

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

Pre-Filing Conference

December 9, 2011

Jefferson City, Missouri

Volume 1

In the Matter of:

Union Electric Company)
d/b/a Ameren Missouri's) File No. ER-2012-0166
Tariffs to Increase its)
Revenues for Electric)
Service)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE

REPORTED BY:

Shelley L. Mayer, CCR
TIGER COURT REPORTING, LLC

1 APPEARANCES

2 MR. TOM BYRNE

1901 Chouteau Avenue

3 St. Louis, Missouri 63103

314.554.2514

4 FOR: Union Electric Co. d/b/a Ameren Missouri

5 MR. JOHN COFFMAN

871 Tuxedo Boulevard

6 St. Louis, Missouri 63119

FOR: AARP, Consumers Council of Missouri

7 MS. LISA LANGENECKERT

8 Sandberg, Phoenix, von Gontard

600 Washington, 15th Floor

9 St. Louis, Missouri 63101

314.446.4238

10 MR. JAMES LOWERY

11 Smith Lewis

111 South Ninth Street, Suite 111

12 Columbia, Missouri 65201

573.443.3141

13 FOR: Union Electric Co.

14 MR. RUSSELL MITTEN

Brydon, Swearngen & England P.C.

15 P.O. Box 456

Jefferson City, Missouri 65102

16 573.635.7166

FOR: Union Electric d/b/a Ameren Missouri

17 MR. DAVID WOODSMALL

18 Finnegan, Conrad & Peterson

428 East Capitol, Suite 300

19 Jefferson City, Missouri 65101

573.635.2700

20 FOR: MEUA

21 MR. LEWIS MILLS

Public Counsel

22 PO Box 2230

Jefferson City, Missouri 65102

23 573.751.4857

FOR: Office of Public Counsel

1 APPEARANCES:

2 MR. KEVIN THOMPSON

MS. CHERLYN VOSS

3 Public Service Commission

200 Madison Street

4 P.O. Box 309

Jefferson City, MO 65102

5 573.751.6514

FOR: The Staff of the Missouri Public Service
6 Commission

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1 JUDGE WOODRUFF: We're on the record. I
2 want to welcome everyone here this morning for a,
3 what I'm calling a prefiling conference in
4 ER-2012-0166. This is a little unusual in that at
5 this point there is no tariff or anything before the
6 Commission, but it -- Ameren has filed a notice
7 indicating that they do intend to file a rate case
8 tariff sometime within the next 50 days or so.

9 So I just wanted to get everybody
10 together to talk about how we want to try and proceed
11 on this.

12 As you're probably all aware, the
13 Commission has had some discussions with various
14 parties about revised rate case procedures and so
15 forth. I didn't want to try and impose anything on
16 anyone, but I did want to get everybody together to
17 try and discuss some specifics about how we want to
18 proceed in this case. And I believe there is another
19 meeting coming up on the 19th on that task force. So
20 this may be discussed there as well, but I wanted to
21 get things started on this.

22 We've got a room full of people here,
23 some attorneys, some not attorneys, and so forth.
24 I'm not going to ask people to enter formal entries
25 of appearance, but we are making a recording of this

1 with the court reporter. So when you speak before --
2 the first time you speak, if you'd just identify
3 yourself for the benefit of the court reporter.

4 The first thing I wanted to bring up is
5 the question of initial data requests. There has
6 been a proposal that the Staff would send out its
7 initial data requests before the actual tariffs are
8 filed to try and get things moving along a little bit
9 faster. Anyone want to be heard on that?

10 MR. BYRNE: I do, your Honor. I'm Tom
11 Byrne; I'm representing Ameren Missouri.

12 One thing I wanted to mention at the
13 outset, you said we were going to file within like 50
14 days, and I don't think that's really necessarily
15 true. The notice is no sooner than 60 days.

