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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

On the-Record Discovery Conference

March 10, 2004
Jefferson City, Missouri
Volume 3

In the Matter of the Application)
of Union Electric Company, Doing)
Business as AmerenUE, for an)
Order Authorizing the Sale,)
Transfer and Assignment of) Case No. EO-2004-0108
Certain Assets, Real Estate,)
Leased Property, Easements and)
Contractual Agreements to)
Central Illinois Public Service)
Company, Doing Business as)
AmerenCIPS, and in Connection)
Therewith, Certain Other Related)
Transactions.)

KEVIN A. THOMPSON, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE.

REPORTED BY:

KELLENE K. FEDDERSEN, RPR, CSR, CCR
ASSOCIATED COURT REPORTERS

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A P P E A R A N C E S

JAMES LOWERY, Attorney at Law
SMITH LEWIS, LLP
111 S. 9th Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141

FOR: AmerenUE

JOHN B. COFFMAN, Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, Missouri 65102-2230
(573) 751-4857

FOR: Office of the Public Counsel and the Public.

STEVEN DOTTHEIM, Chief Deputy General
Counsel
LERA L. SHEMWELL, Senior Counsel
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-3234

FOR: Staff of the MPSC.

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

2 JUDGE THOMPSON: Okay. We'll go ahead and go
3 on the record now. We are in the matter of the application
4 of Union Electric Company, doing business as AmerenUE, for
5 an Order authorizing the sale, transfer and assignment of
6 certain assets, real estate, leased property, easements and
7 contractual agreements to Central Illinois Public Service
8 Company, doing business as AmerenCIPS, C-I-P-S, and in
9 connection therewith, certain other related transactions,
10 Case No. EO-2004-0108.

11 My name is Kevin Thompson. I'm the
12 Regulatory Law Judge assigned to preside over this matter,
13 which is a discovery conference. And before we do anything
14 else, why don't we go ahead and take entries of appearance.
15 Please don't bother to give me your address, as a sign that
16 we're somewhat less formal today. Mr. Lowery, let's start
17 with you.

18 MR. LOWERY: Your Honor, thank you. Jim
19 Lowery, L-o-w-e-r-y, representing AmerenUE.

20 JUDGE THOMPSON: Thank you. Mr. Coffman?

21 MR. COFFMAN: John B. Coffman on behalf of
22 the Office of the Public Counsel.

23 JUDGE THOMPSON: Thank you. Ms. Shemwell?

24 MS. SHEMWELL: Thank you, Judge. Lera
25 Shemwell and Steven Dottheim representing the Staff of the

1 Commission.

2 JUDGE THOMPSON: Okay. Now we know who
3 everybody is. We're here for a conference regarding certain
4 Data Requests. I have a thick wad of Data Requests -- and I
5 guess that's the technical legal term -- supplied to me by
6 Public Counsel, and I have two Data Requests supplied to me
7 by Mr. Lowery. And I understand Staff has another Data
8 Request, but we're going to talk about that in a moment,
9 what we're going to do with that one.

10 Let me just say that I am going to assume
11 that all of these Data Requests are subject to a motion to
12 compel. I'm going to give the party seeking discovery an
13 opportunity to explain to me why discovery should be had,
14 and I'll give the party resisting discovery an opportunity
15 to explain why discovery should not be had. And I will not
16 rule on the record today, but rather take each under
17 advisement, which will give me an opportunity to actually do
18 some research and hopefully get all the answers right this
19 time.

20 Once again, I hope to provide a written order
21 to you very quickly. I had thought by Friday, but since
22 we're evidently going to be here doing this again tomorrow
23 afternoon, perhaps it won't be quite that quick.

24 Kellene, I think Lonnell has told you that I
25 want a one-day turnaround on the transcript. So that's

1 where we're at.

2 Now, why don't we take up the issue of
3 Staff's Data Requests and anything else anyone has?
4 Mr. Dottheim or Ms. Shemwell?

5 MS. SHEMWELL: Thank you, Judge. I'm going
6 to hand you Data Request No. 70.

7 MR. LOWERY: I'm sorry. I'm having trouble
8 hearing you. Judge, if it's all right, I just would like to
9 address that briefly. Ms. Shemwell called me this morning,
10 and I know that they just got our objection yesterday. We
11 got -- I think the Data Request was submitted to us on
12 Friday and we objected yesterday.

13 And they had indicated that they wanted to
14 take up DR No.70 today, and I called her back and indicated
15 that I certainly don't want to delay them and I don't want
16 to inconvenience you by having to have two conferences, but
17 I just have had no time to consult with my client at all
18 about the basis for their Data Request.

19 She explained to me this morning essentially
20 why they believe it's proper discovery, and that's the first
21 I'd heard of that, and so I asked her if it would be all
22 right --

23 JUDGE THOMPSON: It's perfectly fine.

24 MR. LOWERY: -- to put this off until
25 tomorrow afternoon or Friday morning, as long as it was okay

1 with your Honor, so I could be properly prepared to address
2 it.

3 MS. SHEMWELL: Jim, we've agreed and the Law
4 Judge has agreed that he's available.

5 MR. LOWERY: Okay.

6 MS. SHEMWELL: So if we just set a time for
7 tomorrow, and I would like to suggest 2 p.m.

8 JUDGE THOMPSON: Works for me.

9 MR. LOWERY: 2 p.m.'s fine with me.

10 MS. SHEMWELL: Mr. Coffman?

11 MR. COFFMAN: That's fine. I may not be able
12 to make it, depending on what other hearings are going on,
13 but that's fine. If I can't make it, go on without me.

14 JUDGE THOMPSON: Okay. I'm going to assume
15 this room is available. If not, we'll find some other room,
16 and I will have to set up a conference call through the
17 State operator, then, for tomorrow, and I will disseminate
18 that number then. I'll give it to you, Lera, and let you
19 pass it on. I guess I'll have to issue a notice, too, to
20 the other parties, just in case any of them are interested
21 in coming, so -- but yeah, tomorrow's fine, 2 p.m.

22 MR. LOWERY: Thank you.

23 JUDGE THOMPSON: Steve?

24 MR. DOTTHEIM: Judge, if I could address
25 another preliminary matter?

1 JUDGE THOMPSON: Absolutely.

2 MR. DOTTHEIM: And that is on Friday of last
3 week, the Staff filed a motion to extend the time for the
4 filing of the list of issues, list of witnesses, order of
5 witnesses, order of cross-examination.

6 JUDGE THOMPSON: As long as I have it by
7 Nine o'clock Monday morning, I guess we're okay.

8 MR. DOTTHEIM: And -- well, we were going to
9 request until tomorrow, and I'd also indicated in that
10 filing that we might -- or at least the Staff might make a
11 request for an extension of time to file the statement of
12 positions. I'd like to make a request at this time for an
13 extension from this Friday to next Tuesday.

