxes,
23 banker's boxes of documents. And that didn't
24 include the whole file, much of which is
25 spread over other offices. So...

1 But the problem is, is we have got
2 a hearing on May the 2nd. And as you pointed
3 out, your rebuttal is due on April the 14th.
4 We really need, if we're going to give this
5 case the type of scrutiny and examination
6 that it deserves, we need, if possible, to
7 get whatever proposed settlements, whole or
8 partial, that you can arrive at to us as soon
9 as possible. A target date for us would be
10 April 17th. And that may not give you enough
11 time. I understand how parties negotiate,
12 and things don't always go the way we want.
13 But if we had -- if you could get us
14 something by April 17th, that would give us
15 essentially two weeks. It would also allow
16 us, if you or if the utilities or the other
17 parties wanted to come in here for a second
18 conference, you could do that sometime during
19 the last week in April. If we had -- do you
20 understand what I am saying? In your motion,
21 you suggested possibly a second conference,
22 if that might be warranted.

23 MR. RIGGS: Yes, sir. If I may --

24 MR. SCHMITT: Okay.

25 MR. RIGGS: -- just comment, just

1 to be clear. Because good communication is
2 important to all relationships.

3 MR. SCHMITT: Sure.

4 MR. RIGGS: At the bottom, that's
5 all we're trying to do, is make sure we are
6 communicating well with you and properly with
7 you.

8 MR. SCHMITT: Well, and I
9 understand that. And I'm sorry if I seemed a
10 little snippy to you.

11 But all we're trying to do, too, is
12 say we've got a new Commission and we're
13 operating in a new way and we're going to
14 ultimately satisfy ourselves about these
15 outcomes, okay? And I am not saying that
16 others in the past didn't. I know
17 Mr. Gardner, and I know he did. And I am not
18 saying no one else, anyone else didn't.

19 But what I am saying is, is that
20 we're three different people and we have a
21 different way of looking at things and we may
22 need a little more time than others. And I
23 will tell you this, too, we have to rely on
24 staff. And it is the only smart thing to do,
25 because you've got good staff. But we test

1 our staff, all right? Mr. Cicero here has a
2 mind for finance that's not second to very
3 many, all right? So we're okay. And we're
4 not trying to express any favoritism. All
5 we're trying to tell you is, this is how
6 we're going to operate.

7 MR. RIGGS: Right.

8 MR. SCHMITT: Okay. Go ahead.

9 MR. RIGGS: We're here to listen.
10 We're here to listen. We're here to listen.
11 I want to emphasize that. I am not here to
12 say what has worked in the past has to be.

13 I did want the opportunity to
14 express what we had done in the past to
15 contrast that maybe with other experiences
16 you have had because they are different.
17 And that's it.

18 MR. SCHMITT: Okay.

19 MR. RIGGS: Now, I'm sorry,
20 Your Honor, I didn't fully understand if we
21 asked for a second conference. Are you
22 referring to if the company asks for an
23 informal conference for the purposes of
24 discussing settlement?

25 MR. SCHMITT: I'm saying if you ask

1 for another conference it will be on the
2 record. But if you ask for another
3 conference after this, it will -- there is a
4 99.9 percent chance it will be granted,
5 all right --

6 MR. RIGGS: Yes.

7 MR. SCHMITT: -- in the interests
8 of you, the public, the intervenors, and
9 everybody else. Unless everybody else
10 objected, there was some reason for a
11 problem.

12 MR. RIGGS: Sure.

13 MR. SCHMITT: But barring that, I
14 -- we would be -- I think we're susceptible
15 to a second conference.

16 MR. RIGGS: That is a second
17 conference and informal conference for the
18 purpose of discussing the issues, if that's
19 what the company requests?

20 MR. SCHMITT: Well, I think we
21 would have to think about where our status
22 was and rely on the advice of our general
23 counsel before we did that. Because we
24 wouldn't be interested in entertaining an
25 objection from any other party, such as the

1 Attorney General's Office. I mean, they say
2 it ought to be transparent, and we agree that
3 it ought to be transparent. If we can do it
4 in public, fine. If we can't, then --
5 then -- and there's an objection to it, then
6 we probably would be -- not be inclined to do
7 that.

