

In the Matter of:

**UNION ELECTRIC COMPANY, dba AMEREN MISSOURI'S TARIFFS, etc.**

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**ER-2019-0335 VOL. II**

*September 19, 2019*

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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS  
Discovery Conference  
September 19, 2019  
Jefferson City, Missouri  
Volume 2 - 20

In the Matter of Union )  
Electric Company, d/b/a )  
Ameren Missouri's Tariffs To ) File No. ER-2019-0335  
Decrease Its Revenues For )  
Electric Service )

NANCY DIPPELL, Presiding  
SENIOR REGULATORY LAW JUDGE

REPORTED BY:  
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ALSO PRESENT: John Cassidy and Lisa Ferguson,  
Auditors.

P R O C E E D I N G S

JUDGE DIPPELL: This is Case No.

ER-2019-0335, In the Matter of Union Electric Company,  
doing business as Ameren Missouri's Tariffs to Decrease  
Its Revenues For Electric Service. This is  
September 19th, 2019, international Talk Like A  
Pirate Day. We will conduct this in regular English.

This a discovery conference and we have  
notice of a couple of discovery disputes, so we're here  
to talk about those and see if we can work this out. I  
guess I'll go ahead and let you guys make your entries  
of appearance. Would you like to start with Ameren's?

MR. LOWERY: Sure. Jim Lowery, Smith Lewis,  
LLP, representing Ameren Missouri.

JUDGE DIPPELL: And the State?

MR. KEEVIL: Representing the Staff of the  
Commission, Jeff Keevil, Post Office Box 360, Jeff  
City, Missouri 65102.

JUDGE DIPPELL: Public Counsel?

MR. WILLIAMS: Nathan Williams, representing  
the Office of the Public Counsel and the Public. I  
provided my information to the court reporter.

JUDGE DIPPELL: Okay. So the first  
disagreements that I received were from Staff and, I  
don't know, have you all -- are they all still pending

1 or have you all worked out anything in the interim?

2 MR. LOWERY: Could I just maybe address all  
3 of them in order?

4 JUDGE DIPPELL: Yes. Why not?

5 MR. LOWERY: Because we haven't -- we haven't  
6 talked since we got this Monday afternoon.

7 JUDGE DIPPELL: Okay.

8 MR. LOWERY: So there were seven DRs listed  
9 that they indicated that were late. All of those have  
10 been responded to. Some were responded to Monday, some  
11 Tuesday, and the last three were responded to on  
12 Wednesday. So those seven, which I think are on the  
13 second page here. And if I may here, Judge, in 3B,  
14 those have all been responded to. So as far as I know,  
15 those are not at issue this morning.

16 JUDGE DIPPELL: 3A and B?

17 MR. LOWERY: No, B. No, just B.

18 JUDGE DIPPELL: Just B. Okay.

19 MR. LOWERY: The one -- B.

20 JUDGE DIPPELL: Oh, okay.

21 MR. LOWERY: That leaves five other -- I'm  
22 sorry. That leaves five other data requests that are  
23 on the Staff's list, and I'll just try to tick through  
24 them. So 167 seeks information regarded -- regarding  
25 some land and related costs that are not in the revenue

1 part of this case. They're costs that have been booked  
2 to construction work in progress that relate to some  
3 land and work that might, at some point, become an  
4 expansion of a substation and might not become an  
5 expansion of a substation, which there is no CWIP rate  
6 base in Missouri, so that doesn't have any effect on  
7 the revenue requirement.

8 Now, Mr. Keevil and I had worked out, I  
9 thought, and I heard Ms. Ferguson say that they have, I  
10 guess, concerns about the response that we gave, an  
11 agreement regarding this objection that we would  
12 provide verification, ledger increase or whatever, that  
13 would show that it's not in the revenue requirement,  
14 which I thought we did. We provided that in a DR  
15 response on August 14th, but it wasn't until today --  
16 or I guess maybe Monday that I had any inkling that  
17 there was any issue about it.

18 So I don't know exactly what the issue is,  
19 but I don't think the verification is good enough, you  
20 know, and we certainly can talk about that. There's  
21 some additional information and I think we would be  
22 open to -- to providing that, but the DR asked for a  
23 whole bunch of other details that, if this is under the  
24 revenue department, I don't think it has any relevance  
25 at all to the case.

1           So I don't know, Mr. Keevil, if you want to  
2 explain what the shortcoming you perceive in the data  
3 we gave the Staff is, or how you want to proceed on  
4 that. But, like I said, I think we would be open to  
5 providing some further data if there's something flawed  
6 about the data in their view.

7           JUDGE DIPPELL: And, Mr. Keevil, first of  
8 all, do you -- did you receive responses to all of the  
9 DRs that are listed in Paragraph B of your --

10           MR. KEEVIL: We -- we have received something  
11 in response to each of those. As to whether -- as to  
12 the adequacy of those responses, I cannot venture a  
13 guess here today because, as Mr. Lowery indicated, some  
14 of these were coming in as late as yesterday. You  
15 know, they all came in after the statement was filed on  
16 Monday, so we've had -- I don't know whether the  
17 responses are adequate or inadequate, but there has  
18 been something denominated in response on the ones  
19 in B. You know, I --

20           JUDGE DIPPELL: With regard to DR 167?

21           MR. KEEVIL: Well, yeah. One sixty-seven is  
22 one of those first five there -- whatever that was in  
23 the 3A, and the -- you know, I think the first thing  
24 you have to remember is that the standard that we're  
25 dealing with here does not set a high bar for discovery

1 and it's recalculated to lead to discovery of  
2 admissible evidence.

3           The -- we don't know from the information  
4 we've received from Ameren exactly where this property,  
5 dealing with 167 specifically, where it was booked  
6 or -- and then they say that -- the response we got was  
7 as of this date, it's booked in CWIP, which raises its  
8 own little set of questions as to what -- what date --  
9 where was it booked before, and were they planning to  
10 move it, you know, and so all these other things.

11           Like, I don't think we know when the property  
12 was acquired. I'm looking over here at my -- at my  
13 auditors, Mr. John Cassidy and Ms. Lisa Ferguson  
14 working directly on these, so I may turn to them for  
15 some explanation on the response.

16           John and Lisa, do you have --

17           MR. CASSIDY: Yeah. I mean, we learned about  
18 this recently because they acquired the Magnolia  
19 property, and then we learned in the news article that  
20 the property they acquired had a building that was  
21 historically preserved. And so it -- it seemed like  
22 there was something there. But in the article, it said  
23 that they eventually were going to gift the building  
24 back to the historical society. So we wanted to know,  
25 you know, the particulars of when they acquired it,



1 whether or not it was recorded CWIP initially, or if it  
2 was something that it was put in the plant service.  
3 We've experienced that problem with other acquisitions  
4 of land in the past with Ameren.

5 So, you know, what we're wanting is to get,  
6 how did you acquire it, when did you acquire it, and  
7 how did you originally report it. And the problem  
8 we've had with the response they've given us thus far  
9 indicates that, as of today, it's in CWIP, but it  
10 doesn't answer the questions we've asked within the  
11 body of ordinances themselves.

12 MR. LOWERY: If I -- if I can respond.

13 JUDGE DIPPELL: Go ahead.

14 MR. LOWERY: It doesn't matter at all where  
15 it might have been or when it was acquired or anything  
16 else. It's a reg base item, these are capital costs.  
17 If they're reporting CWIP today, if they weren't in our  
18 plant in-service that underlies our revenue requirement  
19 in this case, they have no effect on this case at all.  
20 And while I agree relevance is not a particularly high  
21 bar, if it has nothing to do with the revenue  
22 requirement, it's not relevant.

23 It -- relevance is not on the bottom, you  
24 know, it's not on the floor. It has to -- it has to  
25 have something to do with this case, and the issue in

1 this case is what rates the company should be charging,  
2 and that depends on the revenue requirement. And if  
3 it's not in the revenue requirement, it's not in the  
4 revenue requirement.

5 MR. KEEVIL: Well, they -- they keep saying  
6 that. It's kind of like, trust us, it's not in the  
7 revenue requirement.

8 MR. LOWERY: I already said that if there is  
9 some further --

10 JUDGE DIPPELL: Let him --

11 MR. KEEVIL: If you didn't -- I'll let you  
12 finish.

13 MR. LOWERY: I let him finish. I already  
14 said that if you --

15 JUDGE DIPPELL: Hang on. Let Mr. Keevil  
16 finish.

17 MR. KEEVIL: Yeah. They're saying,  
18 basically, you know, this one and some other ones we  
19 will come to here, trust us, it's not in there.  
20 Without showing us where it was originally booked, we  
21 don't even know when they first acquired this thing.  
22 It could be in the rates from the past rate case, for  
23 all we know, because like Mr. Cassidy said, we've had  
24 problems in the past with properties showing up in  
25 rates that shouldn't have been in there in the first

1 place.

