

In the Matter of:

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

ER-2019-0335, VOL. XV

February 10, 2020



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Discovery Conference
February 10, 2020
Jefferson City, Missouri
Volume 15

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

NANCY DIPPELL, Presiding
SENIOR REGULATORY LAW JUDGE

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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 Case No. ER-2019-0335,
3 In The Matter Of Union Electric Company d/b/a Ameren
4 Missouri's Tariffs To Decrease Its Revenues For Electric
5 Service. My name is Nancy Dippell. I'm the Regulatory
6 Law Judge assigned to this matter. We've come here
7 today for an additional discovery conference.

8 We had a discovery conference last Wednesday,
9 and Sierra Club and Ameren had some remaining issues
10 that were going to carry over to today. And OPC also
11 filed some additional discovery concerns. So I'll begin
12 by taking entries of appearance. And we have several
13 people on the phone. I'll begin with Ameren Missouri?

14 MR. LOWERY: Thank you, Your Honor. Jim
15 Lowery, Smith Lewis LLP, PO Box 918, Columbia, Missouri,
16 65205, appearing on behalf of Ameren Missouri.

17 JUDGE DIPPELL: All right. And Sierra Club?

18 MR. SMITH: Good morning, Your Honor. This is
19 Joshua Smith at Sierra Club, 2101 Webster Street, Suite
20 1300, Oakland, California, 94612. Thank you.

21 JUDGE DIPPELL: And Public Counsel here with
22 me?

23 MR. HALL: Good morning, Judge. Thank you.
24 Caleb Hall appearing on behalf of the Office of the
25 Public Counsel. The stenographer has already been given

1 my contact information.

2 JUDGE DIPPELL: Can those of you on the phone
3 hear Mr. Hall okay?

4 MR. SMITH: Yeah.

5 JUDGE DIPPELL: He's going to move a little
6 closer anyway. Okay. Let me start differently than I
7 started last time then and just begin with Mr. Lowery
8 and perhaps, Mr. Lowery, you can tell me if there have
9 been any changes in the status of these disagreements.

10 MR. LOWERY: I think the status of the
11 disagreements is reflected accurately in all of the
12 filings that have been made with the exception of 3083,
13 and Your Honor, I sent you an e-mail this morning to
14 make sure you had the subject DRs and objections that
15 were still outstanding. But we've reached agreement
16 with OPC on 3083. So I think that one is not at issue.
17 We've, I think, resolved and followed up on all of the
18 Sierra Club items except 6.3 which remains an issue. I
19 assume it remains an issue. Mr. Smith will tell us
20 that. And then we still have a remaining issue on OPC
21 3072, which is what I sent the e-mail about this
22 morning.

23 JUDGE DIPPELL: All right. Then let's go
24 ahead and begin with Sierra Club and I'll let you,
25 Mr. Smith, give us a status report and where you think

1 things lie with this.

2 MR. SMITH: Thank you, Your Honor. Josh Smith
3 for Sierra Club. I think Mr. Lowery is mostly correct.
4 We are still awaiting Mr. Lowery for delivery of the
5 coal contracts that we discussed on Wednesday. I
6 understand they're in the mail. We have not yet
7 actually obtained physical possession of them. But as
8 soon as we do, I'll circle back with you on that if
9 there are any other issues after today.

10 Otherwise, that is correct, I think the only
11 outstanding discovery dispute here relates to 6.3, which
12 is a request for production of unredacted copies of all
13 documents Ameren has produced or created so far with
14 respect to its 2020 IRP. And I can just go into that
15 now if that's how you'd like to approach that, Your
16 Honor.

17 JUDGE DIPPELL: Yes, go ahead.

18 MR. SMITH: Thank you, Your Honor. I think
19 for this particular request it does make sense to back
20 up a moment in anticipation of what Mr. Allison has
21 testified to on behalf of Sierra Club and Ameren's
22 response to that. Mr. Allison put forward a detailed
23 economic analysis that shows three of the coal plants'
24 assets Ameren is operating are, in fact, operating
25 uneconomically according to Mr. Allison's analysis. And

1 Mr. Allison's recommendation, his fundamental
2 recommendation here is that the company's test year
3 spending be disallowed, test year spending on these
4 three plants be disallowed until the company puts
5 forward a more robust justification for the continued
6 spending of these plants. It's important to understand
7 here that the test year involves several hundred million
8 dollars in capital and operation and maintenance costs
9 and in 2019 and 2020, there will be additional costs and
10 fairly significant additional costs.