8 MR. RIGGS: So I would ask if we
9 could resolve that. In the past, settlement
10 conferences have been conducted without
11 commissioners and with the parties and the
12 Commission staff in a formal conference.

13 MR. SCHMITT: That's not a problem.
14 As long as you understand one thing. And
15 that is this, is you cannot rely on anything
16 our staff says about what our position might
17 be. Do you understand? Our -- we have a
18 separateness to the extent that we have a
19 very good staff. We have a competent staff.
20 But you shouldn't -- you shouldn't rely upon
21 -- on -- on -- our staff won't make any
22 representations and they are not going to
23 negotiate and they won't be negotiating for
24 us. Do you understand? You know that
25 anyway.

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MR. RIGGS: I hear what you are saying.

MR. SCHMITT: Okay. All right.

MR. RIGGS: Their input has been useful in previous meetings.

MR. SCHMITT: Well, I'm sure it has. I'm sure that it has been useful. And our staff's available. I mean, we're not saying that they aren't. All I'm trying to say is, is that -- that -- well, I've said it, and then you can take what you will from it. But you know Mr. Raff and Mr. Raff's a fine lawyer and he will take care of everything.

MR. RIGGS: What information from a procedural standpoint would be useful for the Commission that the Commission has found it doesn't have in a conceptual sense?

MR. CHANDLER: Objection, Your Honor. He is asking --

MR. SCHMITT: No, I am not going to -- no. No. I -- I -- you know, that's sustained. That -- I wouldn't answer that if you hadn't objected.

But, I mean, I think the whole

1 point is to -- we have said what our position
2 is. Now, if we can get information, if we
3 can get a potential settlement agreement, we
4 will obviously begin immediately to consider
5 it to the exclusion of everything else or
6 almost everything else.

7 But we do know this. We have a
8 hearing set for May the 2nd. Two months ago
9 we contracted with a court reporter. Being
10 an old lawyer myself, we've got the video but
11 I don't always trust video, so we'll have a
12 video record and a court reporter who will be
13 in a position to provide, at your expense,
14 daily copy, all right?

15 MR. RIGGS: (Moved head up and
16 down).

17 MR. SCHMITT: Now, we know also
18 that that's, I don't think anybody thought
19 about it, that's Derby week. You have got
20 three days. If we got into a hearing, our
21 position would be that we would go three
22 days. If we could finish it going late, that
23 would be fine. If we couldn't, we basically
24 would stop on Thursday at 4:30 or 5 and come
25 back starting Monday the following week.

1 Now, you made a statement that,
2 well, there are lawyers from different places
3 and they have scheduling. You know, I was a
4 lawyer. If a lawyer undertakes a case, he
5 has got to go where the case is and where the
6 hearing is. And that's not a particularly
7 appealing argument to me, at any rate. So
8 the fact that that counsel has other
9 commitments isn't an issue once this case --
10 once it starts, okay? There was no movement
11 or motion by anybody to continue this hearing
12 or to do something else or to reschedule it,
13 and so it is where it is.

14 Last, whatever -- if there is a
15 proposed settlement and it is, you know,
16 during the week of, what, April 17th or the
17 following week, I expect the commissioners
18 will be reviewing it, looking at all the
19 testimony in the case, documents, and that
20 we're going to want to hear some witnesses on
21 May the 2nd. So we're going to hear some
22 witnesses on May the 2nd. If the case is --
23 goes forward for a full-blown hearing or if
24 the parties say we've got a proposed
25 settlement, then we're going to hear whatever

1 else we need to hear in order to make a
2 decision in case the settlement isn't
3 approved, okay?

