

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Early Prehearing Conference

August 17, 2006
Jefferson City, Missouri
Volume 1

In the Matter of Union Electric)
Company d/b/a AmerenUE for)
Authority to File Tariffs)
Increasing Rates for Electric) Case No. ER-2007-0002
Service Provided to Customers)
in the Company's Missouri Service)
Area)

In the Matter of Union Electric)
Company d/b/a AmerenUE for)
Authority to File Tariffs)
Increasing Rates for Natural Gas) Case No. GR-2007-0003
Service Provided to Customers in)
The Company's Service Area)
Missouri Service Area)

CHERLYN D. VOSS, Presiding
REGULATORY LAW JUDGE

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

2 JUDGE VOSS: Go on the record. My name is
3 Cheryl Voss. I'm the Judge assigned to this case. We're
4 here for the prehearing today in Case Nos. ER-2007-0002 in
5 the matter of Union Electric Company d/b/a AmerenUE for
6 authority to file tariffs increasing rates for electric
7 service provided to customers in the company's Missouri
8 service area, and Case No. GR-2007-0003 in the matter of
9 Union Electric Company d/b/a AmerenUE for authority to
10 file tariffs increasing rates for natural gas service
11 provided to customers in the Company's Missouri service
12 area.

13 I would note for the record that all of the
14 parties have filed written entries of appearance, and they
15 will now state their client, identify themselves and which
16 cases they are intervening for the record, beginning with
17 AmerenUE.

18 MR. LOWERY: Thank you, your Honor. My name is
19 James Lowery. I represent AmerenUE in both the electric
20 and the gas rate cases.

21 JUDGE VOSS: Commission staff.

22 MR. BYRNE: Your Honor, my name is Tom Byrne. I
23 also represent AmerenUE in the electric and gas case.

24 JUDGE VOSS: Commission Staff?

25 MR. DOTTHEIM: In Case No. ER-2007-0002,

1 appearing on behalf of the Staff of the Missouri Public
2 Service Commission, Steven Dottheim, Post Office Box 360,
3 Jefferson City, Missouri, 65102.

4 MS. SHEMWELL: Lera Shemwell, representing the
5 Staff of the Commission in the natural gas case,
6 GR-2007-0003. Thank you.

7 JUDGE VOSS: Public Counsel?

8 MR. MILLS: On behalf of the Office of the
9 Public Counsel, my name is Lewis Mills. I'm representing
10 the Public Counsel in the electric case. Mark Poston of
11 my office is representing the Public Counsel in the gas
12 case.

13 JUDGE VOSS: State of Missouri?

14 MR. MICHEEL: Douglas E. Micheel appearing on
15 behalf of the State of Missouri. And we have been granted
16 intervention already in both the electric and gas cases,
17 and I'm here on those cases.

18 JUDGE VOSS: Department of the Natural
19 Resources?

20 MR. BINDBEUTEL: Joe Bindbeutel from the
21 Missouri Attorney General's office, Department of Natural
22 Resources, Energy Center --

23 JUDGE VOSS: Noranda Aluminum?

24 MR. BINDBEUTEL: -- on both cases.

25 JUDGE VOSS: Okay. Great. And Noranda

1 Aluminum?

2 MR. CONRAD: Stuart W. Conrad of the Law Firm of
3 Finnegan, Conrad & Peterson. We have been granted
4 intervention at our request in the electric case,
5 ER-2007-0002.

6 JUDGE VOSS: Missouri Energy Group?

7 MS. LANGENECKERT: Lisa Langeneckert, appearing
8 on behalf of Missouri Energy Group, and we're in the
9 electric case.

10 JUDGE VOSS: Okay. Aquila, Incorporated?

11 MR. MITTEN: L. Russell Mitten, Brydon,
12 Swearngen & England. And we have filed for intervention
13 in the electric case.

14 JUDGE VOSS: Okay. And Laclede Gas Company?

15 MR. PENDERGAST: Michael C. Pendergast appearing
16 on behalf of Laclede Gas Company. We've also filed for
17 intervention in the electric case.

18 JUDGE VOSS: Missouri Industrial Energy
19 Consumers?

20 MS. ILES: I'm Carol Iles, Bryan Cave, and Diana
21 Vuylsteke.

22 JUDGE VOSS: And MO-KAN? Is it CCCA? Note for
23 the record that Mr. Champagne, the attorney for MO-KAN, is
24 not, at least at this time, present. Okay. AARP and
25 Consumers Council?

1 MR. COFFMAN: Thank you. John B. Coffman
2 appearing on behalf of AARP and the Consumers Council of
3 Missouri. Both of those parties have applied to intervene
4 in the electric case, ER-2007-0002.

5 JUDGE VOSS: Missouri Association for Social
6 Welfare?

7 MS. CARVER: Your Honor, I'm Gaylin Rich Carver
8 representing the Missouri Association for Social Welfare.
9 And we have also requested to intervene in GR-2007-0002.

10 JUDGE VOSS: Great. Okay. The purpose of the
11 prehearing, you know, is to take up some of the procedural
12 matters and for the parties to discuss possible compromise
13 and settlement.