11 Ameren's response to Mr. Allison's
12 recommendation is essentially to hold on and trust us
13 we're doing this in the 2020 IRP. And Mr. Michels
14 repeatedly states we're conducting this kind of
15 analysis, we're addressing these very same issues, the
16 more appropriate place to discuss these issues is in the
17 2020 IRP context.

18 So in our view, that makes the analyses that
19 the company is conducting relevant to what's going on
20 now and the justification for continued spending at
21 these plants. And so the 2020 IRP analyses are relevant
22 and there is a need here to examine those documents in
23 rebutting Mr. Michels' assertions that all is well.

24 And Mr. Michels' assertion -- or his response
25 to Mr. Allison is essentially go ahead and continue

1 paying for the repairs on the house that you're going to
2 buy, we're going to do the inspection later. And that's
3 just not something that you would do as a rational
4 purchaser of any property or any transaction, and so we
5 think that those continued -- those valuations are
6 relevant to the continued spending at the plant and
7 should be produced here. We recognize Mr. Lowery and
8 Ameren have put forward a work product privilege
9 assertion.

10 Just a few quick comments on that work product
11 privilege. It's not a complete privilege. It is a
12 qualified privilege under Missouri law and can be
13 overcome with a showing of substantial need and no
14 alternative source for the information. I would also
15 note as a predicate the work product privilege relates
16 to matters developed typically in the litigation at
17 issue for a related matter.

18 The IRP itself is not a litigated docket.
19 There is no opportunity for full discovery, for
20 depositions or cross-examination of witnesses. So there
21 is a, we think, a fundamental unfairness to allowing
22 Ameren to push this off into the IRP process when there
23 won't be an opportunity in that forum for full
24 discovery.

25 I think secondly going back to substantial

1 need element or factor, again, Mr. Michels has advanced
2 2020 IRP analyses as justification for its alternative,
3 their alternative recommendation that all of this will
4 be taken care of later. We don't think that's a
5 satisfactory explanation to support the 2018 test year
6 spending in this case. We think that analyses, those
7 analyses are relevant here and should be produced.

8 JUDGE DIPPELL: Okay. Mr. Lowery, did you
9 have a response?

10 MR. LOWERY: I do, Your Honor, and let me just
11 address real quickly the coal contracts first. I
12 expected those to show up today, Mr. Smith. They were
13 taken down late on Thursday before the UPS folks
14 typically pick up packages but for some reason UPS came
15 earlier that day so they did not get out the door until
16 Friday, but I believe they are scheduled to be delivered
17 today.

18 So there's a lot to unpack there, Judge, back
19 over on the 6.3. I fundamentally disagree with the
20 characterization that Mr. Smith has given of both what
21 Mr. Allison has done and what Mr. Michels has said about
22 it. What Mr. Allison did was a cash flow analysis for
23 the past three years, for '16, '17 and '18, and he
24 included all the capital expenditures that the company
25 made during those years in that cash flow analysis and

1 said if you include those, even though they would be
2 recovered over a long period of time, if you include
3 those there were negative cash flows at these three
4 plants over those three years. But he himself said in
5 his testimony this by itself doesn't show there should
6 be any retirements to these plants. This is just
7 indicative of what happened during this three-year
8 period.

9 Mr. Michels' response to that did not rely on
10 the 2020 IRP. Mr. Allison did say well, and this shows
11 there ought to be robust analysis. And what Mr. Michels
12 said about the 2020 IRP was there will be, we're working
13 on that and there will be those kinds of analysis. But
14 the company is relying upon the decisions it made in
15 2017, 2018, et cetera, based upon the 2017 IRP for the
16 capital investments that it's made that are involved in
17 this particular rate case. And Mr. Michels defended the
18 2017 IRP.

