

1 STATE OF MISSOURI

2

3 PUBLIC SERVICE COMMISSION

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6 TRANSCRIPT OF PROCEEDINGS

7 Prehearing Conference

8 November 8, 2001

9 Jefferson City, Missouri

10 Volume 1

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12

13 Staff of the Missouri Public )

14 Service Commission, )

15 Complainant, )

16 vs. ) Case No.

17 Union Electric Company ) EC-2002-1

18 d/b/a AmerenUE, )

19 Respondent. )

20 -----

21 DALE H. ROBERTS, Presiding,

22 CHIEF REGULATORY LAW JUDGE.

23 -----

24 REPORTED BY:

25 MELINDA ADOLPHSON, CSR

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

2 JUDGE ROBERTS: Good morning, ladies and  
3 gentlemen. My name is Dale Roberts. I'm the  
4 Presiding Judge assigned to this case. This is  
5 EC-2002-1, the Staff of the Missouri Public Service  
6 Commission as Complainant versus Union Electric  
7 Company d/b/a AmerenUE, Respondent. We're here for  
8 the prehearing conference. Before we begin, I'd  
9 like to take entries of appearance on the record,  
10 and I know that there may be some applications to  
11 intervene upon which the Commission hasn't ruled.  
12 So if you will just identify yourself as such as  
13 having a pending application when we get to you,  
14 that will be fine.

15 With that, we'll start with entries of  
16 appearance starting with Staff, please?

17 MR. DOTTHEIM: Steven Dottheim, Post  
18 Office Box 360, Jefferson City, Missouri 65102,  
19 appearing on behalf of the Staff of Missouri Public  
20 Service Commission.

21 JUDGE ROBERTS: Go ahead, Mr. Coffman.

22 MR. COFFMAN: Appearing on behalf of the  
23 Office of the Public and the Ratepaying Public,  
24 John B. Coffman, P.O. Box 7800, Jefferson City,  
25 Missouri 65102.

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1 JUDGE ROBERTS: Anybody? Jump in.

2 MS. VUYLSTEKE: Diana Vuylsteke, appearing  
3 on behalf of the Missouri Industrial Energy  
4 Consumers of the law firm of Bryan Cave, L.L.P.,  
5 211 North Broadway, Suite 3600, St. Louis, Missouri  
6 63102.

7 MR. COOK: James J. Cook, appearing on  
8 behalf of Union Electric Company, AmerenUE, Post  
9 Office Box 66149, St. Louis, Missouri 63166.

10 MS. LANGENECKERT: Lisa C. Langeneckert,  
11 appearing on behalf of the Missouri Energy Group,  
12 law office of Robert Johnson, 720 Olive,  
13 24th Floor, St. Louis, Missouri 63101.

14 MR. MOLTENI: Ronald Molteni and Shelly  
15 Woods, Office of the Attorney General, appearing on  
16 behalf of the State of Missouri, P.O. Box 899,  
17 Jefferson City, Missouri 65102.

18 MS. WOODS: Application to intervene  
19 pending.

20 MR. FISCHER: James M. Fischer of the law  
21 firm of Fischer and Dority, P.C., 101 Madison  
22 Street, Suite 400, Jefferson City, Missouri 65101,  
23 appearing on behalf of Kansas City Power and Light  
24 Company which also has a pending application to  
25 intervene.

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1                   MR. REID:  Scott Reid, appearing on behalf  
2   of the Doe Run Company, 135 East Main Street,  
3   Fredericktown, Missouri 63645.

4                   MR. PENDERGAST:  Michael C. Pendergast,  
5   appearing on behalf of Laclede Gas Company.  My  
6   business address is 720 Olive Street, St. Louis,  
7   63101.

8                   JUDGE ROBERTS:  Anyone else, a party -- or  
9   I'll ask, I guess, Mr. Cook or Mr. Dottheim would  
10  be more likely to know this than anybody.  Are  
11  there any parties not represented here today who  
12  intervened or asked to intervene?  I didn't notice  
13  anyone missing.

14                  MR. COOK:  I don't think so.

15                  MR. DOTTHEIM:  I think everyone who has  
16  been granted intervention is here.

17                  JUDGE ROBERTS:  Thank you very much.

18                  And I failed to mention, I have on the  
19  Bench with me this morning, Amy Davenport, I think  
20  most of you had the opportunity to meet.  
21  Ms. Davenport is a law clerk for the Commission's  
22  Judges and for the Commissioners as well, and she's  
23  working on this case with me.

24                  I understand we have the application to  
25  intervene pending for KCP&L, and that's in the file

1 and has been there for a short amount of time. And  
2 I believe the application to intervene came in from  
3 the AG's, Attorney General's Office yesterday --  
4 yesterday or today. I will probably include both  
5 of those applications to intervene in a larger  
6 order which is pending in which I hope will address  
7 and resolve all the loose ends in this case, so I  
8 don't see any need to rule on those from the Bench  
9 today. You're certainly free to participate with  
10 the parties unless one of them has some objection  
11 in which I can't imagine, but you're on your own on  
12 that.

13 I know that in terms of pending motions,  
14 there is one motion from Missouri Energy Group, I  
15 believe, asking for an extension of time within  
16 which to file their response to the initial  
17 pleading, and I don't believe we've received a  
18 response from Doe Run at all or a request for an  
19 extension of time. I don't know if there are any  
20 others from the previous intervenors. Those issues  
21 will also be addressed in the pending order.

22 I will tell you that it would be my  
23 recommendation that additional time should not be  
24 needed for those documents to be filed, but having  
25 said that from the time your motion for extension

1 of time was filed until the time that this order  
2 comes out, you have had somewhat of an extension  
3 anyway.

4 As to the new applications for  
5 intervention, the ones that are pending, if you  
6 haven't seen it already in the orders in this case  
7 or in other recent cases, the Commission has taken  
8 a practice which may become a common practice  
9 that's being used somewhat selectively now, that  
10 when intervenors ask to get in a case, they are  
11 asked to file basically an answer or some  
12 responsive pleas to the pleading which initiated  
13 the case. And in that document the intervenors  
14 should state their position so that the Commission  
15 can ascertain really why the intervenor's there and  
16 if they need to remain.

17 As most of you know, the Commission's  
18 policy in the past, I believe, has been fairly  
19 liberal in terms of granting intervention. And  
20 once a party is in, they stay. It's rare that  
21 anyone asks to be removed or released from a case.  
22 Many parties, I believe, ask to intervene out of  
23 the abundance of caution. You see a case come up,  
24 you're not really sure what the issues are or where  
25 it's going to go, and you can't see any highly



1 confidential information, and so you're covered by  
2 the protective order. So in order to protect your  
3 interest or your client in order to protect  
4 their -- there is a somewhat routine request for  
5 intervention, you get in and you see the issues,  
6 and upon seeing those issues, you may decide  
7 there's nothing there that concerns you or nothing  
8 there for which you intend to present evidence.

9           And in those cases if we don't see  
10 something, a strong statement of interest in that  
11 responsive pleading, we will be recommending that  
12 you not remain in the case. So that's our reason  
13 for doing that. We're trying to clean these cases  
14 up and narrow the number of parties, not for  
15 convenience in terms of just having fewer parties,  
16 but we don't want to have any unnecessary parties  
17 in these cases. It's not just a free discovery  
18 trip for someone to be in the case. So that's the  
19 purpose of that. And I think you will see it more  
20 and more those of you who practice here with some  
21 regularity. So I think that addresses the  
22 intervenors and for the most part the pending  
23 motions.

24           I do want to state for the record since we  
25 certainly didn't have a court reporter yesterday,

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1     that there was a telephone conference yesterday at  
2     the request of several of the parties. The order  
3     setting the prehearing conference, I think might  
4     have suggested to some parties that I might have  
5     questions for witnesses or -- I don't know what  
6     else. There may have been some other issues sort  
7     of read into the order.

8             In any event, we had a telephone  
9     conference. The parties who were able to be  
10    reached and interested in being involved in the  
11    telephone conference, I believe, were Jim Cook, Bob  
12    Johnson and/or Lisa Langeneckert, I think they were  
13    both on, Diana Vuylsteke, John Coffman, Steve  
14    Dottheim, and I believe those were the only  
15    parties. And I hope that any other party involved  
16    in this case got, and I believe they did get notice  
17    of the fact that that conference was going to take  
18    place. There were really no decisions made other  
19    than I tried to make it clear, no, I really don't  
20    want to talk to your witnesses. I would not do  
21    that at a prehearing conference, but I do want to  
22    talk to you about some of the issues in this case  
23    and where you think your party is on those issues.

24             So as I said, I just wanted it to be in  
25    the record that that telephone conference took

1 place. We didn't see a need to have a court  
2 reporter there. There were simply some procedural  
3 issues addressed. I think the only thing of  
4 substance from my point of view anyway, that was  
5 discussed in the telephone -- and I'm sorry. Of  
6 course, I was there and our law clerk, Amy  
7 Davenport, we were both there. The only thing that  
8 I can recall of substance which was discussed was  
9 the fact that this would probably be a good time  
10 sometime this morning to talk about test year,  
11 test-year proposals. Again, I definitely do not  
12 plan on giving you any decision on test year from  
13 the Bench, but I would like to hear from you on  
14 that, and that's an issue that the Commission will  
15 take up right away.

16           Having covered that, those preliminary  
17 issues, are there any issues? I have some other  
18 things I want to talk about as set out in the order  
19 setting this hearing, but before I go any farther,  
20 does anyone have any issues they need to raise or  
21 any motions to file?

22           Hearing none, let me go through a few  
23 issues which may help the parties understand in  
24 part where I hope this case is going, and certainly  
25 where the Judges and Commissioners are trying to

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1 direct many of our cases, certainly our larger  
2 cases in addition to asking intervenors to give us  
3 some responsive pleading and tell us where you are  
4 in a complex case so we can understand why you're  
5 in it once you have seen the confidential  
6 information, and why you need to remain in it.