16 JUDGE WOODRUFF: Right.

17 MR. BYRNE: So it's 60 days from when the
18 notice filed -- was filed until I think infinite
19 under the -- under the Commission's rules.

20 JUDGE WOODRUFF: That is correct.

21 MR. BYRNE: I -- you know, in terms of --
22 in terms of early data requests, I know -- I know
23 that it's been talked about in the -- in the process
24 revisions that Chairman Gunn has looked at, and I
25 don't think -- at this point we haven't prepared at

1 all to do that. And I'm not sure we'd be in the
2 position to, you know, simultaneously file other
3 information.

4 I mean, there's a lot of filing
5 requirements with a rate case, particularly with
6 direct testimony and, you know, all the other minimum
7 filing requirements, and we haven't really prepared
8 to provide anything else, and I don't think we would
9 be in a position to do that, at least in this rate
10 case.

11 JUDGE WOODRUFF: Staff or anybody else
12 want to --

13 MS. VOSS: Well, I think having worked on
14 the rate case team, the premise was to have the DR
15 response from the dates so they could be potentially
16 presented with the case or with the direct case. And
17 part of the thought was the Company's the one in
18 charge of when they file that, but if they need an
19 extra week or two to get it done, then it would just
20 back up the filing a week or two, just part of the
21 initial process.

22 JUDGE WOODRUFF: Anyone else want to be
23 heard on that question?

24 MR. DOTTHEIM: This is Steve Dottheim. I
25 don't know what the group or the task force has been

1 addressing, and I don't know what Ameren Missouri may
2 be contemplating in filing, so I don't know what in
3 the way of the filing may be projected data. And as
4 a consequence, maybe the Company might address this
5 or maybe Steve Rackers or John Cassidy of the Staff
6 might.

7 But, I don't know. Again, I haven't
8 attended the Commission's task force or workshops or
9 meetings, but in filing, addressing the Staff's
10 standard first data request, if the Company's filing
11 on projected data, having responses to the Staff data
12 requests based on projected data when the case is
13 going to be updated with actual data, historical
14 data, I don't know what the Staff's perspective might
15 be or whether the Staff would not be submitting its
16 entire list of traditional initial data requests
17 because of that very item.

18 I don't know whether the point I'm
19 raising is relevant at all, but I don't know whether
20 Steve or John, you might address that or whether the
21 Company might address that.

22 MR. RACKERS: This is Steve Rackers. I
23 think that we probably would submit our full list of
24 initial DR's like we always do with the understanding
25 that as the -- if you're going to use the projected

1 testing, which I hope you're not, but as the actual
2 data became available, we could just update the
3 responses as necessary.

4 And I just might mention that I think I
5 can speak for the auditing department when I say that
6 I hope the idea isn't that if we get to submit data
7 requests early, that would somehow cut back on the --
8 our period to do the case. If it -- there's some
9 kind of a trade off between early DR's and the full
10 11-month suspension period.

11 MR. BYRNE: I -- part of the issue too
12 is, I mean, if it's not going to cut back on the
13 case, from the Company's standpoint, you know, we
14 don't see the need to -- the need to accelerate the
15 data request process.

16 Putting a rate case together and filing
17 it is very difficult and time consuming and layering
18 and -- I don't know what you guys have, about 180
19 data requests, and it's all the same people that put
20 together the rate case that answer these 180 data
21 requests.

22 So it would be a significant burden and
23 would probably significantly delay the rate case if
24 we had to -- if we had to do it. And frankly, we
25 just don't see the need to do it when the rate case

1 isn't being shortened.

2 JUDGE WOODRUFF: Well, let me ask the
3 next question. Do the parties want to shorten the
4 rate case? I'm not making promises, but that's going
5 to be discussed as well.

6 Ms. Voss?

7 MS. VOSS: I would say given that we have
8 three notices of rate cases potentially filing within
9 the same week and a merger case and there's
10 potentially more, the workload on the Staff I think
11 would honestly be impossible. I mean, I may be wrong
12 if the accountants think differently, but I'm getting
13 nods from the accountants. I just don't know that
14 given that fact situation if there's any way to get
15 it done.