19 He never says in his testimony the 2020 IRP
20 will or won't show this, it will or won't justify those
21 past investments, it will or won't justify a particular
22 retirement date. He simply says one is going to be
23 done. The kind of analysis that Allison wants done will
24 be done but it's in process right now. So the
25 characterization that we're relying upon, the 2020 IRP

1 to justify past investments is simply not true, and the
2 results of that IRP can't be used to turn around and say
3 that decisions we made to invest in the past would have
4 been imprudent because we don't use hindsight in
5 evaluating prudence. So I fundamentally disagree with
6 the characterization of what was or was not said about
7 the 2020 IRP.

8 With respect to the work product objection, I
9 also disagree with Mr. Smith's claims. First of all, an
10 IRP docket is litigation and we laid out, and I'm not
11 going to repeat it all here, but we laid out why that is
12 the case in the filing that we made on Friday.

13 I also don't know where Mr. Smith reaches the
14 conclusion that discovery is not available in IRP
15 dockets. In fact, there has been discovery in IRP
16 dockets and like any other docket case under Chapter 2
17 of the Commission's rules discovery is available in the
18 same form and fashion as it's available under the
19 Missouri Rules of Civil Procedure: Depositions, DRs,
20 interrogatories, requests for admission, all of those
21 things.

22 Furthermore, the Commission, if it chooses,
23 the Commission can hold hearings, evidentiary hearings
24 and, in fact, that has happened in Ameren Missouri's
25 IRPs in the past. So this idea that an IRP docket is

1 not litigation particularly when you consider what is
2 going on with respect to the Sierra Club and the company
3 and the issues that I think we all know are going to
4 come up in that IRP, I think we all know that Sierra
5 Club is going to be an intervenor. I think we all know
6 that there's going to be a hot contest about the
7 priority of the IRP. In fact, in the last IRP Sierra
8 Club claimed a lot of deficiencies and in terms of a lot
9 of these same issues, quite frankly.

10 So it's simply not true that we're relying
11 upon the results of the 2020 IRP or any preliminary
12 results or any in process results in this case and it's
13 not true that that docket does not constitute
14 litigation. I also don't believe, because we aren't
15 relying on it and because you can't use results for an
16 after the fact hindsight prudence review, that Sierra
17 Club has shown and I think the standard is both
18 substantial need for the information and undue hardship
19 and complete inability to get the information any other
20 way. That's what's necessary to overcome a work product
21 assertion and I don't think I've heard anything this
22 morning that comes close to meeting that burden. So I
23 simply -- we have a fundamental disagreement I think
24 about the facts in this case which, of course, depend on
25 a detailed review of testimony that has been prefiled

1 but not admitted and a fundamental disagreement about
2 the application of the work product doctrine here.

3 JUDGE DIPPELL: Okay. Well, these are -- I'm
4 sorry. Mr. Smith, did you want to say something else?

5 MR. SMITH: Your Honor, may I respond very
6 briefly to just three points?

7 JUDGE DIPPELL: Go ahead.

8 MR. SMITH: Yeah, thank you, Your Honor. So
9 the discovery standard, whether the requested material
10 is likely to lead to admissible or likely or has a
11 possibility of leading to admissible evidence. We do
12 think that the analyses that are being conducted right
13 now are relevant to the ongoing and continued spending.
14 So this isn't a question of retrospective questioning of
15 the company's investments. It goes to the company's
16 obligation, its continued obligation to reexamine its
17 spending decisions as they come along. And so that
18 continued obligation to reevaluate and with hundreds of
19 millions of dollars of capital and O&M expenses over the
20 next couple of years we believe that's relevant to that
21 prudence and the Commission has a right to know what's
22 going on with the company's analysis there, especially
23 given that these rate cases come around with relative
24 infrequency and so there may not be the opportunity in
25 the next rate case whether it be two, three, four, five

1 years down the line for the Commission to reevaluate the
2 prudence of the ongoing spending that the company is
3 anticipating here. Then just finally to the substantial
4 need question we certainly don't have the information
5 available through any other process and we do believe
6 there's a substantial need here relative to Mr.
7 Allison's recommendation and Mr. Michels' specific
8 response to that. Thank you.