14 JUDGE THOMPSON: Does the hearing start next
15 week or the following week?

16 MR. DOTTHEIM: The hearings start the
17 following week on Monday, March 22nd.

18 JUDGE THOMPSON: Okay. That's fine.

19 MR. DOTTHEIM: Okay. Thank you. Judge,
20 would you like us to do anything further with filing a
21 pleading or --

22 JUDGE THOMPSON: No.

23 MR. DOTTHEIM: -- or at least --

24 JUDGE THOMPSON: That's the nice thing about
25 having this little on-the-record hearing is you can just

1 make your speaking motion and I can rule and save some trees
2 perhaps, certainly some time.

3 MR. DOTTHEIM: And just one other preliminary
4 matter. I'm not certain how long this is going to go today
5 with Public Counsel's and AmerenUE's discovery matters, but
6 the Staff would like to request to be excused from attending
7 the entire session, if that is not a problem.

8 JUDGE THOMPSON: Absolutely. No, you don't
9 have to be here.

10 MR. DOTTHEIM: Thank you.

11 MS. SHEMWELL: Thank you, Judge.

12 THE COURT: We'll try not to dismiss you from
13 the case while you're gone.

14 Why don't we take up Ameren's two DRs first
15 just because there's only two of them, and it looks like
16 there's quite a few more for Public Counsel.

17 MR. LOWERY: I guess I can report to you that
18 we consulted about those this morning with Public Counsel,
19 and Public Counsel has agreed to supplement their response
20 on No. 9 to either tell us what they believe the least cost
21 option is or to tell us they don't know what the least cost
22 option is and why, and we're satisfied with that. So
23 they're going to do that and, John, I'm assuming we probably
24 can see that in a matter of a couple of days or so; is that
25 fair?

1 MR. COFFMAN: Yes, that's accurate.

2 MR. LOWERY: And then on No. 10, they've

3 agreed to supplement their answer to that one to identify

4 documents that Mr. Kind believes support the particular

5 statement that's in the Data Request documents that he --

6 including some that he, I think, recently became aware of.

7 And again, we're satisfied with that and so I don't think we

8 need to take any more of your time up with those.

9 JUDGE THOMPSON: Very good. In that case, I

10 won't deal with either of these in the Order, okay? Since

11 you-all have agreed before you got in here, you don't need

12 me saying anything about it.

13 Well, then, let's take up Public Counsel's

14 Data Requests, and Mr. Coffman, what order do you want to

15 take these up in?

16 MR. COFFMAN: I'm happy to report that we can

17 dispense with some of the first ones here, based on kind of

18 our reflections on discussions we had earlier today. So we

19 can skip over all the Data Requests in this thick wad down

20 to 591. In other words, we're not going to press -- well,

21 let's see. We don't need to press 551, 552, 553, 555, 556,

22 or 570.

23 MR. LOWERY: Okay.

24 MR. COFFMAN: 594 would be the first one that

25 we'd like to make a motion to compel here --

1 JUDGE THOMPSON: Very well.

2 MR. COFFMAN: -- today.

3 And I might note that I think we probably

4 ought to address each one of these individually, but the

5 Data Requests through the No. 600 here do relate to either

6 strategic plans or key indicators. These are planning

7 documents, and so they are all, I guess, at least similar in

8 that respect. Data Request 591 asks for the most recent

9 draft of the Ameren's strategic plan for Ameren's --

10 JUDGE THOMPSON: 594, you mean, right?

11 MR. COFFMAN: I'm sorry. Let me restate it.

12 MR. LOWERY: I had the same question. 594?

13 MR. COFFMAN: 594 asks for the most recent

14 draft of Ameren strategic plan for Ameren's generation

15 business line. And this was objected to on the basis of

16 relevance, and it is our opinion that this is important.

17 And I could -- maybe I should lay some groundwork, because

18 there is a basic legal and philosophical disagreement

19 between our office and the utility company about the proper

20 scope of this case and whether or not it is relevant to get

21 into information. I'm assuming this is primarily an

22 objection based on --

23 JUDGE THOMPSON: Let me ask you some

24 questions first. I'm sorry.

25 MR. COFFMAN: That's fine.

1 JUDGE THOMPSON: I don't mean to stop you,
2 but I'm looking at the objection letter, and I see that's
3 dated January 20th. So do you waive -- is it untimely, and
4 if so, do you waive that?

5 MR. COFFMAN: It was not my understanding
6 that this -- this particular letter was late, and maybe I
7 should check my notes, but this may have been one of the
8 occasions where we agreed to grant a few days, is my
9 understanding.

10 JUDGE THOMPSON: Well, the letter itself
11 states it was submitted to Public Counsel by facsimile on
12 January 9th. The 10th day following January 9th is January
13 19th, is it not?

14 MR. COFFMAN: Yes, that's correct.

15 JUDGE THOMPSON: This is dated
16 January 20th, so my initial inquiry is, do you waive the
17 defect of untimeliness?

18 MR. COFFMAN: As to this -- as to this set,
19 yes.

20 JUDGE THOMPSON: Okay. Very well. Now, let
21 me ask you this -- and the reason I'm interrupting to ask
22 some questions is I think it will just hurry things along.
23 Okay?

24 When you ask about Ameren's generation
25 business line, did you provide anywhere a definition of what

1 that means?

2 MR. COFFMAN: No, I didn't, but just a
3 second. We -- I think we are aware of an internal
4 definition and it is our understanding, which may get more
5 to the point, that we believe that Ameren has -- has an
6 organization where they pursue a business line between
7 AmerenUE and its other non-regulated generation business
8 through this organizational structure.

9 JUDGE THOMPSON: So you understand that the
10 internal definition of generation business line is that it
11 refers to non-regulated generation?

12 MR. COFFMAN: Yes.

13 JUDGE THOMPSON: Is that correct?

14 MR. COFFMAN: Just a second.

15 JUDGE THOMPSON: Why don't you guys confer
16 and decide what it is you understand it to mean. You'll get
17 a chance, Mr. Lowery, before we're all done here.

18 MR. LOWERY: Okay. Thank you, your Honor.

19 MR. COFFMAN: I'm sorry. I misunderstood
20 what you said. It's our understanding that they -- that the
21 activities within the entire holding company have been
22 broken down into various activities that -- as business
23 lines and that we believe that they do have an organization
24 of their various activities, regulated and non-regulated,
25 which they group together in one generation business line.

1 JUDGE THOMPSON: So that it would be
2 regulated and unregulated?

3 MR. COFFMAN: Yes, that's our understanding.

4 JUDGE THOMPSON: Very good. Now,
5 Mr. Lowery?

6 MR. LOWERY: Well, your Honor, I think that
7 Mr. Coffman is correct in indicating that we -- I think we
8 have a fundamental disagreement about proper inquiry in this
9 case and what the scope of the case is. It's our belief,
10 your Honor, that we could, for example, go buy a generation
11 plant, build a generation plant, enter into a contract to
12 buy power, for example -- and I don't even know that Public
13 Counsel would dispute this -- we could do those things and
14 we don't have to come to the Commission for authority to
15 enter into those transactions.

16 What we do have to come to the Commission for
17 authority to do is to divest ourselves of assets that have
18 been -- that are used in our current regulated public
19 utilities business. And our burden in the case is to
20 establish that divesting those assets that are subject of
21 this particular case is not going to be detrimental to the
22 public interest.

