

In the Matter of:

UNION ELECTRIC COMPANY d/b/a AMEREN MISSOURI, et al.

ER-2019-0335 , VOL. IV

November 13, 2019



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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Discovery Conference

November 13, 2019

Jefferson City, Missouri

Volume 4

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

NANCY DIPPELL, Presiding
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
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1 JUDGE DIPPELL: Let's go ahead and go on
2 the record. This is Case Number ER-2019-0335 in the
3 matter of Union Electric Company, doing business as
4 Ameren Missouri's, tariff's to decrease its revenues
5 for electric service.

6 My name is Nancy Dippell. I'm the
7 Regulatory Law Judge assigned to handle this matter
8 and we are here for a discovery conference. I have
9 two parties on the phone and three in the room with me
10 and I'm going to begin with entries of appearance.
11 I'm going to start with the Company. Mr. Lowery.

12 MR. LOWERY: Thank you, Your Honor. Jim
13 Lowery with Smith, Lewis, LLP appearing on behalf of
14 Union Electric Company, d/b/a Ameren Missouri.

15 JUDGE DIPPELL: And Staff.

16 MR. KEEVIL: Appearing on behalf of the
17 Staff of the Public Service Commission, Jeff Keevil,
18 PO Box 360, Jefferson City, Missouri 65102.

19 JUDGE DIPPELL: Office of the Public
20 Counsel.

21 MS. SHEMWELL: Good morning and thank
22 you. Lera Shemwell representing the Office of the
23 Public Counsel and the public. We're at Post Office
24 Box 2000? I don't know. I'll get it to you.
25 Jefferson City, Missouri 65109.

1 JUDGE DIPPELL: And could those of you on
2 the phone hear Ms. Shemwell all right?

3 MR. ROBERTSON: Not very well.

4 JUDGE DIPPELL: Mr. Robertson, would you
5 go ahead and make your entry?

6 MR. ROBERTSON: Certainly. For Sierra
7 Club, this is Henry Robertson, Great Rivers
8 Environmental Law Center, 319 North Fourth Street,
9 Suite 800, St. Louis, Missouri 63102.

10 JUDGE DIPPELL: And Mr. Mendoza?

11 MR. MENDOZA: Thank you, Your Honor.
12 Also for Sierra Club, Tony Mendoza, Sierra Club
13 Environmental Law Program, 2101 Webster Street,
14 Oakland, California 94612.

15 JUDGE DIPPELL: And Mr. Robertson, you're
16 also representing Natural Resources Defense Council,
17 but not necessarily today; is that --

18 MR. ROBERTSON: Yeah. I represent them,
19 but not today.

20 JUDGE DIPPELL: Okay. All right.
21 Then -- so we have three different issues or three
22 different parties with issues, maybe I should say.
23 And I'm just going to go through them. I think we're
24 going start with Sierra Club. Would -- I don't know
25 who's going to -- who's going to speak on behalf of

1 the Sierra Club, but --

2 MR. MENDOZA: Your Honor?

3 JUDGE DIPPELL: Yes, go ahead.

4 MR. MENDOZA: This is -- this is Tony
5 Mendoza. I'd be happy to speak for us on these
6 issues.

7 JUDGE DIPPELL: Okay. If you'd like to
8 go ahead.

9 MR. MENDOZA: Thank you. I will. Thank
10 you, Your Honor. And thank you for making the
11 accommodation of allowing the Sierra Club to appear by
12 telephone. We greatly appreciate that.

13 So we've -- in our filing, we identified
14 what I would call one concern and one disagreement and
15 I'll just talk about the concern briefly and then move
16 onto the disagreement.

17 So the concern we identified was the
18 practice -- utility's practice of granting itself
19 extension to discovery requests. And I recognize that
20 that is permitted under the scheduling order in this
21 case, but in our view, the Company should be required
22 to identify which specific discovery responses are
23 unusually burdensome and require extra time. I think
24 20 business days is a long time to respond to
25 discovery.

1 And I would argue that discovery we
2 submitted is routine in rate cases. And the cases I
3 have in neighboring states at the moment, the
4 utility's responded almost -- very similar questions
5 on, you know, the same timeline without having to seek
6 an extension.

7 And I just flag this as a concern because
8 of the requirement for testimony date is coming up and
9 I would just ask that if the Company needs more time
10 for any specific questions, that they be required to
11 identify the specific questions that are purported to
12 be burdensome and, you know, endeavor to provide all
13 the other responses on the original deadline.

14 I will say that the Company has produced
15 a lot of documents on a rolling basis. And so while
16 this is a concern, I'm hopeful we'll be able to get
17 everything we need to do testimony on time.

18 JUDGE DIPPELL: All right. And with
19 regard to your other dispute?

20 MR. MENDOZA: And so our -- our
21 disagreement is about I think the relevance of
22 specific discovery requests. We asked -- so as
23 background, there's a court order out there that
24 says -- from a federal district court that we
25 referenced --

1 THE COURT REPORTER: I'm sorry?

2 JUDGE DIPPELL: I'm sorry. The court
3 reporter is having a littler trouble. The
4 speakerphone isn't the base.

5 MS. SHEMWELL: Do you have it on max
6 volume?

7 JUDGE DIPPELL: I do.

8 If you could speak slowly and distinctly,
9 it will help us.

10 MR. MENDOZA: I will do my best. I'll
11 slow down.

12 So our disagreement relates to discovery
13 request question 2.50. So it's the second set. The
14 discovery question itself was attached to the
15 statement that we filed on Friday. The question,
16 which I won't read in its entirety, relates to the
17 reasonableness of continuing to operate the Rush
18 Island and Labadie plants in light of the federal
19 district court order, which ordered that the Company
20 install pollution controls on those plants.

21 And obviously I won't speak for the
22 Company, but I think their objections to that question
23 were relevance and then also some sort of
24 attorney/client or work product privileges.

25 And I would just say as to relevance, you

1 know, this is a general electric rate case in which
2 they are seeking approval. They have to show the
3 prudence of their spending at those generation plants.
4 And it strikes me as prudent, I think in the face of
5 such an order, that a Company would study whether it
6 makes sense to continue to operate those units.