14 And dates for procedural schedule, that is to be
15 filed at this time on August 25th. First, I want to note
16 that the pending application to intervene, as the notice
17 issued by the Commission last Friday addressed, the
18 Commission has not yet reached a decision as to whether to
19 grant certain pending intervention requests in
20 ER-2007-0002.

21 And I have basically just a couple questions for
22 each party. And let's see.

23 MR. CONRAD: Your Honor, please?

24 JUDGE VOSS: Uh-huh.

25 MR. CONRAD: Before we get to that, we're aware

1 of the August 11 order. In fact, I have a copy here. The
2 Commission has lots of powers, including the ability to
3 grant or deny intervention. But who participates in a --
4 in a settlement conference -- and your Honor mentioned
5 settlement process -- is a matter of common law because
6 you have a privilege that's associated with that
7 participation.

8 And, thus, if you have parties who -- parties or
9 potential parties who have not yet been granted
10 intervention -- I don't have any intention or expectation
11 at this point of dealing with HC material in the context
12 of the discussions that may follow. But I have no
13 knowledge of about what others might.

14 But a non-party would not be bound by the
15 protective order in that case docket nor would any
16 non-attorneys be bound by that protective order unless
17 they had submitted a non-disclosure agreement.

18 Also, the -- the common law privilege with
19 respect to settlement discussions, the secrecy surrounding
20 them, if you will, the privilege surrounding them would
21 not cover parties who sat in here and subsequently would
22 deny intervention.

23 That having been said, there's an easy way
24 around his. And that is that if the parties who are
25 petitioning to intervene will simply, as part of their

1 presentation, indicate on the record that they, as
2 attorneys, agree to be bound by the settlement privilege
3 and that any persons that they have here representing them
4 otherwise in the room who are not attorneys and who would
5 not otherwise be bound by the protective order can very
6 quickly do a nondisclosure or can indicate through their
7 attorney that they will do so and make a commitment to do
8 so, then my problem is satisfied.

9 JUDGE VOSS: Excellent point.

10 MR. CONRAD: But I needed to -- I needed to make
11 that before we got started too far.

12 JUDGE VOSS: That was an excellent point. I was
13 going to comment that the Commission allowed them to come
14 into the prehearing as full parties because to deny them
15 the opportunity to do so in the event they're later
16 granted intervention could be detrimental to the parties
17 they represent.

18 Regarding HC material, I think that is an
19 excellent point with the attorneys present. That will be,
20 then, the first question I ask you. Great. Let's see.
21 Let's begin with -- let's see. Missouri Energy Group.
22 You're granted?

23 MS. LANGENECKERT: I was granted intervention.

24 JUDGE VOSS: All right. Let's begin with
25 Aquila.

1 MR. MITTEN: Aquila's interest in the electric
2 case, as we've stated in our application to intervene, is
3 really limited to the fuel adjustment clause issue.

4 Currently, Aquila does not intend to file direct
5 testimony in the case, but we do reserve the right to file
6 either rebuttal or surrebuttal testimony depending on the
7 direction that the case is going with regard to the fuel
8 adjustment clause.

9 JUDGE VOSS: Okay. The reason I addressed you
10 was so that you could identify yourself for her. I just
11 have two questions for you --

12 MR. MITTEN: All right.

13 JUDGE VOSS: -- Which then you can speak.
14 First, you -- you had said that you may file rebuttal
15 testimony. Do you intend at this time to put on an expert
16 witness or witnesses regarding issues?

17 MR. MITTEN: We don't know. It depends on the
18 direction that the evidence is going in the case on the
19 fuel adjustment clause. As we stated in our application
20 to intervene, we're seeking intervenor status because we
21 have a fuel adjustment clause request pending in our rate
22 case as well.

23 And we don't want to allow any opportunities to
24 go by that would give us the ability to put in evidence
25 that might affect the fuel adjustment request that's

1 pending in Aquila's case.

2 JUDGE VOSS: And in the event you don't
3 ultimately put on a witness, are you interested in the
4 ability to cross-examine witnesses during the hearing?

5 MR. MITTEN: We want to reserve that right, but
6 not necessarily.

7 JUDGE VOSS: Okay. Great. And to the extent
8 that you are not yet a party and not bound by the
9 confidentiality agreement --

10 MR. MITTEN: We would agree to be bound by the
11 terms of the agreement pending a ruling on our application
12 to intervene. And if that application is granted, we
13 would sign the nondisclosure agreement. And there are no
14 representatives of Aquila here other than me.

15 JUDGE VOSS: Okay. Great. Thank you. All
16 right. Laclede?

17 MR. PENDERGAST: Good morning, your Honor.

18 JUDGE VOSS: Mr. Pendergast, does Laclede at
19 this time have any intention to put on witnesses, expert
20 witnesses in this case?

21 MR. PENDERGAST: We have put on witnesses in the
22 past in the AmerenUE cases, and we haven't made a
23 definitive determination as to whether we will in this
24 case or not. But it is a distinct possibility.

