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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Prehearing Conference
October 23, 1998
Jefferson City, Missouri
Volume 1

In the Matter of the Application)
of Union Electric Company for an) Case No. EO-98-413
Order Authorizing it to)
Participate in the Midwest ISO.)

LEWIS MILLS, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:
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ASSOCIATED COURT REPORTERS, INC.

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12 Missouri Gas Energy
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FOR: Staff of the Missouri Public
Service Commission.

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P R O C E E D I N G S

JUDGE MILLS: Let's go on the record.

We're on the record in the Matter of the Application of Union Electric Company for an Order Authorizing it to Participate in the Midwest ISO. We're convening this morning for a prehearing conference.

Let's start by just proceeding around the room and the parties can make oral entries of appearance and identify which parties they represent.

MR. COOPER: My name is Dean Cooper. I'm from the law firm of Brydon, Swearngen & England, P.O. Box 456, Jefferson City, Missouri 65102. I'm appearing on behalf of the Empire District Electric Company, Missouri Gas Energy, St. Joe Light & Power and UtiliCorp United, Inc., d/b/a Missouri Public Service.

JUDGE MILLS: Thank you. Mr. Fischer?

MR. FISCHER: Let the record reflect the appearance of James M. Fischer, 101 West McCarty Street, Suite 215, Jefferson City, Missouri 65101, appearing today on behalf of Kansas City Power & Light Company.

MR. RAYBUCK: Joseph Raybuck on behalf of Union Electric Company, doing business as AmerenUE.

1 My mailing address is P.O. Box 66149, St. Louis,
2 Missouri 63166-6149.

3 MS. SCHMIDT: Diana Schmidt appearing on
4 behalf of the Missouri Industrial Energy Consumers,
5 Bryan Cave, LLC, 211 North Broadway, Suite 3600,
6 St. Louis, Missouri 63102.

7 JUDGE MILLS: Thank you.

8 MR. DOTTHEIM: Steve Dottheim, P.O. Box 360,
9 Jefferson City, Missouri 65102, appearing on behalf of
10 the Staff of the Missouri Public Service Commission.

11 MR. COFFMAN: Appearing on behalf of the
12 Office of the Public Counsel, John Coffman and Shannon
13 Cook, P.O. Box 7800, Jefferson City, Missouri 65102.

14 JUDGE MILLS: Thank you.

15 I got a call yesterday from Bob Johnson, who
16 is representing some of the industrial customers, who
17 asked to be excused from this proceeding this morning.
18 Are there any objections to that?

19 (No response.)

20 JUDGE MILLS: Seeing none, Mr. Johnson --
21 while we're on the record, we'll see if we can narrow
22 down who he represents and who Ms. Schmidt
23 represents -- is allowed to be excused.

24 Mr. Cooper, while we were off the record,
25 you had something else you wanted to mention.

1 MR. COOPER: Yes, your Honor. I would like
2 to ask for permission for Empire District Electric
3 Company to withdraw from this case.

4 JUDGE MILLS: Thank you. Are there any
5 objections to that?

6 (No response.)

7 JUDGE MILLS: Hearing none, the Empire
8 District Electric Company is granted leave to withdraw
9 from this case.

10 Mr. Dottheim, you also mentioned off the
11 record that you'd gotten a call from another of the
12 parties to the case.

13 MR. DOTTHEIM: Yes. On -- it actually was a
14 fax that I received on Wednesday of this week from
15 Robin Fulton advising me that he has a trial scheduled
16 for today that could not be continued. So he would
17 not be available, but he also indicated that he was
18 planning to participate in this matter.

19 JUDGE MILLS: Are there any objections to
20 Mr. Fulton being excused from this proceeding this
21 morning?

22 (No response.)

23 JUDGE MILLS: Seeing none, he'll be granted
24 leave to be excused.

25 I also got a call from Mike Pendergast from

1 Laclede Gas Company asking to be excused. Are there
2 any objections to Laclede Gas Company being excused
3 this morning?

4 (No response.)

5 JUDGE MILLS: Seeing none, that will be
6 granted.

7 Ms. Schmidt, can you identify for me which
8 of the industrial intervenors you represent in this
9 proceeding?

10 MS. SCHMIDT: Judge Mills, at this time it
11 is not clear to me from conversations with Bob Johnson
12 who he believes that he represents and who I
13 represent. So I would like to reserve the right to
14 file a Motion for Intervention, to refile one for the
15 companies that I do represent after I've discussed
16 that with him.

17 JUDGE MILLS: Do you want to try to get that
18 tied down fairly quickly?

19 MS. SCHMIDT: Yeah. I propose to file
20 something on Monday.

21 JUDGE MILLS: Okay. Great. Thank you.

22 This case was filed the end of March. The
23 Commission has sort of tacitly put it on hold waiting
24 for the FERC to issue its Order, which was issued a
25 little over a month ago.