7 If the Company hypothetically found that
8 it made sense to not operate those units beyond the
9 dates that are set out in that district court order,
10 then you would expect the Company to come forward with
11 plans to limit capital spending at those units almost
12 immediately.

13 There's a discovery response in the case
14 that talks about all the different projects they are
15 doing at Rush Island and Labadie to continue the --
16 you know, to maintain those units in service. And
17 some of those projects may not be necessary or prudent
18 if the Company decided that it was no longer
19 reasonable to operate those units beyond the dates
20 that are set out in the court order.

21 And I guess I would say we don't know
22 what the answer to those questions are because we
23 haven't seen any studies that the Company has produced
24 in response to those -- to those court orders -- or to
25 that court order, but that's the point of discovery is

1 to find out answers that may lead to admissible
2 evidence.

3 Let's see. I think those are -- those
4 are kind of the I think two specific things that I
5 think should be produced in response to that question.
6 One is, has the -- has the Company studied the
7 reasonableness of continuing to operate the units at
8 all? I mean that's a yes or no question. They've
9 either done it or not. I don't see how that could
10 possibly be privileged.

11 And then an aspect of that I think would
12 be their specific cost estimates for the projects that
13 are referenced in the order. And I believe it's FGD
14 flue-gas desulfurization --

15 THE COURT REPORTER: I'm sorry?

16 JUDGE DIPPELL: Could you repeat that?

17 MR. MENDOZA: Yeah, I know. I'm sorry.
18 That is a hard one. So the acronym is FGD, as in
19 Fred, Gary and David, FGD. And that stands for flue,
20 f-l-u-e, gas, desulfurization.

21 JUDGE DIPPELL: Desulfurization?

22 MR. MENDOZA: Yes, ma'am.

23 JUDGE DIPPELL: Go ahead.

24 MR. MENDOZA: And so that requirement
25 applies, if I remember correctly, to the Rush Island

1 plant. So the FGD requirement applies to the Rush
2 Island plant.

3 And then there's a different type of
4 technology referenced for the Labadie plant, and
5 that's called DSI, so David, Sally, Isaac. And DSI
6 stands for dry sorbent injection. Dry sorbent
7 injection.

8 And so in addition to just whether
9 they've studied the reasonableness of continuing
10 operation at all, I think the cost estimates for those
11 two types of projects would be relevant to this case
12 and should be produced.

13 And I think -- I think that's -- those
14 are the main points there, Your Honor.

15 JUDGE DIPPELL: Okay. Thank you.
16 Mr. Lowery, would you like respond?

17 MR. LOWERY: I would. So a coup-- well,
18 several things. I need to unpack this just a little
19 bit. Their theory, as Mr. Mendoza sort of indicated
20 today and has indicated in their pleading, is that
21 expenditures at Labadie and Rush Island, I think
22 they're referring to capital expenditures, during the
23 test year they're included in the revenue requirement,
24 so anything about those expenditures, of course, is
25 fair game in a rate case. And generally, I would

1 agree. However -- and then, you know, they claim that
2 that theory makes this within the scope of discovery.

3 The DR that they ask -- and one other
4 fact that -- that wasn't mentioned and wasn't
5 mentioned in the filing. The day after the judgment
6 that Mr. Mendoza referred to was issued, the same
7 court stayed the judgment as to all further
8 construction, installation or testing that the
9 judgment ordered. And an appeal has been filed and
10 that appeal is probably going to take -- I'm going to
11 just throw out a number -- two years. Certainly it
12 would be -- it would not be unreasonable to expect.

13 So let's look at exactly what this DR
14 asks for, because the description I don't -- that was
15 given I don't think really entirely matches the DR.
16 And it also doesn't fit the theory that they're
17 positing in terms of why there ought to be discovery.

18 It asks, first of all, whether the
19 Company has considered the reasonableness of further
20 investment in light of the judgment. By definition,
21 further investment in light of the judgment is going
22 to have to take place in the future.

23 But we don't set rates in Missouri based
24 upon future projects. I don't know the DR that
25 Mr. Mendoza is referring to, but I suspect it's a DR

1 that has a list of a lot of projects over probably the
2 next five or maybe twenty years that are sort of
3 forecast to be done at Labadie and Rush Island. Those
4 projects aren't at issue in this case. The only thing
5 at issue in this case would be past investments we've
6 made that we're seeking to recover in rate-base and --
7 in this case.

8 And if you're asking about have we
9 considered the reasonableness of further -- in other
10 words, future investment in light of the judgment,
11 none of that has any relevance in this rate case.

12 The rule -- we objected based on
13 relevance, we objected bas-- also based on the fact
14 that what the rule says, that's Rule 5601 I believe,
15 is that it's not grounds for objection if the request
16 seeks information reasonably calculated to lead to the
17 discovery of admissible evidence.

18 So if it's asking about things we did
19 during the test year, things we've already done,
20 things we did before the judgment, et cetera and that
21 would be under consideration for rate-base, sure. I
22 can't object and say, you know, it's not relevant,
23 it's not reasonably calculated, because evidence about
24 that might be admissible as to what the rate-base
25 ought to be in this case.

1 But the -- but it is grounds for
2 objection to say you're asking about things that
3 aren't at issue in this case. And that is what
4 they're asking about, by their own theory. Because
5 they're asking about have we considered not doing
6 things in the future because we got this judgment on
7 September 30th.

8 The question -- and I can tell you --
9 so -- so I think that their theory, while sound, if
10 they were asking about what we've done, what's
11 involved in this rate case, I wouldn't have an issue
12 with it. It's not sound when they're asking us have
13 you thought about not doing stuff in the future
14 because you got this judgment. Because that stuff's
15 not at issue in this rate case.

16 I also want to address the other
17 discovery concern issue in a moment, but I assume you
18 want to deal with this first and then go back to that.

19 JUDGE DIPPELL: I would. Let me just ask
20 you, I realize that what they're talking about is in
21 the future, but they're asking if you've done studies
22 in the past and --

23 MR. LOWERY: Not --

24 JUDGE DIPPELL: -- it could become an
25 issue.

1 MR. LOWERY: That's not what they're
2 asking. The specific question is how has the Company
3 evaluated the reasonableness of continuing to invest
4 in light of the requirement to put on an FGD, to put
5 on a DSI unit. Have we done that in light of the
6 requirement? That requirement didn't come along until
7 9/30. So have we, since that judgment, evaluated the
8 reasonableness of that. That's the question they're
9 asking.

