

In the Matter of:

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI TARIFFS

ER-2019-0335 VOL. I

July 24, 2019



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Procedural Conference

July 24, 2019

Jefferson City, Missouri

Volume 1

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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(Continued)

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Also Present: Lisa Kremer, Division of Energy
Marty Hyman, Division of Energy

1 (July 24, 2019)

2 JUDGE DIPPELL: We can go ahead and go on the
3 record. This is Case No. ER-2019-0335, In the Matter of
4 Union Electric Company d/b/a Ameren Missouri's Tariffs
5 to Increase its Revenues for Electric Service. My name
6 is Nancy Dippell. I'm the regulatory law judge assigned
7 to this matter. And we have come here today for a
8 procedural conference to figure out how this is going to
9 go forward, and I'd like to begin with entries of
10 appearance. Can I start with company?

11 MR. LOWERY: James B. Lowery, Smith Lewis LLP
12 on behalf of Union Electric Company d/b/a Ameren
13 Missouri. The court reporter has the rest of my
14 information.

15 JUDGE DIPPELL: All right. Staff?

16 MR. KEEVIL: Jeff Keevil and Nicole Mers
17 appearing on behalf of staff of the Public Service
18 Commission, and the court reporter has our contact
19 information.

20 JUDGE DIPPELL: Public counsel?

21 MR. HALL: Good morning and thank you, Your
22 Honor. Caleb Hall and Nathan Williams appearing on
23 behalf of the Office of Public Counsel. Our contact
24 information has been previously provided to the court
25 reporter.

1 JUDGE DIPPELL: Midwest Energy Consumers
2 Group?

3 MR. WOODSMALL: David Woodsmall on behalf of
4 MECG.

5 JUDGE DIPPELL: Consumers Council of Missouri?

6 MR. COFFMAN: Yes. This is John Coffman
7 appearing on behalf of the Consumers Council of
8 Missouri, 871 Tuxedo Boulevard, St. Louis, Missouri
9 63119.

10 JUDGE DIPPELL: Renew Missouri Advocates?

11 MS. OPITZ: Good morning. This is Tim Opitz
12 for Renew Missouri Advocates. My address is 409
13 Vandiver Drive, Building 5, Suite 205, Columbia,
14 Missouri 65202.

15 JUDGE DIPPELL: And then I have several
16 applicants to intervene who haven't yet been granted
17 intervention, but we'll take that up later. So let me
18 go ahead and get entries of appearance from Division of
19 Energy?

20 MS. KREMER: Judge, the Division does not have
21 counsel present, but we do have two staff members
22 present.

23 JUDGE DIPPELL: Okay. And I don't know if you
24 all could hear that on the phone. Division of Energy
25 doesn't have counsel present, but Mr. Hyman and Ms.

1 Kremer are both present here.

2 Missouri Industrial Energy Consumers?

3 MS. VUYLSTEKE: Diana Vuylsteke, Bryan Cave,
4 LLC, 211 North Broadway, Suite 3600, St. Louis, Missouri
5 63102.

6 MR. MILLS: Also appearing for MIEC, Lewis
7 Mills, and the court reporter has my contact
8 information.

9 JUDGE DIPPELL: And the Sierra Club and
10 Natural Resources Defense Council?

11 MR. ROBERTSON: Henry Robertson, Great Rivers
12 Environmental Law Center, 319 North 4th Street, Suite
13 800, St. Louis, Missouri 63102.

14 JUDGE DIPPELL: Is there anyone else that
15 needs to make an entry of appearance that maybe hasn't
16 been granted intervention? I'm not seeing anybody else.
17 We have quite a room full for those of you that are on
18 the phone of staff and other counsel, and so forth. So
19 if you have difficulty hearing something, let me know.

20 First thing I wanted to take up was the
21 request to intervene of Sierra Club, Natural Resources
22 Defense Council, MIEC and Division of Energy. Would
23 there be any objection to those interventions?

24 MR. LOWERY: No objection from the company, no
25 objection.

1 JUDGE DIPPELL: Seeing no objection, I will
2 grant those requests for intervention and I'll issue a
3 short order saying that I did that after this to get you
4 all added to the service list, and so forth.