2 So this thing could be in there from the  
3 previous rate case, for all we know. We don't know  
4 when they got it, where they booked it originally. All  
5 we know is that as of the date that they responded to  
6 the data request, it -- it was in CWIP.

7 We don't know how much they paid for it.  
8 That's another thing. I mean, they -- they tell us,  
9 we'll give you verification it's not in there. They  
10 show us maybe a removing entry, but if they don't show  
11 us where the entries were that put the thing in in the  
12 first place, you can't even -- you can't match up the  
13 amount that was removed with the amount that was put in  
14 there to begin with.

15 So, you know, it's like, here's the number,  
16 it's not in there, trust us, you know -- but, you know.  
17 And -- and I'm sorry, that's not the standard.

18 And this is clearly something they owned  
19 during the time period relevant to this case, and I  
20 think that's -- it meets the discovery standard that's  
21 calculated to lead to the -- reasonably calculated to  
22 lead to the discovery of admissible evidence, so --

23 JUDGE DIPPELL: And what were the responses  
24 that you had provided?

25 MR. LOWERY: I've got the accounting entries

1 as to where it sits on our books and records as of the  
2 date of this response. If -- and, again, you know,  
3 Ms. Ferguson said they hadn't had a chance to get back  
4 to us. I mean, that's fine. I -- everybody is busy.  
5 In the month that we provided this, I had no idea that  
6 they wanted additional accounting information to show,  
7 you know, here's -- here's where the original booking.  
8 If there's -- if there's -- there's a different  
9 accounting information that they want, I think we're  
10 probably open to providing that.

11 The DR asked for much more even than that in  
12 terms of just a lot of information about the property  
13 and so on and so forth, that if it's not in the revenue  
14 requirement, we can establish that, then it's  
15 completely irrelevant.

16 JUDGE DIPPELL: What is the relevance to the  
17 future looking period, if you have the information from  
18 the --

19 MR. KEEVIL: What future looking period are  
20 you referring to?

21 JUDGE DIPPELL: Oh, you know, I'm sorry. I'm  
22 looking at the wrong DR. That's the reason that  
23 doesn't exist.

24 MR. KEEVIL: Okay.

25 JUDGE DIPPELL: I thought I had it on the

1 Magnolia -- wait a minute. This is asking for 2022.

2 Okay. Okay.

3 Well, I can see again, as Mr. Keevil said,  
4 relevance is a -- is a pretty low bar, and I can see  
5 his arguments that without all of the accounting  
6 entries for the various periods, there is no way to  
7 verify where it was, if it's ever been in rate base, if  
8 it is currently going to be in rate base. I -- I think  
9 it meets the relevance requirement, and I don't see --  
10 and maybe there's more in here than just the dates and  
11 times and so forth.

12 That's for demolition costs. Costs incurred  
13 to repair the named homes and the structures. I'm  
14 assuming that would all be costs that would be included  
15 in CWIP if you were -- if that's where it was being  
16 booked.

17 MR. LOWERY: Yeah. And they -- and they are.  
18 They're -- they're shown here. I mean, I think the  
19 question, Your Honor, is, were there any costs  
20 associated with this property in our filed revenue  
21 requirement. And -- and I can understand that there  
22 may be some additional accounting entries that -- and I  
23 can certainly check on that and, if there are, that  
24 would establish that. And -- well, I think -- I think  
25 that's all that would be additional that might be

1 needed to verify anything in this case.

2 Some idea that, well, if we intend to move it  
3 before the case is over, I mean, you know, that's like  
4 saying if we intend to, you know, do something  
5 dishonest in the future. So --

6 JUDGE DIPPELL: Well, it may not be a matter  
7 of intent, but it can still happen, and if -- I mean,  
8 whether you have some --

9 MR. LOWERY: Well, we have the supplement,  
10 the data request response if we actually change the --  
11 the recordation of the asset entry when you said that  
12 it -- it's CWIP, so that's what we would do.

13 MS. FERGUSON: Can I -- I've got something  
14 additional for that?

15 JUDGE DIPPELL: Certainly.

16 MS. FERGUSON: Because that information is  
17 sitting in CWIP, most times, it comes out of CWIP and  
18 it goes into plant in-service. If this is a property  
19 that's truly -- that Ameren Missouri is planning on  
20 donating in the future, I don't understand why it's  
21 necessary to sit it in CWIP, and then there could be  
22 some potential misrecording before our true-up cutoff  
23 putting it in plant in-service and we may not even  
24 know.

25 MR. CASSIDY: Well, and the other part is, I

1 mean, we're asking for how they originally recorded it,  
2 and as Mr. Keevil pointed out, it could be in rates  
3 today. So just to say it's in CWIP isn't sufficient.  
4 It's not addressing the question; number one is, was  
5 it -- did you purchase it during the test year or  
6 true-up period in the last rate case? And if it was  
7 recorded in plant in-service, it's in rates, so we want  
8 to know how you originally recorded it.

9 MR. LOWERY: I would submit how it was --  
10 what happened -- and I have no idea the answer to this  
11 question. What happened in a prior rate case is  
12 irrelevant at this point.

13 JUDGE DIPPELL: Certainly not. I mean, what  
14 happened in the prior rate case is always going to be  
15 relevant to rates going forward. You have to know how  
16 rates were set. They start with -- to figure out how  
17 to go forward. It comes up all the time in issues,  
18 because rates -- and the rate-making process is so  
19 fluid. I mean, it -- it should be black and white, but  
20 it's certainly not.

21 So I -- I see the relevance in this. Your  
22 objection to relevance is overruled, and I'm going to  
23 direct you to go ahead and respond to this. If you  
24 have responded and that's not sufficient, which it  
25 sounds like that's the case here, but I don't know that

1 they've communicated that to you.

2 MR. LOWERY: No. We have -- we have not.  
3 Yeah. We have not -- we have not provided all the  
4 information they're asking for, so we'll -- we'll do  
5 that.

6 JUDGE DIPPELL: Okay. Okay. Let's move on  
7 to the next one. What's the next one on there?

8 MR. KEEVIL: We started at 167. We  
9 skipped 12 and 17.

10 MR. LOWERY: Well, I was just going -- I  
11 was -- so can I just continue?

12 JUDGE DIPPELL: Yeah, if you'd go ahead.

13 MR. LOWERY: So on -- on 17, I'm not exactly  
14 sure what the issue is.

15 MR. KEEVIL: Okay.

16 MR. LOWERY: And at that --

17 MR. KEEVIL: I'd like to answer that easily.

18 MR. LOWERY: Okay.

19 MR. KEEVIL: And that may expedite this one.  
20 I think we got what we were asking for all but two  
21 people.

22 MR. LOWERY: Okay.

23 MR. KEEVIL: And on those two, it's Porter  
24 Baxter and Marty Lyons -- or Martin Lyons, and the  
25 problem is that, well, I got, like -- instead of



1 getting the 12 months ending December 31, we only got,  
2 like, four or five months, six months, something like  
3 that.

4 MS. FERGUSON: Yeah. Mr. Baxter, we received  
5 through July '18.

6 MR. LOWERY: July of '18?

7 MS. FERGUSON: Yes.

8 MR. LOWERY: Okay.

9 MS. FERGUSON: And then Mr. Lyons, we  
10 received through September.

11 MR. KEEVIL: Of '18?

12 MS. FERGUSON: Yes. Of '18. I'm sorry.

13 MR. LOWERY: And you're talking about --  
14 Lisa, you're talking about the calendars?

15 MS. FERGUSON: Yes. Uh-huh.

16 MR. LOWERY: Okay. I don't know why that is,  
17 so --

18 MS. FERGUSON: And I didn't even know about  
19 it until earlier this week when one of our junior  
20 auditors brought it up to me.

21 MR. LOWERY: We'll get them the rest of the  
22 calendars. I don't -- I don't --

23 MR. KEEVIL: That one is easy.

24 MR. LOWERY: I don't -- yeah. I didn't know  
25 and, you know, I know you just got those not long ago,

1 so I don't -- I don't blame you on that. So we'll get  
2 you -- we'll get them the rest of the calendars and  
3 we'll supplement the response.

4 JUDGE DIPPELL: Okay.

5 MR. LOWERY: 168 and one 169. These deal --  
6 and this is the one, Judge, off the record, I was  
7 talking to Mr. Keevil about. He did ask for  
8 verification and the accounting that would show that --  
9 and this isn't rate based or anything, these would  
10 be O & M expenses -- that would show there's no dues or  
11 other expenses related to this utility. They are a  
12 regulatory group, UR, I think it goes by.