7           We are also moving to a more affirmative  
8 stance, and as I say, we're doing this selectively  
9 in a case-by-case basis. It may well become rule  
10 material if we decide to do it in all cases, but  
11 we're moving forward on requiring parties, all  
12 parties to file proposed findings of fact and  
13 proposed conclusions of law. And those for the  
14 most part are being ordered to be filed with your  
15 testimony when the direct testimony is filed or  
16 with your first issue of your rebuttal testimony as  
17 the case may be.

18           And I see lots of interesting looking  
19 faces looking back at me, and I'll explain that to  
20 you. And I think you would relate to this easily  
21 if you have been in private practice. And I, for  
22 better or for worse, spent a number of years in  
23 private practice. And when you're in private, your  
24 client comes in and sits down and starts to tell  
25 you their life story and what Aunt Pearl got and

1     how their cousin got divorced, and they just sort  
2     of cover everything they can think of. And you  
3     should be listening to those comments trying to  
4     figure out what is your issue.

5             And as soon as you figure out what the  
6     issue is, you know in the State of Missouri, and I  
7     hope you all know this, that the State of Missouri  
8     has Missouri approved jury instructions. And jury  
9     instructions are very clear, and they help to focus  
10    a point or to focus a case because they simply say  
11    in order to win this case, you have to prove three  
12    or four things. You know, if you prove -- I pulled  
13    one this morning as an example, a jury instruction  
14    on disturbing a judicial proceeding caught my eye.  
15    And when somebody claims that this has happened,  
16    all they have to do is go to court and prove, A,  
17    that there was a judicial proceeding in a place and  
18    on a certain date and time -- excuse me -- that's  
19    actually 1.

20            No. 2, that the Defendant acted with the  
21    purpose displaying a placard or shouting or doing  
22    whatever. And then, 2A, that it either concerned  
23    the conduct of the hearing or the character of the  
24    Judge or the jury or the character of the party,  
25    that's number No. 2. No. 3, is that the actions of

1 the Defendant disturbed -- actually did accomplish  
2 what they intended to do and disturbed the  
3 proceeding. And, 4, that they did it on purpose,  
4 you know, they did it with intent, and, you know,  
5 the jury instructions are simple. Prove those four  
6 things and you win and don't bother to prove  
7 anything else. Don't waste your time and don't  
8 waste our time because nothing else matters.

9 Now, obviously we don't have jury  
10 instructions in rate cases or any other utility  
11 cases, but hopefully if you practice in this area,  
12 you know that there are only certain things that  
13 you need to prove. And it's always been a  
14 challenge for myself -- and I've heard it from  
15 virtually every Commissioner I've worked with in  
16 the last nine years, and I hear it from the  
17 Commissioners I work with now -- that there is a  
18 vast quantity of testimony filed. Much of it  
19 appears to be candid testimony. It may be  
20 informative and the experts certainly are experts  
21 and know their subject matter, but it doesn't  
22 always expeditiously point the Commission to what  
23 they need to see and hear in order to decide the  
24 case.

25 And the goal, you know, where this is all

1 going is that if you're filing your proposed  
2 findings of fact with the testimony, you should --  
3 and the proposed findings of fact are required as  
4 you have seen in some of the orders, to cite page  
5 number or line number what the fact you're  
6 proving. If you do that, you should see that these  
7 are the portions of the prefiled testimony which  
8 are relevant and which proves something important  
9 in this case. And conversely, you should look at  
10 the other 20 pages and go, Why is this here? It  
11 doesn't prove anything that has to do anything with  
12 the case. And this may work or this may not, but  
13 we're going to try it because everything else we've  
14 tried, we've asked voluntarily for findings in the  
15 past and some parties have filed them and some have  
16 not.

17 So in any event, that's where we're going  
18 and it's the same thing with the law. The proposed  
19 conclusions of law recites how the law should tell  
20 you where you and your witness are going and should  
21 tell us where you and your witness are going. And  
22 I hope and certainly everybody on the ninth floor  
23 believes that this will narrow the issues, possibly  
24 expedite the hearings and certainly give you a  
25 better result, a better order at the end of the

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1 case. So that's my explanation.

2 Yes, Mr. Molteni?

3 MR. MOLTENI: I have one quick question,  
4 Judge. Some parties are interested in some of the  
5 issues, but not all of the issues that are in a  
6 case. In that scenario, would the Commission  
7 expect a global findings of fact and conclusions of  
8 law regarding all of the issues in the case or  
9 merely one targeted to the issue of the parties  
10 that are in the case to litigate.

11 JUDGE ROBERTS: Good question. And I  
12 think you should only be expected to final findings  
13 or conclusions that tie with your issue and your  
14 testimony. Certainly if you have got a witness  
15 filing testimony, you should identify some  
16 pertinent fact why that testimony was filed and  
17 what it proves to us and why it is of value to the  
18 Commission. But exactly, if you're in, you know, a  
19 given rate case because you're concerned about rate  
20 design, and that's your only issue in the case,  
21 then you certainly don't need to be telling us  
22 about depreciation -- you know, offering findings  
23 of fact and conclusions of law that had to do with  
24 depreciation and funds used for construction and  
25 other such issues.

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1                   Yes, Mr. Coffman?

2                   MR. COFFMAN: I've got a question about  
3   the timing of the proposed findings of fact, you  
4   know, often as far as citations to support them,  
5   often there will be subsequent testimony, testimony  
6   at the hearing, matters that come out, you know,  
7   later in the case up to and through the hearing.  
8   And one concern would be that by filing certain  
9   actual facts and also by being required to put  
10   citations there, we wouldn't be precluded from  
11   raising points later.

12                  JUDGE ROBERTS: Well, certainly not.

13                  MR. COFFMAN: I mean, the direct testimony  
14   often doesn't have the most crucial points that  
15   will be argued then later. And I guess this is  
16   sensitive because it has been suggested by some  
17   parties in the past that if you don't file  
18   testimony on an issue, you aren't in that issue.  
19   And it's my feeling that, you know, a party has the  
20   right to develop a case based on cross-examination,  
21   on the testimony offered by other parties, and that  
22   this wouldn't be sort of preclusion as far as what  
23   position you can take. You know, I understand the  
24   rules do let you take a position on matters raised  
25   at the hearing or to develop a position based on

1     how the record of the case develops.

2                 JUDGE ROBERTS:   Yes.

3                 MR. COFFMAN:   Just a general question  
4     about that.   Just a concern that by having a  
5     requirement that certain findings of fact be  
6     developed early in the stage, that wouldn't somehow  
7     preclude the right to raise issues and to take  
8     positions on issues throughout the case.

9                 JUDGE ROBERTS:   The mere filing of  
10    proposed findings of fact will not preclude you  
11    from taking positions later or filing additional  
12    facts.   And certainly it's conceivable that a fact  
13    is alleged in somebody's direct testimony and later  
14    found to be not actually a fact.

15                MR. COFFMAN:   Because I guess at the  
16    initial prefiling or prepared testimony stages  
17    there hasn't been, I guess, anything admitted into  
18    the record, but I can understand that.

19                JUDGE ROBERTS:   Well, that's true.

20                MR. COFFMAN:   Just wanted to get that  
21    concern.

22                JUDGE ROBERTS:   Mr. Dottheim?

23                MR. DOTTHEIM:   This may also be addressing  
24    some subject matter that Mr. Coffman raised, but  
25    oftentimes when testimony is filed, whether it be

1 direct or rebuttal or even surrebuttal, discovery  
2 may not be complete, and the filing on the rebuttal  
3 or surrebuttal testimony may lead to further  
4 discovery. So in approaching the filing of  
5 proposed findings of fact and conclusions of law at  
6 each stage of the filing of testimony, the issues  
7 may not be fully developed. Also, too, for that  
8 matter, the parties may be indicating issues to the  
9 Commission, which when a subsequent round of  
10 testimony is filed or once a prehearing conference  
11 occurs or further discussions between the parties  
12 occurs, there may not be an issue. So there's also  
13 the likelihood that at the earlier stages parties  
14 are going to be indicating possibly items that are  
15 issues which ultimately are able to be resolved by  
16 the parties.

17 JUDGE ROBERTS: I agree. And somewhat  
18 related to that, I mean, certainly even if the  
19 issue settles, and as I said during the telephone  
20 conference yesterday, I anticipate and hope that by  
21 the end of the day you-all will have settled this  
22 case. But even if an issue settles, the Courts  
23 require us to find facts on settled issues. We had  
24 a case where a decision was handed down last week  
25 or the week before in which we thought every party

1     agreed on every fact. And the Commission issued an  
2     order that said, Nah, we're not going to talk about  
3     the facts. They are all agreed to. And the Court  
4     sent it back and said, That's not good enough.  
5     Just because everybody agrees to them, doesn't mean  
6     you don't have to find them and state those  
7     findings clearly.

8             So as here, you know, you state facts, the  
9     issues may settle out, those will still be helpful  
10    to the Commissioners in reviewing the proposed  
11    settlement and in issuing an order that properly  
12    addresses the settled issues. Because if you've  
13    settled them, I know you probably want them to stay  
14    settled.

15            Yes, sir, Mr. Dottheim?

16            MR. DOTTHEIM: Historically very often  
17    issues settle and they are not delineated for the  
18    Commission either in listing of issues or parties'  
19    positions on issues because they are settled.  
20    There's no further dispute. And my recollection is  
21    that those items that are settled that really are  
22    in the consciousness, so to speak, of the  
23    Commission are those which are first identified as  
24    issues either in prior years in a hearing  
25    memorandum are now in listed issues and statement

1 of positions which ultimately are resolved and are  
2 not tried before the Commission. But parties have  
3 not listed those areas of a case where at an  
4 earlier stage than filing a hearing memorandum or a  
5 list of issues or statements of positions. Items  
6 that have settled out of the case are not brought  
7 to the Commission for resolution. Now, I don't  
8 know if you're indicating a different procedure now  
9 to be followed.

10 JUDGE ROBERTS: It's an open question,  
11 Mr. Dottheim. I mean, the decision that came down  
12 from the Western District last week or two weeks  
13 ago is one that, I think, you know, we have to look  
14 at and look at that practice and see if there's a  
15 conflict between the two, so . . .