4 So I guess that's about -- that's
5 about it. What I was going to say, I notice
6 in the -- in one of the other settlement
7 agreements we had there was language talking
8 about the -- you wouldn't cross-examine
9 somebody else's witnesses and also said,
10 well, but we understand that if the
11 Commission doesn't approve the settlement
12 that, you know, we -- that won't be binding
13 on any future hearing. There is not going to
14 be a future hearing. The hearing is May the
15 2nd. And the case will either be settled or
16 heard in whole or in part. And that's about
17 all I've got to say.

18 MR. RIGGS: All right.

19 MR. SCHMITT: Okay?

20 MR. RIGGS: Is there anything else
21 that the Commission --

22 MR. SCHMITT: Not from -- not that
23 I can -- no, there is nothing else. Do you
24 have anything else to say?

25 MR. RIGGS: In light of your

1 remarks, I think most of my remarks that I
2 was going to make about our past practices
3 don't need to be made. I understand your
4 position. And again --

5 MR. SCHMITT: That's our position.

6 MR. RIGGS: -- I never intended to
7 come to lecture to the Commission. I did
8 intend to present what I think is a valid
9 difference between the way settlement
10 procedures have operated in these cases heard
11 versus other cases. But I came to the
12 hearing today not knowing what your concerns
13 were.

14 MR. SCHMITT: I understand. You
15 were not at the Chamber meeting.

16 MR. RIGGS: I was not.

17 MR. SCHMITT: So...

18 And one of the reasons we wanted to
19 tell -- say that at the Chamber, because for
20 a few months before that we wanted to get
21 that out in the public so that everyone would
22 know what our position was, and that was the
23 first opportunity we had to do it. And, so,
24 now is another and it is on the record and
25 there are other utilities here and other

1 people can watch this video of this
2 proceeding and understand how we intend to
3 deal with such cases --

4 MR. RIGGS: Okay.

5 MR. SCHMITT: -- okay?

6 MR. RIGGS: May I have a moment?

7 MR. SCHMITT: Yes.

8 MR. RIGGS: Thank you.

9 (Counsel confer)

10 MR. RIGGS: Your Honor, thank you
11 very much for your time. We have nothing
12 further.

13 MR. SCHMITT: Now, I know we've got
14 25 lawyers here. And it would be terrible if
15 everybody has to say something, but everybody
16 will get a chance.

17 Does anyone -- Mr. Childers,
18 congratulations, by the way. I saw in the
19 newspaper something. You and --

20 MR. CHILDERS: Thank you,
21 Your Honor.

22 MR. SCHMITT: -- you and
23 Mr. Pillersdorf, my old opponents, had a
24 wonderful result.

25 MR. CHILDERS: Thank you,

1 Your Honor.

2 MR. SCHMITT: Do you have anything
3 to say?

4 MR. CHILDERS: Just one
5 clarification. I noticed just a second ago
6 you said that on May 2nd there will be
7 witnesses. And I particularly took that to
8 mean plural. And so my question to you is:
9 If a settlement was reached by the parties at
10 that May 2nd hearing, would the Commission
11 expect all of the witnesses to be present?

12 MR. SCHMITT: What the Commission
13 would do would be once somebody says we have
14 a proposed settlement, we would look at the
15 material and we would designate, or that's
16 what we have done, the witnesses that we
17 would like to be present. And if your
18 witness -- if we don't want to hear from your
19 witness, then you wouldn't be expected to
20 have the witness, unless you just wanted to.
21 You can always have witnesses even though we
22 don't designate them.

23 MR. CHILDERS: Thank you.

24 MR. SCHMITT: Because no party
25 would be deprived of the right to put on

1 testimony. And you might want to -- I mean,
2 I could foresee circumstances where the
3 Commission might ask for or require a witness
4 from, say, KU or LG&E and you wouldn't have
5 your witness and then you would say, oh, I
6 wish I had somebody there, you know.

7 MR. CHILDERS: True.

8 MR. SCHMITT: So everybody will
9 have a chance. There won't be -- but if you
10 are excused, if Mr. Riggs says "I don't
11 care," we're not going to -- I don't -- we
12 would waive your witness being there and we
13 don't require it, then you don't have to,
14 in the order. But you would get something in
15 writing from us.