1 I'd like to go around the room and see if I
2 can get the positions of the parties on what they
3 believe are going to be issues in this case. Let's
4 start again over on my left with Mr. Cooper.

5 MR. COOPER: Your Honor, I'm here for the
6 parties just to observe. I don't have anything to add
7 to the issues at this time.

8 JUDGE MILLS: Do you anticipate that the
9 companies that you represent will be active in this
10 case?

11 MR. COOPER: I don't anticipate that, no.

12 JUDGE MILLS: Thank you. Mr. Fischer?

13 MR. FISCHER: Your Honor, I'm in a little
14 bit of the same boat. Kansas City Power & Light is
15 here principally to observe, but depending on where
16 the issues, how they develop, we may be a more active
17 participant later on in the proceeding.

18 JUDGE MILLS: Mr. Raybuck, I assume that
19 your client plans to be active?

20 MR. RAYBUCK: We do, your Honor. In our
21 Petition we've requested the Commission's approval to
22 allow us to participate in the Midwest ISO, and we
23 believe that is the central issue to this proceeding,
24 namely should Union Electric be allowed by the
25 Missouri Commission to participate in the Midwest ISO.

1 JUDGE MILLS: And the criteria by which the
2 Commission should judge that are what?

3 MR. RAYBUCK: Well, to some extent I suppose
4 the issue that I just mentioned is inter-related with
5 the issue of whether the Missouri Commission is
6 comfortable with the Midwest ISO as FERC has approved
7 it.

8 Of course, or in my view the principal area
9 or the principal jurisdiction for determining the
10 acceptability of the Midwest ISO is before the FERC.
11 These are primarily FERC jurisdictional issues.
12 Certainly the Missouri Commission has jurisdiction
13 over this matter, but I believe the FERC has made it
14 relatively clear that it's up to them to determine
15 whether an ISO meets their criteria.

16 So I would repeat that the central issue in
17 our view is whether the Missouri Commission should
18 allow Union Electric to participate in the Midwest
19 ISO.

20 JUDGE MILLS: Thank you. Mr. Dottheim? I'm
21 sorry. Ms. Schmidt?

22 MS. SCHMIDT: Judge, I agree with
23 Mr. Raybuck that the central issue is whether AmerenUE
24 should be allowed to participate in the ISO, but we
25 believe that it is also important for the Commission

1 to consider Union Electric's vertical market power and
2 residual market power in deciding whether or not they
3 should participate in the ISO, that that market power
4 is an issue in this case and the Commission does have
5 jurisdiction to consider that here.

6 JUDGE MILLS: Okay. So I guess you're
7 saying that if the Commission finds that despite the
8 ISO that AmerenUE retains vertical market power, it
9 could prohibit UE from --

10 MS. SCHMIDT: Or it could make additional
11 requirements of AmerenUE in order to protect its
12 customers in this case.

13 JUDGE MILLS: Thank you. Mr. Dottheim?

14 MR. DOTTHEIM: Thank you, Mr. Mills.

15 The Staff in its response to Commission
16 Order back in July of this year indicated that it
17 believes that the Commission does have jurisdiction
18 over the transaction proposed by Union Electric
19 Company of adjoining the Midwest ISO, in particular
20 under Section 393.190.1, that is the transfer of
21 control of facilities of Union Electric Company.

22 So regardless of whatever jurisdiction the
23 FERC might assert that it has because of the
24 facilities involved, being transmission facilities,
25 the Staff believes that there's direct statutory

1 language which covers this situation.

2 So it's not just merely a matter of interest
3 to the Staff that Union Electric Company be a member
4 of an ISO or in particular possibly the Midwest ISO.
5 Staff believes again that there is direct statutory
6 language that is applicable to the transaction which
7 is proposed even though the ownership of those
8 transmission facilities are not being transferred.

9 As far as you said -- or excuse me. If I
10 understand correctly, you mentioned standards. I
11 would think arguably certainly at a minimum, and
12 possibly the only standard, is not detrimental to the
13 public interest.

14 The Commission indicated that joining an ISO
15 or some organization of that nature or the formation
16 of such was a condition to the Commission authorizing
17 Union Electric Company to merge with Sibsco, Inc. The
18 standard in the merger case, I believe, as it has been
19 in other cases, is not detrimental to the public
20 interest.

21 So it might be asserted that that is also
22 the standard, again at a minimum, for Union Electric
23 Company becoming a member of the Midwest ISO.

24 JUDGE MILLS: So to sort of see if I can
25 understand the first part of your statement, it's your

1 belief that the FERC has the authority to say yes or
2 no to the Midwest ISO, but the Missouri Commission has
3 the authority to say yes or no to UE's participation
4 in it?