9 JUDGE DIPPELL: And Mr. Lowery, any last
10 words?

11 MR. LOWERY: Yes, just very briefly. Your
12 Honor, as the privilege log we provided Sierra Club
13 indicates, the earliest activity that would be part of
14 the IRP didn't take place until I believe it was late
15 October, early November of 2019. Those were preliminary
16 and that work continues.

17 The only issue in this case, in this
18 particular rate case, is going to be expenditures that
19 took place within the test year as trued up and that
20 goes through the end of 2019. Whatever we may or may
21 not conclude or analyze for the 2020 IRP isn't going to
22 have any relevance to the prudence of those
23 expenditures. The relevant information is going to be
24 was the 2017 IRP any good or not and should the company
25 have done something different then or on an ongoing

1 basis in the past. That has nothing to do with the 2020
2 IRP. So I would contend this isn't even relevant, but
3 the real issue here isn't relevance anyway. The real
4 issue here is the work product question. And again,
5 Sierra Club, they could have asked for all kinds of
6 parameters and information. Mr. Allison even talks
7 about how he does resource planning and that's his
8 expertise and those things could have been done but they
9 didn't do that. What they want is they want an advanced
10 look at the company's IRP.

11 You know, I point out that back in December
12 Mr. Mendoza actually sent an e-mail and I was very clear
13 with Mr. Mendoza when I wrote him about this that I
14 don't think any ill intent or anything was intended. I
15 don't think anybody was trying to skirt any ethics
16 rules. Mr. Mendoza was contacting our employees
17 directly wanting information about the 2020 IRP at the
18 same time we're in litigation about IRP planning in this
19 litigation. I mean, they want an advanced look at the
20 2020 IRP and they're using this thin thread of let, you
21 know, there's ongoing investments in 2019 -- or 2020 and
22 beyond. We don't have a forward test year in Missouri.
23 What happens beyond this case doesn't have any relevance
24 to this case.

25 One other point on that, the company has

1 already testified in its prefiled testimony in this case
2 that it will be filing a rate case in 2020, because
3 we're going to have investments of more than a billion
4 dollars and two new wind projects that the Commission,
5 of course, is familiar with. So there's not going to be
6 two or three or infrequent intervals between rate cases.
7 There's going to be another rate case probably filed in
8 the next six or eight months or so. Thank you, Your
9 Honor.

10 JUDGE DIPPELL: Okay. These are -- Did you
11 have anything?

12 MR. HALL: No. Pardon me, Your Honor, I
13 belched and then excused myself.

14 JUDGE DIPPELL: I'm sorry. That one threw me
15 off. So I'm not going to make a ruling on this at this
16 conference, but I am, because these are kind of
17 significant and complicated issues and I want to make
18 sure that they are handled appropriately. So I am going
19 to say though that, Mr. Smith, you can go ahead and file
20 your motion to compel and I will let Mr. Lowery, of
21 course, respond to that and then will make a ruling on
22 that at that time. Because the discovery period and
23 then the hearing quickly coming, I would suggest that
24 you request expedited treatment of that and, Mr. Lowery,
25 because you have already filed I think most of your

1 response in writing and eloquently made your arguments
2 here today I'm hoping that a response to that motion
3 could be done on an expedited basis also. So I'm sorry
4 that we're not taking care of this immediately but I
5 really don't feel that I can make a ruling specifically
6 on it today. Go ahead.

7 MR. LOWERY: We certainly can respond on an
8 expedited basis. I hope that is a matter of a few days,
9 not just a day. Certainly I understand 10 days would be
10 way too long but we might need a little bit of time
11 depending on the timing of this. I don't know exactly
12 what they may say at this point. I agree we've
13 addressed a lot of this. I don't know exactly what
14 might specifically be said. I'd appreciate a couple
15 business days would be nice.

16 JUDGE DIPPELL: I understand. Did you have
17 anything else to say, Mr. Smith, on that subject?

18 MR. SMITH: Not at this time, Your Honor.
19 Thank you for the opportunity to file a motion and we'll
20 do that on an expedited basis as well. I did want to
21 ask for your preference or what your recommendation is.
22 We are scheduled to depose Mr. Michels this Thursday
23 afternoon. I anticipate that if this issue isn't
24 resolved before then there may be disputes about certain
25 questions at the deposition itself. If there is a way

1 to contact Your Honor if there's a dispute that arises,
2 that will be helpful to know.