23 These Data Requests -- and I'm sort of
24 lumping together to some extent 594 through 598 and 600.
25 There's slight differences between them, but they're very

1 similar. These Data Requests go into all kinds of aspects
2 of not just AmerenUE's business but other unregulated Ameren
3 entities that we don't believe have anything to do with this
4 case across all kinds of business lines. We've also
5 objected on the basis that the request is unduly burdensome
6 and that it's overbroad and goes beyond AmerenUE and also
7 goes beyond, as I said, the scope of the case. We just
8 don't think that any of this has anything to do with the
9 scope of this particular case.

10 JUDGE THOMPSON: Okay. I don't see an
11 overbreadth objection to 594.

12 MR. LOWERY: Your Honor, I apologize. I was
13 looking at my notes. We did not on that one, you're
14 correct.

15 JUDGE THOMPSON: Okay. Very well. I think
16 I've heard anything I need to hear, if you don't have
17 anything else.

18 MR. COFFMAN: Yes, I would like to respond
19 with just a few general comments.

20 JUDGE THOMPSON: Sure. Go ahead.

21 MR. COFFMAN: I think it's important, because
22 this does kind of get to a much broader philosophical
23 concern about what's at issue here in this case. I think
24 it's important to remind the Bench that in the application
25 for this case, Ameren makes the claim that the Metro East

1 transfer is the least cost option available to it.

2 This is their claim and this is very much at
3 issue, and it is our concern through -- throughout the
4 discovery we've got and the testimony filed thus far in this
5 case that the information we've been getting is that this
6 claim was made based on a very narrow selective set of
7 options, basically two options, and in fact, the options
8 available in the resource planning process to Ameren is much
9 broader than this.

10 And the issue gets to whether or not Ameren
11 can shield information about what options are out there
12 available to it, steer the Commission's attention only to
13 what it wants the Commission to look at and claim that that
14 is only what is available to AmerenUE when, in fact, all the
15 decision-makers that are -- that are relevant to the
16 resource planning process for AmerenUE are also involved in
17 the entire Ameren resource planning process and when, in
18 fact, the --

19 JUDGE THOMPSON: Is that an allegation or is
20 that an established fact? I mean, does Ameren dispute what
21 you just said about the roles of the resource planners?

22 MR. LOWERY: Well, your Honor, I think I
23 would have to dispute it at least at a certain level. It is
24 true that there are Ameren Services Company employees who
25 provide resource planning services to AmerenUE. I certainly

1 don't dispute that. But they've asked for key performance
2 indicators and strategic plans across a whole array of
3 Ameren businesses, and I certainly won't agree that all the
4 people involved in all of those things have anything to do
5 with AmerenUE's resource planning.

6 I guess if your Honor pleases, I'd like to
7 just make one other point in response to a specific comment
8 that Mr. Coffman made.

9 JUDGE THOMPSON: Absolutely.

10 MR. LOWERY: We do -- we have put on evidence
11 in this case that the -- essentially transferring the pipes
12 and wires in Illinois, which frees up existing AmerenUE
13 generation, is the least cost way to meet our resource
14 needs, but the fact that we have put on evidence before the
15 Commission that there's affirmative benefit to the transfer
16 doesn't mean as a matter of law that we've somehow taken on
17 a burden to establish a benefit or change the legal standard
18 that applies to the case and thereby make everything
19 relating to a benefit we don't even have to show
20 discoverable and relevant in matters that deal with all
21 kinds of other Ameren business lines that aren't regulated.

22 JUDGE THOMPSON: Okay. Mr. Coffman?

23 MR. COFFMAN: May I respond?

24 And I'm afraid it may be necessary for me to
25 discuss matters that are highly confidential.

1 JUDGE THOMPSON: If that's the case, we'll go
2 in-camera.

3 MR. COFFMAN: Okay. I'll try to keep --

4 JUDGE THOMPSON: There's no one in the room
5 that's not an employee of the Public Counsel or of the
6 Commission, except the reporter. All you would need to do
7 is go up and shut the door, and we would be in-camera.

8 Is it shut?

9 MR. COFFMAN: Yes, it is.

10 JUDGE THOMPSON: Well, gosh, we've been in
11 camera all this time and I didn't even know.

12 (REPORTER'S NOTE: At this point, an
13 in-camera session was held, which is contained in Volume 4,
14 pages 88 through 101 of the transcript.)

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1 JUDGE THOMPSON: Okay. I'm looking now at
2 Data Request 596, which asks for a copy of Ameren's
3 quarterly key performance indicator report for energy
4 delivery for the last two years. Let me ask you a question
5 up front, Mr. Coffman. When it says a copy of Ameren's
6 quarterly report, is it referring to Ameren the holding
7 company or is it referring to AmerenUE? Because I notice
8 the next sentence it starts talking about AmerenUE.

9 MR. COFFMAN: Again, this is a -- my
10 understanding, this is a business line within the holding
11 company and that the energy delivery is another organization
12 of activities amongst all the affiliates, including
13 regulated and non-regulated entities.

14 JUDGE THOMPSON: So the reports are those of
15 the holding company?

16 MR. COFFMAN: We are -- so far have only
17 found strategic planning documents and key performance
18 indicator reports that cover the entire project. As I was
19 trying to explain earlier, we did ask for the AmerenUE
20 strategic plan and received in response to that the overall
21 Ameren strategic plan, and have not yet seen a strategic
22 plan for any of the individual companies, which I think just
23 continues to support our concern that this is above all
24 One --

25 JUDGE THOMPSON: And the only objection I see

1 is scope, relevancy objection. Well, let me ask you this:
2 Is it your belief that this report would include information
3 relating to energy delivery of the regulated entity?

4 MR. COFFMAN: Yes.

5 JUDGE THOMPSON: Okay. Mr. Lowery, is that
6 the case?

7 MR. LOWERY: If there is such a strategic
8 plan, your Honor, which to be honest I don't know whether
9 there is or not, I accept. I would assume that that is
10 probably the case.

11 JUDGE THOMPSON: Okay. This doesn't actually
12 refer to strategic plan. Instead it talks about --

13 MR. LOWERY: Key performance indicator. I'm
14 sorry.

15 JUDGE THOMPSON: Of course, if it doesn't
16 exist, that's a sufficient answer to the DR right there, but
17 I notice that's not the answer that was provided. So are
18 you telling me that, in fact, at this moment you don't know
19 if it exists or not?

20 MR. LOWERY: I don't, your Honor. An
21 objection was made and, of course, we haven't responded
22 because the objection's never been taken up. This part was
23 asked some time ago. But I do not know as I sit here today
24 whether it does or doesn't exist.

25 JUDGE THOMPSON: I appreciate that. Okay.

1 I've heard everything I need. You guys have anything else
2 you want to say?

3 MR. COFFMAN: No.

4 JUDGE THOMPSON: Let me look at 597.

5 MR. COFFMAN: Again, this is a business line,
6 a generation business line. Again, it's our understanding
7 that this is a business line that is organized for both
8 regulated and non-regulated activities.