25 JUDGE VOSS: Okay. And in the event you do not

1 put forth a witness, are you interested in cross-examining
2 witnesses?

3 MR. PENDERGAST: Of course.

4 JUDGE VOSS: Okay. And to the extent that
5 you're not currently a party to the case and not bound by
6 the protective order currently on file, are you willing to
7 abide by the terms?

8 MR. PENDERGAST: We certainly are willing to
9 abide by the terms.

10 JUDGE VOSS: Thank you.

11 MR. PENDERGAST: Your Honor, if I could, I just
12 wanted to go ahead and add, we have intervened in AmerenUE
13 cases before. The Commission has a consistent history of
14 granting them.

15 And just so there's no confusion as to what that
16 interest is, we are a customer of AmerenUE's. We are a
17 competitor of AmerenUE's. And we also have an interest in
18 probably some of the revenue requirement issues that
19 affect AmerenUE.

20 So from the standpoint of having interests that
21 are here, I think we probably have as many or more than
22 anybody else. So thank you.

23 JUDGE VOSS: Thank you. Okay. Missouri
24 Industrial Energy Consumers, are you prepared to answer
25 the questions?

1 MS. ILES: Yes, I am.

2 JUDGE VOSS: Great. First, representing
3 Missouri Industrial Energy Consumers, not being a current
4 party to the case, are you agreeing to be bound by the
5 protective order currently filed on the docket?

6 MS. ILES: Yes.

7 JUDGE VOSS: Great. Do you intend to put on any
8 expert witnesses?

9 MS. ILES: Yes, we do. Three witnesses from
10 Brubaker & Associates. Do you want their names? Maurice
11 Brubaker, Mike Gorman and Jim Selecky, S-e-l-e-c-k-y. And
12 maybe others.

13 JUDGE VOSS: Are those witnesses going to
14 discuss issues of rate design, cost of service?

15 MS. ILES: I assume so, yes.

16 JUDGE VOSS: Because I'm not familiar with them.
17 What type of expert witnesses are they? Staff attorney is
18 nodding that she's familiar with them. Okay.

19 MS. ILES: Thank you.

20 JUDGE VOSS: And in the event you -- I guess
21 you're going to definitely put on witnesses?

22 MS. ILES: Right.

23 JUDGE VOSS: Are you also interested in
24 cross-examining them?

25 MS. ILES: Yes, we are.

1 JUDGE VOSS: Okay. Thank you. Mr. Champagne?
2 Just making sure he hasn't come in. Okay. AARP and
3 Consumers Council?

4 MR. COFFMAN: Yes, your Honor. As I --

5 JUDGE VOSS: Mr. Coffman, may I ask you a
6 question briefly?

7 MR. COFFMAN: Sure.

8 JUDGE VOSS: I guess, because you're
9 representing two parties, I'm under the assumption for the
10 record that both parties have -- are aware that you're
11 representing both parties and don't have any issues with
12 conflict of interest?

13 MR. COFFMAN: I can assure you that I am well
14 aware of my ethical duties, and both parties are being
15 kept fully aware of -- of what is going on with each one.

16 JUDGE VOSS: Okay.

17 MR. COFFMAN: And if there aren't any potential
18 conflicts, that will be dealt with, you know, according to
19 the rules in an ethical manner.

20 JUDGE VOSS: Okay. Thank you. And since you
21 are not yet a party to this case are you willing to be
22 bound by the protective order filed in this --

23 MR. COFFMAN: Absolutely.

24 JUDGE VOSS: -- or these cases? Great. Thank
25 you. Do you intend to put on expert witnesses in the

1 electric case?

2 MR. COFFMAN: I can tell you that it is the
3 intent of each party, both AARP and Consumers Council of
4 Missouri, to sponsor witnesses, to have witnesses file
5 their testimony in the case. I can't tell you at this
6 point for sure exactly if or who that would be. Those
7 decisions are -- are still being considered.

8 JUDGE VOSS: Okay.

9 MR. COFFMAN: And -- and I think it might be
10 important to note that -- you know, that even if one of
11 these parties were not to actually sponsor a witness, so
12 to speak, they would be interested nonetheless in
13 cross-examining and building a record as a -- as a full
14 intervenor in this case.

15 And I think the Commission should be aware that
16 the ability of a party to develop a case based on
17 cross-examination and other evidence should not prejudice
18 them based on whether they have a witness or not. I think
19 as practical matter, sometimes witnesses are treated or
20 parties are treated differently based on whether they have
21 sponsored a witness or not.

22 But I think that there would be some serious due
23 process issues with treating parties differently for the
24 basis of intervention based on whether or not they
25 actually hired someone and sponsored a witness of their

1 own because, obviously, the case can be built through
2 cross-examination and other means.

3 JUDGE VOSS: If you do put on witnesses, are you
4 planning to put on witnesses that have rate design or cost
5 of service testimony?

6 MR. COFFMAN: That, actually, is -- I mean, I --
7 I don't know if it's appropriate to reveal every strategic
8 consideration, but it is -- it is a -- a dilemma at this
9 point whether to focus resources on rate design or revenue
10 requirement. Both areas are potential areas that each of
11 these parties would be interested in contributing to the
12 record, though.

