

NOTICE OF *EX PARTE* CONTACT

TO: Data Center
All parties of record in Case No. ER-2007-0291
All Commissioners

FROM: Public Counsel Lewis Mills

DATE: October 11, 2007

According to the Commission's rules (4 CSR 240-4.020), *ex parte* communications are prohibited, but when one does occur, the commissioner involved shall prepare a written report concerning the communication and submit it to each member of the Commission and the parties to the case. The report shall identify the person(s) who participated in the *ex parte* communication, the substance of the communication and the relationship of the communication to a particular matter at issue before the Commission. I am submitting this *ex parte* memo because Commissioner Appling has not – despite the passage of ten days time – submitted such a memo concerning his *ex parte* comments to me.

On October 1, 2007, during a break in the hearing in Case No. ER-2007-0291 after Commissioner Appling's questioning of Kansas City Power and Light Company witness Giles, Commissioner Appling and I met by chance in the lobby of the Governor Office Building. Unsolicited, Commissioner Appling told me that he had misspoken (apparently with reference to his comment that he had talked a lot about return on equity with KCPL witness Giles). Commissioner Appling said that he had meant to refer to the last case, and concluded by saying "so don't you put your [expletive deleted] fingerprints on me." My only response was to immediately steer the conversation to a safer topic. Despite the harsh language, Commissioner Appling's tone and manner were friendly. Nonetheless, it appeared that Commissioner Appling was urging me not to pursue action on the statements he had just made on the record.

As the Commission is aware, Public Counsel did in fact pursue action on those comments, because the off-the-record discussion between a commissioner and a company witness about the adequacy of the company's proposed return during the pendency of this case creates a clear appearance of impropriety.