9 JUDGE THOMPSON: This is the same business
10 line we were talking about in 595 -- or 594?

11 MR. COFFMAN: Well, 594.

12 JUDGE THOMPSON: Okay.

13 MR. COFFMAN: There's -- yeah, the strategic
14 plans as well as the key performance indicator reports are
15 businesses that are normally kept in -- in their business
16 activities.

17 JUDGE THOMPSON: Okay. So this is -- this
18 is, again, reports that you believe exist?

19 MR. COFFMAN: Yes. We've seen such documents
20 in the past and believe that they are normally kept.

21 JUDGE THOMPSON: Okay.

22 MR. COFFMAN: On a regular basis, quarterly.

23 JUDGE THOMPSON: Mr. Lowery?

24 MR. LOWERY: I really have the same
25 information on this one as I did the one before, Judge.

1 JUDGE THOMPSON: Okay. Very good.

2 MR. COFFMAN: Let's see. 698 asks merely for
3 UE Generation.

4 JUDGE THOMPSON: 598?

5 MR. COFFMAN: I'm sorry. 598 asks for key
6 performance indicator reports for UE Generation for the last
7 two years.

8 JUDGE THOMPSON: UE Generation meaning the
9 regulated entity?

10 MR. COFFMAN: Yes. There shouldn't be an
11 issue as to --

12 JUDGE THOMPSON: What's the objection to this
13 one?

14 MR. LOWERY: Well, your Honor, and I have
15 Not -- Mr. Coffman and I talked about this this morning, and
16 that was just a little before I called. I haven't had a
17 chance to go back, to be honest with you, and discuss
18 whether or not we might be able to come to some
19 accommodation on this one.

20 I would say, though, that again, the
21 strategic plan for UE Generation, I'm not sure what that has
22 to do with whether we can provide adequate service after we
23 transfer the Metro East assets away, so I still think
24 there's a substantial issue about scope.

25 I will say, as I told John this morning, it

1 might be that we don't have the same level of concern about
2 this one as we do the other one. I just, unfortunately,
3 didn't have time between this morning and now to take that
4 up with the right people.

5 JUDGE THOMPSON: Okay. I can tell you I'm
6 leaning towards granting this one. It's asking about the
7 regulated entity.

8 MR. LOWERY: I understand.

9 JUDGE THOMPSON: And it's his job in the
10 hearing, then, to find some way of convincing us, the
11 Commission, that it constitutes a detriment. Maybe he can,
12 maybe he can't, but I think it's discoverable.

13 MR. LOWERY: All right. Appreciate that
14 information.

15 JUDGE THOMPSON: Sure. Let's look at 600.
16 This is key performance indicator reports for Ameren Fuels
17 and Services.

18 MR. COFFMAN: Yes. We've already discussed
19 what this entity is, this particular service company. I
20 don't have anything else to add.

21 JUDGE THOMPSON: This is, again, SO2
22 allowances?

23 MR. COFFMAN: Yes.

24 JUDGE THOMPSON: Okay. And are we talking
25 about reports that we think exist or that we know exist?

1 MR. COFFMAN: We know that they've existed in
2 the past.

3 JUDGE THOMPSON: For this company?

4 MR. COFFMAN: Yes.

5 JUDGE THOMPSON: Mr. Lowery?

6 MR. LOWERY: Same level of knowledge, your
7 Honor.

8 JUDGE THOMPSON: Okay. Very good.

9 MR. COFFMAN: Okay. I guess that covers that
10 group, and we would move on to Data Request 613.

11 JUDGE THOMPSON: Okay. Let's take a look at
12 this. AmerenUE's response to OPC DR 566 stated in part that
13 the EEI contract does not extend beyond December of 2005,
14 and it is unknown as to what EEI, Inc.'s plans are after
15 that date. Ameren owns 40 percent of EEI -- I should say
16 AmerenUE, and AmerenUE's non-regulated GenCo affiliate,
17 Ameren Energy Generating Company, owns 20 percent of EEI.
18 Please provide a copy of all power purchase contracts
19 between Ameren Energy Generating Company or other
20 non-regulated AmerenUE affiliates and EEI for output from
21 the EEI Joppa plant, where the contracts include time
22 periods subsequent to December 2005.

23 Okay. Let's see what objections we have to
24 613. Overbroad and remote, seeks information not relevant
25 to any issues in the case and are not reasonably calculated

1 to lead to the discovery of admissible evidence. Okay. So
2 there we have the overbreadth added to the scope objection.
3 I assume that remote is just another way of saying
4 overbroad, or is that a separate objection?

5 MR. LOWERY: I think it's probably the first
6 cousin of the overbreadth objection, your Honor.

7 JUDGE THOMPSON: Very good. Okay. So why
8 don't you tell me, then, Mr. Coffman, why this is relevant?

9 MR. COFFMAN: We suspect that extending the
10 EEI contract beyond December 2005 would be a lesser cost
11 option than the Metro East transfer. We believe that
12 understanding what EEI plans to do and moving on to 614, the
13 documents possessed by the various entities owning and
14 controlling EEI, including AmerenUE, are relevant to us
15 exploring that potential option and challenging the
16 company's contention that the Metro East transfer is the
17 least cost option.

18 Again, this is just making sure that the
19 Commission has in front of it all the options that were on
20 the table when this particular proposed transfer decision
21 was made.

22 JUDGE THOMPSON: What is EEI exactly?

23 MR. LOWERY: Want me to take a crack at that,
24 Judge?

25 JUDGE THOMPSON: Absolutely. What do the

1 initials stand for, first of all?

2 MR. LOWERY: It's an Illinois corporation
3 called Electric Energy, Inc. It owns -- its principal asset
4 is a generation plant, the Joppa plant. AmerenUE owns 40
5 percent of the stock. Ameren Energy Generating, which is an
6 unregulated company, owns 20 percent of the stock, and some
7 other companies, other electric utilities own the remaining
8 40 percent.

9 This DR seeks contracts between -- not
10 between AmerenUE and EE, Inc. or proposals to AmerenUE and
11 EE, Inc. It seeks -- it seeks to discover dealings between
12 Ameren Energy Generating, for example, and EE, Inc.

13 I'll let you finish your questions, but
14 that's the nature of the entity.

15 JUDGE THOMPSON: I appreciate that. Could
16 you tell me a little bit about the Joppa plant?

17 MR. LOWERY: Now, that I suspect Mr. Coffman
18 may know more about the particulars than I do, to be honest.
19 I believe it's a coal-fired plant.

20 JUDGE THOMPSON: Mr. Coffman?

21 MR. COFFMAN: It's over 1000 megawatt coal
22 plant producing very cheap power and has been producing
23 such --

24 JUDGE THOMPSON: It's a base load plant?

25 MR. COFFMAN: Yes, and has been producing

1 such power for AmerenUE for over 50 years.

2 JUDGE THOMPSON: Okay.

3 MR. LOWERY: AmerenUE has an existing

4 contract with EE, Inc., your Honor, that I think had a term

5 of about 30 years and it is about to expire in a year or

6 two.