3 JUDGE DIPPELL: Yes, I will be available in
4 the office on Thursday, and so you can reach me at my
5 office phone number if you have disputes during
6 depositions.

7 MR. SMITH: Thank you, Your Honor.

8 JUDGE DIPPELL: All right then. With regard
9 then to Public Counsel's discovery issue. Mr. Hall?

10 MR. HALL: Thank you, Your Honor. We asked
11 for time during this discovery conference to discuss
12 disputes regarding OPC's DRs 3072 and 3083. As
13 Mr. Lowery indicated, we have resolved any dispute as to
14 3083 so that need not be discussed this morning. I also
15 want to remark I appreciate Mr. Lowery's e-mail this
16 morning sending the DRs and I apologize I thought those
17 had gone out. That was a mistake on my part.

18 As to the remaining dispute on 3072, the
19 company has objected but said that a response will be
20 provided. When I inquired with Mr. Lowery as to what
21 type of response this would entail, I became concerned
22 that this would not actually include the requested
23 goodwill impairment reports that is referenced in
24 Mr. Sagel's testimony. Mr. Sagel testifies in his
25 rebuttal testimony against staff witness Jeffrey Smith

1 and as part of its basis for disagreeing with Mr. Smith
2 on how to calculate the equity ratio for Ameren
3 corporation on a consolidated basis.

4 He points to the recent impairment reports of
5 Ameren Illinois. We are asking for those reports mainly
6 on the basis of that it's relevant to impeach him for
7 credibility and other purposes and secondly because it
8 relates directly to Mr. Murray's theory as to
9 calculating the equity ratio and debt leveraging ability
10 of Ameren Missouri.

11 Mr. Lowery has objected on relevancy and the
12 lack of custody or control over the documents. We
13 disagree fundamentally as to relevancy. For the second
14 basis of the objection as to lack of control or custody,
15 Mr. Sagel was an Ameren Services employee. He
16 references these reports. My understanding is that this
17 -- that the impairment report is property of Ameren
18 Services. I see no reason why Ameren Missouri cannot
19 produce them in this hearing.

20 JUDGE DIPPELL: Mr. Lowery?

21 MR. LOWERY: Thank you, Your Honor. Your
22 Honor, do you have Mr. Sagel's response to the data
23 request that I sent you this morning? I assume that you
24 do.

25 JUDGE DIPPELL: I do. I have what you sent

1 this morning, yes.

2 MR. LOWERY: So a couple of things, Your
3 Honor. The context in which this came up is that staff
4 witness Mr. Smith excludes goodwill from his calculation
5 of Ameren Corporation's consolidated capital structures,
6 and Mr. Sagel criticizes that because it appears that
7 Mr. Smith makes an assumption that all of that goodwill
8 is backed by equity and didn't have anything to do with
9 debt and, in fact, the goodwill arose from Ameren
10 Corporation's acquisition of some of the companies that
11 are now Ameren Illinois Company, might have been
12 Illinois Power, might have been SIPC or Soco, I don't
13 know which ones, it doesn't really matter, and because
14 those acquisitions were done through a combination of
15 debt and equity financing you wouldn't just treat all of
16 this goodwill as equity. That was the point that
17 Mr. Sagel made in response to Mr. Smith's testimony.

18 His discussion of the impairment test that
19 Ameren Illinois has to do, I guess Ameren Corporation
20 and Ameren Illinois has to do was simply explaining what
21 has to be done when you have this goodwill on Ameren
22 Illinois' books. I don't even know if it's on Ameren
23 Corporation's books per se, but it's not on Ameren
24 Missouri's books. He was simply putting in context that
25 these impairment tests, here's what happens, here's this

1 goodwill, they have to do impairment tests. And he
2 concludes it doesn't really matter what the impairment
3 tests show because they wouldn't have any effect on
4 Ameren Missouri's credit worthiness because they don't
5 have anything to do with Ameren Missouri. And as his DR
6 response indicates, he didn't review the impairment
7 reports. He didn't rely on the impairment reports to
8 make any of the statements that he makes in his
9 testimony.