13 JUDGE VOSS: Okay. Thank you. Missouri
14 Association for Social Welfare?

15 MS. CARVER: Your Honor, we are willing to abide
16 by the confidentiality as well. And we would be -- and
17 we're interested in this -- just in the aspect that we
18 have a unique clientele, so to speak, in that we represent
19 low income, disadvantaged, lower socioeconomic backgrounds
20 and believe that it would be advantageous to be part of
21 the settlement in regards to settlement discussions in
22 regards to the rate structure.

23 JUDGE VOSS: Okay.

24 MS. CARVER: We do not plan on having any -- at
25 this time, we're not planning on calling any witnesses but

1 would want to be able to cross-examine.

2 JUDGE VOSS: Okay. Thank you. I hope to be
3 able to issue an order by Tuesday regarding intervention
4 when the Commission has their next agenda session. They
5 just had some questions that they wanted to ask of the
6 parties and this seemed like the easiest forum.

7 Okay. Turn now to pending motions. There are a
8 couple motions filed in this case which have not been
9 ruled on because they involved issues that could be of
10 interest to parties that have not yet been granted
11 intervention.

12 And I wanted to make sure that all parties and
13 prospective parties have an opportunity to respond. And,
14 basically, once the intervention order is out, then anyone
15 granted intervention will have an opportunity to respond
16 to those motions.

17 Also, a few -- a few questions pertaining to
18 other motions that I will briefly ask. And then other
19 parties -- interested parties will be able to briefly give
20 comments on those as well.

21 And if there's anything that looks like I
22 thought could be briefly addressed that can't be, we will
23 schedule that one to file a response of some type as well.

24 Okay. First, regarding Ameren's motion to adopt
25 procedures for implementing its requested fuel adjustment

1 clause and its motion to consolidate to allow the recent
2 intervenors and prospective intervenors that may be later
3 granted intervention an opportunity to respond, I'm going
4 to order any party wishing to address either motion to
5 file a pleading with the Commission on or before Monday,
6 August 31st.

7 In the event the intervention order does not go
8 out on the 25th as I anticipate, I'll bump that back.

9 MS. LANGENECKERT: August 31st is a Thursday.

10 JUDGE VOSS: Yes.

11 MS. LANGENECKERT: Didn't you say Monday?

12 JUDGE VOSS: Tuesday. No. Tuesday is the day
13 there's agenda.

14 MS. LANGENECKERT: Okay. But you ordered people
15 to respond --

16 JUDGE VOSS: Oh, did I?

17 MS. LANGENECKERT: Yes. So is it --

18 JUDGE VOSS: Tuesday, August 31st.

19 MS. LANGENECKERT: That's a Thursday.

20 JUDGE VOSS: Or Thursday, August -- you know, I
21 was looking --

22 MS. LANGENECKERT: Tuesday's the 29th.

23 JUDGE VOSS: That's what happens when you take
24 notes. And I had a calendar right here. To give you
25 guys --

1 MR. CONRAD: I've said before the Commission has
2 a lot of power, but there are --

3 JUDGE VOSS: You know, they might want to
4 discuss that in agenda before they agree to that.
5 Thursday, August 31st. We think went back and forth as to
6 which day to change and put it down too many times.

7 MR. MICHEEL: The motions to join and motions to
8 adopt the fuel adjustment clause, are those the only two
9 that --

10 JUDGE VOSS: This is the motion to consolidate.
11 Yeah. There's other -- right now. There's a couple
12 issues that I have questions about that I don't think
13 would require a detailed response.

14 And if -- if that turns out not to be the case
15 and there's a lot of angst in the room when we start
16 discussing them, they may be added to the list.

17 Okay. Next, regarding Staff's motion to reserve
18 an extra week for the hearing in March, they're thinking
19 about it. As you can tell from the calendar that I passed
20 out to each of the attorneys, the calendar is crazy. They
21 haven't ruled it out, but they're not entirely sure they
22 can justify it at this point either. So they're still --
23 still considering it.

24 They do understand that these are two separate
25 cases and there are a lot of parties. So -- all right.

1 MR. LOWERY: Your Honor, if I may, I might just
2 say on behalf of the company that we tend to agree with
3 Staff that it's probably very wise to reserve that third
4 week. Whether we need it or not is always something you
5 don't know. You don't know whether one case or the other
6 settles. You don't know if there are multiple issues when
7 the cases settle.

8 But they are two different cases. They're very
9 large cases with the largest utility in the state, and
10 this rate case may have more parties potentially to it
11 than any other that I can remember for a while. So I
12 guess, for our two cents worth, we think it's probably
13 wise to reserve that week.

14 JUDGE VOSS: And they may allow us to reserve it
15 with the understanding that the public hearings are now
16 being Web cast and must also be Web cast from that room.
17 So they're juggling things back and forth. And there may
18 be a break-up during that week when they put public
19 hearings in.

20 And so they're -- they're looking at their
21 calendar and realizing that there is zero open. Anyway,
22 I'll just let you guys know, they haven't ruled it out.
23 They're seriously considering it. They just haven't
24 reached a consensus yet.