7 JUDGE THOMPSON: Okay.

8 MR. COFFMAN: The option that we think is

9 very relevant in this case is whether or not AmerenUE

10 pursued extending that contract or not, and we have not seen

11 that evidence yet. And we're also interested in what,

12 perhaps, Mr. Rainwater, the CEO of AmerenUE, might have

13 offered to other affiliates, non-regulated affiliates, you

14 know, in his capacity as key decision-maker for those other

15 affiliates.

16 JUDGE THOMPSON: Okay. Is there any reason

17 you didn't ask him?

18 MR. COFFMAN: We have asked numerous Data

19 Requests trying to get at this particular matter.

20 JUDGE THOMPSON: Okay. Where is this plant

21 located?

22 MR. LOWERY: Joppa, Illinois.

23 MR. COFFMAN: Southern Illinois.

24 JUDGE THOMPSON: I gather this plant has been

25 around for some time, given that a 30-year contract is on

1 the verge of expiring. Did it originally belong to a
2 regulated entity or was it built to belong to a
3 non-regulated energy producer, if anyone knows?

4 MR. LOWERY: I don't know, your Honor.

5 MR. COFFMAN: It's my understanding that
6 there -- it was originally built by five separate regulated
7 utilities to form this non-regulated company.

8 JUDGE THOMPSON: And because they were all
9 sharing its output?

10 MR. COFFMAN: I presume, yes.

11 JUDGE THOMPSON: Okay. So the 40 percent
12 that's not owned by UE or AEG, is that owned by companies
13 that are outside of the Ameren family of companies?

14 MR. LOWERY: Yes.

15 JUDGE THOMPSON: Okay.

16 MR. COFFMAN: Of course, I think that's
17 correct, although AmerenUE is attempting to merge with
18 Illinois Power, whereby the Ameren family would then gain
19 another 20 percent ownership.

20 JUDGE THOMPSON: Okay. And then there still
21 would be yet another 20 percent owned by companies or
22 company outside the family?

23 MR. COFFMAN: Yes.

24 JUDGE THOMPSON: And how much -- what
25 percentage of its output has been coming to UE under this

1 contract that's expiring?

2 MR. COFFMAN: It's our understanding that a
3 proportional share, 40 percent.

4 JUDGE THOMPSON: Okay.

5 MR. LOWERY: I can't dispute that, because I
6 don't know, Judge. That may be right. I don't know.

7 JUDGE THOMPSON: Okay. So your concern then,
8 if I understand all this correctly, Mr. Coffman, is that
9 this is a very low cost or a relatively low cost producer
10 and the contract is now expiring, Ameren will have to
11 replace that load or that energy with energy from somewhere
12 else, and your concern is that that might be higher in cost;
13 is that right?

14 MR. COFFMAN: Yes.

15 JUDGE THOMPSON: Okay.

16 MR. COFFMAN: And that this contract is now
17 being steered away from the regulated ratepayers that it has
18 thus far been benefiting.

19 JUDGE THOMPSON: Because you suspect that
20 Ameren has decided to use the generation capacity freed up
21 by the Metro East transaction to supply the needed power
22 instead, is that it?

23 MR. COFFMAN: That is a suspicion, yes.

24 JUDGE THOMPSON: Okay. Okay. Mr. Lowery, do
25 you want to respond?

1 MR. LOWERY: Sure. Thank you, your Honor.
2 Your Honor, I think it is apparent to you, EE, Inc. is an
3 investment that AmerenUE has made. We own stock. We don't
4 own the plant. We don't operate the plant of an unregulated
5 generation asset.
6 I think the Commission has recently
7 recognized -- there's an Aquila case involving the sale of
8 unregulated plant -- that it doesn't have jurisdiction over
9 those plants. What Mr. Coffman is essentially suggesting is
10 that Ameren ought to, to the extent it can, coerce EE, Inc.
11 into entering into a purchased power contract -- I suspect
12 Public Counsel would like for it to be at cost -- regardless
13 of whether or not the Commission has any jurisdiction to ask
14 us to do that or whether we could even do that consistent
15 with any responsibilities we owe to minority shareholders of
16 the entity that owns that plant, which I would submit that
17 that would not be an appropriate thing for a majority
18 shareholder to do, and AmerenUE, the regulated company is
19 not a shareholder in any of it.
20 Again, AmerenUE is, I think, free to make
21 decisions about what plant it's going to buy, build or where
22 it's going to buy power, and we may or may not be second
23 guessed on that later and we may or may not suffer
24 disallowances or adjustments in a rate case later. But
25 that's not the issue in this case. Again, these are not

1 data requests that seek information about what AmerenUE has
2 or has not done with EE, Inc. They seek information about
3 what any other Ameren-affiliated company, including
4 non-regulated companies, have or have not done with EE, Inc.

5 And other than Mr. Coffman's supposition and
6 he -- there is one there is one fact in Public Counsel's
7 testimony; that is that Mr. Rainwater is the CEO of this
8 Ameren company and of AmerenUE, and that is true as to
9 certain companies. I don't know as to all of them. But
10 that does not go even close to the next step that somehow
11 Mr. Rainwater is doing something improper or untoward
12 relating to AmerenUE's resource planning. There's no proof
13 of that at all in any record.

14 So we would submit that both these are beyond
15 the scope because the issue in the case is not whether
16 AmerenUE could or ought to or whatever coerce EE, Inc. into
17 selling its power at cost, but they're also overbroad
18 because they're going -- not only are they going to an
19 Ameren affiliate that Ameren corporation would own all the
20 stock of like AEG, they are going to an affiliated company
21 that owns a separate power plant that AmerenUE doesn't even
22 control.

23 JUDGE THOMPSON: Okay. Mr. Coffman?

24 MR. COFFMAN: Your Honor, first just to
25 address, I guess, a minor point. We don't know whether

1 Mr. Rainwater is actually on the EEI board. We suspect he
2 is, but that goes to the next Data Request, which is 617.
3 We're asking for a list of current members of the EEI board.
4 but back to the point, which I think explains
5 why this plant that is not necessarily owned by AmerenUE is
6 important. The 40 percent that AmerenUE now owns came about
7 after AmerenUE came to the Missouri Public Service
8 Commission --

9 MR. LOWERY: Did I lose you-all?

10 JUDGE THOMPSON: No. No.

11 MR. LOWERY: I'm sorry.

12 JUDGE THOMPSON: Mr. Coffman is formulating.

13 MR. COFFMAN: I'm being corrected. The
14 original percentage was not 40 percent, but the -- in 1973
15 at least, the -- after the plant had been already benefiting
16 UE ratepayers for a number of years, came and asked for a
17 financing arrangement whereby essentially regulated assets
18 were used as collateral, if you will, as part of the
19 financing for a larger acquisition of EEI, of the -- so --
20 I'm sorry. I've been corrected. The financing was for
21 upgrades, not a greater acquisition of a percentage, but for
22 improvements to the plant.

23 But the point is that regulated ratepayers
24 have been financially at risk for the -- for this particular
25 plant, and it is actually much more than a simple

1 non-regulated investment.