16 MR. DOTTHEIM: And if you'd identify the  
17 decision, because not everyone may be aware of the  
18 case you're referring to.

19 JUDGE ROBERTS: I am sorry that you asked  
20 me that. I would be happy to provide that  
21 information. I don't --

22 MR. DOTTHEIM: Well --

23 JUDGE ROBERTS: Okay. I take that back.  
24 I can tell you that the case number -- it was a  
25 2000 case and there were six cases consolidated and

1 the case numbers were 438, 439 or is it 428, 429?

2 MR. FISCHER: Judge, did it involve the  
3 Alma Telephone?

4 JUDGE ROBERTS: Yes, sir, that's correct.

5 Our law clerk says it's TT-1999-428.

6 There were six cases consolidated, so when you find  
7 it, it will be 428, 29, 30, 31, 32, you know, six  
8 cases in a row. And if that doesn't help you  
9 enough -- I mean, they were telephone tariff cases,  
10 so it would be TT-99-428 et seq, I believe. I try  
11 to keep track of issues. I don't necessarily keep  
12 track of which case they were in. I just try and  
13 keep that big picture in focus.

14 MR. DOTTHEIM: That should be adequate.  
15 I'm quite sure the parties will identify for each  
16 other what that case is or even provide copies of  
17 the Western District Court of Appeal's decision.

18 JUDGE ROBERTS: And as I said, it just  
19 came down. It's not final. I don't know if the  
20 Commissioners and General Counsel will discuss any  
21 further action, but it's out there and there are  
22 always things to think about.

23 So having covered that, are there any  
24 other questions about that issue? It was addressed  
25 in the order setting the hearing this morning, and

1 I wanted to make sure we were clear on the  
2 direction in which that's going.

3 Yes, Mr. Molteni?

4 MR. MOLTENI: One last question. So you  
5 would expect the findings of fact to be filed and  
6 the conclusions of law to be filed only with the  
7 direct or at each stage of the testimony?

8 JUDGE ROBERTS: They should be with each  
9 stage.

10 MR. MOLTENI: Okay.

11 JUDGE ROBERTS: And at this point it  
12 appears they may be optional in the briefs. I  
13 mean, the briefs sort of do that of necessity  
14 because in the brief, you usually say, you know,  
15 this witness at this time said this thing and that  
16 pretty well settles that. So you're sort of  
17 including them in there anyway, but, you  
18 know . . .

19 Yes, Mr. Fischer?

20 MR. FISCHER: Yes, your Honor, to the  
21 extent that a party does not file testimony, would  
22 it be appropriate to file those findings of fact at  
23 the end of the case with a brief?

24 JUDGE ROBERTS: We always -- I think I'm  
25 hearing a couple questions there. We always

1 welcome, you know, voluntary submissions of  
2 proposed findings and conclusions at any stage. I  
3 mean, that's not a problem. If you don't file  
4 testimony, you're obviously not going to file  
5 anything at the time when everybody else files  
6 theirs. I don't see that requirement. We have  
7 another case elsewhere in the Commission right now  
8 where some parties did not -- the parties were  
9 ordered to, but failed to file proposed findings.

10 And if you don't want to follow a  
11 Commission order -- I'm not saying this to you,  
12 Mr. Fischer -- but as to any party, I would  
13 certainly encourage them to file a motion for leave  
14 to be excused from that saying, you know, we didn't  
15 file any testimony, we didn't have any witnesses,  
16 we don't have a dog in this fight, we don't want to  
17 file any findings and ask to be excused because,  
18 you know, they are being ordered of the parties.  
19 And I'll try to make sure in the future that it's  
20 framed in such a way that it's -- and I'll talk to  
21 the other Judges about this, that it makes it clear  
22 it's with the testimony so that if you don't file  
23 testimony, you don't have the obligation to just  
24 come up with findings.

25 MR. FISCHER: Thank you.



1 JUDGE ROBERTS: Yes, sir.

2 We can certainly drop back to this, but I  
3 do want to move on to other issues. You-all have a  
4 lot of work ahead of you and this is a little bit  
5 long for a prehearing conference, but I certainly  
6 have always been a strong believer in trying to  
7 grab ahold of the first opportunity of a case and  
8 try to figure out where it's going and what we can  
9 do to improve the process.

10 I had asked for you to bring with you a  
11 list of issues and where your party is on those  
12 issues. I don't know if I need to read those as we  
13 go or maybe take them with me at the end, but I'm  
14 certainly anxious to know, are there -- first of  
15 all, I assume that no issue has been settled; is  
16 that a fair assumption or -- Mr. Dottheim?

17 MR. DOTTHEIM: Yes. I think that's a fair  
18 assumption.

19 JUDGE ROBERTS: I guess without divulging  
20 anything that you don't want to divulge under the  
21 circumstances, Mr. Dottheim, I'll ask you first and  
22 then Mr. Cook second, generally and very briefly  
23 where is this case? I mean, all are open. We're  
24 still looking at 10 days of hearing and hundreds of  
25 witnesses?

1                   MR. DOTTHEIM: I think the case is still  
2 open. Nothing to my knowledge has been resolved.  
3 If you want to ask for what literally are issues, I  
4 can only give you what traditionally are issues. I  
5 can take you through, for example, the witnesses'  
6 testimony and what areas they cover. And, again,  
7 based on history, possibly give you an indication  
8 of whether an issue exists or not or whether  
9 there's a change of methodology or what have you.  
10 But as far as an actual determination of what are  
11 the issues, the Staff is waiting for the filing by  
12 Union Electric Company of its rebuttal testimony.

13                   JUDGE ROBERTS: Okay. In that case, then  
14 I don't know that I have to ask that same question  
15 of Mr. Cook. Let me just go through the list  
16 here. Mr. Dottheim, assuming -- and all of you,  
17 unfortunately, I'm going to have to ask for a  
18 worst-case scenario, if nothing gets settled,  
19 Mr. Dottheim, if you would tell me two things.  
20 One, how many witnesses do you anticipate  
21 presenting and, two, what do you believe is a  
22 realistic time within which to try this case  
23 within, which to hear this case, how many days?  
24 And I'd like everybody to give me that.

25                   MR. DOTTHEIM: Well, the Staff has filed,

1     if my memory serves me correctly, the direct  
2     testimony of 15 witnesses. That's not to say that  
3     each of those witnesses will file surrebuttal  
4     testimony. That's not to say that the Staff  
5     wouldn't file the testimony of an individual in  
6     surrebuttal testimony that hasn't filed direct  
7     testimony. At this stage it's premature for the  
8     Staff to make that determination. As far as how  
9     much time is necessary to try the case at Staff's  
10    best estimate at this stage is two weeks, and  
11    that's what the Staff had suggested in setting  
12    aside hearing time for the case.

13                 JUDGE ROBERTS: Thank you.

14                 Mr. Cook?

15                 MR. COOK: Yes, sir. We anticipate  
16     somewhere between 20 and 30 witnesses. I have  
17     listed approximately 65 issues. When I say I have  
18     listed those, I have frankly not listed them in a  
19     list for your purposes. That's my working list,  
20     I'm afraid to say. And although we had originally  
21     suggested two weeks as we have gone further in our  
22     preparation, we are concerned that that will not be  
23     enough time. We suggest three.

24                 JUDGE ROBERTS: You suggest three?

25                 MR. COOK: Yes.

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1 JUDGE ROBERTS: Okay. Thank you.

2 Mr. Coffman?

3 MR. COFFMAN: Thank you. I guess I would  
4 first say that as far as a list of issues at this  
5 point in the broadest sense, I think there are in  
6 any rate case, a rate complaint case, rather two  
7 issues, one is what's the appropriate revenue  
8 requirement for the company, and then if there's  
9 any change in that current revenue requirement,  
10 what's the rate design.

11 As far as breaking down those issues  
12 further, we have reviewed the testimony that the  
13 Staff filed in July and find much of it  
14 compelling. I don't know that I would be one to  
15 say that we would take exactly the same position,  
16 but we find it compelling to believe that there  
17 should be a reduction in AmerenUE's revenue  
18 requirement.

19 We have been engaged in discovery for the  
20 last few months. We would anticipate, perhaps,  
21 five or six witnesses. We will definitely be  
22 making our own independent return on equity  
23 recommendation, a couple of accounting witnesses  
24 addressing revenue requirement and, perhaps, more.  
25 I would anticipate four or five witnesses from our

1 office, perhaps, other witnesses as we may see fit,  
2 consultants or otherwise that we may retain, if we  
3 haven't retained them yet.

4 And then, of course, we would be doing our  
5 own rate design recommendation. At this point  
6 probably the best I could do is tell you that we  
7 would be approaching it the way we would do most  
8 any rate case.

9 JUDGE ROBERTS: Do you think we're going  
10 to get through this in two weeks?

11 MR. COFFMAN: It's really hard to say  
12 until after at least every party has had a chance  
13 to file testimony.

14 JUDGE ROBERTS: I mean, assuming nothing  
15 settles out?

16 MR. COFFMAN: The largest case the  
17 Commission has heard normally two weeks has been  
18 enough, but, yeah, I definitely think two weeks.  
19 Whether some things could settle out and narrow the  
20 focus is really hard to tell at this point. I  
21 guess it's possible it could go beyond that, but  
22 two weeks I think would seem a good guess.

23 JUDGE ROBERTS: Thank you.

24 Missouri Industrial Energy Group, is  
25 that --

1                   MS. VUYLSTEKE: Missouri Industrial Energy  
2 Consumers.

3                   JUDGE ROBERTS: Consumers. Thank you.  
4 I'm sorry.

5                   MS. VUYLSTEKE: Your Honor, we would like  
6 to reserve the right to take a position on all the  
7 issues that Staff raises in its case, but I can say  
8 at this point that as far as the list of issues go,  
9 not only are we interested in all issues raised,  
10 but we have a particular interest in cost of  
11 capital, accounting issues including rate base,  
12 expenses and revenue issues and then cost of  
13 service, allocation and rate design. And at this  
14 time we would anticipate three witnesses. On the  
15 timing and length of the hearing, I would think  
16 that a couple weeks would be enough. I would defer  
17 to the Office of Public Counsel and Staff on that.

