

In the Matter of:

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI'S TARIFFS, etc.

ER-2019-0335, VOL. XIV

February 05, 2020



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Discovery Conference

February 5, 2020

Jefferson City, Missouri

Volume 14

In The Matter Of Union Electric)
Company d/b/a Ameren Missouri's)
Tariffs to Decrease Its Revenues For) File No. ER-2019-0335
Electric Service)

NANCY DIPPELL, Presiding
REGULATORY LAW JUDGE.

REPORTED BY:
Lisa M. Banks, CCR
TIGER COURT REPORTING, LLC

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A P P E A R A N C E S

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P R O C E E D I N G S

1
2 JUDGE DIPPELL: This is File Number ER-2019-0335
3 in the matter of Union Electric Company doing business as Ameren
4 Missouri's Tariffs to Decrease Its Revenues For Electric
5 Service. My name is Nancy Dippell and I'm the regulatory law
6 judge assigned to this matter. We have come here today for a
7 discovery conference to discuss some discovery disputes, which
8 were noticed up by Sierra Club.

9 So first I am going to begin -- because of the
10 snowy weather we have everybody on the phone except for myself
11 and the court reporter, who are here in Jefferson City in the
12 conference room.

13 Let's begin with Ameren. Can you make your
14 entry of appearance?

15 MR. LOWERY: Thank you, Judge. Jim Lowery,
16 Smith Lewis, LLP, P.O. Box 918, Columbia, Missouri, 65205,
17 appearing on behalf of Ameren Missouri.

18 JUDGE DIPPELL: And Staff?

19 MR. KEEVIL: Yes, Judge. Appearing for Staff of
20 the Missouri Public Service Commission, Jeff Keevil, 200 Madison
21 Street, Jefferson City, Missouri, 65101.

22 JUDGE DIPPELL: And Public Counsel?

23 MR. HALL: Thank you, Judge. Caleb Hall
24 appearing on behalf of the Office of Public Counsel, 301 Madison
25 Street, Jefferson City, Missouri 65201.

1 JUDGE DIPPELL: And Sierra Club?

2 MR. SMITH: Good morning. This is Joshua Smith
3 at Sierra Club.

4 MR. MENDOZA: Also Tony Mendoza for Sierra Club.

5 JUDGE DIPPELL: All right. Just so you all
6 know, Judge Jacobs, who was our newest regulatory law judge, is
7 listening in today just for training purposes unless you all
8 have an objection to that? I'm not hearing any objection.

9 Are there any other parties on the line that I
10 didn't ask? I don't hear anybody else. All right.

11 I guess to begin, like you say, Sierra Club is
12 the one that brought this current dispute, so Mr. Smith,
13 Mr. Mendoza, whoever was going to speak, would you like to begin
14 by giving us an overview of your issues?

15 MR. LOWERY: Judge, I beg your pardon. This is
16 Jim Lowery. I think I can clear away some issues and save some
17 time for you and the parties, if perhaps I can address some of
18 these items. And then the items that are left, Mr. Mendoza and
19 Mr. Smith can address. If that is okay with the bench?

20 JUDGE DIPPELL: That's probably a good idea.
21 Maybe we will start with you, Mr. Lowery. Thank you for
22 identifying yourself. And to aid the court reporter, I would
23 ask -- and myself -- I would ask that you identify who you are
24 before you begin speaking. Go ahead, Mr. Lowery.

25 MR. LOWERY: Thank you. As indicated in our

1 response, the Sierra Club's timely statement of concern that
2 they filed last Friday, we've answered all of the DRs at issue
3 including 7.6, which we initially objected to. And we should
4 have a privilege log respecting 8.2, I think later today or
5 tomorrow. I might have had it honestly by now, but I've been
6 reading recent filings that have been made. I think I should
7 have it today or tomorrow. I think that takes care of those
8 issues.