5 So I haven't yet suspended this tariff. The
6 Commission didn't do that on its own given that it was a
7 decrease and we did not have any objections to it. But
8 the company's request was that the tariff not actually
9 go into effect until April 1 even though it had an
10 August 2 effective date on it.

11 MR. LOWERY: Well, Your Honor, in fact, it
12 can't go into effect until April 1 at the absolute
13 earliest because of the provisions of 393.1655 by
14 statute.

15 JUDGE DIPPELL: And that provision is?

16 MR. LOWERY: It was adopted in 2018 as part of
17 Senate Bill 564. It's sort of generically known as the
18 rate cap provision. It also has a rate moratorium and
19 it's not a rate increase moratorium. It's a rate change
20 moratorium. That's why you saw that in the application.

21 JUDGE DIPPELL: Okay. I do, in fact, have an
22 order suspending the tariff on for tomorrow's agenda
23 assuming that the Commission takes that up and votes
24 that out.

25 MR. LOWERY: That's what the company expected

1 the Commission would do.

2 JUDGE DIPPELL: So there were some objections
3 or responses to the test year that were filed by staff
4 and public counsel with regard to the true-up period.
5 Does the company want to respond to those?

6 MR. LOWERY: The company does intend to
7 respond in particular to OPC's -- I think, and we
8 haven't had an opportunity to speak, but I think in
9 terms of staff and the company there's probably no
10 daylight between our positions. So we're going to be
11 able to come to agreement on their recommendation as I
12 understand it which I'm sure we'll talk more about. I
13 don't know if you want to talk about it on the record.
14 We'll talk about it as part of the procedural schedule.

15 As far as OPC, our response to their response
16 will be due on August 1, I believe August 1, and we
17 would like the time to be able to provide the Commission
18 a coherent and well thought out response. It's a very
19 short pleading but it's a very impactful pleading in
20 terms of the substantive nature of what they're
21 suggesting. We'd like the time to respond in due course
22 to that which we plan to do on the 1st.

23 JUDGE DIPPELL: Okay. That shouldn't be an
24 issue.

25 MR. KEEVIL: Judge, let me jump in here. The

1 only issue -- They certainly have the right to respond.
2 That in turn could impact, though, the procedural
3 schedule because how you have the test year, update,
4 true-up scheduled has an impact on the procedural
5 schedule when certain information is exchanged, blah,
6 blah, blah. So I guess I would just ask that as soon as
7 possible we get an order setting the test year update
8 true-up however it's ultimately set.

9 MR. LOWERY: Well, if I could respond to that,
10 and I don't disagree with you, Jeff, it does affect it.
11 My assumption, and my assumptions have been proven wrong
12 in the past, but my assumption is, as I said, Jeff, I
13 think that we're going to be on the same page with you
14 guys. I think we understand what you're asking for and
15 I think we're okay with what you're asking for, I
16 believe, but we need to talk about it.

17 My assumption is that staff and the company
18 and perhaps others could file a procedural schedule
19 premised upon our approach, we'll file a response.
20 Obviously the Commission -- and OPC may want to file
21 their own procedural schedule premised on their view of
22 life here and then the Commission obviously would have
23 to resolve it. I wasn't envisioning that it would
24 prevent at least the company and the staff from filing a
25 recommendation on the procedural schedule premised on

1 the approach that staff laid out essentially. That was
2 my premise at least.

3 JUDGE DIPPELL: I don't want to create more
4 work for any of you, but if we need to kind of have
5 contingent procedural schedules like, for instance, if
6 you think the Commission might go with public counsel's
7 true-up period or if the Commission may go with the
8 company's true-up period how that might affect the
9 testimony due dates and that kind of thing. I don't
10 think ultimately it will affect -- The hearing date will
11 probably end up at the end of the schedule like it
12 usually does. So you may want to think about doing
13 that. With that said, what would be a good time to
14 expect a procedural schedule then if you all aren't
15 going to respond until August 1 and say the Commission
16 were to set that true-up date on August -- at its next
17 agenda on August 7?

18 MR. LOWERY: My recommendation would be that,
19 again premised on company and staff I think will be on
20 the same page on the procedural schedule, I believe that
21 to be the case, we have to talk about it, is that we
22 file by August 1, that we file a response and anybody
23 else that wants to file a response to OPC's filing by
24 August 1 and we also file a procedural schedule by
25 August 1.