16 MR. DOTTHEIM: And again, this is Steve
17 Dottheim, but I -- there are other staff members here
18 other than accountants, and the rate cases involve
19 members of the Staff other than the accountants.

20 And so I think that's a question that
21 probably should be directed not just to the
22 accountants, but it involves the engineers and the
23 economists on the staff, management services, other
24 departments that would be involved in all of those
25 cases. So I think it's -- it's a question in general

1 for all sections of the staff.

2 MR. LOWERY: Your Honor, if I might,
3 Ms. Voss said something about some of these
4 discussions taking place, and I participated in the
5 last formal discussion that Chairman Gunn held about
6 some of these issues. And there -- I think it's fair
7 to say that there is not at all consensus about how
8 one might change sort of the standard rate case
9 process and whether or not it could be shortened in a
10 way that would be -- and I'll take Mr. Mills and
11 Mr. Dottheim's perspective -- would be fair to those
12 who are auditing the utility, but also in a way that
13 didn't disadvantage the utility.

14 For example, in changing a true-up date
15 in a way that made the true-up date more stale than
16 it otherwise would be, so maybe the rate case is done
17 60 days sooner, but the information upon which rates
18 are set is even older and therefore it's even more
19 disadvantageous. And there are many particular
20 issues that simply haven't been worked out.

21 This whole idea of perhaps providing data
22 up front, and I don't know if it was the -- if the
23 contemplation would have been all of Staff's 125 data
24 requests or there might have been a contemplation of
25 if we were going to go down this road as a -- as a

1 commission and as a bar that perhaps there might be
2 some front-end work done with the Staff in terms of,
3 sort of a standard of set of interrogatories like you
4 have in a lot of civil cases and certain kind of
5 repeated type litigation. None of that work has been
6 done. And the whole idea that if you were going to
7 do something before you filed a rate case, that you
8 would have worked out some of these other things on
9 the back end.

10 It was, we would have shortened the
11 process -- as an exchange for shortening the process,
12 we could give data up front and we would have worked
13 out the practical considerations about how that was
14 actually going to work. And to be honest, that --
15 that's very much up in the air at this point.

16 And this is not something that we
17 contemplated doing, and as Mr. Byrne indicated,
18 there's severe practical problems. But I also
19 think -- in just our ability to get it done and also
20 deal with preparing our rate case.

21 But I also think in terms of how this
22 would work, I don't think that's sufficiently -- and
23 if can it work at all -- sufficiently vetted or
24 figured out amongst the parties that would make it
25 practical in this case.

1 MR. BYRNE: And I also don't think we
2 should have to, you know, delay filing a rate case in
3 order to implement this until -- obviously, until it
4 all gets worked out, you know. And --

5 MR. LOWERY: And we really weren't
6 proposing to shorten the rate case. We thought those
7 things had to be worked out and I fully anticipated,
8 you know, what Mr. Dottheim had to say about Staff's
9 demands and Ms. Voss's in terms of we -- that really
10 wasn't something we were contemplating.

11 JUDGE WOODRUFF: Ms. Voss, let me ask
12 you, when would Staff's data request be sent out
13 under the traditional timelines?

14 MS. VOSS: Mr. Rackers might speak more
15 clearly, but generally once the rate case is
16 received, then we start generating the data requests
17 and send them out as quickly as possible.

18 MR. RACKERS: That's correct.

19 MS. VOSS: And then they have the
20 turnaround for responses.

21 And the problem's not to have everything,
22 but would it be overly burdensome to have some work
23 papers and supporting documentation that you would
24 think the witnesses would each have prepared and have
25 as they generate their testimony just to also submit

1 just that section at the same time? Because that's
2 one of the biggest portions of the data requests that
3 go out.

