

1

STATE OF MISSOURI

2

PUBLIC SERVICE COMMISSION

3

4

5

6

TRANSCRIPT OF PROCEEDINGS

7

Prehearing Conference

8

May 28, 2002

9

Jefferson City, Missouri

Volume 2

10

11

12

Staff of the Missouri Public)
Service Commission,)

13

Complainant,)

14

vs.)

15

Case No. EC-2002-1

16

Union Electric Company)
d/b/a AmerenUE,)

17

Respondent.)

18

19

20

21

LEWIS R. MILLS, JR, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

22

23

24

REPORTED BY:

25

MELINDA ADOLPHSON, CSR
ASSOCIATED COURT REPORTERS

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201

77

1

APPEARANCES:

2

JAMES J. COOK, Attorney at Law

THOMAS BYRNE, Attorney at Law
ROBERT J. CYNKAR, Attorney at Law
1901 Chouteau Avenue
P. O. Box 66149
St. Louis, Missouri 63166-6149
314-554-2237

FOR: Union Electric Company d/b/a AmerenUE.

JAMES M. FISCHER, Attorney at Law
Fischer & Dority, P.C.
101 Madison Street
Jefferson City, Missouri 65102
573-636-6758

FOR: Kansas City Power & Light Company.

MICHAEL C. PENDERGAST, Attorney at Law
720 Olive Street
St. Louis, Missouri 63101
314-342-0532

FOR: LaCade Gas Company.

LISA C. LANGENECKERT, Attorney at Law
Law Offices of Robert Johnson
720 Olive Street, Suite 2400
St. Louis, Missouri 63101
314-345-6441

FOR: Missouri Energy Group.

ROBIN FULTON, Attorney at Law
135 E. Main Street
P. O. Box 151
Fredericktown, Missouri 63645
573-783-7212

FOR: Doe Run Company.

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201

78

CONT'D APPEARANCES:

RONALD MOLTENI, Assistant Attorney General
SHELLY A. WOODS, Assistant Attorney General
Supreme Court Building
P. O. Box 899
Jefferson City, Missouri 65102
573-751-3321

FOR: State of Missouri.

6

7 SAMUEL OVERFELT, Attorney at Law
8 618 E. Capitol Avenue
9 P.O. Box 1336
Jefferson City, Missouri 65102
573-636-5128

10 FOR: Missouri Retailer Association.

11

12 DIANA M. VUYLSTEKE, Attorney at Law
13 Bryan Cave, L.L.P.
211 North Broadway, Suite 3600
14 St. Louis, Missouri 63102
314-259-2000

15 FOR: Missouri Industrial Energy Consumers.

16 JOHN B. COFFMAN, Deputy Public Counsel
17 DOUGLAS MICHEEL, Senior Public Counsel
RUTH O'NEILL, Legal Counsel
18 Governor Office Building
P.O. Box 7800
19 Jefferson City, Missouri 65102
573-751-3234

20 FOR: The Office of the Public Counsel and
21 the Public.

22 STEVEN DOTTHEIM, Chief Deputy Counsel
23 Governor Office Building
P.O. Box 360
24 Jefferson City, Missouri 65102
572-751-3234

25 FOR: Staff of the Missouri Public Service
Commission.

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201

79

1

PROCEEDINGS

2

3 JUDGE MILLS: We're on the record this
4 morning for a prehearing conference in Case No.
5 EC-2002-1, which is styled Staff of the Missouri
6 Public Service Commission, Complainant, versus
7 Union Electric Company, d/b/a AmerenUE,
Respondent.

8

9 We'll begin by taking entries of
appearance, and I'll start on my left with Staff,

10 and we'll go across the front row, across the
11 second row, and then across the back row, sort of
12 in a zigzag fashion. If we miss anybody, I'll just
13 offer it up at the end.

14 Mr. Dottheim?

15 MR. DOTTHEIM: Steven Dottheim, Dan Joyce,
16 Tim Schwarz, Keith Krueger, Dennis Frey, Victoria
17 Kizito, Robert Franson, Eric Anderson, David Meyer
18 and Nathan Williams, Post Office Box 360,
19 Jefferson City, Missouri 65102, appearing on behalf
20 of the Staff of the Missouri Public Service
21 Commission.