10 They -- Mr. Mendoza said there's two
11 things we ought to be required to provide. They
12 didn't even ask for those things. Have we studied the
13 reasonableness at all. That's not the question they
14 asked. They said have we evaluated the reasonableness
15 of continuing to invest.

16 And then cost estimates for the
17 prospective investments. Well, they actually ask for
18 work papers underlying an evaluation that we may or
19 may not have done in light of since the judgment.

20 So they're not asking -- they're asking
21 for -- again, they're asking for prospectively have
22 you evaluated whether you're going to do these future
23 projects or not given that you have this judgment.
24 They're not asking about the things that we've done
25 that are involved in this case.

1 JUDGE DIPPELL: Well, they're still
2 asking have you evaluated sin-- in light of the
3 decision. Even if it's since September 30th, there's
4 a problem with answering?

5 MR. LOWERY: But they're asking whether
6 or not we've evaluated the issue of continuing to
7 invest, to make future investments. The future
8 investments --

9 JUDGE DIPPELL: They are --

10 MR. LOWERY: -- don't have anything to do
11 with this case.

12 JUDGE DIPPELL: Rebuttal testimony hasn't
13 been filed yet. Maybe future investments do have
14 something to do with this case.

15 MR. LOWERY: Why would a future
16 investment that's not involved in -- that's not going
17 to be considered for rate-base in this case have
18 something to do with this case?

19 JUDGE DIPPELL: If --

20 MR. LOWERY: Might in an IRP, but --

21 JUDGE DIPPELL: They're talking about --
22 and I'll probably let Mr. Mendoza make this argument,
23 but I'm assuming his argument is they're talking about
24 continuing maintenance that will go into the future.
25 For all I know, there is maintenance that has taken

1 place in the test year that will go beyond the date of
2 that court date.

3 I don't know if you all have considered
4 it. Maybe his wording is a little more specific than
5 it should be, but the first question, yes or no. Have
6 you -- have you discovered it or have you considered
7 it, I -- I don't see how the answer to that is
8 privileged or irrelevant.

9 MR. LOWERY: Well, again, the question
10 says continue to invest, which I don't think has
11 anything to do with maintenance, but I --

12 JUDGE DIPPELL: Okay.

13 MR. LOWERY: -- I read the question as
14 capital investment. And the only thing in a rate case
15 that capital investment is going to affect is what our
16 rate-base is. And if it's future projects in light of
17 this judgment, whether we're going to go ahead and do
18 them or not, that's not going to affect the rate-base
19 in this case.

20 And that's why I don't believe the
21 question has any relevance. I don't think it's
22 reasonably calculated to lead to admissible evidence.
23 Because if we were going to spend 50 million dollars
24 in March of next year on some project, it's not going
25 to affect the rate-base in this case and it's not

1 going to affect the rates to be set in this case.

2 JUDGE DIPPELL: And Mr. Mendoza, would
3 you like to make your arguments yourself instead of
4 me?

5 MR. MENDOZA: I -- Your Honor, I was
6 appreciating your questioning, but I have a few
7 additional points. One would be to the idea that this
8 is only a case about the test year, I think that's not
9 right. Because in every rate case, there's a resource
10 planning aspect and that's especially so in cases in
11 states like Missouri where a utility's Integrated
12 Resource Planning processes are not a formal docket
13 with cross-examination and, you know, a Commission's
14 formal ruling approving the IRP.

15 And so the Commission has an obligation
16 in this rate case, like every other rate case, to look
17 at resource planning issues that are identified by
18 stakeholders in testimony. And we do intend to
19 identify the need to plan around both Rush Island and
20 Labadie, not just for the reason of lowering capital
21 spending as soon as possible if there is a requirement
22 decision. You don't want to run into a brick wall.
23 You want to slow down before you hit the brick wall.
24 There's no need to do projects that are intended to
25 extend the useful life of a unit beyond their

1 retirement date, of course.

2 But putting that reasoning aside, there's
3 also the question about fuel spending at the plant,
4 fixed O and M, variable O and M, all the costs that go
5 into the plant that will be charged to customers in
6 future years will -- you know, some baseline of
7 spending for all of those things that may be set in
8 this case.

9 And I would note that the procedural
10 order says that we could challenge what costs go into
11 the fuel adjustment clause and we could even challenge
12 the -- you know, we could even suggest the elimination
13 of the fuel adjustment cause. I don't think Sierra
14 Club is going to make that move necessarily.

15 But I just say that because those are
16 other costs that will be charged to customers in the
17 future for the continued operation of these plants.
18 And I agree that some of these things were not
19 referenced in our -- would not necessarily be
20 responsive to the question. You know, future fuel
21 spending, for example.

22 But if we're talking about the relevance
23 of future activity, I think this is the -- this rate
24 case is the chance for the Commission to rule on
25 certain resource planning issues. Should these units

1 be serving customers at all in the immediate term.

2 And if the company -- you know, and some
3 states have a rule where the utilities have to file
4 rate cases on a certain annual cycle, you know, every
5 three years or five years or something. And in those
6 states, I think you don't -- the Commission doesn't
7 have to look out five years about whether ongoing
8 operations are reasonable because there will be
9 another opportunity to do that.

10 But in this case, there may not be
11 another opportunity for the Commission to -- to weigh
12 in on the prudence of baseline fuel spending, baseline
13 O and M, things like that for future years. And, you
14 know, so I would say that the reasonableness of
15 continued operation is relevant to those questions
16 also, but not just the specific question of capital
17 spending.

18 And I will say Mr. Lowery's correct that
19 our question did not ask specifically for, you know,
20 cost estimates for projects. And I guess I would
21 argue that the reasonableness of continued operation
22 would assume some consideration of costs. But, you
23 know, we didn't specifically ask for that. And if it
24 would be helpful, we could just submit a follow-up.

25 I do think the reasonableness is

1 relevant. It's a relevant question. They should
2 answer it either yes or no. We could maybe help save
3 the process by submitting a follow-up discovery
4 question that just asks for the cost estimate
5 specifically.