5 MR. DOTTHEIM: Yes, clearly.

6 JUDGE MILLS: Okay.

7 MR. DOTTHEIM: Because in particular again
8 of the statutory language that does exist which
9 specifically makes reference to transmission
10 facilities as being within the jurisdiction of the
11 Missouri Commission.

12 Also, too, there is certain provision made
13 by the FERC in, I recall, Order No. 888, respecting
14 the delineation of facilities as either transmission
15 or distribution facilities. And it's my recollection
16 there were seven criteria that are set out by the FERC
17 in Order No. 888.

18 And there is, I believe, a clear indication
19 that although the FERC again asserts jurisdiction over
20 transmission facilities, there's a recognition of
21 State Commission jurisdiction over distribution
22 facilities. And the FERC, I believe, states that it
23 will grant deference to the State Commission in the
24 delineation of transmission facility -- excuse me --
25 facilities as being either transmission or

1 distribution facilities.

2 So that's -- that's another facet that is
3 involved in -- arguably at least tangentially involved
4 if nothing else in this proceeding. And I think
5 there's even a provision in the Midwest ISO agreement
6 for at some point in time, not immediately, but within
7 a matter of years that the delineation between
8 transmission and distribution facilities must be
9 achieved.

10 JUDGE MILLS: Okay. Thank you.

11 Mr. Coffman?

12 MR. COFFMAN: Yes. I believe that Public
13 Counsel shares the concerns that Ms. Schmidt
14 mentioned, and we also believe that in this case it
15 may be necessary for the Commission to make additional
16 requirements of AmerenUE as a condition of their
17 participation in the Midwest ISO.

18 And in that regard the Commission's merger
19 order stated that to address the vertical market power
20 concern, Ameren can use its transmission system to
21 restrict competition from other generation. The
22 regional transmission group should be an entity that
23 will independently operate the transmission systems of
24 the vertically integrated utilities within the region.

25 And so Public Counsel would be interested in

1 bringing to the Commission's attention the vertical
2 power issues related to this and whether or not there
3 will be need to require a transfer of AmerenUE's
4 control of operations to the Midwest ISO as a
5 condition of their participation. And I believe that
6 all our issues fall within that area.

7 JUDGE MILLS: Thank you. Let me address
8 this first to Mr. Raybuck. Where does the FERC
9 approval of the Midwest ISO stand? The Order that
10 I've seen was titled conditional approval. Are the
11 conditions, have they been met? Are they going to be
12 met? Have there been appeals taken to that Order?

13 MR. RAYBUCK: A number of requests for
14 rehearing were filed, I believe, October the 16th.
15 Midwest ISO itself filed a request for rehearing
16 seeking reconsideration on a number of issues.

17 I believe it's the Midwest ISO's intent to
18 comply with all of the conditions except for those
19 which they sought rehearing. For those issues
20 obviously the Midwest ISO is trying to persuade the
21 FERC to either eliminate those conditions or modify
22 them.

23 A number of other parties filed requests for
24 rehearing. Ameren on its own behalf sought rehearing
25 on one issue. It's not clear how quickly the FERC

1 will act on those requests. Until the FERC does, it's
2 somewhat unclear as to what the final conditions will
3 be and whether the Midwest ISO will comply with them.

4 JUDGE MILLS: Is the shape of the Midwest
5 ISO sufficiently clear that it makes sense to proceed
6 with this proceeding?

7 MR. RAYBUCK: The company is receptive to
8 the pleasure of the Commission as far as how quickly
9 or how slowly the Commission wants to process this
10 case. Our view is that it makes some sense to wait
11 until FERC has issued its final Order disposing of all
12 the requests for rehearing.

13 If the Missouri proceeding starts today,
14 some of the testimony or some of the positions taken
15 in this case may be moot depending on what the FERC
16 does with its final Order. So it's the company's
17 preference to essentially suspend this schedule
18 further until FERC issues its final Order.

19 JUDGE MILLS: Have any of the other parties
20 that are present today filed for rehearing at the
21 FERC?

22 (No response.)

23 JUDGE MILLS: Mr. Raybuck, when -- do you
24 have any guesses as to when the FERC might rule on
25 that? It's my impression that they ruled fairly

1 expeditiously on the Midwest ISO's application. Do
2 you have any idea when they might rule on the
3 applications for rehearing?

4 MR. RAYBUCK: It's just a guess, but there
5 are certain milestones which the Midwest ISO would
6 like to accomplish. For example, I believe it's the
7 intention to have the election of the first board of
8 directors in December, and in order to accomplish that
9 the Midwest ISO is asking for another expedited ruling
10 from the FERC.

11 The guess is that the FERC might do that and
12 issue something by December or early in 1999, but
13 that's just a guess.