4 MR. LOWERY: Well, I mean, let me try to
5 respond to that. Work papers are not going to be
6 ready. I mean, they typically are ready within a
7 couple of days or a few days after the direct case
8 filing and we provide those. We provide them on CD's
9 to Staff. I don't think that's really ever been a
10 material issue in the rate cases that we've had.

11 In terms of as they go along, I don't
12 think that's practical because frankly, the way rate
13 cases are put together, these things are moving until
14 pretty late in the process.

15 In terms of the Staff's data -- basic
16 data requests, those really aren't for work papers
17 and that kind of thing. They're for a lot of -- a
18 lot of other information. And it's not that some of
19 that information might not literally be available,
20 but the same people that need to deal with those are
21 also the ones that are trying to put the rate case
22 together. And they certainly can't do both. There
23 would not be enough of them to go around.

24 JUDGE WOODRUFF: It would be information
25 that wouldn't necessarily be in the direct testimony

1 that's filed?

2 MR. LOWERY: That's correct. And so I
3 don't -- if a process was in place and we had a
4 standard set and we knew when we contemplated this,
5 that upon certain subsets of data, that might be
6 practical. But under these circumstances, and I'm
7 not trying to be unduly difficult, but under these
8 circumstances, I just don't think it's practical to
9 expect that to happen here.

10 MR. BYRNE: And it does matter from a
11 Company standpoint; it does matter if we have to
12 delay the rate case a week. That makes a significant
13 difference to us.

14 JUDGE WOODRUFF: That could be several
15 million dollars.

16 MR. WILLIAMS: This is Nathan Williams.
17 I don't think it's -- is it assumed but not
18 explicitly stated that with the filing you're
19 anticipating making -- are you anticipating, I guess
20 I'll characterize it, as the traditional update and
21 true-up?

22 MR. BYRNE: Our filing's not ready. I
23 don't -- I think so, but I don't know for sure, you
24 know. We're putting our filing together now and
25 we're far from being done.

1 MS. MANTLE: Judge, my name's Leanne
2 Mantle. If I may, a lot of the times the problems in
3 the energy department is not necessarily a data
4 request going out, but it's incomplete work papers
5 that the Company -- and it's not just Ameren
6 Missouri, the other electric utilities often on the
7 revenue sides are not really aware of what work
8 papers are. And we do have to go back and request
9 that because it will not be in the work papers and
10 then we get delayed because they've got so many data
11 requests just getting the work papers.

12 A clearer definition of what work papers
13 are or the utility at least telling its people what
14 work papers are would help the energy department
15 considerably when we're coming up with revenues and
16 fuel runs and so forth. If we had the work papers
17 when they filed, that alone would help us
18 considerably.

19 MR. BYRNE: I think in terms of work
20 papers, we've gotten in general -- generally we've
21 gotten them within a couple of days of the filing. I
22 mean, theoretically we could wait to be asked by data
23 request.

24 MS. MANTLE: But typically it doesn't
25 include weather; we have to ask for weather

1 normalization information. Sometimes we have to ask
2 for some of the information with the -- to calculate
3 revenues. We've had to ask for work papers for the
4 fuel model too. I don't know specifically Ameren
5 Missouri, but other utilities we have.

6 And those are all very basic for setting
7 up a rate case for the company, yet the people -- a
8 lot of times the utility people say, Oh, we didn't
9 realize that was considered a work paper.

10 What is a work paper? It's what you
11 needed to come up with your position. And so we end
12 up chasing after them trying to get work papers.

13 MR. LOWERY: Your Honor, if I could -- if
14 I could just briefly address that. I know Ms. Mantle
15 didn't say Ameren Missouri yes or no on an issue, but
16 if there has been an issue -- and I'm not going to
17 say there's never been any issue, Hey, we thought we
18 expected this, but. You know, I've been involved in
19 all these rate cases the last several years and I'm
20 not aware personally of there being much in the way
21 of issues where the Staff said, You really didn't
22 give us your work papers; you really didn't give us
23 what we thought were work papers.