16 MR. CHILDERS: Okay. Thank you.
17 That answers the question.

18 MR. SCHMITT: Anyone else?

19 MR. CHANDLER: I just have a quick
20 statement for the record.

21 Out of respect for the Commission,
22 we didn't want to be jumping up and down on
23 the table with objections today. But we just
24 want to note that in our previous response we
25 did file an objection and note that our

1 appearance here today was not a waiver of
2 that.

3 I do have one question for
4 Your Honor. The remarks made at the Chamber,
5 I don't believe anyone from the Attorney
6 General's Office was able to attend. Were
7 those remarks, were those read from
8 previously-prepared remarks?

9 MR. SCHMITT: No.

10 MR. CHANDLER: Okay. Thank you.

11 MR. SCHMITT: They were not. And
12 in response to your statement, you had an
13 objection to an informal conference that was
14 not open to the public. And our order,
15 basically, made the -- transformed the --
16 what would have been an informal conference
17 into an informal conference that was held in
18 public. And Mr. Riggs discussed possibly a
19 second conference later on. We have
20 specifically pointed out that if there was
21 any objection that wouldn't -- we won't have
22 any -- any conference we hold that -- where
23 the commissioners are involved, will always
24 be in public and will always be videoed.
25 And, but, I understand your position and your

1 objection.

2 MR. CHANDLER: Thank you,
3 Your Honor.

4 MR. SCHMITT: Obviously, it has
5 been overruled.

6 Yes, sir. Please identify yourself
7 again. I apologize.

8 MR. O'CONNELL: I will. My name is
9 Mike O'Connell. I'm the Jefferson County
10 Attorney. I appreciate the opportunity and
11 you all having this conference today.

12 And I think your outline of
13 procedures and settlement procedures and
14 processes are very helpful. I just have one
15 quick question. If it is not settled and it
16 goes to a full hearing and we begin on that
17 Derby week, whatever that is, I think I heard
18 you correctly, that, you know, once you start
19 a hearing you ride that thing until it is
20 concluded; is that right?

21 MR. SCHMITT: We will ride that
22 horse through Thursday at about 4:30 and then
23 we'll come back the following week and
24 finish.

25 MR. O'CONNELL: And ride it some

1 more.

2 MR. SCHMITT: And we'll ride it
3 until the finish line.

4 MR. O'CONNELL: That's what I
5 thought. Thank you.

6 MR. SCHMITT: Even if we have to
7 drag the horse over with a wrecker.

8 MR. O'CONNELL: Yeah.

9 MR. SCHMITT: We'll get it.

10 MR. O'CONNELL: Thank you.

11 MR. SCHMITT: Anyone else? Okay.
12 If there is nothing else, this informal
13 conference is hereby adjourned.

14 And you're invited to, anybody, to
15 contact Mr. Raff, our general counsel, to
16 schedule any kind of settlement discussions
17 you may want to hold here at the PSC, okay?

18 MR. RAFF: If I may, Your Honor.

19 MR. SCHMITT: I'm sorry.

20 MR. RAFF: The standard practice
21 would be if you -- anyone requests a
22 conference, that it be put into writing and
23 we will address it in writing.

24 MR. SCHMITT: Yeah. You may want
25 to ask for dates. But, anyway, go ahead.

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MR. RAFF: Right.

MR. SCHMITT: The hearing is
adjourned.

(Proceedings concluded at 1:42 p.m.)

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REPORTER'S CERTIFICATE

STATE OF KENTUCKY)
COUNTY OF FAYETTE)

I, LISA LARSON, FCRR, RPR, and Notary Public in and for the Commonwealth of Kentucky at Large, do hereby certify that the foregoing transcript was prepared from a piece of media of a proceeding where I was not present. I further certify that I have completed the transcription of said media and that the foregoing represents a complete transcription prepared to the best of my ability to hear said media pursuant to its quality.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 6th day of July, 2017.



LISA LARSON, FCRR, RPR
Notary Public, State-at-Large
Notary ID 580108

My Commission Expires: June 13, 2021