6 MR. LOWERY: May I address one aspect?

7 JUDGE DIPPELL: Go ahead.

8 MR. LOWERY: I'll be brief. But all of
9 the arguments that Mr. Mendoza just made and all of
10 the points he made about looking at resources and all
11 these kinds of things, they asked about 25 DRs that
12 get to all those issues, fuel and all those things
13 with multiple subparts, which we've answered all of
14 them.

15 None of them go to what this DR is asking
16 for. The argument they're making on this DR is
17 separate and apart from the argument that Mr. Mendoza
18 just made that they've done discovery on and that
19 we've responded to.

20 Again, at its core what they're asking
21 for is are you going to do these future projects that
22 aren't going to affect the rate-base in this case?
23 And that's not relevant to this case, it's not -- and
24 that evidence wouldn't be admissible in this case
25 because we're setting rates in this case and we're

1 using historical test year and rate-base has a
2 particular date. That's the way it works in Missouri.

3 And so nothing that he said negates the
4 problem with the -- this specific question that
5 they've asked.

6 JUDGE DIPPELL: I still -- I hear your
7 argument. And you're correct. Test year is what we
8 use in Missouri. We set rates based on the past.

9 MR. LOWERY: Well, and for -- I'm sorry
10 to -- but for capital it's even -- you know, we're
11 not -- we're not setting -- when we're talking about
12 O and M and all these other things he was talking
13 about, yeah, we're using past historical data as a
14 proxy for what those levels are going to be in the
15 future.

16 But when we're putting capital in
17 rate-base, we're not doing that at all. We're saying
18 as of this date, this is what their investment's been
19 and it's in service. You know, prop one says we can't
20 even look forward. Right? We can't even consider
21 future projects. We can't even consider what the
22 rate-base is going to be in the future. And we're
23 simply putting that into rate-base and getting a
24 return and depreciating it.

25 So it's not even the same -- I understand

1 where you're going, but it's not even the same for the
2 general -- as a pr-- we're using historical data as a
3 proxy for the future. We're not using in rate-base as
4 a proxy to the future. It's just that's what the
5 rate-base happens to be.

6 JUDGE DIPPELL: But still, just and
7 reasonable rates encompasses a lot of information.
8 Not just the numbers of capital on this date. In
9 setting just and reasonable rates, the Commission has
10 a wide view of everything. And that includes where
11 things are headed in the future.

12 And having been somewhat -- maybe
13 surprised is not the complete word, but in past rate
14 cases for other companies, having had plants shut down
15 in the process of a rate case, I'm certain that that
16 is on everyone's mind and should be with regard to
17 setting just and reasonable rates.

18 I think the Commission needs as much
19 information as it can and I think that just the
20 question is relevant. I think it is a yes or no and
21 maybe qualified by an appeal has been filed and the
22 order has been stayed answer. And then if there are
23 reports or work papers involved, then you can get to
24 what might be privileged.

25 MR. LOWERY: Understand.

1 JUDGE DIPPELL: So I think if --

2 MR. LOWERY: And I don't even know the
3 answer to the question, honestly.

4 JUDGE DIPPELL: -- if Mr. Mendoza wants
5 to refine his question, then that will be a new
6 request, but it sounds like maybe -- maybe the
7 questions have been asked regarding the cost and so
8 forth in another. This seems more -- I agree this
9 question the way it's asked is directed toward these
10 particular things.

11 Mr. Mendoza, did you have anything else
12 that you wanted to add?

13 MR. MENDOZA: No, Your Honor. Except
14 that I think my preference would be to wait to see the
15 Company's response to that question before thinking
16 about whether to submit other questions. And so I was
17 curious if the Company could offer a time -- I mean
18 the due date for that response has passed, but could
19 the Company offer a response to that question by the
20 end of this week? If that's not -- I mean we're
21 willing to be reasonable.

22 MR. LOWERY: I think that may be a little
23 quick, but I think -- I think by next week is probably
24 not a problem. And just to point out, we did make a
25 valid objection so the due date of the original

1 question, in my mind, is irrelevant at this point.

2 MR. MENDOZA: Okay. Well, I'm just
3 noting that you've had the question for a while. But
4 okay. So I guess we'll think about -- if you'll
5 answer by next week, we'll look at the schedule and
6 see if we can afford to wait.

7 But one -- I guess, Your Honor, could I
8 ask for a clarification of whether you believe that
9 cost estimates for the project would be subsumed? I
10 mean if the answer to the question is no, then I think
11 probably won't produce anything. But if the question
12 is yes, I guess I'm asking -- I'm not sure what I'm
13 asking for, but I guess I'm asking for a clarification
14 that the cost estimates for the project would be
15 considered relevant and part of the Company's
16 response.

17 JUDGE DIPPELL: I guess I am looking at
18 the specific question. And it says, Has the Company
19 evaluated the reasonableness of continuing to invest
20 in the Rush Island Energy Center in light of the
21 requirement that it install wet flue-gas sulfur--
22 desulfurization in order to keep operating the plant?

23 I don't see any cost estimate in that
24 question.

25 Then it says, If so, provide all reports

1 and work papers associated with such evaluation.

2 I'm -- I also am assuming that those
3 reports and work papers could involve cost estimates.
4 So I guess that part, the answer would be yes, if
5 they -- if such things exist. I don't know, again,
6 about what might be reasonably attorney/client
7 privileged based on whether those cost estimates were
8 done for appeal purposes instead of business purposes
9 other whatever. I don't know what objections might be
10 made.

11 But all reports and work papers
12 associated with such evaluation would seem to involve
13 cost estimates, if they were made. Is that --

14 MR. MENDOZA: Thank you, Your Honor, for
15 entertaining that question that I had. I -- I think
16 in -- you know, thinking about that language, as you
17 were reading it, I think we will actually go ahead and
18 submit a follow-up question sooner rather than later.
19 Just -- just in full disclosure to the Company, I
20 think we will submit a follow-up question on that
21 point just to avoid any doubt about what the in-- in
22 any case, we'll submit a follow-up question that just
23 says provide any cost estimates for the project.