1 MR. KEEVIL: When is August 1?

2 MR. LOWERY: It's a Thursday, I believe.

3 MR. KEEVIL: Next Thursday?

4 MR. LOWERY: It's a week from Thursday.

5 MR. KEEVIL: Week from tomorrow. I was going
6 to say about a week would be adequate, yeah.

7 JUDGE DIPPELL: Public counsel, if you can
8 figure something out within a week, a proposed
9 procedural schedule?

10 MR. HALL: Either a predicate procedural
11 schedule depending on the test year approved by the
12 Commission or either a joint filing by the parties I
13 think a week's more than doable.

14 JUDGE DIPPELL: Okay. Great.

15 MR. KEEVIL: Will you issue an order, Judge?

16 JUDGE DIPPELL: I will. I will issue an order
17 dealing with the interventions and setting that August 1
18 as a date for both response to the responses -- reply to
19 the responses and for proposed procedural schedules. Is
20 there anything else that needs to come up?

21 MR. LOWERY: I was just going to bring up when
22 we filed the 60-day notice on this case, of course, we
23 filed the traditional seeking an increase in revenues
24 and then actually it's a small rate decrease as you
25 know. I don't know if you want in your order changing

1 the caption of the case.

2 JUDGE DIPPELL: Actually I meant to ask that
3 after I read it this morning. I can certainly do that.
4 Does anybody have an objection to me changing it from
5 increase to decrease?

6 MR. MILLS: Your procedural schedule says
7 decrease.

8 MR. LOWERY: I believe, Your Honor, that we
9 filed our application and we actually did use the word
10 decrease on the application. We weren't really sure
11 what to do, to be honest with you. We have a 60-day
12 notice that says one thing but it's really -- but I
13 thought maybe officially you might want to change that.

14 JUDGE DIPPELL: Okay. I can do that. That's
15 just clerical. But I'll mention that in my little order
16 so that everybody is clear about the caption of the
17 case. Anything else?

18 MR. KEEVIL: You said the suspension is on for
19 next week. So they are -- the tariffs are going to be
20 suspended?

21 JUDGE DIPPELL: It's on for tomorrow.

22 MR. KEEVIL: Oh, tomorrow. Okay.

23 JUDGE DIPPELL: Just a regular suspension.
24 You know, suspending it 120 days and six months brings
25 it to an operation of law date of May 30, I believe.

1 MR. LOWERY: That's what I calculated, yes,
2 Your Honor.

3 JUDGE DIPPELL: I brought a copy of the
4 Commission's calendar through that date. Obviously it's
5 pretty blank after November, or after October actually,
6 which is pretty amazing. That doesn't mean you have to
7 fill it up.

8 MR. KEEVIL: We'll fill up the holiday season.
9 How's that?

10 JUDGE DIPPELL: Yeah, that's always my
11 favorite. Anyway, the operation of law date is on here
12 and I see that meaning that the Commission needs to
13 issue an order with a 30-day effective date by the 29th
14 of April at the latest. So I would like to see reply
15 briefs no later than April 1.

16 MR. LOWERY: Your Honor, can I address that
17 briefly while we're on the record?

18 JUDGE DIPPELL: Yes.

19 MR. LOWERY: The Commission has not been
20 issuing in our rate cases, the last several cases, an
21 order with a 30-day effective date. It's varied from 24
22 was -- 24, 18, 22, 31 in one case. I'm a little bit
23 concerned about the ability to squeeze everything in if
24 we have quite that much time. And I know I actually
25 don't think -- We've exchanged some draft schedules. I

1 don't think either of us were necessarily thinking quite
2 that much time given, you know, given, you know, the
3 size of the utility and all the issues that you tend to
4 have in our cases, and so on. So I'm hoping maybe
5 there's some flexibility there.

6 JUDGE DIPPELL: There's always flexibility and
7 I tend to give you guys a lot of flexibility and then
8 find myself scrambling at the last minute and having
9 special agendas and all kinds of stuff to get stuff out
10 with even a 10-day effective date. So I would encourage
11 you to, if you want a decent order, to give me as much
12 time as you can, but I do also want you all to have
13 adequate time to prepare your case because that helps me
14 more than anything if everybody has a chance to actually
15 prepare the case and settle things that don't really
16 need to be decided by the Commission and all of that.
17 So I guess I'm saying there is flexibility. When you're
18 making your schedule, just know that in an ideal world
19 from the judge's perspective that's where we would be.