13 In the revenue requirement, you asked for  
14 that on August 1, and I think I just dropped the ball  
15 and I didn't -- I didn't get that information for him,  
16 because I was -- my wife and I were on the way out of  
17 town for a vacation. So that's fair and -- and I think  
18 we owe the Staff that, and certainly willing to provide  
19 a response that would provide that accounting.

20 The other issue is, back in the summer or  
21 spring, I don't know the exact date, some of the House  
22 led -- Democratic-led House committees, I think the  
23 Energy Environment Committee or something, there was  
24 some press reports. I think it involved AP, not really  
25 Ameren so much, but about this group. And it's a group

1 that does research and -- and makes filings of EPA, et  
2 cetera, about federal air regulations. And a lot of --  
3 a number of fairly cold, heavy utilities were members  
4 of it. And they requested information of several  
5 utilities at the time, and -- and either Ameren  
6 Corporation or Ameren Services did provide some  
7 information to the House committee.

8 And Staff is asking for us to provide that,  
9 and I don't recall whether they're asking for more  
10 things, but exactly, but -- and the ostensible reason  
11 that I was given when we objected was, well -- and I  
12 think I've got the letter here.

13 "We believe that the Missouri Public Service  
14 Commission may have questions concerning this matter  
15 concerning -- given the recent media coverage." Well,  
16 again, it doesn't have anything to do with this rate  
17 base. If the chairman were to ask us for this  
18 information, I -- we obviously would take that under  
19 due advisement. And I have a feeling I know how the  
20 company would respond, but if it's not in the revenue  
21 requirement -- this group has actually been disbanded  
22 and Ameren is not a member of it any longer. If  
23 there's no cost in the revenue requirement, and we can  
24 demonstrate that, you know, asking us, you know, for  
25 correspondence or whatever because the Commission might

1 separately have some curiosity about it, doesn't have  
2 anything to do with this rate case.

3 JUDGE DIPPELL: Mr. Keevil?

4 MR. KEEVIL: Well, like I told you, we'd  
5 get -- I told you we'd get to that, trust us, it's not  
6 in their defense again, so there -- there it is.

7 The thing about this group is that there's no  
8 question that Ameren was a member of the group during  
9 the test year. They were paid -- or they paid dues  
10 for, I'm not sure how many years prior to the test  
11 year, but I know they were a member previously to the  
12 test year.

13 And the -- the letter that Mr. Lowery was  
14 referring to -- I've got a copy for you, Judge. You  
15 can take a look at it if you want to -- was from the  
16 House of Representatives Committee on Energy and  
17 Commerce, Congress of the United States. And some of  
18 the questions that it asks here is -- well, the first  
19 three, actually, "To assist the Committee's  
20 investigation, we request you answer the following:  
21 (1) What is the source of the funds your company  
22 contributes to UARG? Are these rate-payer or  
23 shareholder money? (2) If you have used rate-payer  
24 funds, has the Public Utility Commission in each state  
25 in which you operate specifically approved the use of

1 such funds for this purpose? (3) Please explain how  
2 your substantial annual contributions to UARG are  
3 consistent with your obligations to rate payer."

4 Then they go on and ask for some additional  
5 documentation, budgets, funding, blah, blah, and  
6 then -- but, I mean, I think that this -- this is the  
7 sort of thing that is directly relevant to a rate case,  
8 the source of funds contributed, are the rate-payers  
9 being asked to pay them. If so, how do they -- how do  
10 they benefit the rate-payer. I mean, that's clearly  
11 relevant to a rate case.

12 Now, Ameren again comes back and says, well,  
13 you know, we -- we quit paying the dues, therefore, you  
14 know, no harm, no foul. Well, you know, we need to see  
15 what they paid, when they paid it, and whether  
16 everything has been removed.

17 And, you know, I -- I truly believe that this  
18 is one of those areas. You know, we run into this  
19 frequently when a company files a rate case, and not  
20 just Ameren, any -- any big company. The company comes  
21 in and they tell you, well, we -- we didn't put that in  
22 that direct case, so, therefore, it's not an issue.  
23 Well, sorry. This is a rate -- it's a general rate  
24 case, the largest energy company regulated by the --  
25 the Missouri Commission.

1           There are issues that pop up during audits  
2 that the company does -- sometimes the company doesn't  
3 want to raise them for good reason. Sometimes the  
4 Staff raises issues. Sometimes Public Counsel raises  
5 issues, intervenant. You know, the company cannot  
6 control exactly what issues are brought to the  
7 Commission. And this -- this -- having information of  
8 this type is exactly the sort of thing that -- that  
9 Staff needs access to during an audit.

10           And let me point out, like Mr. Lowery said,  
11 they gave this information to Congress, so therefore, I  
12 assume this is public information anyway, that perhaps  
13 we should send a Freedom of Information Request to  
14 Congress and ask -- I don't know. It seems like a -- a  
15 needless -- a needlessly difficult way to get the  
16 information.

17           But if this is public information anyway,  
18 there's no reason for them to try to hide it from us,  
19 and it's clearly relevant to the rate case, as well as  
20 to possible issues that, like I said, may come up as a  
21 result of reading the documentation. Because, like  
22 Mr. Lowery said, what this group was was primarily a --  
23 according to the House Committee -- let me say it that  
24 way -- the --

25           MR. LOWERY: I appreciate that.

1           MR. KEEVIL: It was, like, a group to  
2 possibly influence EPA -- air regulations, air quality  
3 regulations, and it was funded primarily by companies  
4 with a large amount of fossil fuel power generation,  
5 who had, you know, an interest in seeing reduced  
6 regulations, shall we say, of air emission standards.  
7 Like I said, if you want to see a copy -- that's the  
8 letter.

9           JUDGE DIPPELL: I trust what you read to me.

10          MR. LOWERY: Very briefly. I won't belabor  
11 the point.

12          JUDGE DIPPELL: Yeah.

13          MR. LOWERY: But -- but all of the arguments  
14 that Mr. Keevil has made are -- they're not consistent  
15 with the -- with what he indicated to me when he wrote  
16 me the letter on August 1 and said -- he said, we need  
17 verification it's not in the revenue requirements, such  
18 as journal entries and dates, FERC accounts, and  
19 amounts for where it was recorded and which we are  
20 willing to give. And that's my fault that we haven't  
21 done it to this point.

22                 And then the remainder was, well, the  
23 Commission might have questions about this. And if  
24 it's not -- if --

25          MR. KEEVIL: Well, I still think that's true.

1 MR. LOWERY: Well, I think that is -- might  
2 be true, and it might be your opinion, but that has,  
3 again, nothing to do with setting rates in this case --  
4 that curiosity.

5 JUDGE DIPPELL: Yes and no. A lot of --  
6 there -- there's the black and white, as I said, in  
7 rate setting, and then there's the policy side in rate  
8 setting. And so Commission interest in the same topics  
9 that Congress is interested in might affect either --  
10 either of those things. In any event, I -- I'm -- I  
11 don't know what the hesitation is really to provide  
12 responses that Ameren has provided to Congress to --

13 MR. LOWERY: I -- I mean, I think the  
14 hesitation is, a rate case -- well, I agree a rate case  
15 puts a lot of things at issue. A rate case does not  
16 give the Staff license through discovery to peer into  
17 every detail of the company's business if it isn't  
18 affecting the revenue requirement, and that's what this  
19 request, and I would submit some of the others,  
20 reflect.

21 And, you know, I think we've had -- I think  
22 we've had -- and we're up to 320 DRs now. I think  
23 we've had partial objections to 14 and totaled only 30  
24 in this entire case. And, you know, I think they have  
25 a principle about this; we want it, so give it to us.



1 And I think we have a little bit of a principle to say,  
2 look, it's not relevant. Relevance has to mean  
3 something. Everything can't be relevant. And I -- I  
4 still do not see the relevance of that.

5 So, you know, I think there may be some  
6 principle involved on both sides of this particular  
7 objection.

8 JUDGE DIPPELL: Well, and -- and I will agree  
9 that perhaps Mr. Keevil's candid answer in his letter  
10 about, you know, his particular, you know, interest in  
11 receiving these answers, perhaps he should have stated  
12 more directly, the questions in the letter are directly  
13 related to rate issues. I mean --

14 MR. KEEVIL: Well, they had to know that,  
15 Judge. They had it before we had it.

16 MR. LOWERY: They're not -- they're not  
17 related if it's -- if there's no cost in this rate  
18 case. It doesn't really matter.