24 JUDGE DIPPELL: Okay. So I think this
25 was our last discovery conference before the testimony

1 gets filed and so forth. So I will just say that if
2 you all have further disputes about those follow-up
3 questions, that you may follow the regular process and
4 contact me for a telephone conference or whatever.

5 I'm not encouraging that. I'm just reminding you --

6 MR. MENDOZA: Understood.

7 JUDGE DIPPELL: -- reminding you because
8 I do know that the testimony dates are coming up.

9 MR. KEEVIL: I think there's another
10 conference aft-- before rebuttal, but not before
11 direct.

12 MR. LOWERY: That's right. I believe
13 that's right.

14 JUDGE DIPPELL: So Mr. Lowery, did you
15 want to make your other statements?

16 MR. LOWERY: I do. And I -- frankly, I
17 wouldn't, but since this is on the record and a
18 pleading has been filed, making these statements and
19 statement that's been made on the record, I feel like
20 I need to make my own record about it.

21 So we've received in about the last five
22 weeks nearly 100 DRs from Sierra Club and most of them
23 had many subparts. So effectively, you know, a couple
24 hundred questions probably or at least close to that.
25 During that same window of time we received about 275

1 DRs, also with a lot of subparts, from the Staff and
2 OPC.

3 So when Sierra Club says in their
4 pleading that our notice of extension, which is
5 completely contemplated by the rules and the
6 procedural order, and it's completely within -- and we
7 gave the reason why is unjustified, I would contend
8 they don't have any basis to make that statement.

9 Many, and in fact most, of the DRs for
10 which we gave extension notices to them are -- the
11 first one we gave two weeks and the second one we gave
12 a week -- are also being answered and dealt with by,
13 you know, a fairly similar cross-section of the same
14 people. So people only have so many hours in the day.
15 And -- and these were very broad-ranging, detailed DRs
16 and so we needed the time.

17 I'd also point out that Sierra Club, of
18 course, got notice of this case in July, actually
19 sought to intervene on July 17th and it took them
20 about two and a half months to ask a single question.
21 And all the questions that they asked in those sets of
22 data requests were questions they could have asked
23 during that entire period of time.

24 So to the extent that because of the
25 practical ability to actually properly process and get

1 accurate answers to the DRs, it may put some squeeze
2 on them. That's not entirely the Company's
3 responsibility. And there's nothing untoward or
4 improper about what we've done.

5 I'd also note, as Mr. Mendoza indicated,
6 on that first set we did answer about a third of them
7 within the normal 20-day period. We answered all but
8 two of the rest of them before the extension was up,
9 and we answered all of them by the time of the date of
10 the extension. And we've also answered quite a number
11 of the second set, which the extension date was one
12 week. That hasn't arrived yet.

13 So we are operating in good faith and
14 doing the best we can, but -- but they had some
15 ability to ask some of these questions at an earlier
16 point in the case and they didn't do it and here we
17 are here.

18 JUDGE DIPPELL: Okay. Well, I understand
19 everyone has time constraints. Do -- do note,
20 however, as the holder of all of the information and a
21 company the size and experience of Ameren, that
22 expectations are high and that Ameren will do what
23 they can to comply. And I do appreciate that you
24 complied with your extension. I agree the -- that's
25 what's allowed. Maybe --

1 MR. KEEVIL: Can I jump in here?

2 JUDGE DIPPELL: -- maybe future -- just
3 one moment. Maybe future procedural schedules should
4 be more specific about what the outcomes will be on
5 the -- on the extensions.

6 Mr. Keevil?

7 MR. KEEVIL: I was just going to say --
8 and I'm not looking to pick a fight with anybody on
9 this. This is not my issue. But technically -- I
10 don't have the rule in front of me, but if I remember
11 that rule correctly, it does not give any party, Staff
12 included, Company, Public Counsel, Intervenor,
13 whoever, a unilateral right to extend a response date.

14 Now, it's -- we've kind of by practice
15 sort of adopted a gentlemen's sort of agreement to
16 allow that. But if I remember the rule correctly, it
17 talks about by agreement, the date for discovery -- or
18 DR responses may be extended.

19 And so I mean theoretically Mr. Mendoza
20 could argue that if he didn't agree to the extension,
21 then there was no extension and you'd wind up I guess
22 with mul-- multiple motions to compel and just
23 fighting back and forth.

24 So I mean that's -- that's why I think
25 the parties have basically treat-- as long as the

1 extension request is reasonable by the Company or
2 whoever is responding, that, you know, it's generally
3 accepted. But I mean what caused me to pop up here
4 was when you said that was what the rule provided
5 and --

6 JUDGE DIPPELL: Well --

7 MR. LOWERY: I think she's correct what
8 the rule provides.

9 JUDGE DIPPELL: -- the rule is actually
10 silent as to that. It does mention the -- that by
11 agreement, that that's in regard to you shall answer
12 by this time unless there's an agreement or --

13 MR. KEEVIL: Right. That's what I was
14 talking about.

15 JUDGE DIPPELL: -- otherwise ordered by
16 the Commission, which the Commission in this case has,
17 in the procedural schedule, basically said unless the
18 party says more time is needed.

19 MR. KEEVIL: Oh, you're ta-- okay.

20 MR. LOWERY: The agreement in the rule
21 allows you, for example, to agree I can have 25 days
22 instead of, you know, 20 by separate agreement. But
23 the provision for an extension doesn't -- doesn't say
24 anything about -- I -- I agree that we all treat it as
25 a ge-- I'll say a gentleperson's agreement, try to be

1 more politically correct.

2 But -- but I don't -- I don't agree that
3 the rules -- and I'm not looking to pick a fight with
4 you either, Jeff, but I don't -- I don't agree the
5 rule -- if a party doesn't -- has an issue with an
6 extension given by another party, then I think they
7 have to go to the Commission and have the Commission
8 resolve the disagreement.

9 JUDGE DIPPELL: I do agree that if -- if
10 they say we need two weeks and the other party says I
11 don't have two weeks, then -- then you can come in and
12 have the Commission say no, answer now.

13 MR. LOWERY: I would agree with that.

14 MR. KEEVIL: I would agree with that. I
15 mean, yeah but -- okay.

16 JUDGE DIPPELL: So there are avenues.
17 I'm just saying the rule and the procedural schedule
18 that was ordered in this case are a little nonspecific
19 on what happens with a self-extension.

