

1                   BEFORE THE PUBLIC SERVICE COMMISSION

2                               STATE OF MISSOURI

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4                   TRANSCRIPT OF PROCEEDINGS

5                               Prehearing Conference

6                               JUNE 27, 2007

7                               Jefferson City, Missouri

8                               Volume 1

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10                               \_\_\_\_\_  
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12  
13       Dr. Michael and Sharon Maples   )  
14               Complainants,               ) Case No. GC-2007-0350  
15       V.                                )  
16                                        )  
17       Union Electric Company           )  
18       d/b/a AmerenUE,                )  
19               Respondents.            )

20  
21                               \_\_\_\_\_  
22       BENJAMIN H. LANE, Presiding  
23                               REGULATORY LAW JUDGE.

24       REPORTED BY:

25       LISA M. BANKS, CCR  
         MIDWEST LITIGATION SERVICES

## A P P E A R A N C E S

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## P R O C E E D I N G S

1 JUDGE LANE: Good morning, ladies and  
2 gentlemen. My name is Benjamin Lane. I'm the  
3 Regulatory Law Judge that's been assigned to hear this  
4 case, which is Case No. GC-2007-0350. That's  
5 Dr. Michael and Sharon Maples versus Union Electric  
6 Company, d/b/a AmerenUE.

7 We're here today pursuant to the  
8 Commission's order of June the 11th setting a  
9 prehearing conference in this matter. That same order  
10 also directed the parties to file a proposed procedural  
11 schedule no later than July 17th. Before we proceed  
12 any further, I'd go -- I'd like to please go ahead and  
13 take entries of appearance orally.

14 I know that those of you who are here  
15 and present have appeared in-person have already filed  
16 written entries of appearance, but just for the record,  
17 if we can go ahead and take care of that. Let's go  
18 ahead and start with Dr. and Mrs. Maples. You're here  
19 representing yourselves?

20 DR. MAPLES: Yes, sir.

21 JUDGE LANE: Okay. Very well. How  
22 about AmerenUE?

23 MR. LOWERY: Your Honor, this is -- my  
24 name is James Lowery. I'm with the law firm of Smith  
25 Lewis, LLP, 111 South Ninth Street, Suite 200,

1 Columbia, Missouri, 65201, representing AmerenUE.

2 JUDGE LANE: Thank you very much, sir.

3 For the Staff of the Commission?

4 MS. KLIETHERMES: Your Honor, Sarah

5 Kliethermes, enter pursuant to the Supreme Court

6 Rule 13.

7 JUDGE LANE: Thank you very much,

8 Ms. Kliethermes.

9 And for the Office of Public Counsel?

10 MR. POSTON: Marc Poston appearing for

11 the Office of Public Counsel.

12 JUDGE LANE: Thank you, Mr. Poston.

13 Any other parties present? And I don't

14 think there are any other parties in the case, so we

15 can go ahead and get going then.

16 As indicated in the Commission's order

17 of June 11th, this prehearing conference has two

18 objectives. The first one and I think possibly the

19 more important one, in this particular case, is to give

20 the parties one last chance before we go to a contested

21 evidentiary hearing on this matter to attempt to

22 settle.

23 Sometimes I'll take an active role in

24 pointing out some issues that may be fertile grounds

25 for settlement. In this particular case, I think

1   there's been such extensive pleadings by the parties,  
2   that I think the issues are pretty well set out. I  
3   think the positions of the parties are also pretty well  
4   set out. So I don't think I'll take quite as active a  
5   role before I -- before we go off the record and I  
6   leave the room.

7                   But I think it's very important to --  
8   that the parties have one additional chance to attempt  
9   to settle this matter if at all -- if it's possible  
10  because the law does favor settlements, and it is often  
11  in the best interests of the parties to attempt to  
12  resolve these matters without taking the time and  
13  expense and uncertainty of a formal evidentiary  
14  hearing.