9 Regarding the statement of disagreement or
10 concern that was filed last night, and without waiving what I
11 believe is a lack of compliance with Commission scheduling order
12 and the Commission's rules, I don't think that statement was
13 timely. I can tell you that we can and will copy and overnight
14 pulled contracts the Sierra Club seeks DR3.12. It may take a
15 day or two, but we will do that and get those to them. The
16 Company has a policy against emailing confidential documents
17 like that, so we're going to overnight them to them.

18 With respect to 1.24, we can provide the
19 examples that they are asking for. When they asked the DR, as
20 we indicated, that information was overwritten. It wasn't
21 available. Mr. Meyer testified in his rebuttal testimony a
22 couple of weeks ago that the Company was in the process of
23 changing it processes so he could maintain that documentation.
24 It is still in that process, but it is far enough along that we
25 can provide the sample. I think that addresses all of the DRs

1 across both of these filings that have been made, except 6.3.

2 6.3, I'd like to address -- as I indicated, I
3 would like to address primarily procedural problems that I see
4 with it at this point. The statement is untimely. I wasn't
5 made aware until about 4:15, 4:30 last night -- and the
6 Commission wasn't made aware until about 7:30 last night that
7 these issues even existed. We timely objected to the DR in
8 question on December 17th. And the testimony the Sierra Club
9 points to for its new justification to bring this issue up in
10 the eleventh hour was filed about two weeks ago.

11 As I understand the scheduling order, parties
12 can file a statement of discovery or disagreement or concern but
13 they are supposed to that two or more business days in advance
14 of the conference. That statement, in effect, is in lieu of a
15 motion to compel under those circumstances. The idea I think is
16 that the Company and the Commission gets notice -- not as much
17 notice if there was a motion to compel and not as much time to
18 respond, but notice -- more than just a couple of business hours
19 to address the issue and prepare for arguing it at the discovery
20 conference. That way everybody has a fair notice and a fair
21 opportunity to prepare and respond.

22 The Commission's scheduling order did not
23 dispense with the requirement that a motion to compel be filed
24 with respect to other discovery disputes. The only item
25 dispensed with in the rule was the requirement to have a

1 conference with the judge first. Even if filing at 7:30 last
2 night was treated as a motion to compel, I think it is patently
3 unreasonable to expect the Company to respond to it in just a
4 couple of business hours after it was served.

5 Just a couple of other things and I will let
6 Mr. Mendoza or Mr. Smith respond. They knew they wanted to
7 depose Mr. Michel's at least as of last Friday because they
8 asked for dates then. They had until Monday to file a statement
9 of dispute, timely file one with respect to this 6.3 issue. For
10 that matter, they essentially asked for the same kind of
11 documents about nine or ten days ago in DR 8.2. We told them,
12 again then, that they were protected by work product. Of course
13 we had raised that issue all the way back in December. And so I
14 don't think that -- I don't think that this particular issue is
15 even right to be taken up this morning.

16 MR. MENDOZA: Your Honor, this is Tony Mendoza.
17 May I respond to some of that?

18 JUDGE DIPPELL: Yes, go ahead.

19 MR. MENDOZA: First of all, I want to thank
20 Mr. Lowery for agreeing to send the coal contracts. I think his
21 Super Bowl win this weekend must have him in a generous mood. I
22 agree with him that it was not reasonable to expect that he be
23 prepared to make a full oral argument on that -- the one issue
24 that remains in dispute, which is about the IRP. I'll just note
25 that this has come up before. We disagreed with the objection

1 in December, but it became more of a compelling issue when the
2 IRP has been raised in Mr. Michel's rebuttal testimony. I guess
3 what I would suggest as a possible solution, could we have a
4 discovery conference on this upcoming Monday, which would give
5 Mr. Lowery more time and then we could address that issue there?
6 I'll say, in terms of the timing, I wish we had raised it
7 earlier. We realized we wanted to do that, you know, as we were
8 going through a lot of discovery and a lot of testimony. I
9 regret we didn't raise it earlier. I do still think there is
10 time to address the issue that would allow us to potentially use
11 some of that information in our testimony that is due next
12 Friday.