18                  JUDGE ROBERTS: Thank you.

19                  Mr. Fischer, refresh me, KCP&L?

20                  MR. FISCHER: Yes, your Honor.

21                  JUDGE ROBERTS: Okay. Thanks.

22                  MR. FISCHER: I guess I would echo on what  
23 Ms. Vuylsteke said about reserving the right to  
24 take a position on issues. We are currently in the  
25 process of doing that. We have about four or five

1 areas of particular concern in the case. Having  
2 just gotten into it, we haven't identified specific  
3 witnesses, so I'm not certain to how many there  
4 would be, if any. But I can say that we would be  
5 particularly interested in things like depreciation  
6 policy, cost of capital issues to the extent in  
7 setting ratemaking or performance of base  
8 ratemaking becomes an issue in this proceeding and  
9 any issues related to the transmission system of  
10 the state. Those are areas we would be  
11 particularly interested in.

12 To the extent we participate with  
13 witnesses, I would think we would have separate  
14 witnesses for those kinds of issues. As far as  
15 whether we can try this case in two weeks, if I  
16 hear what the parties are saying, there's 45  
17 witnesses that are already scheduled, and it's been  
18 my impression for most cases three or four  
19 witnesses a day is about all you can get through.  
20 So I would encourage you to set aside an extra  
21 week.

22 JUDGE ROBERTS: Would anyone like to  
23 recuse me from this case? I'm sorry.

24 Doe Run?

25 MR. REID: Yes. At this time I'll kind of

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1 echo the last two parties. We would like to  
2 reserve the right on all issues. At this time we  
3 are siding with the Staff. As far as number of  
4 witnesses, we have not made a determination on  
5 that. And we will defer to the Staff as to the  
6 amount of time that this will take.

7 JUDGE ROBERTS: Thank you, sir.

8 Attorney General?

9 MR. MOLTENI: We also would like to  
10 reserve all issues because the State has multiple  
11 interests here both as a consumer, utility services  
12 from UE, so it's interested in the rate design  
13 issues and revenue requirement issues. Also the  
14 State through some of its agencies and  
15 subdivisions, particularly with the Department of  
16 Natural Resources and their energy center, has  
17 issues related to weatherization and energy  
18 efficiency, so we would anticipate addressing those  
19 issues.

20 Thirdly, AmerenUE has presented some legal  
21 issues in their affirmative answers or in their  
22 affirmative answers to the complaint that deal with  
23 constitutional issues, how the Commission would  
24 proceed in terms of deprivation of property rights  
25 under the US and Missouri Constitution and



1     preemption under the Employee Retirement Income  
2     Security Act of 1974, those issues that we probably  
3     will pipe in on.

4             As far as witnesses go, I think we'll  
5     probably be relying on the Staff's witnesses and  
6     the Office of Public Counsel's witnesses for the  
7     rate design issues. We would anticipate maybe one  
8     or two witnesses from the Department of Natural  
9     Resources regarding the energy efficiency and the  
10    weatherization issues. I don't know if those are  
11    at all contested by AmerenUE or the Staff or any  
12    other parties in the case. We haven't discussed  
13    that yet.

14            As far as a consumer of services from UE  
15    all through public funds, I imagine we would have  
16    one, maybe two witnesses on that, if it's something  
17    that could not be stipulated, although I can't  
18    imagine that it wouldn't be. Those issues would  
19    all be a matter of public record that need not take  
20    the Commission's time to present testimony.

21            JUDGE ROBERTS: Okay. You may or may not  
22    either be able to or be willing to answer this just  
23    off the top of your head, but if intervention is  
24    granted to the Attorney General in this case, will  
25    you anticipate, do you think you're able to

1 represent both the interest of the State of  
2 Missouri as a customer, you know, through the  
3 agencies who gets service from UE and also address  
4 the issues in terms of constitutionality of our  
5 statutes or the taking this issue or --

6 MR. MOLTENI: Absolutely. We don't see  
7 any conflict with that representation.

8 JUDGE ROBERTS: Okay. Thank you.

9 Missouri -- what's the other group? I'm  
10 sorry, Ms. Langeneckert.

11 MS. LANGENECKERT: Missouri Energy Group.

12 JUDGE ROBERTS: Thank you.

13 MS. LANGENECKERT: We, too, would like to  
14 reserve stating a position on all of the issues.  
15 We feel that from prior revenue requirement cases  
16 we've seen UE is over earning compared to the  
17 standard set by other states and other utilities.  
18 Our main interests at this point are cost of  
19 service and rate design, and I believe off-system  
20 sales. We will have one witness, most likely, and  
21 I will defer to the other learned counsel as to how  
22 long this will take.

23 JUDGE ROBERTS: Mr. Pendergast?

24 MR. PENDERGAST: Thank you, your Honor.

25 JUDGE ROBERTS: I saved the best for

1 last.

2 MR. PENDERGAST: We'll see about that.  
3 Just break the monotony a little. I don't want to  
4 reserve our motion on all the issues. There are a  
5 number of issues in this case related to production  
6 cost and fuel cost and things that are endemic to  
7 the electric industry that I don't think Laclede  
8 Gas is going to have any interest in. I think I  
9 can state that now. Typically what we have been  
10 interested in in the past and when we've gotten  
11 involved in AmerenUE proceedings has been the issue  
12 of rate design.

13 And on that particular matter and,  
14 perhaps, this is a consideration that you may want  
15 to take into account, when you read the responsive  
16 pleadings, you know, we now have Staff's complaint,  
17 we now have Staff's rate design proposal, and I  
18 think that we would be prepared to go ahead and  
19 respond to that. But like any other proceeding, a  
20 rate case proceeding, we still have to hear from  
21 the company, from public counsel, from the  
22 industrials, and I suspect that all of them will  
23 have adjustments to or modifications to those  
24 particular proposals. So I don't think it's until  
25 everybody gets their direct case on that you're

1 really going to go ahead and be in a position as an  
2 intervenor that's primarily interested in rate  
3 design and give a definitive answer as to what your  
4 position is because you just really won't know what  
5 the parameters are until that time, but that's  
6 primarily what we're going to be interested in.

7           There may be a select accounting issue or  
8 two that is of general applicability that we may  
9 want to take a position on, but those would be only  
10 a few in number. And obviously if there's some  
11 alternative regulation plan to go ahead and affect  
12 us as a gas company, we would want to go ahead and  
13 have an opportunity to potentially take a position  
14 on that. I don't at the most see more than one  
15 witness for Laclede Gas Company in this case,  
16 possibly two. And if the hearing needs to go to  
17 three weeks, we will try not to be a contributing  
18 factor to that. Thank you.

19           JUDGE ROBERTS: Thank you. Have I -- yes,  
20 Mr. Dottheim?

21           MR. DOTTHEIM: Yes. In stating earlier  
22 that the Staff views that the case can be tried in  
23 two weeks, that was based upon the cases Staff  
24 filed and the evaluation as to prior complaint  
25 cases as to the amount of time that was required

1 involving utilities the size of Union Electric  
2 Company. As Mr. Cook has suggested three weeks,  
3 once the Staff sees the rebuttal testimony that's  
4 filed, the Staff may well agree that a third week  
5 may be necessary.

6 JUDGE ROBERTS: Thank you. Mr. Dottheim,  
7 you don't have to remain standing or even stand  
8 up. If I remember correctly I think you were  
9 involved with the Staff complaint case involving  
10 Southwestern Bell, which may have been TC-89-14?

11 MR. DOTTHEIM: That's correct.

12 JUDGE ROBERTS: And those were simpler  
13 times before the Telecommunications Act and all  
14 that other stuff, but how long was the hearing on  
15 that case, if you recall?

16 MR. DOTTHEIM: My recollection offhand  
17 that it was two weeks of hearings, but as you have  
18 indicated, that was some time ago, so my memory may  
19 not be as good as it needs to be. But I think it  
20 was --

21 JUDGE ROBERTS: I think it was only \$100  
22 million, so . . .

23 MR. DOTTHEIM: The Staff filed \$200  
24 million access earnings revenues case, and the  
25 Commission authorized a rate reduction in the range

1 of \$100 million. You were thinking of the actual  
2 order of the Commission.

3 JUDGE ROBERTS: Well, I'm not sure if  
4 these are apples to apples comparison. On the one  
5 hand I always fear that if we schedule three weeks,  
6 you will fill three weeks. On the other hand, I  
7 don't like working nights, and I don't think it's  
8 productive for you or the Commissioners or anyone  
9 to have hearings that, you know, go 12 hours a  
10 day. So I'm trying to figure out how to contain  
11 this. Mr. Dottheim and Mr. Cook are both lined up  
12 ready to respond.

13 MR. DOTTHEIM: Well, I think I'm the only  
14 one, but I've had occasion to work a Commission  
15 hearing that went to 10 p.m. on a Saturday night.  
16 I don't know that I'm anxious to relive that,  
17 but --

18 JUDGE ROBERTS: Well, and I will tell you  
19 that we have a Commissioner who talked to me just  
20 recently about holding a hearing on Saturday and  
21 working Saturdays for this case if we needed to.

22 MR. DOTTHEIM: It's been done before.

23 JUDGE ROBERTS: So please don't talk to  
24 him.

25 Mr. Cook?

1                   MR. COOK: I'm really not going to make a  
2 speech, but let me say about our suggestion that  
3 it's three weeks and the thought of 20 to 30  
4 witnesses. A few references have been made about  
5 the basic claim of the Staff in this case. The  
6 Company needs to be clear that this is not just a  
7 case where there's a minor dispute about whether or  
8 not we're making a few million dollars too much or  
9 not.