25 Okay. Regarding the proposals for test year, I

1 have a couple questions for Ameren. I know that Ameren
2 filed a document this morning. But since a lot of people
3 probably haven't had a chance to look at it yet because it
4 just came through on EFIS late yesterday or this
5 morning --

6 MR. LOWERY: It was late yesterday. Yes.

7 JUDGE VOSS: The first one is why is test year
8 ending June 30th, 2006, updated through January 1, 2007,
9 in its electric case and only recommending updates through
10 September 30th in the gas case? I understand there's some
11 fuel adjustment contracts that are going into effect.

12 MR. LOWERY: The -- the principal reason is the
13 one you just touched upon. We have, today, new executed
14 fuel and transportation contracts that replace contracts,
15 long-term agreements that have been in place for a number
16 of years that the prices under those contracts become
17 effective on January 1.

18 And, obviously, the electric utility, fuel is
19 part of the revenue requirement. We know what those
20 prices are. We filed our direct case based upon those
21 prices. The fuel modeling has been done based upon those
22 prices. And we want to make sure we can capture those
23 because those prices will be in effect a full five months
24 before rates would even take effect in the case.

25 And I think, in keeping with what the Commission

1 tries to do, we'll be using the test year and using the
2 true-ups to make sure we have accurate data.

3 If you're going to separate based upon what you
4 know what and want those rates to be reflective of what
5 the cost of service is, then it would be very important
6 that those fuel costs be included.

7 And since those prices become effective on
8 January 1, what we're recommending and we had sent to the
9 parties a couple of days ago, sort of a straw man
10 procedure schedule to try to talk from this morning.

11 What we're going to be recommending is to
12 true-up fuel through a true-up process and -- and plan and
13 service and some other potential items that we may agree
14 on with the parties or other items the Commission may
15 order to in effect make sure that we get -- we take into
16 account those new fuel prices.

17 In the gas business, there isn't any similar
18 kind of item. We -- we don't see any compelling issue or
19 revenue issue that would require us to go beyond the
20 September 30th date. So we chose a different date just
21 because there wasn't that particular item.

22 JUDGE VOSS: Okay. When would Ameren be able to
23 make the relevant records available to the parties, you
24 know, given that the hearing in this case is scheduled for
25 the second week -- second or third week mid March?

1 MR. BYRNE: Your Honor, I guess that depends on
2 what's -- what's updated. And that -- and that still has
3 to be determined if -- if it's just fuel that has to be
4 updated, I -- I think we can make the records available
5 relatively quickly after the first of the year.

6 But I know updates are often a basket of items.
7 And I think other parties might have some items that they
8 want to be updated as well. So I think depending on what
9 the scope of the basket of items is, that will determine
10 how long it will be before we can get the information.

11 JUDGE VOSS: Thank you. Are there any parties
12 that want to comment on this issue in response to their
13 statements? Yes. Steve Dottheim, Staff.

14 MR. DOTTHEIM: Yeah. The Staff has been in
15 discussions with the company on these matters. And it's
16 -- it's fully anticipated that those discussions would
17 continue this morning.

18 And the Staff has been attempting to accommodate
19 the company in -- in addressing the matter of the January
20 1, 2007, date for the new fuel contracts and coal
21 transportation contracts. But, again, that's a matter
22 that it was thought, at least by the Staff, that would be
23 discussed once we went off the record and addressed the
24 schedule in general.

25 JUDGE VOSS: Thank you.

1 MR. DOTTHEIM: And I think it's been addressed
2 by Mr. Byrne that it's -- it's not just a matter of -- of
3 fuel and -- and transportation or -- or coal and
4 transportation contracts. It's -- it's a basket of items,
5 expenses, revenues, and rate-based items that need to be
6 synchronized at a specific point in time. So --

7 JUDGE VOSS: Okay. Great. Thank you. Would
8 anyone else like to comment on the issue? Is that -- were
9 you raising your hand or --

10 MR. LOWERY: (Mr. Lowery shakes head.)

11 JUDGE VOSS: Okay. Okay. Finally, regarding
12 public hearings and notice, the public hearing
13 recommendations are now going to be due on August 25th.
14 And the Commission wanted me to stress to the parties that
15 that is the time to give information regarding the effect
16 on consumers.

17 Witnesses at the hearings are generally going to
18 be cost of service, rate design witnesses, not witnesses
19 that say how difficult it is to pay their rates because
20 that's not the issue that's relevant before the Commission
21 in setting reasonable rates.

22 Great. And I have a request to try to get a
23 public hearing in the Cape area by one of the
24 Commissioners.

25 MR. COFFMAN: Your Honor -- your Honor, I just

1 wanted make sure I understood your previous comment about
2 -- and I wasn't sure exactly what you were saying as to
3 what time certain type of testimony was appropriate.
4 I -- I may just not have followed you. Were you referring
5 to the evidentiary -- what you commonly call the
6 evidentiary hearing?