24 And if there is an issue, I would
25 encourage the Staff to communicate with us about

1 that. I don't know that there's an issue for the
2 Commission to be involved in when there really hasn't
3 been much of an issue raised with the Company at all.
4 If there's one at all.

5 JUDGE WOODRUFF: Okay. All right. In
6 looking at what was filed or what's been proposed,
7 there's also a suggestion that the Company file an
8 executive summary report along with its direct
9 testimony. Anybody familiar with what I'm talking
10 about?

11 MR. BYRNE: We have done that in some
12 previous cases.

13 MR. LOWERY: Well, I don't know whether
14 you're talking about filing a report like the Staff
15 files a report as opposed to testimony. I think
16 perhaps that's what you're talking about and
17 perhaps --

18 JUDGE WOODRUFF: That was suggested. I'm
19 not sure it's a good idea either, but.

20 MR. BYRNE: Yeah. I mean, I think we had
21 not contemplated doing that either. Our thought at
22 least up until now is we would file testimony.

23 JUDGE WOODRUFF: Okay.

24 MR. BYRNE: I think -- I think frankly
25 the rules as written out probably require us to file

1 direct testimony with our --

2 JUDGE WOODRUFF: And you generally do put
3 the executive summary at the beginning of the
4 testimony?

5 MR. LOWERY: Generally most witnesses, if
6 the testimony is very involved at all, try to at
7 least summarize what their main points are at the
8 beginning of the testimony.

9 JUDGE WOODRUFF: Okay.

10 MR. DOTTHEIM: And I think -- this is
11 Steve Dottheim again. I think generally the policy
12 witness, whether it's Mr. Warner Baxter or -- for
13 Ameren Missouri usually has in his testimony a
14 listing of all the Company's witnesses. And it may
15 give an indication of which -- of the subject matter
16 covered by those witnesses. I'm not sure that that's
17 occurred in every single case, but I think that is
18 generally --

19 MR. LOWERY: It has definitely happened
20 in the last two cases.

21 MR. BYRNE: It's happened in every case.

22 MR. DOTTHEIM: So it's been the case --

23 MR. LOWERY: I would expect it to happen
24 again.

25 MR. DOTTHEIM: Yes, after the discussion

1 today.

2 JUDGE WOODRUFF: Okay. Ms. Voss,
3 anything else that you wanted to bring up?

4 MS. VOSS: No. Hopefully with the DR
5 sheets we can get together and make sure there's a
6 clear understanding of what work papers are.

7 MR. BYRNE: Yeah. We'll be glad to talk
8 to the Staff before or after our filing, and you
9 know, quickly get work papers to them. You know,
10 maybe not exactly on the day of the filing, but
11 within a couple of days thereof -- thereafter.
12 Hopefully that will -- that helps.

13 JUDGE WOODRUFF: All right. Is there
14 anything anyone else wants to bring up?

15 Mr. Dottheim?

16 MR. DOTTHEIM: Judge, I do have an item
17 of concern. We haven't been talking about highly
18 confidential information, but the first person on the
19 conference call was Don Johnstone, and I know the
20 real Don Johnstone is in the back of the room. I'm
21 not sure who is the Don Johnstone that joined us on
22 the conference call.

23 JUDGE WOODRUFF: Mr. Johnstone, did you
24 join us earlier?

25 MR. JOHNSTONE: I did.

1 JUDGE WOODRUFF: On the phone?

2 MR. JOHNSTONE: And then when I arrived,
3 I hung up.

4 JUDGE WOODRUFF: I wondered about that
5 when you walked in also.

6 MR. LOWERY: He hung up on you, Judge.

7 MR. DOTTHEIM: Judge, I'm satisfied with
8 that response then.

9 JUDGE WOODRUFF: Okay.

10 MR. JOHNSTONE: It was probably a period
11 of some 30 seconds between when I turned the phone
12 off and put it away.

13 JUDGE WOODRUFF: All right. Well, I
14 thank you for turning off your phone before you came
15 in.

16 All right. Well, I appreciate everyone
17 coming today. It's really a lot more people in the
18 room than I thought would be here. Like I say, I
19 just wanted to try and run this past some people to
20 get some ideas on what you wanted.