19 JUDGE DIPPELL: If your answers to the House  
20 of Representatives was that, then we may get it and see  
21 the entries and say, well, this wasn't involved. If it  
22 turns out your answers to the House were something  
23 different than your answers in your accounting, then  
24 that's an issue that might be relevant in the rate  
25 case.

1 MR. LOWERY: Well, I believe all of this  
2 predated the filing of the rate case, and so it doesn't  
3 really matter what the -- you know, and I -- I  
4 understand, but -- but -- but it isn't an either/or  
5 proposition.

6 JUDGE DIPPELL: I think that, again, it could  
7 reasonably lead to discoverable evidence if there's --

8 MR. LOWERY: Well, I understand.

9 JUDGE DIPPELL: -- something discovered that  
10 is not on the up and up.

11 MR. KEEVIL: Judge, it's kind of related to  
12 that. I mean, it -- I was -- I didn't want to read the  
13 whole letter and I'm still not going to, but to give  
14 you one paragraph from the letter from Congress here,  
15 it says, "UARG has avoided any transparency with  
16 details of it's funding and internal organization only  
17 recently revealed. Your company" -- that's Ameren --  
18 "contributed \$265,865 in 2017 to fund UARG's  
19 activities, with a higher contribution projected  
20 for 2018," which is, as you will recall, is the test  
21 year. "This amount appears to be directly proportional  
22 to your company's amount of fossil fuel powered  
23 electric generation."

24 See, so that -- I mean, just things of that  
25 nature are relevant to a rate case. I'm sorry.

1 Mr. Lowery and Ameren prefer them not be, and I  
2 understand that, but they are. So, you know, that's  
3 what an audit is.

4 JUDGE DIPPELL: I -- I agree then with Staff  
5 on this one, as well. So, Mr. Lowery, you can provide,  
6 along with the -- the information that you have  
7 previously prepared, can answer the rest of that.

8 MR. LOWERY: I understand, Your Honor. And  
9 that brings us to the last one, and that's DR No. 12.  
10 DR No. 12 is asking -- I apologize. I think it's  
11 attached to your motion -- or not your motion, but  
12 your --

13 MR. KEEVIL: Yeah, it was.

14 MR. LOWERY: -- your discovery notice.  
15 DR No. 12 is asking a -- a lot of information about all  
16 benefits, all costs, all expected this and that for a  
17 period in 2020 through 2023 relating to possible or  
18 expected continuous improvement-type activities that we  
19 might engage in.

20 And we don't -- the company would be  
21 perfectly open to starting to look forward at what  
22 costs and revenues are going to be in the future, if we  
23 were wanting to do that in terms of setting rates. But  
24 I don't think that Staff is going to be open to using a  
25 forward test year in this case or probably in any other

1 case. And that being the case, what costs and revenue  
2 changes might occur in 2020, '21, '22, '23, again, have  
3 nothing whatsoever to do with this case.

4 JUDGE DIPPELL: And Mr. Keevil, what's your  
5 response to that?

6 MR. KEEVIL: Okay. A couple of things,  
7 Judge. The -- first of all, I think you're aware of  
8 this as much as anyone. We frequently see companies  
9 come in here and ask, we say, well, you know, we -- we  
10 anticipate that our costs are going to be increasing  
11 shortly after the end of this case and -- and we want a  
12 tracker mechanism or something to keep track of these  
13 projected increased costs.

14 Well, this is kind of the flip side of that.  
15 We -- we want to know if there -- if there are costs,  
16 continuous improvement initiatives which are designed  
17 to -- or expected, I should say, to decrease costs,  
18 we -- we at least want to know that so we could  
19 propose, if we would deem necessary, some sort of  
20 tracker mechanism to keep track of -- going forward.  
21 Now, I'm not saying we will, I'm not saying we won't;  
22 but we need to know that sort of thing.

23 You'll remember here recently there was a big  
24 issue with Public Counsel, MACG upon bringing a  
25 complaint to the Commission about the Sibley shutdown

1 shortly after a GMO rate case. And, I mean, we just  
2 need to know -- this is the sort of thing we need to  
3 know even if nothing eventually comes from it in the --  
4 in the testimony.

5           The other thing that -- and this is even more  
6 directly related, I think, is since these are  
7 continuous improvement -- new continuous improvement  
8 initiatives that are expected by the company to have  
9 cost savings in the future, it could impact Staff's  
10 normalizations of -- depending on what the continuous  
11 improvement initiatives are, you know, Staff normalizes  
12 a lot of expense items through -- in any rate case, not  
13 just Ameren's and not just this one.

14           And we need to know, since there wouldn't be  
15 any past history to base that normalization on since  
16 these are new, we need -- would need to know expected  
17 cost savings in the near future to formulate any sort  
18 of normalization that might or might not be called for.

19           And again, finally, I'd just go back to  
20 the -- the standard is so low. I mean, it's a  
21 reasonably calculated standard to lead to the discovery  
22 of admissible evidence. It's not like we have be able  
23 to point to this, you know, particular cost. You say,  
24 well, that one there is something that's going beyond  
25 the test year, and that one is going to what, you know.

1 I think for normalization purposes and for potential  
2 tracking purposes, that it's -- it meets the standard  
3 of relevance.

4 MR. LOWERY: Your Honor, may I address a  
5 couple of those points?

6 JUDGE DIPPELL: Yes.

7 MR. LOWERY: The idea that Staff is going  
8 to -- so if we're going to start looking forward to  
9 normalized expenses, then the company ought to be able  
10 to look forward to normalized cost increases or revenue  
11 decreases. And that's something that -- I've been  
12 practicing here for 20 years, I've never once seen  
13 Staff ever take the position that -- that a utility  
14 could ever look forward to cost increases or revenue  
15 decreases, and use that to normalize expenses of the  
16 past.

17 The idea that Staff is going to propose a  
18 tracker; for example, Staff is on record in a couple of  
19 cases in the last couple of years, Laclede and Missouri  
20 American Water, they proposed exactly that for property  
21 taxes, for example -- future property taxes. Staff  
22 said that it's completely inappropriate, it's not  
23 extraordinary, et cetera, et cetera. And that would  
24 certainly apply to day-to-day effort for the company to  
25 improve its processes, cut it's own, so on and so

1     forth.

2             This also asks for this information on a  
3     separate basis by month, by FERC account for a three-  
4     or four-year period. And, you know, relevance also,  
5     when a -- when a judge or an administrative law judge  
6     in this case is making a decision about relevance, you  
7     also have to take into account the relative burden, the  
8     relative benefit, and so on. It's not just logic and  
9     relevance. You can -- you can almost make some case  
10    for logical relevance of every piece of paper at Ameren  
11    or every cost or expense in a rate case, as Mr. Keevil  
12    has done this morning. That doesn't make it relevant  
13    from a legal perspective in a rate case.

14            I -- I am not all that surprised by your  
15    rulings on the other ones, but this one is not even  
16    in -- in my opinion, it's not even really close,  
17    given -- given how the Commission sets rates.

18            JUDGE DIPPELL: Mr. Keevil, this does seem  
19    very broad and very detailed. I mean, it -- it does  
20    say, describe in detail all the benefits and  
21    improvements that are expected and quantify all cost  
22    savings or additional costs.

23            MR. KEEVIL: Yeah. Let me -- let me address  
24    that, if I could, Judge. The -- I don't know if  
25    there's some confusion perhaps between Staff and Ameren

1 on this one. The -- what we're looking for here is  
2 not -- how do I say that? What we're looking for here  
3 is actually -- like, when they implement a new  
4 continuous improvement initiative, they have to have  
5 some idea of how much that's going to save, otherwise,  
6 they wouldn't do it. I mean, there's a cost-benefit  
7 analysis involved there, you know, where, you know, if  
8 it saves this much, and -- it costs this much and saves  
9 this much, then, you know, it's worth doing and  
10 otherwise it's not looked at.

11 So that's the sort of thing we're looking  
12 for. It may not be in the detail that -- that is set  
13 forth here. I mean, that's a fairly standard audit  
14 question, like, FERC account, monthly, all that good  
15 stuff. But what -- what we want to know here is, for  
16 the continuous improvement projects that they have  
17 and -- or expect to initiate by the end of the --  
18 either have or will by the end of the true-up period,  
19 the expected cost savings.

20 And some of that detail may be able to -- I  
21 mean, they may not even have it in that great of  
22 detail, frankly. I mean -- but like I said, there has  
23 to have been an analysis; otherwise they wouldn't do  
24 it. That's what we -- show us the analysis, what do  
25 you expect to save from this program.



1           And like I said, we're -- we're not looking  
2 for things that aren't going to be implemented until  
3 December of 2022. We're looking -- looking for things  
4 that have been implemented or will by the end of the  
5 test year, but that will extend out, and assuming that  
6 they've projected the savings out through December  
7 of '22. You know, that's -- that's what we're looking  
8 for.

