

In the Matter of:

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

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**ER-2019-0335, VOL. III**

*October 16, 2019*

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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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TRANSCRIPT OF PROCEEDINGS

Discovery Conference

October 16, 2019

Jefferson City, Missouri

Volume 3

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

NANCY DIPPELL, Presiding  
SENIOR REGULATORY LAW JUDGE

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

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A P P E A R A N C E S

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1 JUDGE DIPPELL: We can go ahead and go on the  
2 record. This is File Number ER-2019-0335 in The Matter of Union  
3 Electric Company Doing Business As Ameren Missouri's Tariff to  
4 Decrease Its Revenues For Electric Service. My name is Nancy  
5 Dippell. I'm the regulatory law judge assigned to this file and  
6 we are here for a discovery conference on October 16th, 2019.

7 I would like to begin with entries of  
8 appearance. Can I start with the Company?

9 MR. LOWERY: Jim Lowery, Smith Lewis, LLP,  
10 appearing on behalf of Ameren Missouri. The court reporter has  
11 my information.

12 JUDGE DIPPELL: And Staff?

13 MR. KEEVIL: Yes, appearing on behalf of the  
14 Staff of the Public Service Commission, Jeff Keevil. The court  
15 reporter has my information.

16 JUDGE DIPPELL: And Public Counsel?

17 MR. HALL: Caleb Hall, appearing on behalf of  
18 the Office of Public Counsel. My contact has also been provided  
19 to the court reporter.

20 JUDGE DIPPELL: All right. So Staff filed a  
21 letter of -- or a statement of concern and disagreement. And  
22 I'll start by asking are these all still pending?

23 MR. KEEVIL: No, Judge.

24 JUDGE DIPPELL: Has anything been worked out?

25 MR. KEEVIL: We've got -- let's see, I think

1 it's the first -- okay, A is worked out, which was Number 309.  
2 C, is worked out, which was 17 and 168. So we're just left with  
3 B, which DRs 318 and 329.

4 JUDGE DIPPELL: All right. I have seen your  
5 response and the discovery request.

6 MR. LOWERY: So, Your Honor, if I may?

7 JUDGE DIPPELL: Okay.

8 MR. LOWERY: You know, we objected to --  
9 partially objected to 318 and 329 on September 30th and the  
10 basis of the objection was we've gotten similar DRs to this in  
11 the past. The basis of the objection was if we were going to  
12 literally comply, we're going to have to pull around 600 --  
13 individually pull 600 different invoices. We indicated at that  
14 time that we thought that weighing the burden of doing so  
15 against any marginal relevance of it would have mitigated in  
16 favor that the objection ought to be obtained. I didn't hear  
17 anything about this until Friday when this statement was filed.

18 I contacted Mr. Keevil on Monday, not  
19 remembering that they were not working. But anyway, I contacted  
20 him by letter on Monday, indicated that we had -- we had pulled  
21 four invoices to just see how much time it was going take us.  
22 And it took about six minutes per invoice to actually get them  
23 out of the system, get them downloaded, get them in a position  
24 that we could actually provide them. So it's going to take  
25 something like 55 to 60 hours if we literally had to pull all of

1 these invoices.

2           Mr. Keevil called me yesterday about noon and --  
3 what -- as I understood the issue with Staff is trying to make  
4 sure that they have the date when the service, and like when the  
5 coal's delivered or the urea is delivered, that date on the  
6 front end and also the date on the back end, that is the  
7 payment. I think this relates to cash working capital to  
8 determine leads and lags for cash working capital study.

9           I don't really understand what the problem is  
10 here. I've got the response to 318 here. That is for oil. 329  
11 is for basically coal related commodities, urea, limestone,  
12 coal, coal delivery. I think there might be one more, activated  
13 carbon. I've got the response to that. And our folks had  
14 pulled out of the fuel accounting system, a listing of every  
15 single one of these. Here's the activity date, which is the  
16 response indicates. That's the date we got delivery of the  
17 coal. Here's the payment date. Here's the amount that was  
18 paid. And so I don't see the reason why we should have to spend  
19 55 to 60 hours pulling all of these invoices.