21 I expect you to keep discussing this
22 informally amongst yourselves, and I'm sure that will
23 happen, as to how you want to proceed with this case
24 and make everything as smooth as possible. Certainly
25 the Commission appreciates that.

1 At this point I don't anticipate issuing
2 any sort of order to try and push anything at this
3 point. If anybody wants to file a formal motion or
4 anything, the Commission would deal with it, but
5 I'm -- anything else anyone wants to bring up?

6 MS. VUYLSTEKE: Judge, we --

7 JUDGE WOODRUFF: Ms. Vuylsteke.

8 MS. VUYLSTEKE: One concept we wanted to
9 throw out here --

10 JUDGE WOODRUFF: Why don't you come
11 forward so you can get out of the pillar.

12 MS. VUYLSTEKE: Diana Vuylsteke; I'm
13 representing the MIEC. You know, one option that the
14 Commission and the parties might consider is that we
15 usually have a pretty standard group of intervenors.
16 If there is a way for the Commission to grant earlier
17 intervention, it's easier for those parties to get
18 started with the discovery process, sign those
19 confidentiality agreements, and that could bring an
20 efficiency to the process. So just wanted to throw
21 that out there.

22 When we intervene, we could do a formal
23 request for maybe an expedited ruling or something.

24 JUDGE WOODRUFF: In general there's
25 seldom opposition to intervention. But, yeah, when

1 you file your intervention, you can certainly ask for
2 expedited consideration and I can issue an order
3 directing an expedited response.

4 As I understand, you want to be on the --
5 in the case as soon as possible so you can start
6 discovery process and view the confidential
7 information?

8 MS. VUYLSTEKE: Right. Generally the
9 Commission will issue a procedural order and set an
10 intervention date. And it takes a little time,
11 especially with multiple interveners for all those
12 applications to get ruled upon.

13 You know, in many cases the Commission,
14 especially the cases that spin out of a prior case,
15 you know, certain people will automatically be
16 parties. That might not be appropriate to have
17 automatic parties here, but when people are the same
18 intervenors over and over, you know, the Commission
19 may look with favor on ruling more quickly on parties
20 like the MIEC or MEG or some of the others.

21 So if you think it's a good idea, we can
22 just ask for that when we file our pleading.

23 JUDGE WOODRUFF: Certainly no harm in
24 asking.

25 MR. MILLS: I'm Lewis Mills, public

1 counsel. Won't the 0166 case number carry through to
2 the rate case?

3 JUDGE WOODRUFF: Yes. This is the rate
4 case number.

5 MR. MILLS: So couldn't the parties such
6 as the MIEC or Great Rivers apply to intervene now?

7 MR. BYRNE: I mean, I'm not sure the case
8 exists until we file it.

9 MR. LOWERY: There may be a case number
10 in EFIS, but I'm not sure that means there's a rate
11 case. There have been no tariffs filed to initiate a
12 rate case.

13 MR. MILLS: Then the Commission could
14 grant conditional intervention to parties that would
15 be proper parties once a rate case is filed.

16 MR. LOWERY: I guess my objection to that
17 at this point, Judge, just kind of off the cuff is it
18 is -- and something that's not contemplated by the
19 Company, I wouldn't anticipate opposing MIEC request
20 for intervention, but you take it to its logical
21 conclusion and you have other folks, and maybe the
22 Company, I don't know if we're going to oppose, not,
23 are they an appropriate intervenor or not.