20 To that point though, I -- like I say, I
21 have looked at the schedule and, you know, the
22 holidays are in there, but if -- if there are truly
23 unreasonable extensions going on, I've looked at it
24 and I'm not -- I'm not above allowing more time for
25 rebuttal and shortening the time for surrebuttal if

1 that happens. So it's not -- we're not there, but I'm
2 just saying there -- I considered after our last
3 discovery conference -- I think I made some statement
4 about difficulty with actually there being any
5 ramifications for failing to cooperate. But I have
6 looked and that is one possibility.

7 MR. LOWERY: Well, Your Honor, I -- I
8 understand what you're saying.

9 JUDGE DIPPELL: Yeah.

10 MR. LOWERY: We certainly would want to
11 be heard and have a fair opportunity to be heard on
12 whether or not the extensions were unreasonable or
13 not, because none of that has been established by
14 anything that's been --

15 JUDGE DIPPELL: And I am not --

16 MR. LOWERY: -- said here today.

17 JUDGE DIPPELL: -- not saying that it
18 has. I just am throwing that out there because we
19 have had three discovery conferences and they -- in a
20 situation where they usually get worked out before the
21 judge gets down here. So that part of it is a little
22 unusual.

23 So anyway, I think we've said enough
24 about that for now. Let's move onto Public
25 Counsel's -- Public Counsel's issues.

1 MR. LOWERY: Do we still have issues?

2 MS. SHEMWELL: Yes.

3 JUDGE DIPPELL: Do you still have issues?

4 I'm going to put the phone over toward
5 Ms. Shemwell while she's speaking.

6 MS. SHEMWELL: Thank you. Because I've
7 had laryngitis for two weeks now; a bad thing for a
8 lawyer with public hearings.

9 Good morning. It's on the Hyperion,
10 H-y-p-e-r-i-o-n, Hyperion Financial Management
11 software. And Geri Best had worked with Dave to get
12 this and we have gotten the annual Hyperion reports.
13 It's an internal reporting software that's used for
14 financial reporting of all of Ameren Corporation
15 subsidiaries.

16 And while Dave Murray, who is here and
17 can speak for himself, is happy to start using the
18 annual, we had specifically asked for the monthly and
19 received a response to OPC DR-3034 which says that
20 income statements and balance sheets are generated
21 from HFM, which is the Hyperion, on a monthly basis.
22 And we had asked for those.

23 It does have a caveat that incremental
24 reviews and adjustments may be necessary on a
25 quarterly basis to produce quarterly FERC and GAAP

1 reports, but we are still looking, I believe, and
2 would like to receive the monthly reports.

3 I will note that if in looking through
4 the annual reports that we have received, which we
5 have just gotten, if we find that we can target that,
6 we will be happy to. But the Company has said they're
7 produced monthly for all of their subsidiaries -- or
8 it's used for all subsidiaries and produced monthly,
9 so that's what we're looking for is those monthly.

10 And so I -- I think I can leave it at
11 that in that we are still looking for the monthly, but
12 if we can tailor it more narrowly, we will work with
13 the Company and do that. We don't know yet. We
14 haven't had time.

15 JUDGE DIPPELL: And, Mr. Lowery?

16 MR. LOWERY: So -- yeah, a little bit of
17 background. So I received an e-mail from Mr. Hall who
18 I under-- you know, Ms. Shemwell's pinch hitting I
19 think for him today -- I think it was on Friday --
20 that explained what their issue and concern was.

21 And based on that e-mail, we answered
22 3047, which is actually the only DR that they raise as
23 being an issue in the case. We answered -- we
24 answered -- well, they raised 3047, but I was led to
25 understand, based on Mr. Hall's e-mail, what it is

1 that they were trying to get to. And so we
2 answered -- we had a pending DR 3045, which we
3 answered yesterday.

4 And I understand you haven't had very
5 much time. I'm not casting stones about it. But we
6 answered it yesterday. And I inquired of Mr. Hall at
7 the time do we still have an issue? Based on your
8 e-mail, I believe that this will address the concern
9 that was at least expressed in the explanatory e-mail.
10 Please let us know.

11 I think Mr. Murray maybe wasn't available
12 yesterday and so I think this morning he looked at
13 that answer. I didn't hear back until we got here
14 this morning as to whether we have an issue or not,
15 and apparently we still do.

16 I wasn't aware there was a complaint
17 about 3034 until, you know, about a minute ago. And
18 we had understood that the answer to 3045 would have
19 solved the overall concern, because I think these
20 things are related.

21 So I guess are we willing to discuss and
22 see if there's -- what we can do? Sure. I just
23 don't -- I don't have the expertise to resolve it.
24 Ms. Shemwell probably doesn't either at this moment.
25 And I'm not exactly sure -- and I don't know exactly

1 what exists or doesn't exist. So I'm not sure where
2 that leaves you, Your Honor, but --

3 JUDGE DIPPELL: Well, let me ask a
4 question first. When I read the statement of concern,
5 I thought that 3034 was provided just because it -- it
6 says that those reports are generated on a monthly
7 basis. And then the response to 3047 said we don't
8 routinely do that. So am I wrong there?

9 MS. SHEMWELL: I meant to say 3034 -- if
10 I said 3037, it's probably because I wrote it down.
11 We're looking at 3034. 3037 conflicts.

12 MR. MURRAY: 3047.

13 MS. SHEMWELL: 3047 conflicts. 3034 is
14 the one that says they are generated on a --

15 JUDGE DIPPELL: So I guess let me
16 rephrase what I was trying to ask. Is there a dispute
17 on 3034 or is that just provided to show the conflict?

18 MS. SHEMWELL: I think that was
19 showing -- we're showing that there is a conflict.

20 JUDGE DIPPELL: Okay. And then so to
21 restate, my understanding is then that 3047 asks for
22 the monthly; you've received the annual. That may
23 provide the information that you need, but it may not?

24 MR. LOWERY: And you're just still
25 thinking on that? Is that the question?

1 MS. SHEMWELL: We haven't read through
2 the information.

3 JUDGE DIPPELL: Okay. Well --

4 MS. SHEMWELL: And Mr. Murray said to me
5 this morning they'll be happy to look through it and
6 do so quickly, but it does appear that it's available
7 on a monthly basis.