22 JUDGE MILLS: Thank you.

23 MR. COOK: James J. Cook and Thomas M.
24 Byrne, Robert J. Cynkar, appearing on behalf of
25 Union Electric Company, doing business as

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
80

1 AmerenUE. Mr. Byrne and Mr. Cook's address is
2 P.O. Box 66149, St. Louis, Missouri 63166.

3 JUDGE MILLS: Thank you.

4 MR. COFFMAN: Appearing on behalf of the
5 Office of the Public Counsel, John B. Coffman and
6 Doug Micheel and Ruth O'Neill, P.O. Box 7800,
7 Jefferson City, Missouri 65102.

8 MR. OVERFELT: Sam Overfelt, appearing on
9 behalf of Missouri Retailer Association, P.O.
10 Box 1336, Jefferson City, Missouri 65102.

11 JUDGE MILLS: Thank you.

12 MR. MOLTENI: Ronald Molteni and Shelly

13 Woods, of the Attorney General's Office, appearing
14 on behalf of the State of Missouri, P.O. Box 899,
15 Jefferson City, Missouri 65102.

16 JUDGE MILLS: Thank you.

17 MS. VUYLSTEKE: Appearing on behalf of the
18 Missouri Industrial Energy Consumers, Diana M.
19 Vuylsteke, Bryan Cave, L.L.P., 211 North Broadway,
20 Suite 3600, St. Louis, Missouri 63102.

21 MR. FULTON: Rob Fulton, appearing on
22 behalf of Doe Run Company, P.O. Box 151,
23 Fredericktown, Missouri 63645.

24 MS. LANGENECKERT: Lisa C. Langeneckert,
25 with Robert C. Johnson, appearing on behalf of the

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
81

1 Missouri Energy Group, 720 Olive, Suite 2400,
2 St. Louis, Missouri 63101.

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

7 JUDGE MILLS: Thank you.

8 MR. COOK: James M. Fischer and Larry W.
9 DORITY, Fischer & DORITY, P.C., 101 Madison Street,
10 Suite 400, Jefferson City, Missouri 65101,
11 appearing on behalf of Kansas City Power and Light
12 Company.

13 JUDGE MILLS: Ms. Wilbers, are you
14 appearing today?

15 MS. WILBERS: We're here with the State of
16 Missouri. Thank you.

17 JUDGE MILLS: Is there anyone that we
18 missed? Is there anything that the parties wish to
19 take up while we're on the record this morning?

20 MR. COFFMAN: I don't have a particular
21 request at the moment, your Honor, but the Company
22 and the Office of Public Counsel have been having a
23 discovery discussion, and it's likely that we may
24 want to have a conference under Rule 8B at some
25 point. If you have any particular time that's

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
82

1 appropriate for you during this week.

2 JUDGE MILLS: I'll make myself available
3 whenever you-all need me.

4 MR. COFFMAN: Thanks a lot.

5 JUDGE MILLS: Is there anything else?
6 There's a few things I want to go over, partly
7 because this case is so large and because there's
8 so many parties and so much money at stake. I just
9 want to set out some ground rules fairly early on,
10 particularly about the way the hearing is going to
11 be run. We're not going to be allowing friendly
12 cross. I'm sure most of you are well aware that
13 that's the standard practice at the Commission, and
14 it won't be allowed here in this case.

15 Prefiled exhibits, this is the prefiled
16 testimony. Those are going to be marked ahead of
17 time. I don't know if you-all are aware, but the
18 Commission has a new rule in effect that only one
19 copy will be required rather than the three that

20 was previously required. I believe that went into
21 effect May 1st. It may be May 31st. But in any
22 event, I believe it will be in effect before this
23 hearing begins.

24 And to that end, I would like to get that
25 one copy from all the parties well before the day

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
83

1 of the hearing so I can mark it, assign an exhibit
2 number and have all that done before we take up
3 time on the record the first morning. And if that
4 creates a hardship for anyone, then you can just
5 bring it. But otherwise get it to me sometime
6 earlier that week or even the week before. That's
7 several weeks after surrebuttal testimony is done,
8 so that shouldn't be a problem.

9 I'd also like to get a copy of all
10 testimony electronically either on a disk, a CD or
11 E-mailed to me. My E-mail address is
12 lmills@mail.state.mo.us. That won't be an official
13 copy. That's just so that I have an electronic
14 version for my own convenience to read it at home
15 or when putting an order together.