10                   This is a case where the Company  
11 significantly and legitimately believes, and we'll  
12 attempt to prove, that if the Staff's position  
13 prevails, this Company is going to -- and the  
14 consumers of this State are going to be in a  
15 significantly different state than they are now.  
16 And I'm not going to go into the details of that,  
17 because I'm not sure who is in the room, but this  
18 is a very serious case about the future of this  
19 Company and electricity in this state. And it is  
20 not something that we are going to rush through  
21 with fewer witnesses than we think are necessary.  
22 And we're sorry if the -- and I'm not suggesting  
23 that it's your suggestion, but we're sorry if  
24 that's going to take a lot of time, but it's a big  
25 case and it needs the time that it needs.

1 JUDGE ROBERTS: I agree and well said.  
2 I'm not sure I agree with your position on your  
3 Company's earnings, but I agree that the time it  
4 takes is the time it takes. I'd rather not do  
5 it -- I don't mind it if it takes three or four  
6 weeks. I would just rather not do 12-hour days  
7 because I don't think it's a productive way to hear  
8 a case or to try a case.

9 MR. COOK: If I can say also, I agree. I  
10 mean, the Company will do what it takes. If it's  
11 12 hours a day and seven days a week, that's what  
12 we'll do.

13 JUDGE ROBERTS: Strike that.

14 MR. COOK: That was an official  
15 statement. It was not a true one. It personally  
16 was true. We will do what needs to be done, and if  
17 that's the Commission's decision and preference,  
18 we'll do that. But I think it's probably a better  
19 choice to work full reasonable days and give the  
20 parties the opportunity to rest and prepare  
21 appropriately.

22 JUDGE ROBERTS: I agree. Thank you.

23 To that end, I should have mentioned  
24 earlier, perhaps, if you-all already haven't heard  
25 this, and it was mentioned yesterday, I believe, in



1 the telephone conference which took place, there  
2 was a discussion about scheduling on this case. At  
3 the agenda a week ago Tuesday, and I don't recall  
4 what date that would have been, but I know it was a  
5 week ago Tuesday or I think it was. In any event,  
6 the hearing -- I'm trying to bring up my calendar  
7 on the computer here. I have blocked out the two  
8 weeks for the hearing starting at one week earlier  
9 than I think anyone in here had asked in their most  
10 recent request or, at least, the Staff and the  
11 Company, and that is that we have planned to start  
12 the hearing on March 4th instead of March 11th.  
13 And that hasn't come out in the order yet, but we  
14 have stated it in the agenda room, and we've stated  
15 it -- I stated it yesterday during the telephone  
16 conference. So I mean, you can put that down in  
17 ink.

18 I will say this, there is certainly some  
19 sentiment that if something settled, and I said  
20 this yesterday, if something were to settle and two  
21 or three weeks opened up somewhere else in the  
22 calendar which is sooner rather than later, there  
23 would be some consideration as to whether it's  
24 possible to move this forward. Now, that's a lot  
25 easier said than done because of all the

1     intervening deadlines and things that are taking  
2     place in this case, especially of this magnitude,  
3     but we are trying to bring it to hearing as quickly  
4     as possible.

5             I know that some parties wanted that done  
6     sooner and irrespective of how soon you do or don't  
7     want this case heard, the reality of it was our  
8     hearing calendar is booked until -- we have  
9     hearings now set in September and maybe October for  
10    the year 2002, and we are booked solid until March  
11    with the exception of three or four days at  
12    Christmas and, you know, a couple days here and a  
13    couple days there. We're booked solid. There's  
14    simply no way to book this case unless we have  
15    dueling hearings and put you-all in the smaller  
16    hearing room and only have a few Commissioners in.  
17    So, you know, I think you can plan on March 4th,  
18    which as I said, at least gets it slightly earlier  
19    than one of the proposed dates.

20            With that, I also wanted to mention, there  
21    has been some discussion in terms of that hearing  
22    date, and I'm not going to call to memory the  
23    citation, and, in fact, I don't have it in our  
24    Bench book. I would simply ask the parties to bear  
25    in mind that there's a Supreme Court Rule 4.3 on --

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1     pardon?  There's a Supreme Court Rule in terms of  
2     dealing with the media concerning a pending case.  
3     And off the top of my head I want to say it's 4.3,  
4     and the law clerk says it's 4-3.6.  And, of course,  
5     the Commission has a rule, Code of State Regulation  
6     dealing with the same subject.  And I would ask you  
7     to keep those things in mind in terms of any  
8     communication you have with the media.

9             The evidence may appear compelling for one  
10    side, but I believe Mr. Cook said in different  
11    words, you're innocent until you're proven guilty.  
12    It's not a criminal standard we have here, but we  
13    have yet to see the evidence, and we're trying to  
14    bring this into hearing as quickly as we can and  
15    those are the first dates we have.  Please conduct  
16    yourself in accordance with the appropriate rules.  
17    And now that we know the hearing is set, we can  
18    fill in everything that goes on between here and  
19    there.  The proposed schedule, which I think was  
20    the proposal of Union Electric and one to which  
21    Staff may have, my words now, acquiesced seems to  
22    be the main schedule on the table.

23            There was discussion when I sat down with  
24    the Commissioners about this a week or two ago  
25    about the fact that one could possibly move sooner

1 the dates for rebuttal and surrebuttal and some of  
2 the other things that take place in the case. But  
3 even if that were able to be accomplished without  
4 prejudicing any party or issue, that only means  
5 that part of the case finishes earlier, and then we  
6 all sit still for a month or two waiting for March  
7 4th to come around. So my starting point at this  
8 place is we're looking at that procedural schedule,  
9 and unless someone has specific issue or date to  
10 address within that, that looks like that's the  
11 direction we're going.

12 Diana Vuylsteke?

13 MS. VUYLSTEKE: Your Honor, I don't know  
14 if this is the appropriate time, but there was one  
15 conflict, I believe, and I'm sure Steve will let me  
16 know if I'm wrong, between the Staff's schedule and  
17 what UE was proposing regarding intervenor  
18 testimony. I think UE proposed that intervenor  
19 testimony be filed before their testimony, and we  
20 had requested that our testimony be filed after UE  
21 files its testimony. And we would again renew that  
22 request. And if we're going to talk about a  
23 schedule on dates, you know, we can reserve that  
24 discussion until later, but I just wanted to give  
25 you a heads up that that's a big concern of ours.

1                   JUDGE ROBERTS: Have a seat. And you're  
2 all welcome to stay seated if you will just turn  
3 your microphone on. I would be interested in  
4 hearing -- and at this point let me take another  
5 side trip and tell you something. As you know, we  
6 have -- well, we have a new Commissioner who may be  
7 here -- well, if all goes well, he will certainly  
8 be here when this case is heard. He may be here, I  
9 hope, much sooner than that. We have some other  
10 Commissioners who are newer than -- you know, some  
11 newer than others. I haven't heard a rate case  
12 for, I don't know, two years maybe. I don't know  
13 if that's good or bad from your point of view, but  
14 I would ask that you-all, you know, assume that you  
15 know more than we do. I think that's a safe  
16 assumption. The parties always know more than we  
17 do.

18                   And although this is administrative law, I  
19 mean, I always reach back to the example when I was  
20 a student at Creighton University, there was a big  
21 storm in Omaha, Nebraska. A tree fell over on a  
22 parked car. There was a social worker for the  
23 county in that parked car because he had pulled  
24 over during the storm and the tree hit his car,  
25 crushed it and the guy ended up a quadriplegic and

1 sued the city or actually sued the county. They  
2 brought in Melvin Delie to try the case for the  
3 Plaintiff. It was a very interesting case, and I  
4 skipped school for a week or two and watched Melvin  
5 Delie try a case because I thought that was more  
6 important than going to school.

7 In any event, it was clear to me at that  
8 point the judge knew nothing about silver maple  
9 trees or when, you know -- how safe is a silver  
10 maple tree that's 36 inches in diameter. And in  
11 that case and I think in almost all cases, it's the  
12 duty of the attorneys to educate the Bench and  
13 tell them what they need to know so that they can  
14 decide the case. And as I said, this is  
15 administrative law. We're supposed to be closer to  
16 being subject matter experts than a circuit court  
17 judge or any other type of forum. But I still  
18 would tell you that you can safely assume that we  
19 know less about the subject. And I'll say this  
20 certainly for myself, I know less about the subject  
21 and far less about the case than you do. So feel  
22 free to educate me.

23 And the reason for that side trip was,  
24 Ms. Vuylsteke, explain it and it will be in the  
25 record when I talk to the Commissioners, the pros

1 and cons of having intervenor testimony before the  
2 respondent's testimony versus after the  
3 respondent's testimony, and then I'll ask Mr. Cook  
4 to respond and anybody else can chime in  
5 thereafter. So have at it.

6 MS. VUYLSTEKE: Sure. From our  
7 perspective, we think it makes sense to have the  
8 intervenor testimony after AmerenUE testimony is  
9 filed for several reasons. First of all,  
10 intervenors in the case don't necessarily have a  
11 position on the issues until they know what the  
12 contested issues are between the complainant and  
13 UE. Until we really know what AmerenUE thinks the  
14 issues are and what it disputes, it is difficult  
15 for us to weigh in. And I think there can't really  
16 be a presumption that any particular intervenor is  
17 taking the side of the Staff or of UE until all  
18 that testimony is already in the record. And I  
19 also think it's really typical and traditional for  
20 intervenor testimony to be filed after the main  
21 testimony in the case is filed, and I think  
22 Ameren's response is going to be part of that. And  
23 I also think it would contribute to the narrowing  
24 of the issues and any possible settlement in the  
25 end if you wait on it.

1 JUDGE ROBERTS: Thank you.

2 Mr. Cook?

3 MR. COOK: I certainly don't want to do  
4 anything to encourage the intervenors to support  
5 the Staff. And I don't know that I disagree with  
6 the position that after the intervenors see the  
7 Staff's and the Company's positions, then they can  
8 more readily narrow their positions. It becomes a  
9 practical problem for the Company in that -- I  
10 don't remember if you actually made a proposal,  
11 Diana, but if there is -- the Company only doing  
12 its rebuttal, and then the intervenors come in  
13 after that, one, the Company may not have any  
14 opportunity to reply. Secondly, even if there is  
15 some opportunity for surrebuttal to them the amount  
16 of time left to do discovery of those witnesses and  
17 their positions and in preparing rebuttal testimony  
18 or surrebuttal testimony is possibly significantly  
19 reduced and it just becomes a real problem for the  
20 Company. So if you -- if by the time the Company  
21 replies, it knows what it's replying to, it helps.