20           Mr. Keevil and I did discuss and I would still  
21 be open to this, if they wanted to go through and say, you know,  
22 give me ten -- they can pick them. I don't care. Give me ten  
23 coal transportation. Give me ten coal commodity, give me ten  
24 urea invoices of their choice. You know, that's going to take  
25 some time, you know, but if they've got some concern about the

1 date, but I don't understand -- certainly they haven't done this  
2 in past cases. We've always had cash working capital. I think,  
3 you know, relevance for purposes of discovery is not just  
4 logically relevant. Part of that is weighing the prejudice of  
5 the party in terms of having to actually spend the time. I  
6 think this is so marginal that our objection is well taken.

7 JUDGE DIPPELL: Mr. Keevil, do you want to  
8 respond to the --

9 MR. KEEVIL: Sure.

10 JUDGE DIPPELL: -- number of Data Requests. I  
11 read the number of invoices and so forth. Is there --

12 MR. KEEVIL: Yes. One second. Well, first of  
13 all, Judge, the -- Mr. Lowery is correct in this does relate to  
14 cash working capital, capitalization, more specifically it's  
15 expense lag related. In this case Ameren Missouri has proposed  
16 shortening of expense lags, I believe, by about four days, which  
17 is a fairly significant difference in expense lag. And when I  
18 say difference in four days, I mean from the past cases. When  
19 Mr. Lowery says, you know, we've had cash working capital in  
20 past cases that is true, but we did not have proposal by Ameren  
21 to shorten the expense lags by four days.

22 In terms of the number of invoices, one of them  
23 I believe it is the coal, the coal additives like the urea,  
24 limestone, carbon, the Data Request that we submitted to Ameren  
25 already is only asking for a sample of those invoices rather

1 than all of the invoices. So we've built in a sampling  
2 procedure in the request itself and Ameren didn't like the  
3 sampling that we have suggested. So they said, no, that is  
4 still too many.

5 As far as the oil invoices, which by the way,  
6 the coal is, I believe, is DR 329 and additives are also in 329.  
7 And then the coal -- excuse me the oil is 318. In the oil DR,  
8 it's my understanding that Ameren's witness who is proposing  
9 this four-day shortening of expense lag used approximately  
10 280-some-odd of the roughly 300 oil invoices. So you know, they  
11 used them in their calculation, so we don't see why we shouldn't  
12 be allowed to use them in ours.

13 He also mentioned the receive dates. I don't  
14 know where those receive days are from. They are not in the  
15 responses that I looked at to 318, or excuse me 329 and 318.  
16 Because the -- calculating the lags you need both the bill date,  
17 the date they received the bill and the date it was paid. The  
18 responses that I looked at yesterday when Mr. Lowery and I were  
19 on the phone, the responses only contained the payment date, no  
20 bill received date in the responses that I looked at in 318 and  
21 329. So if he has different responses that's perhaps a  
22 different ball of wax there.

23 Again, I mean, what these are is these are  
24 invoices underlying the source documents for the transactions  
25 themselves. You know, Ameren talks about, well, we'll give you



1 -- we'll let you look at this, which we made based on the  
2 invoices and that is basically what they're saying is, trust our  
3 -- trust us to have actually transcribed everything from these  
4 invoices over to the general ledger and don't worry about the  
5 underlying source documents themselves. And if -- Ameren has  
6 access to them -- had access to them in preparation of this  
7 case, and there's no reason why we shouldn't also have -- if  
8 they are going to stick with his proposed four-day shortening of  
9 expense lag.

10           If that -- if they want to go back to the  
11 expense lag they had in the last rate case, that's -- you know,  
12 we can probably work something out fairly quickly here. But as  
13 long as they are sticking with this proposed four-day shortened  
14 expense lag, we feel like we need to see the documents from  
15 which that was taken.