2 MR. LOWERY: Your Honor, if I might respond
3 to that?

4 JUDGE THOMPSON: Sure.

5 MR. LOWERY: Back in the '70s, AmerenUE --
6 and I don't know all the particulars, but apparently
7 AmerenUE must have desired to grant some of its regulated
8 assets to secure a guarantee of bond that EE, Inc. issued
9 to -- I'll take John's word for it -- upgrade the Joppa
10 plant, and the Missouri Commission granted the authority to
11 issue that financial guarantee. Those bonds were paid off
12 many, many years ago, and AmerenUE was never called upon to
13 pay a dime on its guarantee.

14 The cost of the stock ownership to AmerenUE
15 has never been in AmerenUE's rate base. It's never been in
16 our cost of service. It's below the line, so to speak. The
17 Missouri ratepayers have never paid a dime for EE, Inc. The
18 only thing that's ever been in Ameren's rate base would be,
19 of course, the purchased power, cost of purchased power from
20 EE, Inc., just like the purchased power cost from Synergy,
21 if we had a contract with them to supply us power, might be
22 in the rate base.

23 JUDGE THOMPSON: Sure.

24 MR. LOWERY: But the Missouri ratepayers have
25 not paid a dime relating to EE, Inc. It's not been in the

1 rates. It's a separate, unregulated entity that owns the
2 plant. We don't even own the plant directly. I think all
3 of this business about a 30-year-old guarantee bonds that
4 were long since paid off is frankly irrelevant.

5 JUDGE THOMPSON: Okay. I appreciate that.
6 First of all, I notice that with respect to DR 614, excuse
7 me, there is a claim of privilege raised. That's not raised
8 with respect to 613 and 617. And, of course, you will not
9 be able to get anything that's covered by the
10 attorney/client or work product privilege. I would ask that
11 Ameren produce a privilege log. Okay?

12 MR. LOWERY: Okay.

13 JUDGE THOMPSON: With respect to anything
14 withheld as being privileged under either of those two
15 privileges.

16 MR. LOWERY: Understood.

17 MR. COFFMAN: Your Honor, before we go on,
18 could I essentially mention -- you brought the issue of
19 privilege log up. I just wanted to mention that the last
20 order on reconsideration concerning discovery that the
21 Commission issued did order AmerenUE to provide a privilege
22 log relating to the Data Requests that we were unsuccessful
23 in getting -- compelling, despite a late objection, DRs 532,
24 535 and 536. We have yet to receive a privilege log to
25 those, and --

1 JUDGE THOMPSON: Okay. Do you know anything
2 about that, Mr. Lowery?

3 MR. LOWERY: Your Honor, I believe that that
4 is almost prepared and, John, I hesitate to make a "it will
5 be to you tomorrow or the next day" type of representation,
6 but I think in the next couple of business days that will be
7 in your hands.

8 MR. COFFMAN: Okay. Thank you for that
9 answer. It's just frustrating to us. In fact, if we see
10 something, we hear privilege log, and something about it
11 suggests to us that it may not actually be privileged, we
12 have little time to now raise that issue.

13 JUDGE THOMPSON: I understand. We can always
14 take it up at the hearing.

15 MR. COFFMAN: Okay. I would be ready to move
16 on to the remaining SO2 Data Requests, which are 621 through
17 25.

18 JUDGE THOMPSON: Sure. Let's do those as a
19 group. Give me a moment to take a look at those and the
20 objections. Okay?

21 MR. COFFMAN: And then also take a look at
22 633 through 639. The last three of those are highly
23 confidential. The only ones that do not relate to SO2 that
24 remain are 626 and 627.

25 JUDGE THOMPSON: So 626 and 627 are outside

1 the scope of what we're currently looking at?

2 MR. COFFMAN: Yes. I figured we'd deal with
3 those last.

4 JUDGE THOMPSON: Very well. Okay. First of
5 all, I'm looking at the objection letter, okay, which is
6 timely, and I notice that it raises a privilege without
7 specifying. I assume you mean attorney/client or work
8 product privilege or both.

9 MR. LOWERY: I think it would include both,
10 your Honor.

11 JUDGE THOMPSON: Okay. And just as I pointed
12 out for 614, you may not have whatever is privileged, but
13 Ameren, in turn, may have to produce a privileged log. And
14 given the short interval remaining before the hearing, I
15 think Ameren will have to produce that fairly quickly;
16 otherwise it won't be of any use to the Public Counsel.
17 Okay?

18 Perhaps we ought to set a date certain for
19 the privilege log, any privilege logs that we discuss today,
20 excluding the one from the last order. Okay?

21 MR. LOWERY: Okay.

22 JUDGE THOMPSON: How quickly do you think you
23 can produce those?

24 MR. LOWERY: Today's Wednesday. A week?

25 JUDGE THOMPSON: A week? What do you guys

1 say, a week going to work for you?

2 MR. COFFMAN: That would be fine. And just
3 so we're clear, I mean, when we talk about a privilege log,
4 I assume we're talking about a form that we are used to
5 which gives the date, the author, the recipient, the
6 description and the specific privilege.

7 JUDGE THOMPSON: I assume. Is that what
8 we're talking about?

9 MR. LOWERY: I believe that would be correct.

10 JUDGE THOMPSON: Okay. Great. So that takes
11 care of that. Now, the other objections raised are lack of
12 relevance, not likely to lead to the discovery of admissible
13 evidence, unduly burdensome, overbroad and they seek
14 information about Ameren entities other than AmerenUE.

15 Okay. So now I'm looking at 633. Okay. So
16 633 asks about UE's Phase 1 SO2 allowances. 634 asks about
17 UE's Phase 2 SO2 allowances. 635 is, again, UE's Phase 1
18 SO2 allowances. 636 is, again, UE's Phase 2 SO2 allowances.
19 637HC -- and perhaps we'll have to go in-camera -- again is
20 UE SO2 allowances. I'll keep the phase secret. And 638HC
21 also refers to UE SO2 allowances, as does 639HC.

22 So I can tell you that these DRs which
23 specifically ask for information relating to the regulated
24 Missouri entity, as far as I'm concerned, are relevant. I'm
25 not going to buy an irrelevance objection on that.

1 Now, there's overbreadth and unduly
2 burdensome and, of course, a relevant request can be
3 overbroad or unduly burdensome. I think specifying a number
4 of a particular type of SO2 allowance, as far as I can see,
5 is not likely to be overly broad, in that I don't think the
6 responder would scratch his head and wonder exactly what's
7 specified, which is how I understand overbroad, meaning that
8 it's unclear what information is responsive.

9 As to whether or not it's burdensome, I don't
10 know. I think 633 is not burdensome. It simply asks for a
11 number. 634 simply asks for a number.

12 MR. COFFMAN: Your Honor, I would remind you
13 that there is some rule of thumb on the burdensome, although
14 it's kind of small, about 120 pages or 150 pages, which is
15 in the privilege -- that's for voluminous.

16 JUDGE THOMPSON: The Protective Order.

17 MR. COFFMAN: That's right. The Protective
18 Order.

19 JUDGE THOMPSON: The two we just talked about
20 ask for a number. As far as I'm concerned, that can be one
21 sheet of paper that has the word 10 written on it, right?