8 JUDGE DIPPELL: Right.

9 MS. SHEMWELL: But that's not what we
10 got.

11 JUDGE DIPPELL: Okay. I think with
12 regard to that then, I would ask you all to look at
13 what they provided you and in the next couple of days
14 let them know if you still need a monthly basis.

15 And Mr. Lowery, I would ask you to
16 determine which of these is the correct statement.

17 MR. LOWERY: Okay. I'll do it.

18 JUDGE DIPPELL: And it seems that if
19 these reports are generated, in fact, on a monthly
20 basis and are not encompassed in the annual
21 information, that someone could generate those reports
22 for Public Counsel.

23 MR. LOWERY: All right. Well, I'll wait
24 to hear from them. And I will in the meantime see
25 what exists and doesn't exist.

1 JUDGE DIPPELL: Okay.

2 MS. SHEMWELL: And -- okay. I think
3 we're pretty sure that there are monthly, but anyway.

4 And Caleb had mentioned that a few are
5 past due. Amanda has --

6 MR. LOWERY: 1233 and 1234 and I believe
7 those are --

8 MS. SHEMWELL: I've got 1231 through 34.

9 MR. LOWERY: Caleb's e-mail only said 33
10 and 34, but you have 1231 through 34?

11 MS. SHEMWELL: Yes. 31 and 32 were
12 submitted on September 23rd. And Caleb's not here --
13 and 24th -- for me to double check with him. 33 and
14 34 were sent October 18th.

15 MR. LOWERY: 33 and 34 I believe you
16 should have today. I thought you would have them
17 yesterday. I wasn't aware there was an issue about 31
18 and 32 so I'll just have to check on them.

19 MS. SHEMWELL: Jere was out yesterday
20 afternoon. She manages CaseWorks for us. Dave was
21 having trouble getting in. I can never seem to get
22 in. So we're very dependent on Jere. Jere Buckman,
23 not Geri Best who works for Ameren. Although we're
24 dependent on Geri Best as well.

25 MR. LOWERY: I will check on them.

1 MS. SHEMWELL: Okay. Great.

2 JUDGE DIPPELL: So again, I'll ask you
3 all to -- in the next couple days if this isn't worked
4 out, to get back in touch with me and let me know if
5 there's some dispute.

6 MS. SHEMWELL: Thank you.

7 MR. LOWERY: Thank you, Your Honor.

8 JUDGE DIPPELL: Okay. Then we can move
9 onto Staff. Do you all --

10 MR. LOWERY: Can I just --

11 JUDGE DIPPELL: -- still have
12 disagreements?

13 MR. LOWERY: Well, I think they'd like --
14 I think we have seven or eight DRs that we are still
15 late on that I'm feverishly working to get to them.
16 But let me just update you on their list. Eight of
17 the 15 on their list they have. And Mr. Keevil and I
18 spoke yesterday.

19 And there was one, Jeff, that we had
20 indicated you'd get a separate disc. And as I think I
21 mentioned off the record, they got that today.

22 So there are six or seven additional ones
23 that are on Mr. Keevil's list. I am pounding the
24 pavement to get answers just as quickly as I possibly
25 can. And I don't expect it to be very much longer,

1 but that's where we are.

2 MR. KEEVIL: Yeah. Let me just for the
3 record here, since we filed our notice of discovery
4 disagreement last Friday, they've -- they have
5 responded to about --

6 MR. LOWERY: Eight of them.

7 MR. KEEVIL: -- about half of the DRs we
8 had listed. And still outstanding are responses to DR
9 444, 443, 437, 431, 395 and 374 and 377. The first --
10 well, except for those last two, my under-- I went
11 back and checked when I filed this and I don't believe
12 there were any objections to those first five that I
13 listed. Those are just simply overdue.

14 And on 374 and 377, they did object to
15 the extent of privilege, but we're not looking for
16 really privileged stuff. We're just looking for
17 complete answers. As I indicated in the notice, we
18 did receive responses to the first two parts of Number
19 377.

20 JUDGE DIPPELL: Did we lose somebody?

21 MR. KEEVIL: Hello? On the phone?

22 MR. LOWERY: They might have lost
23 interest.

24 MR. MENDOZA: I'm still here. That
25 wasn't me talking.

1 JUDGE DIPPELL: I think I lost
2 Mr. Robertson. Since -- since you're still on the
3 line, Mr. Mendoza, we're just going to go ahead. If
4 you want to send Mr. Robertson an e-mail, if he did
5 not intend to be lost, then I can try to get him back
6 on the phone.

7 MR. MENDOZA: Okay. I'll just hang tight
8 and I'll e-mail him.

9 JUDGE DIPPELL: Okay. Thank you.
10 Go ahead, Mr. Keevil.

11 MR. KEEVIL: Yeah. Thanks. As I was
12 saying, we did receive a response to the first two
13 parts of DR 377, but there are additional parts, and
14 no response to subpart to 374.

15 As Mr. Lowery said before I started
16 rambling, we have spoken -- he and I have spoken. And
17 it's my understanding that the Company intends to
18 respond to all seven of these DRs. And my only
19 question, similar I guess to something Mr. Mendoza
20 asked Mr. Lowery earlier, I was just curious as to --
21 can we get -- by the end of the week?

22 MR. LOWERY: I can't speak for sure on
23 every single one of them because I don't have them,
24 but I have been pushing on them. And I -- I think
25 that's certainly possible and it may be likely. I

1 certainly don't expect it to be more than a few
2 business days at most on all of them.

3 I can tell you on one of them -- I'll
4 just tell you right now on 395, it involves
5 watercraft.

6 MR. KEEVIL: Right.

7 MR. LOWERY: You're going to get a
8 response to all but one of the watercraft. One of
9 them, we can't find the information that we need to
10 respond. And so we're going to give you a response to
11 all but one and tell you we're going to supplement
12 just so we don't hold up -- that's been the hold-up on
13 that one, for example. Trying to get it for all of
14 them and we can't find it for one and so -- so that --
15 as an example.