7 JUDGE VOSS: Evidentiary hearing. Generally,
8 the witnesses should be on cost of service and rate design
9 issues, and that the public hearings are the best place to
10 have presented information regarding the impacts so the
11 public can be aware.

12 MR. COFFMAN: In other words, you're saying --
13 you're hoping to reserve that time for expert witnesses?

14 JUDGE VOSS: Yes. That was part of the -- the
15 reason to request whether people were going to bring
16 expert witnesses as opposed to five people that, you know,
17 live in a given area. Due to the number of parties, and,
18 of course, if you have such testimony, it can always be
19 filed, and the Commission can rule on any objections to
20 it. But, generally, that's their concern.

21 Does anyone else have any other issues they'd
22 like to take up on the on-the-record portion of the
23 prehearing? Yes, Mr. Dottheim.

24 MR. DOTTHEIM: This may be a -- a little bit
25 unusual. But it -- it goes to the protective order that

1 the Commission has issued. And I'm not sure everyone may
2 have -- have noticed that it's possibly beginning with the
3 protective order issued by the Commission with the
4 AmerenUE electric case.

5 There are two provisions in the protective order
6 dealing with EFIS data requests. They are on page 3 of
7 11, and they are on -- on page 3. They're paragraphs F
8 and G.

9 And they -- they deal with a situation that
10 there's an effort now being made, at least on the part of
11 the -- of the Staff, to utilize EFIS for data request
12 retention, and some companies are -- are loading and the
13 Staff in certain instances loading data request responses
14 into EFIS.

15 And it sets out, in essence, certain procedures.
16 It's -- it's not clear whether there's an expectation
17 whether EFIS will be used for data request responses to be
18 loaded into EFIS or whether that's a voluntary matter that
19 it sets out the procedure to be followed if a utility or
20 if parties use EFIS for -- for loading data request
21 responses into EFIS or even data requests themselves.

22 So as I was raising that matter to see if there
23 might be some -- some clarification that's a matter that
24 -- that the -- that has been coming up in scheduling
25 conferences that have been occurring.

1 It's a matter that I fully expect the parties
2 will -- will address when we go off the record. And as is
3 usually done, there's usually a discussion of the exchange
4 of data requests. And I would expect that when we submit
5 to the Commission a proposed procedural schedule, it's
6 likely that it will also address the matter of exchange of
7 data requests and possibly, in fact, likely, probably
8 shortening the response time for that the data request at
9 certain points in the -- in the schedule.

10 But I just thought I would make note of those
11 two provisions that are in the Commission's protective
12 order if other parties hadn't noticed it and thought that
13 I would inquire as to when you, at this time or at some
14 later time, might be able to provide the parties with some
15 clarification as to what are the Commission -- what --
16 what the Commission's expectation is, if there is an
17 expectation.

18 JUDGE VOSS: I just wanted to clarify. You want
19 to know whether that language identifies that the
20 Commission expects parties to do that if they have the
21 availability or if it's an option?

22 MR. DOTTHEIM: Yes. Whether it's just
23 voluntary.

24 JUDGE VOSS: I will get back to you on that. I
25 will find out. I'm not sure what their intention was in

1 that language.

2 MR. DOTTHEIM: And the parties may -- the
3 parties may address that, too, when they submit to the
4 Commission a proposed procedural schedule. The parties
5 may address that collectively, and they may address that
6 individually.

7 JUDGE VOSS: Well, I will try to get some type
8 of a notice or statement from the Commission on that and
9 let the parties know.

10 MR. LOWERY: You -- your Honor, if I may, if it
11 pleases the Commission?

12 JUDGE VOSS: Uh-huh.

13 MR. LOWERY: I would like to address this. The
14 -- the EFIS system is a voluntary system even when it
15 comes to filing pleadings and always has been. If a party
16 chooses to file an original and eight copies of any
17 pleading or other filing, then the party's perfectly free
18 to do that.

19 And when -- when reading this language, it's
20 absolutely clear, if you ask me, that there's no mandatory
21 direction that EFIS must be used for data requests. In
22 fact, it makes no sense that there would be given that
23 EFIS is not mandatory for use otherwise. And the
24 Commission's rules have never been amended to -- to make
25 that otherwise than a voluntary system.

1 There are also some very, very serious practical
2 problems with having to use EFIS for data request
3 responses, and I'll give you one example. We've had a
4 data -- we've had -- we've had nearly 200 data requests in
5 the case so far.

6 But we had one in particular that comes to mind
7 that asked for a number of different items. I believe we
8 had something on the order of 20 or 30 file attachments,
9 separate documents that were PDF that had to be provided.
10 And in order to file those -- file those -- and it's not
11 really a file, to submit those or put them into EFIS, what
12 you have to do is you have to go through and you have to
13 fill out the case number form and the name and what the
14 data request is about, and you have to individually attach
15 and then upload and wait for it to upload and wait for it
16 to upload. And you have to do it again, 20 times times
17 200 or 400 or 600 data requests as opposed to what we have
18 been doing.

19 And that is addressing an e-mail to whomever
20 requested it or whoever else might need to be copied on
21 that e-mail. Attaching the 20 files, hitting the send
22 button, and away it goes and everybody that needs to get
23 it gets it.