9           MR. LOWERY: Judge, with all due respect,  
10 that's not what the question says. It's asking about  
11 continuous improvement initiatives that would start on  
12 or after January 1 of 2020, and all of them for the  
13 next three years. That's what the -- that's what the  
14 question asks for.

15           JUDGE DIPPELL: And let me just get  
16 clarification, because I don't do this stuff every day,  
17 even though it's --

18           MR. KEEVIL: You have this week, I think,  
19 haven't you?

20           JUDGE DIPPELL: I have this week. Continuous  
21 improvement initiative, is that a term of art?

22           MR. KEEVIL: I'm going to turn to my auditors  
23 over here.

24           MR. CASSIDY: Well, I mean, Ameren is engaged  
25 in a program of trying to hold -- to reduce O & M

1 costs, you know, over time, and that's kind of an  
2 ongoing program. So it's -- it is like a program of  
3 various different things; ways that they can do things  
4 better and -- and reduce costs.

5 JUDGE DIPPELL: So when he proposes  
6 continuous improvement initiatives to Ameren, Ameren  
7 understands what they're referring to in that regard?

8 MR. LOWERY: We -- we -- I think if we were  
9 answering a data request, could draw the lines in our  
10 head and come up with an answer.

11 JUDGE DIPPELL: Okay. So --

12 MR. LOWERY: I do think that's true, but --

13 JUDGE DIPPELL: So we're not talking about  
14 vagueness.

15 MR. LOWERY: I didn't object based on  
16 vagueness.

17 JUDGE DIPPELL: And as you said, we're going  
18 to start buying pencils at Walmart because it's cheaper  
19 than Staples. I mean, that's --

20 MS. FERGUSON: Well, I mean -- and if I could  
21 add to that. In the Ameren Missouri gas case that we  
22 just concluded, we had discussions about cost savings  
23 initiatives. And when -- when Mr. Keevil talks about  
24 tracking, what we're talking about tracking doesn't  
25 mean necessarily a deferral, as tracking is usually,

1 you know, called.

2           What we were talking about is, is the company  
3 keeping track of what cost savings, when they're  
4 starting, when they're stopping, what they're doing,  
5 how much they're saving, because then we know that when  
6 we get to a rate case, whenever they've started that  
7 cost saving initiative in relation to the test year, we  
8 might be able to reflect that in rates when we're --  
9 when we're setting the rates. Not necessarily  
10 deferring it like an AAO and then amortizing it down  
11 over a period of years.

12           And as a matter of fact, the company agreed  
13 to such a thing as part of the stipulation and  
14 agreement in the Ameren Missouri gas case.

15           MR. LOWERY: A couple of things I need to  
16 address there. (A) What we agreed to in a stipulation  
17 agreement, by the terms of that stipulation, shouldn't  
18 have anything to do with this case, and it shouldn't be  
19 cited by the Staff as precedent for your data request  
20 in this case.

21           Secondly, Ms. Ferguson basically admitted  
22 exactly what I just said they're wanting to do, and  
23 that is, let's look forward and grab some isolated cost  
24 savings, but we'll ignore cost increases or revenue  
25 decreases that might raise the revenue requirement.

1 That's improper unless we're going to have a forward  
2 test year.

3 MR. KEEVIL: That's not what she said.  
4 That's not what she said.

5 MS. FERGUSON: That is not what I said.

6 MR. KEEVIL: She's talking about future  
7 rate -- if you don't start tracking these things,  
8 that -- keeping track, maybe -- maybe tracking --  
9 calling it tracking is what's confusing people. If you  
10 don't start keeping track of these costs when they  
11 initiate, then when you get to the next rate case,  
12 you -- you -- you won't have any evidence of -- of the  
13 benefits of the cost improvements, so this could work  
14 in Ameren's favor.

15 MR. LOWERY: Then a data -- a data request  
16 asking what we expect here in August or September has  
17 nothing to do with -- if they -- if they are going to  
18 propose in a rate case, Commission, you ought to order  
19 Ameren to keep track of this stuff in the future. They  
20 could propose that. They don't need data today about  
21 what we expect or don't expect in order to make that  
22 proposal, and no such order has been issued by the  
23 Commission.

24 So again, there's no relevance to this  
25 whatsoever to the revenue requirement in this case.

1 MR. CASSIDY: Oftentimes, Staff asks for  
2 budgeted information for, like, fuel costs and when  
3 Ameren was running a transmission tracker a few years  
4 back, they were to provide future transmission costs to  
5 Staff. So, I mean, we're just asking for your  
6 anticipation of future savings for programs that you're  
7 continuously evaluating for -- for different things.

8 JUDGE DIPPELL: I think that this data  
9 request, to me, seems, on its face, overly broad  
10 about -- it doesn't sound like what you really want is  
11 what is asked for in this data request. I can see your  
12 arguments about wanting to know about cost savings, so  
13 that you're not in a position like was referred to with  
14 the closure of a plant immediately after the rate case,  
15 and sort of taken by surprise. But this -- this  
16 request is very, very detailed, and it does say, all  
17 anticipated continuous improvement initiatives. It --  
18 it's just very broad. It's very detailed. It is very  
19 burdensome.

20 MR. LOWERY: And we did object on those  
21 bases, by the way, as well, Your Honor.

22 JUDGE DIPPELL: I just -- so my suggestion is  
23 a different data request.

24 MR. KEEVIL: Okay.

25 MR. LOWERY: Do I take that, you're -- you're

1 sustaining our objection to this one?

2 JUDGE DIPPELL: I will sustain your objection  
3 to this particular data request, the way it is worded.  
4 I can see a less detail oriented -- I mean, a less  
5 burdensome -- I guess overbroad is not really --  
6 because it's very specific. It's not -- it's not --  
7 it's not vague, like you say, at all. It's very  
8 specific, but it -- it seems to cover more topic than  
9 it needs to.

10 MR. KEEVIL: Let me ask you this, Judge. And  
11 in terms of drafting a -- a supplemental or other DR.  
12 What I'm hearing -- and that's why I wanted to clarify  
13 this or confirm. Your problem is not with the time  
14 period, it's with the detailed request in the front of  
15 that packet?

16 JUDGE DIPPELL: In part. I -- I heard the  
17 auditor say that -- well, they didn't really need -- or  
18 maybe you said it. Somebody said you don't really need  
19 things that start in -- on December 1st in 2022, but  
20 that's not what the question says. So --

21 MR. KEEVIL: Okay. Right. I mean, and if we  
22 could get -- with all due respect to Mr. Lowery --

23 JUDGE DIPPELL: Yeah.

24 MR. KEEVIL: -- I can see if -- I provided  
25 him the data request that said give me the -- give me

1 your anticipated expense -- or not expense, excuse  
2 me -- cost savings from the continuous improvement  
3 initiatives through 2022, he's going to come back  
4 and -- and say basically similar what he said  
5 previously, that's not in the test period, but it  
6 doesn't matter.

7 But from what I heard you -- or I thought I  
8 heard you say was, that would be okay in your mind if  
9 it was less detailed and less burdensome to put  
10 together, you know, if they have a budget for a  
11 specific continuous improvement project that runs out  
12 through 2022, we could go ahead and ask -- we could go  
13 ahead and ask for that?

14 JUDGE DIPPELL: I certainly understand what  
15 Mr. Lowery is saying about how that's -- that's in the  
16 future, it's not going to be in the test year. But I  
17 also do see Staff's arguments how that might be  
18 relevant. So, yes. But if you're going to ask him to  
19 tell you about something that they anticipate happening  
20 in December of 2022, I don't see how that is relevant.

21 MR. KEEVIL: Well, if they -- if they started  
22 it. We're talking about cost savings -- anticipated  
23 cost savings in 2022.

24 JUDGE DIPPELL: Right. Right.

25 MR. KEEVIL: Based on what's --

1 JUDGE DIPPELL: Right. If -- if they -- I  
2 can see how if it's starting in the near future, but if  
3 it's --

4 MR. KEEVIL: Right. Okay.

5 JUDGE DIPPELL: If it's not going to start  
6 till December of 2022, I don't see how that's relevant.

7 MR. KEEVIL: Right. Okay. Okay.

8 MR. LOWERY: We'll cross the -- we'll cross  
9 the bridge in another data request when we get it.

10 JUDGE DIPPELL: I was going to say, you can  
11 bring it back to me next month.

12 MR. LOWERY: I'm -- I'm not --

13 JUDGE DIPPELL: Or sooner if you need  
14 answers. I mean, I -- I don't know that the procedural  
15 order said this, but I will say it to all of you here  
16 again. Sometimes you need answers faster than the next  
17 discovery conference. And my biggest pet peeve is  
18 getting into the hearing room and listening to the  
19 whining about the discovery. So I --

20 MR. KEEVIL: Is that your biggest pet peeve?

21 JUDGE DIPPELL: Right now, my hearing was  
22 from yesterday.

23 MR. KEEVIL: I'm making a mental note, by the  
24 way.

25 MR. WILLIAMS: Judge, are you saying if you



1 have a dispute, you want to address it sooner, to  
2 notice it up?