22 MR. COFFMAN: It wouldn't be our expectation,
23 in what we understand now their SO2 records, that any of
24 this information would be difficult to calculate. We
25 believe it would be readily available to them.

1 JUDGE THOMPSON: Okay. Now, I'm a little
2 concerned about 635 and 636 that ask for work papers.

3 MR. LOWERY: 633 actually does, too, your
4 Honor.

5 JUDGE THOMPSON: Okay. Well, then all those
6 that ask for work papers. My question is how voluminous are
7 these work papers likely to be, and is there some kind of
8 dispute about how these figures are calculated, some lack of
9 certainty that would require work papers?

10 MR. COFFMAN: I mean, we would expect to see
11 a spreadsheet that added up the various transactions.

12 JUDGE THOMPSON: Okay. And just -- I mean
13 how big is such a spreadsheet likely to be? 700 pages,
14 5 pages? Do we have any idea?

15 MR. COFFMAN: I would imagine it would be 10
16 pages, 20 pages at most.

17 MR. LOWERY: I honestly don't know, your
18 Honor.

19 MR. COFFMAN: If we really knew for certain,
20 we wouldn't be asking.

21 JUDGE THOMPSON: I'm asking these ballpark
22 figures because I have only the vaguest notion of what an
23 SO2 allowance even is. So in order to understand what work
24 papers dealing with transactions in the secondary market in
25 these things are likely to look like, I have to ask you to

1 give me some kind of ballpark notion, because I have no
2 idea. I don't know if it's something where Ameren sells
3 thousands of them every day or if ameren sells dozens of
4 them every decade. I just don't know how many SO2
5 allowances it gets, how many of them it trades. I don't
6 know.

7 MR. COFFMAN: Maybe as a ballpark I might
8 suggest that 50 transactions a year has been our experience.

9 JUDGE THOMPSON: Am I right that these are
10 allowances having to do with pollution?

11 MR. COFFMAN: Yes.

12 JUDGE THOMPSON: And it has to do with the
13 amount of SO2 that can be discharged from a coal-fired
14 plant?

15 MR. COFFMAN: Essentially, yes.

16 JUDGE THOMPSON: So the cleaner the coal you
17 have, the less you need the allowance, and also how well
18 your scrubbers work, or both, right?

19

20 MR. COFFMAN: Yes.

21 JUDGE THOMPSON: So Ameren might have
22 allowance it doesn't need, which it could then sell perhaps
23 at a profit somebody who has filthy coal and terrible
24 scrubbers; is that right?

25 MR. COFFMAN: Yes. And, of course, our

1 concern is that they may be selling some that they might
2 need in the future, and it relates to the Metro East
3 transfer because these are coal plants that would be
4 transferred to the AmerenUE regulated side.

5 JUDGE THOMPSON: And wouldn't they be
6 receiving SO2 allowances with respect to those plants?

7 MR. COFFMAN: Our concern is that it wouldn't
8 be enough.

9 JUDGE THOMPSON: And what happens? What's
10 the harm that follows?

11 MR. COFFMAN: It's economic that --

12 JUDGE THOMPSON: They have to pay penalties?

13 MR. COFFMAN: Either more efficient scrubbers
14 would have to be purchased or bought or they would have to
15 go on the emissions market and SO2 purchase allowances.

16 JUDGE THOMPSON: And you're concerned that
17 ratepayers might have to pay for those?

18 MR. COFFMAN: That's correct.

19 JUDGE THOMPSON: Let me give you a scenario
20 here. If Ameren inadvertently sold so many SO2 allowances
21 that it had to go hunting for some or else build better
22 scrubbers, wouldn't the excess cost be chargeable to the
23 shareholders?

24 MR. COFFMAN: It's all -- it's all a risk to
25 be included in the revenue requirement. Certainly we could

1 claim that a great number of things that AmerenUE does is
2 not prudent or not reasonable in a rate case, but we believe
3 this is a very high cost item, and it's directly relevant to
4 adding up all the costs and benefits.

5 JUDGE THOMPSON: How much does an SO2
6 allowance generally trade for?

7 MR. COFFMAN: I'm told that \$200 is a going
8 rate for an allowance. I couldn't tell you how much is --

9 JUDGE THOMPSON: My monthly Ameren bill is
10 more than that. That doesn't strike me as a particularly
11 large cost.

12 MR. COFFMAN: Well, not unless you understand
13 how many they really need.

14 JUDGE THOMPSON: How many do they need, John?
15 How much do they need for Labadie every year?

16 MR. COFFMAN: Labadie might be 30,000 per
17 year.

18 JUDGE THOMPSON: And how many do they get per
19 year? Aren't these given to them by the EPA?

20 MR. COFFMAN: They're now given roughly
21 two-thirds or three-fourths of that amount that they would
22 need.

23 JUDGE THOMPSON: And we're just talking
24 Labadie? So in other words they're given, say, 20,000 a
25 year and they need 30,000 a year for that plant alone?

1 MR. COFFMAN: Yes, and we're really using
2 ballpark figures here.

3 JUDGE THOMPSON: I understand. That's okay.
4 I have to understand. You know, your evidence requests,
5 your discovery requests have to be processed in the light of
6 what you expect to prove, so that I can understand how the
7 facts you're seeking discovery of dovetail with other facts.

8 MR. COFFMAN: I just want to make sure that
9 we're on the record here, that we aren't -- you wouldn't
10 hold us to the precise --

11 JUDGE THOMPSON: No, this is --

12 MR. COFFMAN: -- allowance.

13 JUDGE THOMPSON: This conference is not part
14 of the hearing.

15 MR. COFFMAN: I'm told that a rough number
16 that would be required by Ameren for an entire year would be
17 150,000, for AmerenUE.

18 JUDGE THOMPSON: For AmerenUE. And do they
19 get that many?

20 MR. COFFMAN: No.

21 MR. LOWERY: Was that AmerenUE, that
22 estimate?

23 MR. COFFMAN: Yes.

24 JUDGE THOMPSON: Yes, it was.

25 MR. LOWERY: Okay.

1 JUDGE THOMPSON: That would suggest to me
2 that they're busy buying them, not selling them.

3 MR. COFFMAN: Well, they used to get more
4 than they needed and the EPA now gives less.

5 JUDGE THOMPSON: Okay.

6 MR. COFFMAN: Our concern is that they
7 are -- may be selling off more than they would need and that
8 their need is going to increase if the Metro East transfer
9 takes place.

10 JUDGE THOMPSON: Okay. Well, I can tell you
11 that with respect to 633, 634, 635, 636, with respect to
12 those four, I don't believe the request is overbroad or
13 burdensome, and I do believe the request is relevant. And,
14 therefore, except to the extent that the information is
15 privileged, then I am leaning towards directing Ameren to
16 provide that information, okay? I think that's fair to let
17 you know that.

18 MR. LOWERY: Thank you.

19 JUDGE THOMPSON: Let me look back here at 621
20 and work my way up through these other ones. 621 asks for a
21 comprehensive description of the system of controls, then we
22 have parenthetical example of what that might include for
23 the sale, loan or swap of SO2 emission allowances that
24 Ameren and its affiliates currently have in place. Do you
25 believe that this description exists already? I mean, are

1 you asking them to sit down and write up a description or --

2 MR. COFFMAN: I couldn't tell you whether we

3 know that there are any system of controls. We don't know

4 if it's called that or exactly what the protocols are.