13 I guess, I would move orally for a discovery
14 conference on Monday. I think there are other ways to address
15 it, of course. We could file a motion to compel or some other
16 method, but that would seem to be one good one.

17 JUDGE DIPPELL: Okay.

18 MR. LOWERY: Your Honor, this is Jim Lowery. I
19 don't have an objection to having another conference Monday if
20 the -- if, Judge, you want to have a conference as opposed to
21 ruling on the paper. I do intend to respond in writing to what
22 I am going to treat as a motion to compel that was filed last
23 night.

24 JUDGE DIPPELL: Okay. Let me back up before we
25 get to the item that was filed last night. So Mr. Lowery

1 discussed how he had complied or intended to comply with the
2 original items that were filed on Friday. Were those
3 satisfactory, then, to Sierra Club or are there still things
4 pending there?

5 MR. SMITH: Your Honor, this is Joshua Smith at
6 Sierra Club. And maybe I will respond to those because those
7 are issues that I had raised initially. With respect to 7.6,
8 that's correct. Ameren did provide a response and that I think
9 resolved our concern there. Without seeing the privilege log
10 that the Company is preparing for 8.20, it's a little premature
11 for us to say whether that is completely resolved. So if Your
12 Honor is inclined, that may be an issue that could be deferred
13 to a Monday conference as well. After we have a chance to
14 evaluate that privilege log, we can I think respond more fully
15 to that.

16 JUDGE DIPPELL: Okay.

17 MR. SMITH: One other quick note, I would ask as
18 a clarification for Mr. Lowery. This is Josh Smith. On 1.24,
19 the sample of the commitment decision -- the commitment decision
20 process, are you able to let us know what period of time that
21 sample is from? I guess we will see it when we see it, but -- I
22 guess my question here for you Mr. Lowery is is there a
23 possibility of requesting a specific period of time?

24 MR. LOWERY: Mr. Smith, I have not seen it yet
25 myself. I believe that the first time there is any

1 documentation available is from this week -- sometime this week.
2 So it's my understanding that you are going to get an example of
3 the documentation for that process on a day this week.

4 MR. SMITH: Okay. Thank you for that
5 clarification.

6 JUDGE DIPPELL: All right. Sorry. Someone was
7 about to speak? Was there another comment?

8 MR. LOWERY: I want to say something about the
9 Chiefs game, but I was really trying to refrain. I appreciate
10 Mr. Mendoza bringing it up himself.

11 MR. HALL: Hello. This is Caleb Hall from
12 Public Counsel.

13 JUDGE DIPPELL: Yes?

14 MR. HALL: I just want a quick clarification.
15 Are we having another discovery conference on Monday. I wasn't
16 exactly clear on that point.

17 JUDGE DIPPELL: Well, I'm getting to that one.
18 Hold on just a second.

19 MR. HALL: Okay.

20 JUDGE DIPPELL: So then we get to the dispute
21 over DR 6.3, and that was the one that was filed yesterday. I
22 just want to clarify. Mr. Lowery said something about waiving
23 the rule for the phone calls, but I don't believe in this
24 instance I waived that rule and -- I want to say once again that
25 if there are discovery disputes in issue and there is not a

1 discovery conference on the horizon or it is not in a timeframe
2 that is conducive, you can still follow the process of the rule
3 and contact me and we can have a phone call and I can authorize
4 you to go ahead and file motions to compel or whatever.

5 In this case, I don't mind a statement of
6 dispute coming in at the last minute because it is better to
7 talk about these things than not. I don't expect Mr. Lowery to
8 be able to fully defend the position if it is given at the last
9 minute, but the fact that we are able to discuss it here is a
10 good thing and not a bad thing.