14 JUDGE MILLS: Thank you. Do any of the
15 other parties have something they want to add?

16 MS. SCHMIDT: I would like to, Judge Mills.
17 The FERC proceeding could take some extended period of
18 time for every motion for rehearing to be ruled on,
19 et cetera. If we wait -- if the Commission waits to
20 act on AmerenUE's application to participate until the
21 FERC proceedings are completely exhausted, we feel
22 that this would unduly delay AmerenUE's participation,
23 which is in part to protect its customers.

24 So we think it would be beneficial for the
25 Commission to go ahead and move forward even though

1 the FERC proceedings are not finally concluded.

2 JUDGE MILLS: Thank you. Anyone else?

3 That's really all that I wanted to
4 accomplish on the record this morning was to get
5 positions of parties and see if I could get sort of an
6 outline of the FERC proceeding. Is there anything
7 anyone else wants to bring out on the record?
8 Mr. Dottheim?

9 MR. DOTTHEIM: Ms. Schmidt's comments about
10 waiting until all litigation has concluded, I think
11 people would probably not disagree with that. There
12 may be, though, a distinction between waiting until
13 the FERC rules on the applications for rehearing and
14 waiting until literally there is no further
15 litigation, there is no further proceedings regarding
16 the formation and authorization of the Midwest ISO by
17 the FERC.

18 If something is shortly going to be
19 forthcoming from the FERC on the applications for
20 rehearing, there may be some advantage to waiting.
21 But then again, there's no telling what that schedule
22 might be, I think we might be able to proceed forward
23 very much mindful of the substance of what's been
24 filed regarding the applications for rehearing.

25 In fact, Union Electric has, of course,

1 filed the September 16th Order of the FERC. It might
2 be beneficial if AmerenUE filed with the Commission
3 the Midwest ISO petition for rehearing and its own
4 petition for rehearing before the FERC.

5 So the Commission might be able to by that
6 gauge, at least from the Midwest ISO's perspective and
7 AmerenUE's, how broad is the range of issues that the
8 Midwest ISO or AmerenUE still would like to take up
9 further with the FERC.

10 JUDGE MILLS: Mr. Raybuck, can you do that?

11 MR. RAYBUCK: We'd be glad to do that.

12 JUDGE MILLS: Thank you Mr. Coffman?

13 MR. COFFMAN: Yes. I just wanted to add
14 that Public Counsel doesn't necessarily have any
15 problem with delaying this further, although we'll go
16 forward if the Commission wants to.

17 It should be pointed out, if it hasn't
18 already, that the subject of our remaining concern in
19 this case is a subject of some applications for
20 rehearing that are pending. But we don't generally
21 care how fast the Commission wants to move. We have
22 no problem with delaying.

23 JUDGE MILLS: Mr. Dottheim?

24 MR. DOTTHEIM: One thing that the Staff had
25 been thinking about and that might speed things along,

1 others may view it as being problematic, but the Staff
2 was going to suggest that if -- that Midwest ISO,
3 AmerenUE could indicate, and it may very well be laid
4 out in already what has been filed about a week ago
5 today, what are the drop-dead, the deal-breaker issues
6 that remain in question as a result of the
7 September 16th Order of the FERC, that might identify
8 for the parties and the Commission what is the range
9 of disputes that are vital as far as the Midwest ISO
10 and AmerenUE are concerned relating to the very
11 existence of the Midwest ISO.

12 JUDGE MILLS: Thank you. Although I can
13 imagine that while applications are -- applications
14 for rehearing and the possibility of litigation is
15 still out there, I wouldn't think that Ameren would
16 want to go on the record with what it thinks are vital
17 and what it thinks are not vital.

18 That may be something that you-all may want
19 to discuss while you're off the record in your
20 procedural schedule.

21 There is a procedural schedule, proposed
22 procedural schedule due November 6th. I assume that a
23 lot of these issues you'll have to talk about today
24 while you're trying to work out a procedural schedule.
25 And it may be that this is one of those cases where

1 not everyone is going to be able to agree to a
2 procedural schedule if there are different theories
3 about how quickly the FERC might rule and whether or
4 not a ruling is necessary to proceed.

5 Although the Order didn't say it, it
6 certainly would be acceptable, probably not desirable,
7 but acceptable for there to be more than one proposed
8 procedural schedule proposed on November 6th.

9 Is there anything further? Mr. Fischer?

10 MR. FISCHER: Your Honor, depending on the
11 length of the off-the-record discussions, I may need
12 to be excused from a portion of that.

13 JUDGE MILLS: That will be fine. Anything
14 further? Then we're off the record.

15 (Discussion off the record.)

16 WHEREUPON, the record portion of the
17 prehearing conference was concluded.

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