10 He simply examined the Ameren Corporation,
11 Ameren Missouri's consolidated 10-K SEC annual report,
12 which I'm sure the bench is familiar with, and it has a
13 paragraph or two in it that discusses the goodwill issue
14 at Ameren Illinois and the impairment -- the obligation
15 that Ameren Illinois has to do these impairment tests.
16 And as I understand it, the impairment tests are
17 required by GAAP, generally accepted accounting
18 principles. You have to do them because depending on
19 what the results might be you might have to report
20 something in your financial statements about them.
21 Again, it wouldn't be Ameren Missouri's financial
22 statements. It would be Ameren Corporation's or Ameren
23 Illinois' financial statements.

24 So first of all, Mr. Sagel didn't rely on the
25 reports that OPC wants, and secondly these aren't Ameren

1 Missouri reports. While Mr. Sagel is an Ameren Services
2 employee and if he was providing services to Ameren
3 Illinois that called for access to these reports and
4 Ameren Illinois wants him to use them to provide that
5 service, then yes, he would have access. But the fact
6 that he provides services to Ameren Illinois and may be
7 able to access Ameren Illinois' information as part of
8 that doesn't turn every piece of paper that Ameren
9 Illinois has into accessible information in a Union
10 Electric Company rate case in Missouri and that's what
11 their -- Ameren Missouri doesn't have this report and
12 Mr. Sagel doesn't have any right to demand that Ameren
13 Illinois force him to turn it over in an Ameren Missouri
14 rate case.

15 So we don't have possession, custody and
16 control of it. We don't have any right to insist upon
17 it. If they want it, I guess they can get a subpoena
18 and go to Ameren Illinois and see whether or not that
19 subpoena would be upheld. We don't have any right to
20 produce this information.

21 JUDGE DIPPELL: Mr. Hall?

22 MR. HALL: If I could just respond, Your
23 Honor. Regardless of the response I'm hearing now that
24 Mr. Sagel did not rely upon the impairment test for his
25 testimony, this dispute hits at the underlying

1 disagreement between Ameren Missouri and OPC, that is
2 that the equity ratio for Ameren Missouri depends upon
3 looking at all of Ameren's Corporation's subsidiaries
4 because all the corporate entities are inherently
5 interdependent in their equity ratios and debt
6 leveraging ability.

7 Furthermore, this position now that we are not
8 able to access a document referenced in an Ameren
9 Services person's testimony, because it's the property
10 of another Ameren subsidiary, hits at our concerns as to
11 affiliate transactions. We're not asking for every
12 single document that's within Ameren Illinois'
13 possession or Ameren Services' possession. We're asking
14 for one document that's -- We're asking for documents
15 that are referenced in Mr. Sagel's testimony.

16 We have already asked and Ameren Missouri has
17 already provided other materials and documents that were
18 the property of Ameren Corporation and other Ameren
19 subsidiaries. This defense has only come up in
20 reference to this data request.

21 MR. LOWERY: Your Honor, this is Jim Lowery.
22 I don't know to what Mr. Hall refers that we have
23 produced documents that are the property of Ameren,
24 other Ameren subsidiaries. I don't know what he's
25 talking about there. But again, Mr. Sagel didn't even

1 rely upon and wasn't pointing to this report. He was
2 simply pointing to the fact that impairment tests must
3 be done in reliance upon the 10-K. This data request
4 response was produced I believe last Thursday. I don't
5 know whether OPC wasn't aware of it until today or not,
6 but it's been out there for awhile.

7 JUDGE DIPPELL: Mr. Hall, so in this -- I see
8 the statement in Mr. Sagel's testimony on page 16 where
9 he says despite being highly unlikely based on recent
10 impairment tests, which certainly sounds like he's
11 basing his opinion on those impairment tests, but then
12 he does say in his DR response I did not review or rely
13 upon the most recent annual goodwill impairment test
14 performed on Ameren Illinois. Instead my testimony was
15 based on the Ameren Corporation's publicly filed 10-K
16 page 91.