16 In terms of motions to strike testimony,
17 we're going to require that all those be prefiled
18 before the hearing. I'll issue a notice that sets
19 a date for that. I don't have a specific date in
20 mind this morning. But I don't want to take up
21 time on the record dealing with motions to strike
22 testimony that was filed weeks earlier. So I'm
23 going to set a deadline for that, and we'll take

24 those up before we get to hearing so we'll know at
25 the time of hearing what is and what isn't subject

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201

84

1 to a motion to strike.

2 Of course, if something comes up at the
3 last minute or something during cross-examination
4 makes it apparent that something ought to be
5 stricken, then, of course, you're free to file a
6 motion for that, but I'm not going to wait until
7 the morning of the hearing, and then have somebody
8 move to strike portions on someone's direct
9 testimony or even surrebuttal testimony that could
10 have been filed ahead of time. So as I said, I'll
11 issue a notice that sets a date for that.

12 Corrections to testimony, I don't think we
13 need to take up time on the record to add in
14 apostrophes, to correct minor typos. If your
15 witnesses have got a minor typo that doesn't really
16 affect the substance of the testimony, do all you
17 can to encourage the witness to let it go. We
18 don't need to have a perfect record, if it's
19 understandable what the witness says.

20 Also if there are any corrections of
21 substance that need to be made to a witness's
22 testimony, please do those as an errata sheet so
23 that we're not struggling on the record to follow
24 page and line for significant directions. If you
25 can have an errata sheet set out that we can simply

ASSOCIATED COURT REPORTERS

1 admit, submit that when that witness is ready to
2 take the stand, and then it will be much quicker
3 and probably much easier for the other parties to
4 understand than trying to mark through their own
5 copy as we go along.

6 In terms of the actual progression of the
7 hearing, I know that there have been depositions
8 taken in this case. If it's possible, the parties
9 may want to explore the possibility of admitting a
10 deposition instead of doing the same questions over
11 again on cross. That's not always possible, and
12 you may have reasons for wanting to do it live on
13 cross, but I'd encourage you to explore that
14 possibility simply to save time.

15 Similarly, because by the time we get to
16 hearing, there would have been at least three
17 rounds of testimony filed, it may be perfectly
18 possible for parties to waive cross on a witness.
19 It frequently turns out that you are not able to
20 get a whole lot additional from a witness that they
21 haven't already said in three rounds of testimony.

22 And in terms of the schedule of witnesses,
23 that's one of the -- I believe the due date for
24 that is June 26, just about a month from now. I'd
25 like the parties to let me know as soon as possible

1 if there are any conflicts for certain witnesses or
2 even the possibility of a conflict. Nothing puts a
3 monkey wrench in the works any worse than finding
4 out on a Tuesday afternoon that the witness for the
5 next day is unavailable, and we have to scramble
6 around and try and figure out who is going to be
7 next. So if there are possibilities of conflicts,
8 let me know, and we'll try to have contingency
9 plans so that we can keep moving through the
10 hearing without having to stop and take a break
11 because one particular witness is not available.

12 I think that's it. Any questions on that
13 laundry list of stuff I've just gone through? Most
14 of it's just fairly standard operating procedure.

15 Mr. Cook?

16 MR. COOK: Is it presumed that if there's
17 a preference to schedule of witnesses to be by
18 issue?

19 JUDGE MILLS: Well, really the three
20 possibilities that I've seen are by party, by
21 witness or by issue. I think the most common
22 practice here is by witness. It is one witness
23 takes the stand and testifies about all issues they
24 want to talk about, and then they step down, and
25 then they are gone. It's also been done by issue

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201

1 where you take all the witnesses on that issue, and
2 you may end up with the same witness taking the
3 stand three or four times during the course of the
4 case. Then the third possibility is by party in

5 which the moving party generally would go first,
6 and then the rebutting party, and then the
7 intervenors have to fit in somewhere.

8 To my knowledge that hasn't really been
9 done at the Commission. If it has, at least not
10 very often. It's a possibility. If your question
11 is what do I prefer, I don't know that I have a
12 preference. As I said, I think it's most common
13 here to do it by witness. And then there are
14 certainly some efficiency that way, but there's
15 also some inefficiencies in that you have to make
16 clear on the record when you're switching topics
17 with that witness for me, because otherwise I'm too
18 dense, and I might get confused when I write to the
19 order. And you don't have that problem if you
20 simply do it by issue. It tends to get more
21 compartmentalized on the transcript. It's a little
22 easier to figure it out.

23 Certainly that's something you can talk
24 about when you talk about the schedule of
25 witnesses. If you come to an impasse, and you want

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
88

1 my input on that, I can make that decision. But as
2 I said, I don't have any preference. So if you-all
3 can agree on something, that will be fine with me.