16           MR. LOWERY: Your Honor, there are several  
17 things Mr. Keevil said that are inaccurate. First of all, our  
18 folks did not pull these invoices and look at the invoices. Our  
19 folks used the same information that we'd given to Staff in the  
20 Data Request response. Pulling the -- the invoices come in,  
21 they're processed. There is a system called Fuel Works where  
22 the data is inputted. That system rolls up ultimately in the  
23 general ledger in the financial statements. There are  
24 accounting controls in place to ensure that that's done  
25 accurately.

1 I can't sit here and tell you that a human being  
2 would never make a mistake, but you know, Sarbanes-Oxley and so  
3 on, we've got good reasons why our accounting systems needs to  
4 be accurately. And Staff certainly doesn't verify every figure  
5 in a rate case and every figure from our financial records.  
6 They and we have to rely upon those systems. So it's not -- we  
7 did not pull these invoices. We pulled the same information out  
8 of the system that were given to the Staff for the cash working  
9 capital.

10 Another clarification, in case you have a  
11 misunderstanding about this, with the sampling process that they  
12 attempted to limit their DR to, that's 577 invoices.

13 MR. KEEVIL: No, in total perhaps, but not on  
14 that one.

15 MR. LOWERY: In total, these two DRs are still  
16 asking us to provide 577 invoices. In terms of -- I don't know  
17 -- I pulled the DRs up this morning and I printed the DRs in  
18 total. Here they are. There's the activity date. There's the  
19 payment date. The DRs explain that the activity date is the  
20 shipment received date in both cases. I don't know what  
21 Mr. Keevil is looking at, but I pulled them up this morning and  
22 I printed them.

23 So you know, I don't think anything that Mr.  
24 Keevil says changed -- changes the equation here. Staff does  
25 not need to see 577 invoices to figure out the leads and lags.

1 If they don't like the four-day change and they want to propose  
2 a different change or they look at this and say we've done a  
3 miscalculation, then they can certainly make that point when my  
4 they file their case. But they don't need for us to spend 60  
5 hours pulling 577 invoices to do that.

6 JUDGE DIPPELL: Mr. Keevil, is there any smaller  
7 sample -- well, if what Mr. Lowery says is accurate, which I'm  
8 taking him at his word that they didn't use any different  
9 information --

10 MR. LOWERY: I spoke to the witness yesterday  
11 who prepared to cash working capital study. They did not look  
12 at the invoices. They did not pull the invoices.

13 JUDGE DIPPELL: I don't know if you have  
14 specifically asked that question in your Data Request?

15 MR. KEEVIL: Oh, if they looked at invoices  
16 versus something else? I don't think it was --

17 MR. LOWERY: They didn't ask that question, no.

18 JUDGE DIPPELL: Is there any lesser number of  
19 invoices that the Staff could look at the physical invoices?

20 MR. KEEVIL: Well, perhaps, but only to an  
21 extent. We'd have to look at -- again, I don't -- may I see the  
22 response?

23 MR. LOWERY: Absolutely.

24 MR. KEEVIL: You are saying activity date is --

25 MR. LOWERY: As it says on the response.

1 Shipment receive date, i.e., activity date.

2 MR. KEEVIL: Okay.

3 MR. LOWERY: The response explains it.

4 MR. KEEVIL: So it's not the bill -- that is the  
5 oil. Okay.

6 MR. LOWERY: Same thing for the coal, as the  
7 response itself says.

8 MR. KEEVIL: Honestly Judge, when I looked at  
9 this yesterday -- not this, but looked at the response  
10 yesterday, there were two columns. There was the counter-party  
11 column and there was -- well, actually I take that back. There  
12 may have been three columns. There may be invoice number  
13 column, but there was no activity. It was just payment. So we  
14 obviously need -- to go back to your question. We need the date  
15 that the bills were received as well as the dates that the bills  
16 were paid. So we can't sample that.

17 MR. LOWERY: For cash working capital study you  
18 need the date that the service was provided, i.e. when we got  
19 the coal, when we got the urea. The invoice date doesn't have  
20 any meaning, I don't believe, to that calculation. I think if  
21 you check with your witness they would agree with that. Invoice  
22 may follow a week after we got the coal. In fact, we take title  
23 of coal at the mines. When they load the railcar, that's when  
24 we get the coal. It's our coal at that point. When we pay it,  
25 that's a relevant date because that is when the cash went out

1 the door. But the invoice date doesn't have anything to do with  
2 the leads and lags.