17 Is that explanation not --

18 MR. HALL: I think a more eloquent response
19 could be provided by my witness Mr. Murray is in the
20 room. He keeps eyeing at me. He wants to give a
21 response if it would be proper.

22 JUDGE DIPPELL: I'd rather not since this
23 isn't evidentiary and I don't want to go down the road
24 of having the witnesses argue at the discovery
25 conferences.

1 MR. HALL: In that case, OPC still -- I'll
2 talk this over with my witness, but at this point I
3 still feel the need to maintain just our disagreement
4 with Mr. Lowery on this issue and would like permission
5 to file a motion to compel if we still feel the need to
6 do that.

7 JUDGE DIPPELL: I'm sorry, Mr. Lowery, you had
8 two points in your response and I was only hitting on
9 the one. What was the second point?

10 MR. LOWERY: I think the two points are, one,
11 Mr. Sagel didn't rely on, didn't review these reports
12 that OPC wants. They don't form the basis of his
13 testimony, number one, and the second one is these
14 aren't Ameren Missouri reports and they aren't
15 accessible to Mr. Sagel in connection with any service
16 that he is providing for Ameren Missouri including being
17 a testifying witness in this case. These reports, in
18 fact, are not prepared by the treasury group of which
19 Mr. Sagel is a part.

20 They're prepared by the accounting function at
21 Ameren Services as a service to Ameren Illinois because
22 it is an accounting device. It has to be done because
23 of generally accepted accounting principles. I guess
24 the second point, which I think is the most important,
25 although the first one is also germane, is Sagel doesn't

1 have a right to force -- to go rip these out of Ameren
2 Illinois' file cabinet or a different department in
3 Ameren Services' file cabinet and produce them in an
4 Ameren Missouri rate case. Ameren Missouri doesn't have
5 custody and control and he doesn't have a right to grab
6 the reports and produce them.

7 JUDGE DIPPELL: Okay. And I guess the reason
8 I got stuck on the first one was because in my mind if
9 he didn't, in fact, rely on it and there's not some
10 other way that that was relevant, then the point about
11 whether he can get them or not is kind of moot. So that
12 was the reason I got stuck on the first point. But I
13 understand your argument there.

14 Well, again, I do think it's relevant.
15 Whether or not he can obtain it is an issue that I'm
16 afraid I'll need more study on. So I will go ahead and
17 authorize you to file a motion to compel and we'll deal
18 with this in the same manner we deal with the other one.

19 MR. HALL: Thank you, Your Honor.

20 JUDGE DIPPELL: Is there anything further from
21 anyone about any other disputes I'm not aware of?

22 MR. SMITH: No, thank you, Your Honor. This
23 is Josh Smith. Thanks for your time this morning.

24 JUDGE DIPPELL: Again, I am available if you
25 have -- since this is the last discovery conference

1 scheduled, but I am available if other disputes arise.
2 I do hope that your settlement discussions were somewhat
3 productive on Friday, and I hope that you'll continue to
4 have open lines of communication and try to hash these
5 things out as much as you can before we get to the
6 hearing.

7 MR. LOWERY: Your Honor, this is Jim Lowery.
8 We are continuing those efforts and I apologize by the
9 way for including you on the settlement document that
10 was sent out. I know that you saw the subject line and
11 I'm sure got rid of it quickly but I apologize for that
12 oversight on my part.

13 JUDGE DIPPELL: That's all right. I'm just
14 happy to know that there were settlement discussions
15 taking place.

16 MR. HALL: Hey, Jim, speaking of open lines of
17 communication, would you mind staying on the line when
18 we go off the record just while I had you, Dave and I
19 had a few questions for you.

20 MR. LOWERY: I may or may not be able to
21 answer them. If the Judge doesn't mind us using her
22 line, that's fine with me.

23 JUDGE DIPPELL: Not at all. The line is open
24 until noon. All right. Then if there's nothing
25 further, then that concludes this discovery conference.

1 I will look forward to your motions to compel. We can
2 go off the record. Thank you.

3 (Off the record.)
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CERTIFICATE OF REPORTER

I, Beverly Jean Bentch, RPR, CCR No. 640, Certified Court Reporter with the firm of Tiger Court Reporting, LLC, within the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

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