11 So it sounds like you all are in agreement that
12 we can talk again on Monday and I'm fine with that. If that
13 prevents a bunch of filings back and forth, motions to compel
14 and so forth, then that's perfectly acceptable to me. I can
15 send out something and set that providing the weather does not
16 cause us a problem. Is there a time that works best for people
17 on Monday morning?

18 MR. LOWERY: Your Honor, this is Jim Lowery. My
19 calendar is open on Monday, so from my perspective.

20 MR. MENDOZA: We are open -- this is Tony
21 Mendoza for Sierra Club. We're open to whatever time works best
22 for you, Your Honor.

23 JUDGE DIPPELL: Okay. We'll let's just keep
24 things at ten o'clock then. Hopefully we won't have any weather
25 issues on Monday. I can go ahead and submit that. So it sounds

1 like, then, that you all will have a chance to discuss it
2 further. You have a settlement conference coming up still too,
3 so I expect that perhaps if you can work things out or if you no
4 longer have any disputes, then with regard to 8.2, then you can
5 let me know that before Monday at 10:00.

6 Are there other concerns that I need to cover,
7 Mr. Hall? Did I cover everything that you had questions about?

8 MR. HALL: No, Judge. I now understand where
9 you're coming from.

10 JUDGE DIPPELL: Okay. Anyone else have other
11 questions or concerns?

12 MR. KEEVIL: Judge, this is Jeff Keevil.

13 JUDGE DIPPELL: Go ahead, Mr. Keevil.

14 MR. KEEVIL: Yeah. Not a concern really, but I
15 just wanted to confirm you mentioned the settlement conference
16 that is coming up on Friday. I have gone ahead and reserved
17 Conference Room 110 in the Governor Office Building for that
18 conference. I didn't know if you had planned to reserve a room
19 yourself or not. I went ahead and reserved 110. Were you
20 planning to reserve anything?

21 JUDGE DIPPELL: Well, I would probably just go
22 for Room 305 here unless it is already occupied by someone.

23 MR. KEEVIL: I don't think we need 305. I don't
24 like 305.

25 JUDGE DIPPELL: That's fine. I can come to you

1 if you would like. I didn't know who else might be involved in
2 your conference.

3 MR. KEEVIL: Well, Judge, I don't think there's
4 a need -- I mean, if I remember correctly, the settlement
5 conference was supposed to be an informal conference. It wasn't
6 even on the record. I was even expecting you to be there.

7 JUDGE DIPPELL: I'm sorry. I misunderstood what
8 you were talking about. Yeah. No. I have no intent being
9 there on Friday.

10 MR. KEEVIL: Okay.

11 JUDGE DIPPELL: No. I was just talking about
12 the conference on Monday -- the second discovery conference.

13 MR. KEEVIL: Okay. I was referring to the
14 settlement conference on Friday, it will be Room 110.

15 JUDGE DIPPELL: Yeah. All right. Are there any
16 other questions?

17 MR. LOWERY: Yes. Jim Lowery. I was just going
18 to indicate -- well, Mr. Keevil beat me to it. That's an
19 informality, the settlement conference. I now understand you
20 folks were talking past each other slightly. There is nothing
21 more from the Company. The discovery conference Monday, if we
22 get it resolved, we will let the bench know. If we don't, we
23 will be talking to you Monday at 10:00.

24 JUDGE DIPPELL: Okay. That sounds good.
25 Anything further from Sierra Club?

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MR. MENDOZA: No, Your Honor. Thank you for taking to the issues today and safe travels home.

JUDGE DIPPELL: Okay. Thank you.

MR. SMITH: Thank you.

JUDGE DIPPELL: Hearing nothing else, then we can go ahead and go off the record.

(OFF THE RECORD.)

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CERTIFICATE OF REPORTER

I, Lisa M. Banks, CCR within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Lisa M. Banks, CCR No. 1081

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