4 MR. COOK: I have another question. The
5 hearing schedule calls for hearings to be completed
6 August 2nd.

7 JUDGE MILLS: That's a Friday. That's

8 correct.

9 MR. COOK: Should we assume that's the end
10 of the hearing schedule?

11 JUDGE MILLS: Yes. We have, I believe, 12
12 days of hearing or 13?

13 MR. COOK: 12 or 14.

14 MR. DOTTHEIM: I thought it was 14.

15 JUDGE MILLS: I think that should be
16 enough. And if it's not enough, you-all ought to
17 know by the end of this week that it's not going to
18 be enough. I don't think that there's any reason
19 to get to the 11th or 12th day and then suddenly
20 realize, Oh, my gosh, we've got to scramble for
21 additional days.

22 MR. COOK: Certainly that's my normal
23 understanding would be that the schedule that's set
24 out is the schedule, that as we go through it and
25 it's very likely we realize, Oh, my goodness, if it

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
89

1 looks like there's more witnesses than there is
2 time, the direction I hear is that we should make
3 the witnesses and the hearing fit in the schedule
4 that's here and not assume that it could lap over?

5 JUDGE MILLS: And that's not exactly what
6 I had in mind. My thinking is that if that turns
7 out to be the case, you ought to know it now, by
8 the end of this week certainly. I would like it to
9 be done within the allotted time. But I mean, if
10 you get to the end of your discussions this week,
11 issues that you thought might settle, haven't

12 settled, whatever, that people aren't willing to
13 waive cross, for whatever the reason it looks as
14 though that isn't going to be enough time, let me
15 know now, and we'll set out some additional days.

16 What I don't want to get thrown at me is
17 the 11th day, where we should have been on the 3rd
18 day, and realize then that we have to scramble
19 around for more hearing dates.

20 MR. COOK: Thank you.

21 JUDGE MILLS: Are there any other
22 questions?

23 You have got this room the rest of the
24 week. There are conference rooms throughout the
25 building. I'm sorry I can't make the large hearing

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
90

1 room available, but feel free to contact me
2 whenever you need me. I had originally planned to
3 go back on the record every morning just to touch
4 base and see if there are any questions that the
5 parties needed to have addressed on the record, but
6 on further reflection, I'm not sure that's
7 necessary.

8 Do the parties think that would be
9 beneficial? Does anybody have any thoughts on
10 whether it would be worthwhile to get a court
11 reporter in on the chance that there may be
12 questions that need to be addressed on a daily
13 basis through the rest of the week?

14 MR. DOTTHEIM: If that develops, I assume

15 we could alert you to that?

16 JUDGE MILLS: Certainly we could.

17 MR. DOTTHEIM: And you have that option.

18 At the moment, maybe it would be best to assume

19 that we won't need that, but events might prove

20 otherwise. If they do, we can contact you.

21 JUDGE MILLS: Okay. That sounds

22 reasonable.

23 MR. COOK: That's what I was going to

24 say.

25 MR. FISCHER: Your Honor, I would assume

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
91

1 that if there are counsel that aren't interested in
2 particular issues, that they can be excused for
3 those particular parts of the prehearing?

4 JUDGE MILLS: I'm not going to officially
5 excuse you, because it's really too indefinite for
6 me to grant something like that. But I don't see a
7 problem, if there are portions going on that a
8 particular counsel isn't interested in, that they
9 could be missing. I mean, I don't want to hear
10 later that, you know, discussions turned to an
11 issue Thursday afternoon that involved somebody who
12 wasn't here and couldn't get back. I think it's
13 incumbent on you-all to be available when you need
14 to be available, but it certainly isn't incumbent
15 on you to be here when you don't need to be here.
16 I hope that answers your question.

17 Anything further?

18 I'm going to be around all week. If you

19 need to talk to me either off the record or on the
20 record, I mean, off the record, obviously, with all
21 the parties present or on the record with all the
22 parties present, just give me a shout, and we'll
23 get back together.

24 If there's nothing further the
25 on-the-record portion is adjourned.

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
92

1 WHEREUPON, the on-the-record portion of
2 the prehearing conference was adjourned.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

EC20021v2

22

23

24

25

ASSOCIATED COURT REPORTERS
(573) 636-7551 JEFFERSON CITY, MO 65102
(573) 442-3600 COLUMBIA, MO 65201
93