22 JUDGE ROBERTS: Thank you.

23 MS. VUYLSTEKE: Can I respond to  
24 Mr. Cook's comments? I think that it can be  
25 arranged that we have some simultaneous surrebuttal



1 or some surrebuttal after Ameren's rebuttal and  
2 after our testimony, I think that that would make  
3 sense and solve the problem for UE.

4 MR. COOK: We're willing to talk about  
5 that with the other parties who may be so inclined  
6 to have a concern about this.

7 JUDGE ROBERTS: Great.

8 Are there any other issues? I want to  
9 talk about test year before I leave the room, but  
10 are there any other issues that need to be  
11 addressed?

12 Mr. Dottheim?

13 MR. DOTTHEIM: Yes. Judge Roberts, are  
14 you indicating that we should be addressing, that  
15 is we, the parties once you conclude your portion  
16 of the prehearing conference, should be discussing  
17 the dates, the intervening dates between now and  
18 the commencement of hearings on March 4th or are  
19 you seeking to set those dates on the record or is  
20 that something that you're looking for the parties  
21 that are assembled here today to see if we can  
22 reach agreement on?

23 Evidently, I think in large part there  
24 appears to be agreement with the Staff and the  
25 Company that was based upon hearings starting on

1 March 11th. And I'm quite sure the Staff and the  
2 Company will want to discuss that one week earlier  
3 date with the commencement of the hearings. There  
4 is another date that the Staff wants to visit with  
5 the Company regarding, and I assume that the other  
6 parties may also want to discuss further dates. So  
7 if you might be able to address that, you may well  
8 have and I've just missed it.

9 JUDGE ROBERTS: Thank you. No, I don't  
10 think I had addressed that or certainly I don't  
11 think I made it clear. I wanted to talk to you  
12 about whether there was any consensus on dates, I  
13 have no intention of setting dates from the Bench  
14 this morning. I was trying to say earlier that I  
15 think somewhat by default we're looking at the  
16 schedule, which if my memory serves me was somewhat  
17 proposed by Union Electric and later agreed to  
18 under one circumstance or another for the most part  
19 by the Staff. And that schedule seems to lead us  
20 toward March 4th in a fairly orderly order, you  
21 know, fairly orderly way. There may be some dates  
22 in there that you disagree on or now that you see  
23 we're going to hearing on March 4th you may want to  
24 tweak those dates a little bit or there may be some  
25 discussion with the intervenors to change dates on

1 when testimony is filed.

2 I will say that we will come to some  
3 agreement as to how soon you-all can put those  
4 together and requests and file that before I leave  
5 the room, and then you can do that, and I'll be  
6 able to sit down with the Commissioners and say,  
7 Here's where we are. This is the update. These  
8 are the pending dates.

9 MR. COFFMAN: If it helps out, I'll just  
10 note that while we had hoped for an earlier hearing  
11 date, at this point and given the Commission's  
12 current schedule, I don't think we have any  
13 disagreement with the Staff proposed schedule at  
14 this point. I would expect just maybe a couple of  
15 adjustments that might need to be made, but  
16 conceptually, I think it's realistic and hope we  
17 can reach some agreement. And would hope that we  
18 could get an order on test year and on the major  
19 deadlines, which would then, of course, serve as a  
20 back stop to help us get to the point where we can  
21 identify issues for you.

22 JUDGE ROBERTS: All right. Would it be  
23 unreasonable to ask for that kind of a schedule --  
24 I mean, that kind of a motion or agreement if it  
25 ends up being an agreement from all the parties

1 Wednesday, to be filed next Wednesday? Of course,  
2 keep in mind Monday is a State holiday, so we'll be  
3 closed. I know Steve will be working, and I know  
4 the rest of you are working, but is that adequate  
5 time for you-all to work? I know it's not just  
6 working it out this morning, but it's also a matter  
7 of getting signatures or fax and E-mail, getting  
8 everybody to see it so there's some agreement with  
9 the actual document if it ends up being a unanimous  
10 or jointly filed document?

11 Mr. Dottheim?

12 MR. DOTTHEIM: The Staff would think that  
13 a filing by Wednesday or at the latest on Wednesday  
14 of next week is doable.

15 JUDGE ROBERTS: Great. Thank you very  
16 much.

17 Anything else other than test year? And I  
18 think you probably should put that traditionally we  
19 always have motions, written motions, in most cases  
20 I think we do, on the test year. I would say that  
21 you should submit those in writing. We can talk  
22 about it now because I would like to hear in real  
23 time sort of what your logic is for test year  
24 proposals.

25 Mr. Dottheim, do you want to go first?

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1                   MR. DOTTHEIM: Yes. I believe test year  
2 is addressed in the Staff's testimony, if my memory  
3 serves me correctly, Mr. James Schweiderman's  
4 testimony, who is no longer with the Commission, as  
5 is another Staff witness, and the Staff will be  
6 submitting a pleading with the Commission  
7 identifying who will be adopting, what other  
8 members of the Staff will be adopting the testimony  
9 of Mr. Schweiderman and Mr. Mark Griggs, who is  
10 also no longer on the Staff.

11                   The Staff in its filing on September 28th  
12 regarding the procedural schedule, the Staff  
13 responds to the Office of Public Counsel's request  
14 for order setting evidentiary hearing. In  
15 paragraph 4 on page 3, the Staff also addressed the  
16 test year matter and identified that the 12 months  
17 ending June 30, 2001 as the Staff's proposal for  
18 test year, the test year which the Staff used as  
19 the basis for its direct testimony and schedules  
20 that were filed on July 2. And the Staff in that  
21 paragraph in identifying June 30, 2001 as the end  
22 of the test year --

23                   MR. COOK: Excuse me. I think that's  
24 wrong, Steve. If that is the case, we'll be glad  
25 to agree. You mean 2000.

1 JUDGE ROBERTS: Sold.

2 MR. DOTTHEIM: Yes. Yes. And what I do  
3 note now is that is incorrect on that paragraph 4  
4 of the Staff's pleading because there -- and let me  
5 just make certain of this so I don't add any  
6 further confusion.

7 JUDGE ROBERTS: While you're doing that,  
8 I'm going to ask Mr. Cook to give me -- I'm sorry.  
9 Go ahead, Steve.

10 MR. DOTTHEIM: Yes. It does appear  
11 incorrectly on the Staff's pleading that was filed  
12 on September 28, which show there the 12 months  
13 ending June 30, 2001. It should be as others have  
14 noted, June 30, 2000.

15 JUDGE ROBERTS: All right. And, Mr. Cook,  
16 Union Electric's request for test year would be?

17 MR. COOK: I have a long dissertation that  
18 goes with it, but the Company's test year is  
19 June 30, 2001.

20 JUDGE ROBERTS: I'd be happy to hear --  
21 how long is long? I know you-all have work to do,  
22 but --

23 MR. COOK: Well, I think we can certainly  
24 discuss it in some detail, and whether we want to  
25 do that all on the record or not, I don't know, but

1 we started out trying to work with the Staff's test  
2 year, although our accountants have been suggesting  
3 to the Staff all along that a test year that starts  
4 in July of 1999 was going to be pretty inaccurate  
5 as far as rates to get into effect in the middle of  
6 2002. And as we've looked at the Staff's filings  
7 and tried to see what we can do to adjust them and  
8 bring them up to date, we have finally come to the  
9 conclusion, as we're getting ready to do our  
10 testimony, that that can't be done. A more current  
11 test year is clearly the one that needs to be  
12 brought into the record in this case.

13           Significant changes in many areas of the  
14 Company's costs in revenues are obvious in a more  
15 current test year. We think a lot of that was even  
16 obvious by looking at the year-end information that  
17 the Staff clearly had at the time they filed their  
18 case. Staff, in fact, uses some year-end  
19 information to make adjustments to their test year,  
20 but not always.

21           So it's our position that because of the  
22 tens of millions of dollars and probably \$100  
23 million at least of differences in the Company's  
24 cost of service brought about by labor, employee  
25 benefits, Callaway refueling, depreciation, even

1 using the Staff's method of depreciation, pensions,  
2 even using the Staff's method of calculating  
3 pensions, all of these using a more current test  
4 year and based on information even after July of  
5 this year, which would indicate that those trends  
6 are not changing. And given the significant change  
7 in the country's economy from the period of time  
8 that Staff used to a more current time period,  
9 staff's test year is just totally out of date.

10 JUDGE ROBERTS: Would you prefer to use  
11 the future-looking test year?

12 MR. COOK: Well, if I had my druthers, I'd  
13 prefer to use a test year that I just made up,  
14 but --

15 JUDGE ROBERTS: Just checking.

16 MR. COOK: I know. But really a test  
17 year -- rates are going to go into effect because  
18 of this case in probably May of 2002. And we have  
19 had and the Staff has had the information to use a  
20 full test year that ends in July of '01. That's  
21 much more logical.

22 JUDGE ROBERTS: I'm not as good and never  
23 will be good as good as Steve Dottheim about  
24 keeping in my mind case citations, but I know  
25 there's a case that says the party is bound by



1 statements of their attorney. And so when you say  
2 that the rates are going to go into effect in  
3 whatever you said, May of 2002, is that an  
4 affirmation that the Company is not going to ask  
5 for a rehearing or take any subsequent action on  
6 this case?

7 MR. COOK: No.

8 JUDGE ROBERTS: Just checking.

9 MR. COOK: Other things being equal, I  
10 suspect.

11 JUDGE ROBERTS: All right. Thank you.

12 I would like to be able to address this  
13 issue only in separate pleadings, if you would,  
14 please, do that for me and for the Commissioners  
15 with the logic of arguments that I know you both  
16 will offer and anyone else who wants to weigh in.  
17 You're not required to weigh in on the test year  
18 issue, but if the parties can file pleadings on the  
19 proposed test year and the logic for your request,  
20 that will help us to address that separately.