16 But these have my attention and I am
17 working very hard to get them out the door to you and
18 I don't expect it to be much longer. I can't be more
19 specific. I apologize. But I'd be, you know, making
20 stuff up and I don't think that's a good practice to
21 make stuff up, so.

22 JUDGE DIPPELL: So with regard to 374 and
23 377, I'm confused. So there --

24 MR. LOWERY: We are going to be
25 answering.

1 JUDGE DIPPELL: You are going to be
2 answering those?

3 MR. LOWERY: We are. Yes, we are. And
4 all the subparts of them.

5 MR. KEEVIL: Yeah. I had those split out
6 separately, Judge, because they did object partially
7 to those, but like I said, that -- that's not the
8 issue. It's --

9 JUDGE DIPPELL: Okay.

10 MR. LOWERY: They involved us in SR
11 litigation and so we did -- as a cautionary, raise a
12 potential -- just, you know, when you get them, you
13 don't know what -- you don't know what you may have or
14 not have, but we -- we can answer them. I -- I
15 believe we're close to having those answers prepared
16 and you should have them soon.

17 JUDGE DIPPELL: So I had a question then.
18 Staff filed these and they filed the DRs as
19 confidential because they were marked as confidential
20 in your system, I guess.

21 MR. KEEVIL: They were -- two of them.

22 JUDGE DIPPELL: Yeah. I'm sorry. 431
23 and 395.

24 MR. KEEVIL: 395. Yes. I filed them as
25 confidential because we submitted the data request as

1 confidential. The 431 refers to an officer strategy
2 meeting --

3 JUDGE DIPPELL: Don't refer to anything
4 that is confidential.

5 MR. KEEVIL: Yeah, I know. I'm not going
6 to. The -- actually as I'm looking at that one, that
7 one doesn't get very detailed. Normally those
8 meetings like -- the presentations on meetings like
9 that are given to us as confidential by the Company.
10 And I suppose since that was what this was referring
11 to, that's why that was submitted as confidential.

12 The other one is the boats and
13 watercrafts DR that Mr. Lowery mentioned a moment ago.
14 And that one gets into specific -- specific items
15 of -- well, the specific boats actually, I guess.
16 Again, not sure exactly why that one was --

17 JUDGE DIPPELL: Well, that -- that was my
18 question. If these were, in fact, something that
19 needed to be confidential. I didn't see anything just
20 from my perspective that looked confidential, but I --

21 MR. LOWERY: I -- I can tell you that
22 sometimes Staff will submit -- and we appreciate --
23 Staff's very good about making sure that they err on
24 the side of caution. We appreciate that. Sometimes
25 they submit something as confidential and when we

1 submit the answer, we don't consider it to be
2 confidential. I would have to look more closely.

3 JUDGE DIPPELL: I guess my concern is
4 that these are now attached to a document in EFIS that
5 the public can see --

6 MR. LOWERY: Yeah. So --

7 JUDGE DIPPELL: -- as opposed to just
8 being --

9 MR. LOWERY: -- the question is do we
10 have a problem that needs to be cleaned up.

11 JUDGE DIPPELL: Right. My question is
12 can I change the confidentiality of these attachments?

13 MR. KEEVIL: I'll defer to the Company on
14 that.

15 MR. LOWERY: What were the numbers? I'm
16 sorry. I wasn't --

17 JUDGE DIPPELL: It's 431 --

18 MR. LOWERY: -- carefully keeping up.

19 JUDGE DIPPELL: -- and 395. And you
20 don't have to answer now.

21 MR. LOWERY: Let me double check and get
22 back with you.

23 JUDGE DIPPELL: That would be good.

24 MR. LOWERY: Or if I --

25 JUDGE DIPPELL: I would just like to mark

1 this entire pleading as public.

2 MR. KEEVIL: Public.

3 JUDGE DIPPELL: Including its attachment.

4 MR. KEEVIL: Again, fine with us if it's
5 fine with the Company.

6 MR. LOWERY: Let me look at them.

7 JUDGE DIPPELL: If they don't need to be
8 confidential, we try to make as much public as we can.

9 So in regard to your dispute then, you
10 are going to answer and you are going to do it as
11 quickly as you can --

12 MR. LOWERY: That's correct.

13 JUDGE DIPPELL: -- while still answering
14 the others as quickly as you can.

15 MR. LOWERY: That's correct.

16 JUDGE DIPPELL: And if not by the end of
17 the week, then certainly by Monday or Tuesday of next
18 week?

19 MR. LOWERY: That's my expectation unless
20 I find something different. If I do, I will
21 communicate with Mr. Keevil.

22 JUDGE DIPPELL: Okay. I will say that
23 that is also currently the Commission's expectation.
24 And if that changes, again, I will encourage you to
25 contact me and we'll get it worked out

1 MR. LOWERY: Very good.

2 JUDGE DIPPELL: Okay. Is there anything
3 else? Mr. Mendoza, did you have anything further
4 today?

5 MR. MENDOZA: No. Except to thank you
6 again for allowing us to call in. It really helps.
7 We appreciate that very much.

8 JUDGE DIPPELL: All right. No problem.
9 Maybe next time we'll have a better speakerphone.

10 MR. KEEVIL: Unlikely.

11 JUDGE DIPPELL: Anything further from
12 anyone here?

13 MS. SHEMWELL: No, thank you.

14 MR. KEEVIL: No.

15 JUDGE DIPPELL: All right. Thank you
16 very much for cooperating and presenting your issues
17 at the discovery conference. We can go off the
18 record.

19 (WHEREUPON, THE DISCOVERY CONFERENCE WAS
20 CONCLUDED.)

21

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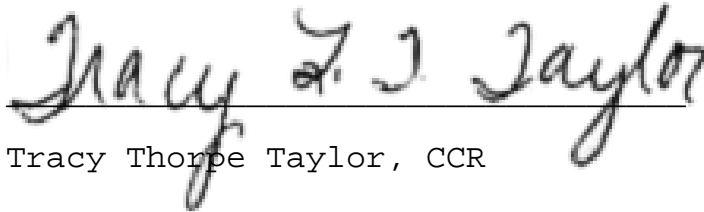
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CERTIFICATE OF REPORTER

I, Tracy Thorpe Taylor, CCR No. 939, within 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.


Tracy Thorpe Taylor, CCR

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