3 MR. KEEVIL: Sooner rather than later.

4 JUDGE DIPPELL: If you need an answer sooner  
5 than the discovery conference, then I want you to bring  
6 it to me sooner than the discovery conference.

7 MR. WILLIAMS: Through the rule process or --

8 JUDGE DIPPELL: Yes. Just, you know, we'll  
9 have the telephone conference and --

10 MR. KEEVIL: Actually, I think -- didn't -- I  
11 think you waived that, or --

12 JUDGE DIPPELL: I did waive it, but I'm --  
13 that's what I'm saying, though. You --

14 MR. WILLIAMS: I'm just asking what you're  
15 telling us to do if we're not bringing it up in a  
16 discovery conference.

17 JUDGE DIPPELL: Well, file something, bring  
18 it to me, but call me, whatever, but let's get it  
19 worked out before -- I don't want to get to the hearing  
20 stage and hear about the discovery issues. I would  
21 rather address them -- so I'm just saying, if you can't  
22 wait till a discovery conference to bring something in,  
23 then -- then don't. Don't feel like you have to wait.

24 MR. LOWERY: Just to the point of  
25 clarification, just so I'm a little bit with

1 Mr. Williams, so I understand what you're saying.

2 JUDGE DIPPELL: Yeah.

3 MR. LOWERY: If there -- if there is  
4 something in between the discovery conferences and, I  
5 mean, I would -- I would hope that I would call them or  
6 they would call me before we start exchanging motions  
7 to compel.

8 JUDGE DIPPELL: Yeah. Right.

9 MR. LOWERY: Although I think that has been  
10 waived in the order, so we don't literally have to.  
11 But assuming that happens, they need to file a motion  
12 or we would need to file a motion, right, in between  
13 the discovery conferences, to tee something up for you?

14 JUDGE DIPPELL: I mean -- well, and I don't  
15 have to -- I don't want to contradict whatever I put in  
16 the order, because I don't have that provision right in  
17 front of me, because not every party is here, so I want  
18 everybody -- I'm just saying let's -- yes. Either file  
19 something or go through the rule procedure; even though  
20 it's been waived doesn't mean you can't do it.

21 MR. LOWERY: I understand. We certainly --  
22 we certainly can have a conference if we -- and you  
23 would be willing to have such a conference?

24 JUDGE DIPPELL: Right.

25 MR. LOWERY: I understand that. But -- but

1 either, you know, let's say Mr. Keevil decides he  
2 doesn't want to do that or -- or me, if it's on -- if  
3 it's on my side, if we didn't do that, in order to tee  
4 something up between these discovery conferences, we  
5 have to file something?

6 MR. WILLIAMS: Judge, may I make a  
7 suggestion?

8 JUDGE DIPPELL: Yes.

9 MR. WILLIAMS: You have a procedural schedule  
10 out there that deals with discovery conflicts. If  
11 you're wanting some process or doing things between,  
12 perhaps you might want to issue an order that says you  
13 can possibly avail yourself to the rule process.

14 JUDGE DIPPELL: I will -- I will do that.  
15 That will clarify it in the matter, I'd say. I just  
16 don't want you all to have to wait a month to get your  
17 disputes settled and then it gets time for testimony  
18 and then you're --

19 MR. KEEVIL: And I know Mr. Lowery,  
20 Mr. Williams, and I are known for your shyness and  
21 reticence in terms of -- I did have one other thing,  
22 Judge, before we -- before we move on, if I could --

23 JUDGE DIPPELL: Okay.

24 MR. KEEVIL: -- bring it up. The -- I stuck  
25 this in the notice or whatever I called this filing on

1 Monday, at the every end of the 3B.

2 MR. LOWERY: I was going to address it, too.  
3 Go ahead.

4 MR. KEEVIL: Yeah. The -- the -- what  
5 spurred that was our auditors received an e-mail from  
6 Mr. Byrne of Ameren, indicating that, basically, he  
7 wanted to limit the informal meetings to, I think it  
8 was eight, during the course of your preparation in  
9 this case. And I don't know if it -- how much the  
10 judges know about the processing of these cases, but  
11 the informal meetings between the auditors and the --  
12 and the company, not just -- not just Ameren, but the  
13 auditors and the companies being in the subject of the  
14 rate case, it is common practice during the discovery  
15 portion or primarily during the preparation of stats  
16 for a direct case.

17 The -- the thing that surprised us the most  
18 was in this e-mail from Mr. Bryne to the auditors, he  
19 indicated that there was apparently a desire on the  
20 part of Staff to have many, many, many more of these  
21 than had been done in past cases. And the auditors  
22 went back and checked the last electric rate -- Ameren  
23 electric rate cases, and there were over 30 of these  
24 informal meetings held in that case. And so far, we  
25 have requested less than 20, I think, in this case.

1 The -- so in terms of there being -- having -- being a  
2 lot more in this case than there have been in previous  
3 cases, that's, you know, where that came from.

4 And the reason for -- the need for these  
5 informal meetings is, if you don't have these, what  
6 that's going to lead to is a lot more -- and the  
7 companies again, not just Ameren, but all companies --  
8 always complain about the number of data requests in a  
9 rate case. Well, if we don't have these informal  
10 meetings, if you think the data requests are bad now,  
11 wait till you see what happens then. Not only will  
12 there be more, but they will be far more detailed and  
13 specific than -- than they are now.

14 And that, in turn, I am sure, will lead to  
15 more of these discovery conferences, and calling  
16 everybody down here to Jeff City, taking up your time,  
17 Ameren's time, Staff's time, that could easily have  
18 been avoided had these informal meetings taken place.  
19 Because what they -- that's an opportunity for our  
20 auditors to meet with their -- I wouldn't say auditors,  
21 but their financial or the accounting type people to  
22 get explanations for how certain things were booked,  
23 how certain costs and expenses are treated, revenues  
24 also are treated. And it's just a far more efficient  
25 process to iron -- iron these little things out.

1           Now, you obviously, if there's something  
2 really big comes up, you're going to have to follow it  
3 up with a written motion -- or not a motion -- a  
4 written discovery of some type. But, I mean, in terms  
5 of just answering questions, you know, why did you do  
6 this, how did you do this, it's just a lot more  
7 efficient and simple and avoids further data requests  
8 that -- and like I said, it's been done for years. If  
9 there's -- there's not more in this case than there has  
10 been in any other case, and it -- it avoids, frankly,  
11 even more data requests than the company has already  
12 seen.

13           MR. LOWERY: So, Your Honor, let me give you  
14 my perspective on this, and a little bit of background.  
15 Mr. Keevil is correct that for years, and I've been  
16 involved in rate cases going on for about 15 years.  
17 The company has accommodated the Staff and had quite a  
18 number of meetings with them in every one of the rate  
19 cases with various employees, subject matter experts,  
20 and so on. Sometimes that's to educate Staff on a new  
21 topic. Maybe there's been some new program or whatever  
22 and we're going to do that, or sometimes to answer --  
23 follow up on data request responses, whatever it might  
24 be.

25           In addition, the Staff auditors who are

1 housed, I think, just down the hall from our regulatory  
2 accounting staff, on a pretty regular basis, pop their  
3 heads into the regulatory accountant's office with a  
4 question, and I think there's a normal, natural  
5 exchange that goes on with those questions addressed.

6 I can't speak to the claim, and I'm not  
7 saying it's false or it's true, that there were 30-some  
8 meetings last time or however many meetings there have  
9 been in the past. That's not what my client is telling  
10 me. And the same people that have been involved in  
11 those cases are involved in this case.

12 So I can't speak to the claim. I didn't  
13 really know that we were going to have -- sort of have  
14 testimony from non-lawyers in this conference today, so  
15 I -- and I don't think it's fair for them to sort of  
16 weigh in on this when my folks aren't here, because  
17 typically lawyers are appearing at these things and  
18 making -- you know, they're not -- we're not here for  
19 testimony.

20 But at -- but at the end of the day, we're in  
21 a contested case. There are discovery rights and rules  
22 about that, the Rules of Civil Procedure, supplemented  
23 by the Commission's rules, supplemented if there's gaps  
24 to be filled by Chapter 536. And I think the law is  
25 very clear that there is no right on any party in any

1 case to insist on an interview or a meeting with  
2 another party.