24 The company has been willing, as indicated by
25 Staff, for example, that we're willing to provide copies

1 of data requests that we would propound to others, to
2 other parties simultaneously, they can look at that. They
3 look at those and decide if they might want that response
4 or not. That's something that's typically been done in
5 other Commission cases recently.

6 I would expect that we'd be talking about doing
7 that today. But this -- this order clearly does not make
8 it mandatory. The rules don't contemplate that it would
9 be mandatory any more than it contemplates the filings
10 would be mandatory.

11 And there are some serious problems and concerns
12 that we have, and I think some other parties have as well,
13 about the functionality of that system and the
14 practicality to doing it. I understand that perhaps
15 Staff, as an internal matter, want to promote their system
16 and maybe have been told, You have to do something with
17 the system.

18 But I would respectfully suggest that doesn't
19 apply to the other parties and shouldn't apply to the
20 other parties. And we do have those serious concerns. So
21 when you went to the Commissioners for that clarification,
22 I just wanted you to be aware of our concern.

23 MR. MICHEEL: The State of Missouri would echo
24 those, and I would agree with Mr. Lowery. I -- I avoid
25 using EFIS if at all possible.

1 JUDGE VOSS: Mr. Conrad?

2 MR. CONRAD: I also, your Honor, would on behalf
3 of my client endorse the comments that have been made by
4 Mr. Lowery and by counsel for the State.

5 I have a slightly different matter in that I have
6 been, at times, I feel like I think I characterized it in
7 one recent e-mail as akin to Don Cahodie and referred
8 people to my web site at www.windmilltilting.com.

9 I have been trying to at least advocate some
10 procedures, be they small, with my increased efficiency of
11 case handling. And I think that's particularly important
12 in a case like this and a time like this when we all have
13 so many cases that your Honor referred to, characterized
14 the Commission's schedule as somewhat crazy.

15 There is a slight other matter, however, that I
16 would like to flag for your attention. The Commission
17 rules provide generally for a ten-day response period to
18 its motions.

19 On the 2nd of July, Ameren filed a motion to
20 open the case, establish protective order and also moved
21 for expedited treatment, the latter of which they're
22 certainly entitled to do.

23 But even a motion for expedited treatment
24 involves some possibility of response. Now, as of July 2,
25 there are only two statutory parties other than the

1 utility to respond to that motion. Neither did.

2 And the case itself was not actually filed until
3 July 7. But I note that in order to grant a motion for
4 protective order was issued in this docket one day before
5 the case itself was filed.

6 Now, I certainly endorse and support the
7 company's desire to keep confidential information
8 confidential. No argument about that. But perhaps the
9 problem to which Mr. Dottheim refers might have been
10 voided certainly by the way of agreeing with Mr. Lowery
11 and the language in the two paragraphs, which is, at least
12 I'm seeing it, was new, although it may be part of what is
13 now a standard protective order.

14 When I see a standard protective order, I will
15 confess that I don't spend a lot of time reviewing it
16 because I have presumed that it is the standard Commission
17 protective order that has been used. These two paragraphs
18 are new. And I am, I guess, mildly curious, although I'm
19 not asking for a response from your Honor, how it is that
20 before a case is filed and before there is even an
21 opportunity for parties intervene that we have a
22 protective order issued.

23 Now, at least in my practice in some other
24 jurisdictions, while we have model protective orders, we
25 usually have some negotiations about the terms and

1 conditions of them, speaking with respect to FERC.

2 And I don't -- I don't have and haven't had
3 problems with the terms of the quote, standard, closed
4 quote, protective order that was used prior to this.
5 But as Mr. Dottheim and my other colleagues point out,
6 there is some ambiguity potentially in the two paragraphs
7 that have been stuck in.

8 And I certainly agree that, logically, with
9 counsel for Ameren that there should not be any compulsory
10 aspect to that. But if you see what my -- my concern is
11 -- is where did -- where did I get an opportunity to even
12 review the standard protective order when it's -- when
13 they requested a standard protective order on July 2 and,
14 boom, even before the case is filed, we have an order
15 issued that govern parties' proceedings thereafter.

16 I'm -- I guess I'm a little confused about that.
17 So help me out here.

18 JUDGE VOSS: I will say that with changing
19 technologies, it's understandable that a standard
20 protective order is going to change over time. And I --

21 MR. CONRAD: Excuse me. Is going to change
22 every time?

23 JUDGE VOSS: Change over time. As technologies
24 change, data is transmitted in different ways. A
25 protective order that was in effect 20 years ago before we

1 had Internet and EFIS -- you know, the terms of the
2 paragraphs will speak for themselves. And I'm going to
3 get clarification on what they mean.

4 And as for the motion being granted before the
5 case was opened, the case was opened with the filing of
6 direct testimony, which contained some highly confidential
7 information, my understanding, or could potentially have,
8 which is why the Commission issued the protective order
9 before that information was filed in the docket.