3 MR. KEEVIL: Whether it's the invoice date or --

4 MR. LOWERY: But you got the receipt.

5 MR. KEEVIL: Pull it out of the --

6 MR. LOWERY: You got the date we got the coal.

7 MR. KEEVIL: Maybe we do, maybe we don't. I --  
8 like I said, this is the first -- I looked at this thing  
9 yesterday on the computer and there was no activity date column.  
10 Okay. So we'll have to check that. We need that. And sampling  
11 will not suffice to replace that. Now, as far as the sampling  
12 to confirm that they didn't, you know, make a mistake, that  
13 possibly we could take the smaller number just to confirm that  
14 they did it -- transposed it over quickly and all that good  
15 stuff.

16 But certainly not as -- I mean, I haven't heard  
17 any counter on Mr. Lowery's letter to me on Monday said -- was  
18 the first time they mentioned the sampling. There is no number  
19 of sampling or process or anything. This morning was the first  
20 I heard an actual number, and I think probably just pulled that  
21 one out of the air when he was talking about ten of these and  
22 ten of those. So we would have to know how many we're talking  
23 about here.

24 MR. LOWERY: Let's be clear, Judge. I made this  
25 objection on September 30th and Mr. Keevil neither picked up the

1 phone or sent me an e-mail explaining what the real issue was or  
2 that he didn't see these activity dates when we went to the DR.  
3 Actually, until I had to write a letter on Monday in response to  
4 the filing. Now, Staff's perfectly free to file notices of  
5 disagreement and not call me up. The rule's been waived. And  
6 I'm not even asking for a formal, hey, let's have a 22.090,  
7 whatever. I'm not even asking for that. But I take a lot of  
8 the umbrage to the idea that, well, I just now came up with this  
9 today.

10 I reached out one business day after we got  
11 notice that they had an issue with our objection. I did make a  
12 proposal this morning. I said we do ten of each commodity. I  
13 said you can pick the invoices.

14 JUDGE DIPPELL: I think that the ten is the  
15 number that Mr. Keevil was referring to.

16 MR. KEEVIL: Yeah. I don't think ten is going  
17 to cut it. But if I can respond briefly to the inflammatory  
18 statements Mr. Lowery was just making. September -- he seems  
19 quite proud of this September -- his objection on September the  
20 30th. That was less than two weeks before the statement of  
21 discovery concern was due, which we filed. And he's more than  
22 correct when he says we don't have to tell them anything about  
23 the discovery concerns prior because it has been waived.

24 However, what I would like to point out is we  
25 have been required to send -- not required, but we've been felt

1 compelled to extend them weekly updates of the Data Request that  
2 they are overdue in responding to in this case. That includes  
3 both the ones that are overdue according to the Commission's  
4 rule as well as the ones that are overdue according to the  
5 relevant question extensions they sent. In other words, they  
6 haven't even been meeting the requested extensions that they  
7 have been setting for themselves, which we have not objected to  
8 so far.

9                   So for us to -- it is like we're almost  
10 babysitting Ameren in the response to this case. Okay, Ameren,  
11 your responses are overdue. Where are they? And it's like we  
12 shouldn't have to be doing this. This is Ameren we're talking  
13 about. This is not Bill and Sue's Water Company in Podunk,  
14 Missouri. This is Ameren. They should be able to respond to  
15 Data Requests in a timely manner, and in a complete manner. And  
16 you know, for them to come in and say, well, you know, because  
17 we didn't get a call six days before the discovery notice was --  
18 it's just disingenuous, Judge. And frankly, I'm as offended as  
19 Mr. Lowery seems to be that I didn't call him Friday before a  
20 holiday and tell him, oh, by the way, you know, where is your  
21 stuff.