3 That's not to say we're not willing to have  
4 meetings. What we said was, we'll agree to eight, any  
5 topic you want. We'll, on a case-by-case basis,  
6 consider more. There is 18 on the list they've sent us  
7 so far, and that doesn't even include the topics that  
8 the two lead auditors on the case, Mr. Cassidy and  
9 Ms. Ferguson, would have. This is just for other  
10 auditors that they have staffed on this case.

11 I'm not saying we're only going to have eight  
12 necessarily, but we don't have to have any. And  
13 consequences in terms of more DRs, we -- if that  
14 happens, we'll have to deal with that. But we don't  
15 have to do this at all. And there's, quite frankly,  
16 with all due respect, the Commission doesn't have  
17 authority to, you know, create a new discovery item. I  
18 guess they could adopt a rule in the future, they could  
19 have rule making and they could change that, but that's  
20 not the rules today.

21 JUDGE DIPPELL: Okay. Mr. Keevil?

22 MR. KEEVIL: Can I address the Court briefly?  
23 I don't necessarily disagree that -- you can't order  
24 them to meet unless there's something noticed up. But  
25 this is something that we have done -- we as Staff have



1 done in the past in order -- in order to simplify the  
2 process. And -- but what Ameren is -- the way this  
3 comes across to me is, you know, we're not going to  
4 meet with you other than eight times. And we're not  
5 really concerned about simplifying the process or -- or  
6 getting -- getting your questions answered in the most  
7 efficient manner possible.

8           Now, Mr. Lowery said, you know, they'll  
9 deal -- the data -- more data requests, fine; bring  
10 them on, is kind of what I heard there. And the -- I  
11 would just like to point out that so far, we have --  
12 and this is -- this is as of the very end of last week,  
13 Friday, I think, we had issued 271 data requests. And  
14 Ameren had been late in its response on 78 percent of  
15 those. And if -- even if you take into consideration  
16 those that they had asked for additional time to  
17 respond to, they've still been late on 64 percent,  
18 because they've missed their own self-imposed extension  
19 time lines on a large number of the data requests that  
20 we've issued in this case.

21           Now, I asked -- I asked my people to go back  
22 and look at -- we did, in this case, submit a small  
23 number, 13, 15, something like that, prior to the case  
24 being filed after they filed the notice of -- 60-day  
25 notice, we went ahead and sent them some DRs because we

1 knew in the past that it had been -- there had been  
2 problems in getting timely responses to -- from Ameren  
3 in response to certain data requests. So we -- we went  
4 ahead and set them prior to the actual filing, so we --  
5 so they could start preparing responses. I don't think  
6 we got one response prior to them filing the case.

7 In fact, Mr. Lowery sent me an e-mail that  
8 said, you know, we don't -- we don't recognize these  
9 data requests as triggering any sort of time line  
10 because the case hasn't been filed yet. So they --  
11 they didn't -- they didn't take advantage of the  
12 opportunity to respond sooner to -- when we gave them  
13 the opportunity. And if you take those out -- if you  
14 take those out of the equation, they've still been late  
15 on their responses to 76 percent of their total data  
16 requests and 67 percent of the ones that they asked for  
17 an extension on.

18 So I'm pointing this out because when he  
19 says, you know, data requests, fine, bring them on.  
20 This is the kind of thing Staff is dealing with trying  
21 to put together its direct case. They're late on  
22 three-quarters of the responses.

23 If they want, you know, five times as many  
24 more data requests, Staff is going to be put in a  
25 position here where we're not able to put together a

1 direct case because if they're late responding, and  
2 they're refusing to meet with us, we're just not --  
3 we're not going to have the information that we need to  
4 put this direct case together. And you're going to  
5 hear on the first day of the hearing your greatest  
6 peeve, but we're going to come in and say, look, they  
7 don't respond and they don't meet, so how can we put  
8 together this direct case.

9 Now, like I said, if you avoid the data  
10 requests, then you -- you avoid discovery disputes, but  
11 so far, it hasn't -- it hasn't been working out so  
12 well. And I don't think increasing substantially the  
13 number of data requests issues is the answer.

14 MR. LOWERY: And I'm not going to address all  
15 of those things, Your Honor. But what we said was,  
16 we've agreed to eight and we'll consider more on a  
17 case-by-case basis. That's what we said. And that's  
18 where we are.

19 JUDGE DIPPELL: Okay. I think it's good that  
20 we get these things out in the air, because that's what  
21 we're here really to do is to discuss these things. As  
22 you both said, there's not really any way I can order  
23 them to have more meetings.

24 MR. KEEVIL: I think you can suggest it might  
25 be a good idea.

1           JUDGE DIPPELL: I started to say, I -- I will  
2 suggest that it is a very good idea to answer on a  
3 timely basis going forward.

4           MR. LOWERY: And I appreciate that, Your  
5 Honor, and I -- let me say just one thing about that a  
6 little bit. Our -- our performance has not been what  
7 we wanted it to be for -- for a couple of reasons. The  
8 primary reason is, we've had complete turnover of the  
9 paralegal staff who handles all of this work. Two of  
10 them started in June, right before this case was filed,  
11 and one of them has been there longer than that, but  
12 hadn't deeply been involved in this. And they just  
13 haven't been as efficient from the beginning, and --  
14 but they have gotten a lot better and I think we have  
15 gotten better as we've moved through the case.

16           We also had some turnover and changes in some  
17 of the people that are deeply involved in the direct  
18 cases, so I'm -- I'm not going to sit here and say  
19 we've performed as well as we would like. And we're  
20 cognizant of the fact that we need to do better, and we  
21 are working hard to do that. So I apologize to the  
22 Staff. And if I need to apologize to you, but to you,  
23 as well, we -- we do need to do better and we're going  
24 to definitely try to do better. It hasn't been an  
25 intentional thing.

1           The other thing I will say is, and I  
2 appreciate Staff's intent in sending 13 DRs before the  
3 case was filed. They sent them, I believe, five days  
4 before we actually filed the case. And as I think  
5 Mr. Keevil can appreciate, we are scrambling -- we  
6 have 18 witnesses, et cetera. We didn't have time to  
7 think about their DRs, which really aren't DRs at that  
8 point in the case. And -- and as, you know, Judge  
9 Woodruff did rule several years ago, that there is no  
10 case until there's a case, a notice of the case -- the  
11 intended case filing and then the brief case.

12           So I just wanted to sort of complete the  
13 picture. We didn't get these two months before --

14           JUDGE DIPPELL: I did see your response to  
15 Mr. Keevil's -- I think he included it in this, his  
16 filing, so I understand that. Just -- so the -- the  
17 sanction for discovery issues is, even though we say  
18 the same sanctions as in civil court and so forth, it's  
19 not civil court; it's -- it's administrative  
20 proceedings. And the whole point is for the Commission  
21 to get the information it needs to make a decision  
22 about just and reasonable rates.

23           So if Staff doesn't get the information and  
24 it doesn't come to the Commission in a -- in a  
25 well-formed opinion and recommendation, and if Public

1 Counsel doesn't get their answers and they can't  
2 prepare, then we get to the hearing and everything  
3 is -- is at ends. And we end up having to let in stuff  
4 that we wouldn't normally let in because there's really  
5 no way for me to say, well, we're just not going to let  
6 you present your case because you didn't present  
7 discovery on time. Because that doesn't solve the  
8 problem, that that still prohibits the Commission from  
9 getting the information it needs.

10 So if you don't want to get to hearing and  
11 have Staff and OPC and the other parties allowed to put  
12 everything in the record, whether it's good information  
13 or not, then I say answer those discovery requests, so  
14 that we don't feel it's necessary. And -- and do it in  
15 a timely manner, so that Staff can make a well-formed  
16 case, Public Counsel can make a well-formed case, and  
17 the Commission can make a well-formed decision on the  
18 actual relevant important information, and not have the  
19 record awash with 20 issues that didn't need to be  
20 there in the first place if they had just been  
21 formulated in such a manner that the Commission could  
22 understand what the real issues are.

23 MR. LOWERY: I appreciate your remarks, Your  
24 Honor. I will say, we have not had those problems, I  
25 don't think, in our cases. And I -- I appreciate what

1 you're saying and I understand what you're saying, you  
2 know. There's -- there's always two sides to the story  
3 about these meetings. I don't -- you know, I'll --  
4 I'll inquire about the 30 meetings, but --

5 MR. KEEVIL: Thirty-three.

6 MR. LOWERY: You know. -- or 33, or whatever  
7 it is. You understand, of course, that the logical  
8 extension of their position though is, well, what if  
9 they think they need 58 meetings, or 74 meetings, or,  
10 you know.