21 I don't want to push you. Is Wednesday  
22 too soon for that on top of the procedural  
23 schedule?

24 MR. DOTTHEIM: From the Staff's  
25 perspective, Wednesday is not too soon. In fact, I

1 believe the Staff would frankly prefer to get this  
2 matter before the Commission for determination as  
3 soon as possible.

4 JUDGE ROBERTS: All right.

5 MR. COFFMAN: I would just add that the  
6 sooner this issue is resolved, the sooner this case  
7 can move along. And we would anticipate supporting  
8 Staff's test year. It has been the one that was, I  
9 guess, the best test year from the date when Staff  
10 filed its complaint, and it's the test year that we  
11 have been looking at in our discovery thus far.  
12 It's a time period that we have already analyzed in  
13 a previous sharing credit case. And I guess we may  
14 give you additional reasons in filing, but we would  
15 certainly urge the Commission not to delay this  
16 particular decision.

17 JUDGE ROBERTS: Mr. Cook?

18 MR. COOK: First, I would just take brief  
19 objection to Mr. Coffman's suggestion that it was  
20 the best test year the Staff had filed a complaint  
21 since it was filed a year after the end of the test  
22 year, and they had lots of information to update  
23 more than that by taking at least three other  
24 quarters that they could have taken. We should be  
25 able to file a motion, a pleading by next Wednesday

1 on this matter. And certainly agree that the  
2 sooner it is resolved, the better. I think  
3 practical matter, the parties may need to discuss  
4 actually the potential effect on the schedule if,  
5 in fact, a different test year than what was  
6 originally filed by the Staff is adopted, I think  
7 there may be some practical implications to that,  
8 and the Company recognizes that, and I would  
9 propose that we discuss that off the record later.

10 JUDGE ROBERTS: In that case, my  
11 preference would be to push you harder and ask you  
12 to file any motions on the test year by four  
13 o'clock on Tuesday. And I appreciate that's the  
14 day after a holiday for some of you. And if  
15 getting two motions in at the same time is some  
16 kind of a conflict, I would rather extend the other  
17 one, because I would like to get a test year issue,  
18 and I think that's an issue that can and maybe  
19 should be addressed separately with the  
20 Commissioners. And the remaining procedural  
21 schedule may flex accordingly, I'm not sure.

22 Mr. Molteni, are you --

23 MR. MOLTENI: I was just wondering if  
24 you're expecting just the Staff, OPC and the  
25 Company to file a motion regarding the test year?

1 JUDGE ROBERTS: Good question. I would  
2 say that anyone who wants to take an issue on test  
3 year is certainly welcome to weigh in. And I would  
4 say that the parties for whom intervention status  
5 is pending should go ahead and weigh in. The  
6 Commission's practice is that once an application  
7 for intervention is received, that party is put on  
8 a service list so that they can keep up with the  
9 case until a determination is made, at which point  
10 they either stay on or if necessary, they are  
11 removed. So I would go ahead and participate as a  
12 party in terms of if you want to file a pleading,  
13 file a pleading.

14 MR. MOLTENI: If I may, the State of  
15 Missouri would defer to the Staff's test year, and  
16 I wouldn't anticipate filing a pleading unless the  
17 Bench ordered us to do so on that.

18 JUDGE ROBERTS: No. I'm not ordering  
19 anybody on test year to file anything, but I am  
20 saying it's a decision I want to get to the  
21 Commissioners sooner rather than later and sooner  
22 rather than the other issues on the procedural  
23 schedule. And if I can get it by five o'clock  
24 Tuesday, I can try to have it on agenda for  
25 Thursday and that would be my preference.

1                   Mr. Cook, do you want to respond? I mean,  
2                   can I get you to push that one day sooner?

3                   MR. COOK: Well, of course. But let me  
4                   ask the detail. You're suggesting the test year  
5                   pleading on Tuesday and then a scheduling motion on  
6                   Wednesday?

7                   JUDGE ROBERTS: You know what, I'm  
8                   flexible on the overall schedule. And if you  
9                   believe those dates might change depending on the  
10                  test year, then there's certainly no reason to rush  
11                  that. You know, I can move it to, say, the  
12                  pleading on the schedule be due on Friday so that  
13                  you would have the benefit of whatever takes place  
14                  at the Thursday agenda.

15                  In other words, what I'm contemplating is  
16                  having anyone who wants to file a pleading having  
17                  to do with test year do so by 4 p.m. on Tuesday.  
18                  And I would -- and I apologize. That would be  
19                  Tuesday the 13th of November according to my  
20                  calendar, 2001, yes. And then I would have it on  
21                  agenda for discussion on Thursday, the 15th of  
22                  November. And I would set the deadline for your  
23                  motions regarding the procedural schedule at the  
24                  earliest to be on Friday, the 16th. Those could  
25                  possibly move over till Monday if you think you

1     need more time to react to what you hear in agenda  
2     Thursday and draft schedule pleading accordingly in  
3     order to coordinate with each other on a schedule  
4     depending on what the Commission does on test year.

5             MR. COOK:  One thought is that it might be  
6     helpful if we could file -- if it's possible that  
7     we would want to file some suggested schedule  
8     modifications that could go along with a test year  
9     other than what the Staff has filed.  And I guess  
10    it might be helpful to have that in that test year  
11    pleading, which would suggest that I would like it  
12    to be if we could have another couple days for that  
13    and have it be on the agenda the following Tuesday  
14    instead of that Thursday.

15            JUDGE ROBERTS:  Just a minute,  
16    Mr. Dottheim.

17            It sounds like what you might be  
18    suggesting is consolidating these into all one  
19    pleading so that that pleading will say, Here is  
20    the test year we would like.  You know, we like  
21    test year A.  And if we get test year A, this is  
22    the procedural schedule that we would need to go  
23    with it.  And the alternate, you know, if you go  
24    with test year B, and these are the dates that  
25    would go with that; is that what you're suggesting,

1 Mr. Cook, something along those lines?

2 MR. COOK: I think something along those  
3 lines. The parties putting together a suggested  
4 schedule that would be appropriate to the extent  
5 the difference in the test year other than what  
6 Staff filed or it is possible, I guess, that off  
7 the record later this morning the parties can  
8 address that and maybe come up with some  
9 alternative schedules that the parties would agree  
10 to should one particular test year or the other be  
11 adopted.

12 JUDGE ROBERTS: Mr. Dottheim?

13 MR. DOTTHEIM: Yes. I think to some  
14 extent I'm agreeing with Mr. Cook from a  
15 perspective of that I think schedule should be  
16 addressed in the test year filing. I don't know  
17 that the Staff needs beyond Tuesday at  
18 four o'clock.

19 I think what the indications are this  
20 morning, and I think you have anticipated that, is  
21 that one party or the other, the Staff or Union  
22 Electric Company will tell the Commission that if  
23 it's scheduled -- excuse me -- if its test year  
24 proposal is not adopted by the Commission, then the  
25 schedule that's been proposed to the Commission for

1     this proceeding is inoperative and a very different  
2     schedule is necessary.

3             So I would agree and would be, frankly,  
4     the Staff's intent to address schedule when it  
5     files its further pleading on test year, amongst  
6     other things, clarifying the September 28th  
7     pleading. The test year doesn't appear correctly  
8     in Mr. Schweiderman's testimony, but the Staff  
9     would file with its test year pleading further  
10    information regarding the schedule and what a test  
11    year other than the test year on which the Staff  
12    based its case, what that would do to the schedule.

13            JUDGE ROBERTS: Okay. In that case I will  
14    ask any party who wishes to consolidate those  
15    issues into one pleading, make your request or  
16    recommendation regarding the test year and the  
17    dates that fall in accordance with the test year,  
18    put those all in one motion. And hopefully this is  
19    not -- you're not going to have to start from  
20    scratch. I mean, I know you have been dealing with  
21    these issues, and you already have solid ideas  
22    about what you need. I would like to have that by  
23    four o'clock on Tuesday, the 13th, please, and I'll  
24    issue an order for the record so it would be in the  
25    case file to that effect. I'm going in for a root



1 canal the next morning at 8, and I need something  
2 enjoyable to do.

3 Mr. Coffman?

4 MR. COFFMAN: I think that the filing, the  
5 deadline of Tuesday is just fine for addressing  
6 both of these matters. I think among the comments  
7 we would probably -- what we provide is that  
8 certainly we would be objecting to any further  
9 extension of the schedule as a result of the test  
10 year decision and particularly any extension of the  
11 hearing dates, thus, you know, potentially the  
12 extension of a final decision in this case. And  
13 that might be one reason that we argue that the  
14 current proposal of Staff is the more appropriate  
15 one. And probably further point out that a test  
16 year is simply a starting point and it's very  
17 common practice to update for --

18 JUDGE ROBERTS: Sure.

19 MR. COFFMAN: -- more recent numbers as  
20 long as you have already gone through a 12-month,  
21 not snapshot or picture.

22 JUDGE ROBERTS: Okay. And I should note  
23 that my goal in this is to get this on agenda  
24 Thursday, the 15th. It is my understanding that  
25 the Chairman -- as you all know, Chairman Simmons

1 wife passed away the night before last, and  
2 Chairman Simmons will be with family at the funeral  
3 in Texas next week. And because he will not be in  
4 the agenda on Thursday -- I don't anticipate that  
5 he will be in the agenda on Thursday, the 15th, the  
6 Commissioners, yet the remaining Commissioners may  
7 decide to continue this over until he returns for  
8 Tuesday, the 20th.

9 Just so you know, I mean, I will put it  
10 on. It's not uncommon that when the Commissioners  
11 know that one other Commissioner might have a  
12 position one way or the other, even if it's adverse  
13 to their own position, they will say, Well, I know  
14 the Chairman would want to have some input on  
15 this. Let's wait till he gets back. So it may be  
16 continued till Tuesday, but I'd like to have the  
17 paper in and be able to start having those  
18 discussions and getting that on schedule.