22                   Now, as far as the sampling, like I said, I'll  
23 have to check with my people. I'm pretty sure ten is not going  
24 to cut it. We were talking about 300 -- roughly 300 responses  
25 here. And again, I -- he mentioned is it possible for people to

1 make mistakes. Yeah, it is. In fact, that goes to -- I mean,  
2 one of the DRs that was on my list for today's conference, which  
3 has now been corrected and was that Number 17, which they were  
4 ordered to respond to at the last discovery conference, they  
5 still, when they were originally responding to it, they -- all  
6 it was was a copy of the calendar. Someone's calendar. And  
7 they missed two months. They missed two months out of six  
8 months. They gave owed us roughly six months of the calendar.  
9 They only copied four months. So we get things like that and  
10 then they ask us to just rely on the way we transpose these  
11 invoices into the ledger system because we wouldn't make a  
12 mistake on something like that. Well, you know, we have proof  
13 that they make mistakes when they -- and it's understandable.  
14 Everybody makes mistakes. I'm not saying that people don't.

15                   But when we have proof like that, that they do  
16 make mistakes, have made mistakes in the discovery in this case,  
17 for them to come in and say, well, just trust us when we tell  
18 you that the invoices reflect what we -- what our ledger says it  
19 does, is just -- it goes against the entire premise of an audit.

20                   As far as the sampling, like I said, I'll just  
21 have to check to see how many we need. It's gonna be more than  
22 ten I'm fairly sure, but you know, I'll check on that.

23                   MR. LOWERY: Your Honor, very briefly. A  
24 paralegal made a mistake when she scanned a document. It was  
25 sent to them on September 24th. Again, we didn't hear anything



1 about it. A simple, 30-second e-mail to me saying, hey, you're  
2 missing two pages and they would've it had the next day. But be  
3 that as it may -- also we have done significantly better in  
4 terms of our time limits on DRs. We've done about twice as well  
5 as we have the last time that we've been here. We're continuing  
6 to work on that. That has nothing to do with the validity of  
7 the objection or lack thereof at whatever. That's nothing more  
8 than an effort by Mr. Keevil to sort of try and make us look bad  
9 and hope that you'll rule on the objection in our -- in his  
10 favor because of that tactic. I don't really need to say  
11 anything else.

12 JUDGE DIPPELL: So I've let you guys have your  
13 back and forth because that, frankly, is why we are here because  
14 it's better for you guys to get this out now, than like I say,  
15 to get to hearing and Staff doesn't have what it needed and  
16 Ameren says, well, we had a legitimate reason. But once we get  
17 to hearing, it's too late for all of that. That's why we're  
18 here.

19 It sounds to me like if Staff now has the dates  
20 that they need on the ledger, that that will be sufficient.  
21 However, it seems reasonable that Staff would want to actually  
22 double check with the physical invoices to make sure that the  
23 ledger is being entered correctly. I can see complete relevance  
24 there. 600 or 597 or whatever the number was, sounds a little  
25 burdensome. I'm not really sure because I don't know where

1 these invoices are kept or who has to retrieve them or whatever.  
2 But if Staff could do with fewer, that seems reasonable as well.

3 I think you're going to have to give up some of  
4 them so that they can do their audit. So I'm going to let you  
5 guys talk that out and see if you can reach an agreement as to a  
6 reduced number of invoices. If you cannot, then let me know and  
7 I will make a formal ruling on the discovery dispute.

8 MR. KEEVIL: Fair enough.

9 JUDGE DIPPELL: Will that work?

10 MR. LOWERY: Yep. Absolutely. Thank you.

11 JUDGE DIPPELL: Any other -- Mr. Jones, did you  
12 have any to add today?

13 MR. HALL: No. Public Counsel has none at this  
14 time. I do have one question for Mr. Lowery, but it's not  
15 necessarily for the record.

16 JUDGE DIPPELL: All right. It sounds like we  
17 have everything on the record that needs to be on the record and  
18 we can conclude. We'll off the record.

19 (OFF THE RECORD.)  
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CERTIFICATE OF REPORTER

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



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Lisa M. Banks, CCR No. 1081

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