11 JUDGE DIPPELL: Well, I -- I --

12 MR. LOWERY: We don't -- we don't have a  
13 Staff of people that between rate cases are just  
14 sitting around without other jobs, and I don't think  
15 they want us to. I'm sure they would say, well,  
16 your O & M, your labor is too high because you've got  
17 all these people sitting around doing nothing.

18 So I -- I'm cognizant of the things that  
19 you're saying, and I don't want to get in a big  
20 discovery war with them. I don't want to -- I don't  
21 want to get a bunch of DRs that are unnecessary. But  
22 from our perspective, there has to be some balance, as  
23 well. And I hope, Your Honor, that you can appreciate  
24 there needs to be some balance, as well. And -- and  
25 it's -- there's always two sides -- there's always two

1 sides to the story, and it doesn't mean that one is  
2 completely legitimate and the other is completely  
3 illegitimate.

4 JUDGE DIPPELL: And you are at a disadvantage  
5 that I have -- my personal experience over the last few  
6 years has been with cases that have been unreasonably  
7 complicated. So I know Ameren in the past; this has  
8 not been the case with Ameren rate cases, and I hope  
9 that trend continues.

10 The other side of that is if -- I would hope  
11 if you're willing -- if you're able and willing to meet  
12 informally, that you will work some of these issues  
13 out.

14 MR. LOWERY: We'll -- we'll -- we will -- we  
15 will, with good intention, see if we can come to some  
16 middle ground.

17 JUDGE DIPPELL: If you're not willing to talk  
18 informally, then I -- I don't see how you can reach  
19 those agreements that have typically been the case with  
20 Ameren rate cases, so -- okay. So I think that that  
21 takes care of Staff's issues for today?

22 MR. KEEVIL: I think so.

23 JUDGE DIPPELL: Okay. Mr. Williams?

24 MR. WILLIAMS: The only thing that I noticed  
25 up for Public Counsel is the relevancy objection to a



1 request for Excel files for Mr. Hevert's rate of return  
2 testimony from the KCPL general rate cases. What we're  
3 looking for is the Excel modeling he did for  
4 comparables. And that's clearly relevant to his  
5 credibility.

6 JUDGE DIPPELL: Mr. Lowery?

7 MR. LOWERY: My issue is this. I don't have  
8 a right to ask Mr. Hevert or to compel Mr. Hevert to  
9 provide his work product that he did for somebody else,  
10 whether it be KCPL or Alliant Energy or AP, or National  
11 Grid in New York. That -- that's a -- they -- there  
12 are discovery devices by which they can obtain  
13 information beyond the work Mr. Hevert is doing for us;  
14 in that, they can take his deposition, they can do, you  
15 know, have documents delivered as part of that  
16 deposition.

17 But I -- but it's not -- it's not our case.  
18 I mean, he testifies all over the country. So again,  
19 and I -- what I think is really going on here is, I  
20 think Mr. Murray left Staff and went to Public Counsel  
21 and he maybe doesn't have access to these anymore. I  
22 don't know, because clearly he would have -- Staff was  
23 cleared in that case, PL case, for which he's asking  
24 for information.

25 As Mr. Williams, I think, indicated before we

1 went on the record, Mr. Hevert did similar comparable  
2 analysis, work papers in our case, but he got those in  
3 Native format. I just don't think it's proper  
4 discovery request in our rate case.

5 JUDGE DIPPELL: Okay. But your objection is  
6 to relevance?

7 MR. WILLIAMS: Yes, it is.

8 JUDGE DIPPELL: I agree it's relevant. I  
9 think it's relevant. I also agree that if you don't  
10 have it and don't have access to it, you can't provide  
11 it. They could take his deposition, they --

12 MR. LOWERY: He certainly doesn't have to  
13 provide it and we don't have it, so --

14 JUDGE DIPPELL: So I guess what I'm saying  
15 is, that's the objection you need to make. I think  
16 it's relevant.

17 MR. WILLIAMS: Well, it wouldn't be an  
18 objection. I mean, it's their responses which they  
19 haven't provided, but they don't have it. At least I  
20 haven't gotten anything formal.

21 MR. LOWERY: We can -- we can provide such  
22 response. We don't have it.

23 MR. KEEVIL: The witness doesn't have it?

24 MR. WILLIAMS: Yeah. The witness does.  
25 They're arguing that because it's --

1 MR. LOWERY: We -- I mean, we don't --

2 MR. WILLIAMS: I think it's in play because  
3 they've maintained their witness, but --

4 MR. LOWERY: Well, I don't think the law  
5 possibly could be that just because Company A engages  
6 Expert B, that Company A has access to every bit of  
7 work product that that expert has ever done, that  
8 might, if discovered, have relevance to his credibility  
9 or otherwise. I don't think that could possibly be the  
10 law.

11 MR. KEEVIL: Well, the same -- the same  
12 argument. Let's say Hevert has written a scholarly  
13 paper somewhere, and UE -- or Ameren doesn't have it,  
14 but Hevert sure as heck would. You couldn't -- Public  
15 Counsel couldn't ask for a copies of Mr. Hevert's, you  
16 know, scholarly publications?

17 MR. WILLIAMS: Well, they're suggesting we  
18 have to depose him to get it with a subpoena duces  
19 tecum, as opposed to asking for it through a data  
20 request, and it's all discovery.

21 MR. KEEVIL: Hmm.

22 MR. WILLIAMS: I don't know that  
23 Mr. Hevert's refused to provide it to him. Do we  
24 have -- I don't think he's even asked. Now, as the  
25 Judge has said, that doesn't have anything to do with

1 relevancy.

2 JUDGE DIPPELL: Right. And I -- so I -- I  
3 think your objection as to relevancy is overruled. If  
4 you're going to make some other objection, I -- I do --

5 MR. WILLIAMS: It'd be untimely at this  
6 point.

7 JUDGE DIPPELL: If you can't present it. I  
8 guess that my statement is to answer the question. If  
9 your answer is, we don't have it or it's somehow work  
10 product of another company, I guess that Mr. Hevert can  
11 object.

12 MR. LOWERY: I understand.

13 MR. WILLIAMS: Well, the ones you don't waive  
14 are, of course, privileged, attorney work product,  
15 so --

16 JUDGE DIPPELL: Right. So I'm going to say  
17 answer it.

18 MR. LOWERY: And we will.

19 JUDGE DIPPELL: Okay.

20 MR. WILLIAMS: And I'll also say, according  
21 to the information I have been provided by technical  
22 staff, there are -- or were at least at the time the  
23 notice was made, some outstanding discovery that have  
24 not been responded to. But that of course was not  
25 noticed up for this proceeding.

1 MR. LOWERY: There -- there are a few, and  
2 there are a few for you guys, but we are -- we are in  
3 pretty good shape. I mean, I'm not saying we don't  
4 have any that are past the due date, but we are in  
5 relatively good shape right now.

6 MR. WILLIAMS: Well, we're not saying  
7 there's 75 percent of them are unanswered.

8 MR. LOWERY: Well, I'm pretty sure that's not  
9 the case, we both concede. But -- but, as I indicated  
10 to you, Judge, we -- we know we needed to do better,  
11 and I think we have been, and we're going to do our  
12 best to do that.

13 MR. KEEVIL: You haven't been since we  
14 noticed these things up for discovery.

15 MR. LOWERY: I -- you can have your  
16 perspective.

17 MR. WILLIAMS: And I anticipate speaking with  
18 Mr. Lowery after this conference about it.

19 JUDGE DIPPELL: Okay. Well, I highly  
20 recommend that. All right. Is there any other issues  
21 that we need to talk about on the record?

22 MR. WILLIAMS: Not that I'm aware of.

23 MR. LOWERY: Not that I'm aware of. Thank  
24 you for your patience.

25 JUDGE DIPPELL: All right. Thank you both or

1 all three for coming in to discuss these things and  
2 hopefully you will continue to play nice.

3           You can go ahead and go off the record.

4           (Hearing concluded.)

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C E R T I F I C A T E

STATE OF MISSOURI )  
  ) SS  
COUNTY OF BOONE )

I, Ashley M. Rouse, Certified Court Reporter for the firm of Tiger Court Reporting, do hereby certify that the above and foregoing is a true and accurate transcription, to the best of my ability, of the Procedural Conference of the Missouri Public Service Commission held In the Matter of Union Electric Company, d/b/a Ameren Missouri's Tariffs To Decrease Its Revenues For Electric Service, File No. ER-2019-0335, on September 19, 2019.

Dated this 3rd day of October 2019.

*Ashley M. Rouse*

\_\_\_\_\_  
Ashley M. Rouse  
TIGER COURT REPORTING

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