24 We're frankly dealing with motions, we're
25 dealing with those kinds of things at the same time.

1 We're -- and perhaps the Company doesn't file a rate
2 case. I mean, it's not -- it's not a complete
3 certainly. Or perhaps the rate case is delayed for
4 various reasons for many months.

5 And so what we're sort of doing without
6 the Commission having any rules or there being any
7 statutory changes about this report now, we're
8 turning a rate case into a 13-month process, not an
9 11-month process without any real justification for
10 doing so.

11 MR. BYRNE: An important point is there
12 is no case until we file it. And so for people --
13 for people to file pleadings or for the Commission to
14 issue orders, there's no case pending until we file a
15 rate case, or if there is, the 11-month clock's
16 started.

17 JUDGE WOODRUFF: Right. And at this
18 point the Company, as you indicated, the Company
19 could decide to not file a case at all.

20 MR. LOWERY: The 60-day notice was a
21 communication rule in terms of -- in terms of dealing
22 with the communication issues, and that's really all
23 that it was. And I don't -- I think we would have an
24 issue with it now morphing into -- now the rate case
25 has been entirely changed by a communication rule

1 device.

2 JUDGE WOODRUFF: All right.

3 Mr. Dottheim?

4 MR. DOTTHEIM: Judge, I assume what the
5 Company is articulating, and I understand its concern
6 and it's not directly stating is if the Commission
7 grants intervention and it has not literally filed
8 its rate case yet, what is the Commission's position
9 if MIE-- MIEC starts submitting data requests to
10 Ameren Missouri respecting its impending rate case if
11 it's been granted intervention in ER-2012-0166.

12 JUDGE WOODRUFF: Uh-huh.

13 MR. DOTTHEIM: So --

14 JUDGE WOODRUFF: Yeah. I don't think we
15 can grant intervention until there is actually a
16 case.

17 MR. MILLS: Yeah. And, Judge, just to be
18 clear, what I was suggesting, that parties could file
19 an application to intervene before the case is
20 filed. The Commission could conditionally grant
21 intervention and it would take effect once the case
22 was filed. So that rather than waiting for it to be
23 filed, then filing application to intervene, then
24 waiting for it to be granted, their intervention
25 could take effect almost instantaneously.

1 MR. BYRNE: Judge, the problem I have is
2 there's no case; there's nothing to file anything in.
3 There's nothing to grant an order in. There's no
4 case pending. In my opinion you can't do anything
5 with this communication-based assignment of a
6 document. There's -- it's nothing. It doesn't
7 exist.

8 JUDGE WOODRUFF: Although we are having a
9 conference today; in fact, I've already issued an
10 order in the case, but perhaps that's not an
11 enforceable order.

12 MR. BYRNE: You know, I guess what we'd
13 have to do is we'd have to -- say we objected -- say
14 somebody intervened, we objected, I guess we'd have
15 to --

16 JUDGE WOODRUFF: Yeah. I think it would
17 cause a lot of -- it would cause more confusion than
18 it would be helpful. I'm not going to recommend that
19 anyone file an application for an intervention before
20 the actual tariffs are filed.

21 Anything else anybody wants to bring up?
22 I don't see anybody else raising their hands, so.

23 Again, thank you all for coming today.
24 And with that we are adjourned.

25 (Off the record.)

1 CERTIFICATE

2 I, Shelley L. Mayer, a Certified Court Reporter,
3 CCR No. 679, the officer before whom the foregoing
4 hearing was taken, do hereby certify that the
5 witness whose testimony appears in the foregoing
6 hearing was duly sworn by me; that the testimony of
7 said witness was taken by me to the best of my
8 ability and thereafter reduced to typewriting under
9 my direction; that I am neither counsel for, related
10 to, nor employed by any of the parties to the action
11 in which this hearing was taken, and further, that I
12 am not a relative or employee of any attorney or
13 counsel employed by the parties thereto, nor
14 financially or otherwise interested in the outcome
15 of the action.

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18 _____
19 Shelley L. Mayer, CCR
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