5 JUDGE THOMPSON: You don't believe there is

6 something of this kind that already exists? Are you asking

7 for the creation of something?

8 MR. COFFMAN: We're asking if something

9 exists.

10 JUDGE THOMPSON: Okay. So if they respond

11 and say that we don't have a comprehensive description, you

12 would consider that an adequate answer to your DR?

13 MR. COFFMAN: Yes.

14 JUDGE THOMPSON: Now, Mr. Lowery, do you know

15 if such a thing exists?

16 MR. LOWERY: No, I don't know if there is a

17 written description of a systems controls. I suspect there

18 are probably some controls, but whether there is a

19 description, I do not know.

20 JUDGE THOMPSON: Okay.

21 MR. LOWERY: I understand what John just

22 said. What he's asking is if something exists, if a

23 comprehensive description is written down somewhere, that's

24 what they want. If it's not, we can tell them that.

25 MR. COFFMAN: We want only as comprehensive a

1 description as exists. If there is not --

2 JUDGE THOMPSON: That's fair. And with that

3 understanding, I'll say that I believe that should be

4 provided unless Mr. Lowery can convince me that it need not

5 be. I know, first of all, with whether or not it exists,

6 the DR is something that's unique to practice in front of

7 the Commission, and in processing these discovery disputes,

8 we have to rely on reported cases, none of which deal with

9 DRs, all of which deal with interrogatories, depositions,

10 document production requests. And I know that it's a proper

11 objection to an interrogatory that you need not create

12 something to respond. So --

13 MR. COFFMAN: That's a fair reflection of

14 law, yes.

15 JUDGE THOMPSON: Exactly. So that's why I'm

16 asking. If you're asking them to provide you something that

17 does exist, then I would say they need to provide that,

18 again, unless he can convince me otherwise, to the extent

19 that it applies to the regulated entity. Okay? And, see,

20 this question is at the group level --

21 MR. COFFMAN: Yes.

22 JUDGE THOMPSON: -- and I assume you mean a

23 comprehensive description, pre-existing description of a

24 system of controls that applies at the group level and,

25 therefore, would include the regulated entity, right?

1 MR. COFFMAN: Yes, and the request for -- the
2 reason we ask it at the group level is that that's the way
3 we believe it is controlled.

4 JUDGE THOMPSON: I understand.

5 MR. COFFMAN: We would be satisfied with
6 whatever controls are in place as it relates to AmerenUE.

7 JUDGE THOMPSON: Right. Well, then I notice
8 that the very next one, this is asking for documentation.
9 I'll tell you how I'm going to understand 621 and 622; 621
10 as being does such a thing exist, yes or no, and 622 being,
11 if it does, give it to us. Okay?

12 MR. COFFMAN: Yes.

13 JUDGE THOMPSON: So understanding these two
14 DRs in that fashion, I'm leaning toward directing Ameren to
15 respond, okay, unless Ameren wants to tell me either that
16 there is no such thing or that whatever there is doesn't
17 include the regulated entity.

18 MR. LOWERY: I understand, your Honor.

19 JUDGE THOMPSON: Okay. Now, with respect to
20 623, I'm having a hard time with 623. I believe that the
21 sales and swaps of AmerenUE's SO2 allowances are relevant.
22 Okay? What I don't see the relevance of is approval by the
23 senior management of Ameren. And perhaps could you explain
24 that me, Mr. Coffman?

25 MR. COFFMAN: I see this -- the answer to

1 both of these would be the same. Our concern is that the
2 approval is done at the Ameren holding company level. If
3 it's actually made at the AmerenUE level, I mean, that
4 answers the question. I mean, I --

5 JUDGE THOMPSON: You're talking about 624?

6 MR. COFFMAN: Yes. We would be certainly be
7 happy --

8 JUDGE THOMPSON: See, I see the two
9 differently. I realize they're asking the same question at
10 two different levels of analysis. As far as I'm concerned
11 624 is certainly relevant, are Ameren trades of AmerenUE's
12 allowances approved by AmerenUE's senior management? I
13 think that's a relevant question.

14 Now, you asked to provide all documentation.
15 That might be overbroad. That might be burdensome. I don't
16 know. What do you mean by that? In other words, if they
17 were to give you a yes or no, yes, it is, or no, it's not,
18 is that a sufficient answer? What do you mean by
19 documentation?

20 MR. COFFMAN: I think we're simply interested
21 in understanding who did approve the sales and swaps.

22 JUDGE THOMPSON: Okay. Well, then, as long
23 as we understand 624 as a yes/no question, yes, no or, you
24 know, yes in some, no in others, you see what I'm saying?

25 MR. COFFMAN: Yes. Of course, if the answer

1 is no, it begs the question, well, then who did, but --

2 JUDGE THOMPSON: But you didn't ask that next
3 question, did you?

4 Now, as to 623, again, if you're willing to
5 take a yes/no answer, then I'll allow it, but in terms of
6 documentation, I don't think they need to riffle through
7 their files finding memos and letters showing who approved
8 these.

9 MR. COFFMAN: That's fine. We'll concede to
10 your judgment on that.

11 JUDGE THOMPSON: Mr. Lowery?

12 MR. LOWERY: I think I understand, Judge, but
13 if I can just repeat back what I think you indicated. On
14 624 we're considering that question to be who at AmerenUE
15 approved the sales of AmerenUE SO2 allowances. Is that the
16 question that we're considering to be before us now?

17 JUDGE THOMPSON: I don't think -- what I'm
18 considering it to be is a yes/no question.

19 MR. LOWERY: Okay. Did someone at AmerenUE
20 approve those sales?

21 JUDGE THOMPSON: Did senior management
22 approve it or not. Okay?

23 MR. LOWERY: Okay.

24 JUDGE THOMPSON: Yes or no. And if that
25 answer's not sufficient, then, you know, you drafted it.

1 MR. LOWERY: And the same thing in 623, did
2 someone at the senior management of Ameren approve those
3 sales?
4 JUDGE THOMPSON: At the holding level. Yes,
5 exactly. And I'm going to allow them, as long as they're
6 seen as yes/no questions, but as far as I'm concerned, I
7 don't see any need for any documentation. In other words,
8 you don't need to find memos, letters or anything of that
9 kind.
10 MR. LOWERY: Understood.
11 MR. COFFMAN: That's fair.
12 JUDGE THOMPSON: Okay. Now, let's see, we're
13 saving 626 and 627?
14 MR. COFFMAN: Yes.
15 JUDGE THOMPSON: I'm trying to see if we've
16 got anything we haven't gotten to yet. I see that we have.
17 Okay. The last three here, 637 to 639HC, let's see. OPC DR
18 601 requested AmerenUE to specify the number of UE's Phase 1
19 -- and we'd better go in-camera here.
20 (REPORTER'S NOTE: At this point, an
21 in-camera session was held, which is contained in Volume 4,
22 pages 134 through 151 of the transcript.)
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