20 MR. KEEVIL: Judge, Mr. Lowery indicated we've
21 exchanged some draft dates and everything. Your date is
22 not tremendously far off from our date.

23 MR. LOWERY: Seven to ten days is what we're
24 talking about. We're not talking about three weeks or
25 anything.

1 MR. KEEVIL: About a week, week and a half.

2 MR. LOWERY: Part of it is, I think, part of
3 it is to build a little time in the schedule that we can
4 meaningfully talk about settling or at least settling a
5 lot of the issues. And there's sort of a chicken and
6 the egg problem in terms of issue in terms of having the
7 data. If there were a leeway of a week or ten days in
8 there, I think that would help us a lot and I think it
9 might give you a cleaner case to deal with.

10 JUDGE DIPPELL: That being said, the other
11 place where I really need more time than has been being
12 given in these situations is right before the hearing.
13 If I don't have your issues lists and your position
14 statements before the last minute, then there's no way
15 that myself and the commissioners can be prepared going
16 into the hearing.

17 And if we are prepared going into the hearing,
18 actually understand what the issues are and what's going
19 to be presented, you're going to have a much better
20 outcome no matter what your position is in having the
21 commissioners and myself understand those issues. I
22 really encourage you to take a look at that and give
23 sufficient time for me to update the commissioners and
24 for them to study what your positions and your issues
25 are.

1 MR. LOWERY: That's fair. We all obviously
2 have to talk, but I know in our drafts we're looking at
3 about a week for statements of position, about ten days
4 to two weeks for issues list. I know -- I think we're
5 all cognizant of that being helpful. So we'll try to --
6 If you give us a little room on the back end, we'll try
7 to give you a little on the front end.

8 JUDGE DIPPELL: That would be helpful. Things
9 happen. So don't be shocked if for some reason I tweak
10 it, but I try to go with what you guys suggest as long
11 as it actually makes sense for the Commission.

12 MR. LOWERY: Thank you.

13 MR. KEEVIL: Let me throw one thing out. You
14 may not be aware of it. I don't think most of the
15 judges are. You mentioned the list of issues and
16 position statements. I bring this up because I've seen
17 in some recent orders position statements almost on the
18 top of filing the list of issues, et cetera, et cetera.
19 For some reason getting together the list of issues has
20 -- not in Ameren necessarily but just overall that is
21 always one of the most contentious aspects of any
22 contested hearing at the Commission. I don't know why.
23 But it's been that way for 30 years. I don't think the
24 judges understand the contentious nature sometimes of
25 those list of issues. I just throw that out there since

1 it's not ex parte, I can say that, we're on the record.

2 JUDGE DIPPELL: It's certainly apparent when I
3 get a list of issues that says did Ameren prove its
4 case; that it's pretty apparent that you guys couldn't
5 agree to what the real issues are, but I just encourage
6 you to try to actually be specific about what it is
7 you're disagreeing about because that is part of that
8 having the Commission understand your issues. If you
9 can't even articulate them, I don't know how the
10 Commission can.

11 MR. KEEVIL: You can articulate them. You
12 can't agree. That's the problem.

13 JUDGE DIPPELL: It's hard to agree to what the
14 wording is.

15 MR. LOWERY: I'll probably jinx all of us but
16 I don't disagree with what Mr. Keevil said. Generally
17 speaking we haven't had huge problems in our rate cases
18 on that issue. On other cases I've had a lot more
19 trouble honestly than in the rate cases.

20 JUDGE DIPPELL: I realize that I've been
21 involved, especially since I've returned to the
22 Commission, I've been involved in other cases that have
23 been more contentious and this is the first big Ameren
24 case I think I've dealt with.

25 Anyway, is there anything else anybody wants

1 to bring up on the record before I turn it over and let
2 you guys discuss all these lovely things? I don't see
3 anything. Then I will leave it to you guys to talk
4 about the procedural schedules and how you think it
5 might go. I think the phone line is open until noon.
6 So if you need longer than that you may have to do a
7 different line.

8 MR. LOWERY: I would be surprised.

9 JUDGE DIPPELL: Okay. Thank you very much for
10 your attendance and we can go off the record.

11 (Off the record.)

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