10 MR. BYRNE: Your Honor, if I might?

11 JUDGE VOSS: Yes.

12 MR. BYRNE: There's one other problem we have
13 with using EFIS for data requests, and I just -- in
14 addition to those that have been pointed out by
15 Mr. Lowery.

16 My understanding is the way the EFIS system
17 works, basically, everyone at the Commission has access to
18 it, which means the Commissioners have access to it. The
19 hearing examiner -- the RLJs have access to it.

20 And, you know, to -- to us, that's a -- that's a
21 problem as well as the other problems that we've
22 identified. You know, the -- the way discovery is
23 supposed to work is it's supposed to be the between the
24 parties and the decision-makers don't see information
25 until it's presented in evidence.

1 And so in addition to the -- to the issues that
2 Mr. Lowery has raised, that is also an issue with using
3 EFIS for us.

4 MR. MILLS: Your Honor?

5 JUDGE VOSS: Yes.

6 MR. MILLS: Just briefly, just so the record is
7 clear, I'm not sure that it is true that all the people at
8 the Commission have access to the data requests.

9 Second, EFIS has individual rights granted to
10 individual users depending on their position within the
11 Commission or without the Commission. And I don't believe
12 it's correct that the RLJs or the Commissioners have
13 access to the docket portion of EFIS.

14 MS. SHEMWELL: I agree with that. I'm not aware
15 that the Commissioners have access to EFIS, the data
16 request portion.

17 MR. DOTTHEIM: It was my understanding that
18 until recently, it was only the Office of Public Counsel
19 and the Staff that had access to the data request portion
20 of -- of EFIS. And that it's been expanded to permit
21 other parties or intervenors specifically.

22 JUDGE VOSS: Yes, Mr. Pendergast.

23 MR. PENDERGAST: Just to throw my two cents
24 worth in, your Honor, our experience with EFIS is in some
25 cases, particularly smaller ones, it works well.

1 I can certainly understand Staff's desire to go ahead and
2 have all their information in a central place where it can
3 be accessed by folks who want to do it without having to
4 send e-mail through some sort of chain without having to
5 get to it to everybody that needs it.

6 I think on occasions there are some practical
7 problems. I think they've been identified by AmerenUE.
8 And it just seems to me probably this is one of those
9 classic cases for some sort of rule-making.

10 I know that the Commission just proposed and
11 maybe adopted a rule regarding the standard protective
12 order. It's obvious they've already got rules on
13 discovery and how that's to be conducted and so forth and
14 so on.

15 And, you know, there are a lot of, I think,
16 issues to be considered when it comes to how you use EFIS
17 and -- and when it's appropriate and maybe when it's not
18 and what alternatives there are.

19 It just seems if we're going to go ahead and
20 establish some kind of precedent for that that rule-making
21 might not be a bad way to go ahead and do it.
22 So --

23 JUDGE VOSS: Okay. For now, I will definitely
24 clarify this issue. Mr. Dottheim, did you have any other
25 comments or --

1 MR. DOTTHEIM: Not at the moment.

2 JUDGE VOSS: Couldn't see you back there. Too
3 many people in the room. I will find -- just clarify, I
4 don't have any reason to believe that the Commission
5 intends this to be compulsory, but I'll clarify the
6 language and find out if that was their intent.

7 And I'll also find out who has access to the
8 docket system. I know I have access to part of it. But I
9 think -- I don't know that -- I don't think I have access
10 to data requests. But I've never looked for them because
11 I haven't had a reason to. So --

12 MR. CONRAD: Not to prolong this, but just since
13 I'm kind of a little bit of a techno nerd and have sat on
14 some of these internal working groups with respect to the
15 -- the data request module, one thing that I think does
16 get forgotten about, for those who are internal to the
17 Commission, it's called an intranet.

18 And your response time when you click on a
19 screen or click on a mouse is virtually instantaneous
20 because you are not going to cross a -- a broadband
21 network. You are not going through servers and some
22 server from California or who knows where.

23 MR. LOWERY: Spam filters.

24 MR. CONRAD: And there may be -- as somebody
25 points out, there may be spam filters and all sorts of

1 things.

2 When you are on the outside, I have experienced
3 response times that vary anywhere from five to ten seconds
4 to 30 seconds or more. So it's -- it becomes a function
5 of how many hits are on the Commission's server as well as
6 what the routing is throughout.

7 So I guess what I would ask you to take into
8 account is that the response time that you all experience
9 inside the Commission is not what the public and those
10 outside the -- the Governor Office Building see and
11 appreciate.

12 JUDGE VOSS: And I'm sure the Commissioners
13 appreciate the difference between high speed and regular
14 access. Different parties may have different types of
15 connections. But I'll find the answers to those questions
16 and get some clarification on the issue so there won't be
17 a question anymore.

18 And does anyone else have any other issues?
19 Great. Well, that ends the on-the-record portion of the
20 prehearing conference. And I have two more copies of the
21 Commission calendar in case anybody -- three -- didn't get
22 one.

23 And I will put in an order to the things that I
24 discussed at the beginning about responses being due. Or
25 optional responses.

1 MR. LOWERY: Thank you, your Honor.

2 JUDGE VOSS: That -- all right.

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