19 Is there anything else that we need to  
20 discuss this morning, motions, requests,  
21 questions?

22 Mr. Cook?

23 MR. COOK: There was a reference in the  
24 order setting this prehearing about technology  
25 requests. It's been awhile since I've done

1 anything here that requires technology, but  
2 certainly we're in favor of technology. I guess  
3 I'm asking the practical question, do we need to  
4 make any requests on the record concerning that  
5 suggestion about, I think it's audio/visual aids or  
6 real-time transcripts, things like that?

7 JUDGE ROBERTS: Thank you for reminding  
8 me. And as you-all know, we are -- I hope you know  
9 that we've worked very hard to make some  
10 improvements at the Commission which we think  
11 better serve the people who litigate here and  
12 certainly a roll off of that is that it serves us  
13 better in wrapping up a case. The first and  
14 foremost among those changes has been the fact that  
15 we've gone, for the most part, to real-time court  
16 reporting. We're not using it this morning for the  
17 prehearing, but we do use it for -- it will  
18 certainly be used for this case. We're using it in  
19 most of the hearings that we do.

20 The real-time court reporting gives you  
21 the ability to watch the testimony go by in real  
22 time, and on your software make bookmarks on  
23 certain point. So that when it finally gets to be  
24 your turn to cross the witness an hour later, you  
25 don't have to rely on your notes. You can

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1     hyperlink back to that point and say, you know, At  
2     ten o'clock this morning you said the chair was  
3     blue, you know, it isn't, is it, or what have you.  
4     We do not pay to provide that service for anyone  
5     other than our own agency, obviously, but that does  
6     not mean that it's not available.

7             There are two different ways you can do it  
8     and this has been discussed at some adjudication  
9     division round tables. These are completely  
10    outside our control, but I can tell you about  
11    them. One, is to buy the software, and the  
12    software that we use for real-time court reporting,  
13    one of the only that I'm aware of on the market is  
14    Livenote, all one word. And, of course, they have  
15    a web page. And you can buy Livenote so you have a  
16    license to put it on presumably your laptop. And  
17    then you would certainly need to make arrangements  
18    with us -- well, let me back up.

19            Before you encounter that or incur that  
20    expense, you should talk to -- go through me or  
21    Steve, talk to our technology people and ascertain  
22    whether you will be able to hook into our network  
23    to use it in that way. The other option is the  
24    court reporting company which has the State  
25    contract will provide laptops with the software

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1 installed, ready to go for some kind of a fee.  
2 They rent them, I believe, I don't know, by the  
3 day, by the hour, by the hearing. So that if you  
4 want to use the real-time court reporting system,  
5 you simply talk to the court reporting company, and  
6 I can put you in touch with them and work out  
7 whatever arrangements you need to work out with  
8 them. That's the real-time court reporting,  
9 real-time testimony.

10 We hope to have the feed from that to the  
11 large screen that you see above you and to the  
12 right, which is actually meant more for the people  
13 who come here to watch hearings than it is meant  
14 for the attorneys, obviously because of its  
15 location, and we're somewhat limited in our  
16 facility on how that screen was placed.

17 The other technology would be tell us what  
18 you need, if we can provide it, we certainly will.  
19 If you need us to accommodate something in terms of  
20 technology, I'm basically saying we're more and  
21 more technologically advanced than we used to be.  
22 If you're going to bring something in, you need to  
23 warn us so that we can make sure that we're able to  
24 accommodate it, whatever that may be. We're moving  
25 to the technology where we are able to do displays

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1 on what's called a Smart Board. And rather than me  
2 describe it, I'd say put that in a search. They  
3 have a web page or I can tell you how to find it.

4 We have also purchased for the attorneys  
5 to use in the hearing room an ELMO, and rather than  
6 take the time now to explain ELMO, which is not one  
7 of the Muppets or --

8 MR. DOTTHEIM: It's not the Tickle Me  
9 Elmo?

10 JUDGE ROBERTS: It's not the Tickle Me  
11 Elmo, although that might work just as well. In  
12 any event, we have tried to selectively put in  
13 place some of the technology that would enhance  
14 your ability in presenting your case. And that  
15 we're slowly and steadily testing that equipment  
16 and getting it installed. And if you have some  
17 particular need, you want to show a video, you want  
18 to do a slide show, whatever, we certainly want to  
19 know about it in advance for timing purposes and  
20 possibly for evidentiary purposes, but we also will  
21 do anything we can to facilitate that in terms of  
22 technology. And that's really, I think, all I  
23 wanted to make sure that you parties were aware  
24 of.

25 Mr. Coffman?

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1                   MR. COFFMAN: I have an additional matter,  
2   if I can bring it up at this point, the Company and  
3   Public Counsel have a couple of discovery disputes  
4   that have progressed to the point where the next  
5   step is to ask for a Subsection 8B teleconference  
6   with yourself. And both of us are willing and  
7   ready today to do that, and we thought that you  
8   might be available given that you're having the  
9   prehearing today, perhaps later today, you know, or  
10   I guess I would be prepared and here. But I  
11   thought it would be appropriate to bring it up now  
12   because I have some concern about these conferences  
13   and notifying other parties in the case and I  
14   thought I would --

15                  JUDGE ROBERTS: Excellent.

16                  MR. COFFMAN: -- mention it now and let  
17   other parties know that that might occur, and  
18   certainly if they want to participate.

19                  JUDGE ROBERTS: I will be here for most of  
20   the day. I will tell you, this is not a State  
21   secrete, I have physical therapy at 3:15. Some of  
22   you heard about my car wreck, so I'll be out from  
23   3:15 until just whenever. I'll be in traction.  
24   It's almost as fun as these prehearings. No, it's  
25   not as fun. So other than that absence and I'm out

1     for that a couple times a week often, but other  
2     than that I'm here, and I will try to drop what I'm  
3     doing and make myself available, especially while  
4     you-all are here in the building and this is the  
5     ideal time to sit down and go through those issues  
6     in person. I would be happy to do that.

7             Other than that on a going-forward basis,  
8     I am almost always here at 7:00 in the morning and  
9     regrettably and often here until 6:00 or past in  
10    the evening. And whatever hours work -- I was a  
11    little sketchy with Steve, Mr. Dottheim, the last  
12    day or two trying to get together for that  
13    conference, but I'll try to make myself available  
14    any time you need to talk.

15            And I will also tell you this, this isn't  
16    a big secret, but I certainly don't publish it, I  
17    have a direct telephone number, which is not listed  
18    on our web page. And the reason I don't list it is  
19    because every order that goes out of the Commission  
20    has my name on it, and every person who sees those  
21    orders wants to call me personally and talk about  
22    their case, and that may not be appropriate in my  
23    position. So my direct number is not really --  
24    it's actually in a sub sort of page on our web page  
25    where you can find it. My direct number is



1 751-2474. And I encourage any attorney who has an  
2 issue to call me directly, and we'll work through  
3 it.

4 MR. COFFMAN: If there was a time that was  
5 appropriate for you, I think we might be able to  
6 schedule that.

7 JUDGE ROBERTS: Set it now?

8 MR. COFFMAN: Yes. One o'clock or really  
9 any time?

10 JUDGE ROBERTS: Who is involved? Is it  
11 going to be primarily Public Counsel and Union  
12 Electric, Ameren?

13 MR. COOK: Right.

14 JUDGE ROBERTS: I'm sorry. I always say  
15 Union Electric. I still call GTE, GTE. I  
16 shouldn't say that for your marketing folks. I  
17 guess that's a bad thing. For AmerenUE and Public  
18 Counsel, and can other people sit in if they --

19 MR. COFFMAN: That's always been my  
20 expectation.

21 JUDGE ROBERTS: I would think the parties  
22 are covered by the protective order. It might be  
23 informative for them if they so choose. I'd be  
24 happy to do it at 1:00 or shortly thereafter if  
25 that works.

1                   MR. COOK: Can we say 1:30?

2                   JUDGE ROBERTS: We can say 1:30.

3                   MR. COFFMAN: That's fine.

4                   JUDGE ROBERTS: Do you want to do it in

5 here or next door?

6                   MR. COFFMAN: Doesn't matter. Every judge

7 seems to have a different mode of operation. Judge

8 Thompson has been doing them in --

9                   JUDGE ROBERTS: In chambers?

10                  MR. COFFMAN: -- his chambers.

11                  MR. COOK: You have a lot of these

12 problems, John?

13                  MR. COFFMAN: Unfortunately. Some worse

14 than others.

15                  JUDGE ROBERTS: Why don't I plan on coming

16 down here. And if the parties are engaged in

17 consultation in this room, we'll go next door or

18 we'll find a room, because I think it would be

19 easier if I come to all of you than if all of you

20 try to come to me.

21                  Anything else? Yes, sir?

22                  MR. REID: You pointed out that the Doe

23 Run response has not been filed. I don't know if I

24 need to make a verbal motion here. We plan on

25 filing a written motion for extension of time to

1 file responsive pleadings. I don't know if I need  
2 to do that now.

3 JUDGE ROBERTS: I'm sorry. Because I'm  
4 having -- without the microphone. You say you're  
5 planning on asking for additional time in which to  
6 file?

7 MR. REID: To file responsive pleadings.  
8 I don't know if I need to bring that up now. We  
9 plan on filing a written motion for that.

10 JUDGE ROBERTS: I would ask you to file  
11 your written motion as soon as you can. They are  
12 overdue. And general direction discussion not as  
13 to your party, but in general as to this process,  
14 is that if the parties don't take a position, then  
15 we wonder why you're in the case and why they need  
16 to stay in the case. So I would encourage you or  
17 for your party's sake to get something filed.

18 MR. REID: Okay. Thank you.

19 JUDGE ROBERTS: Anything else? After  
20 taking up quite a bit of your time, but hopefully  
21 it's been at least somewhat informative on where we  
22 go from here. If you need anything else, let me  
23 know. I'll be in the building most of the day, and  
24 I'll see you down here at 1:30. And with that, we  
25 can go off the record.

1                   WHEREUPON, the on-the-record portion of  
2   the prehearing conference was concluded.  
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