15                   The second thing that I'd like to do --  
16  get accomplished in this prehearing conference is to  
17  have the parties talk about should settlement -- should  
18  it look like settlement is not going to occur, to have  
19  the parties begin talking about some of the procedural  
20  issues or something in the procedural schedule that's  
21  been ordered by the Commission already.

22                   Now, Dr. and Mrs. Maples, I know you're  
23  not attorneys and you may not be familiar with  
24  Commission practice. We talked about the procedural  
25  scheduling. You may not know all the things that that

1    may entail. I think the parties that are here, of  
2    course, are quite familiar with that process, and they  
3    can probably go into some detail about the types of  
4    things that would be involved in that.

5                   It's not just a matter of setting dates,  
6    but it's also a matter of you discussing with Ameren  
7    and with Staff and with OPC any discovery issues that  
8    may be important. You have the right to request any  
9    documents that haven't already been filed in this case  
10   as part of the record as attachments to the verified  
11   pleadings and so forth.

12                   But if there are any other documents in  
13   the possession and under the control or created by the  
14   parties that you would like copies of to help you  
15   prosecute your case, you are entitled to that.

16                   Likewise, Ameren is entitled to request  
17   any documentation from you. There are also  
18   interrogatories that might be filed. Again, those are  
19   some of the formal discovery. I think the pleadings to  
20   date have done a really good issue of identifying what  
21   the parties positions are in this matter and it may be  
22   unnecessary to have additional formal discovery. But I  
23   just wanted you -- to let you know as non-lawyers what  
24   your rights are under the Commission's rules and the  
25   applicable law.

1                   Typically, the procedural schedule is  
2 exactly what the name implies. It's a schedule for  
3 important procedural events in processing or in  
4 adjudicating this case. Typically a procedural  
5 schedule will set dates for the following types of  
6 events: The filing of a statement of issues, so this  
7 is a -- each party might propose a list of issues that  
8 are to be determined at the hearing that narrows down  
9 the focus and kind of lets the Commission laser in on  
10 what are the contested issues of law and or fact in the  
11 matter.

12                   There would also be the filing --  
13 pre-filing of direct testimony. That could be done --  
14 testimony can be filed before the hearing if you like  
15 in a written format. There's a specific format for  
16 doing that. There's also rebuttal testimony, and  
17 you're familiar with the concept of rebuttals since  
18 you've done that several times in your pleadings  
19 already. That is responding to things that were said  
20 in the pleadings of the opposing parties.

21                   There can also be even surrebuttal  
22 testimonies which where a party advances a particular  
23 issue, the other side responds, and then other side  
24 responds to that response. That's known as  
25 surrebuttal. There are also force-position statements.

1 For example, the Office of Public Counsel has not taken  
2 a formal position one way or the other on the relief  
3 that the complainants have requested in this case, and  
4 they may choose to do that prior to the hearing. They  
5 may choose to do that.

6 Then, of course, there's the timing of  
7 the evidentiary hearing itself. So I just wanted to  
8 let you know and let everyone know that the second  
9 major thing that I would like to get the ball rolling  
10 on at this conference would be those procedural issues  
11 that are kind of lurking out there should a  
12 settlement -- should it not be possible for the parties  
13 to arrive at a settlement before we have to go to a  
14 hearing.

15 Do you understand what I've just been  
16 talking about?

17 DR. MAPLES: Yes, your Honor.

18 MRS. MAPLES: I'm sure he does more than  
19 I do.

20 JUDGE LANE: Okay. Well, very good. I  
21 like to explain that to folks who are representing  
22 themselves because the procedural thicket is sometimes  
23 difficult and our rules are somewhat arcane but they  
24 are available on the Internet and think I've told you  
25 that in telephone conversations that we've had about



1 procedural issues. So just wanted to let you know  
2 about that.

3                   So as I said before, sometimes I'll take  
4 an active role in getting the ball rolling. I don't  
5 think I'm going to do that in this particular case.  
6 And what I propose to do next is take us off the  
7 record. I'm going to leave the room here, so that you  
8 can have a fair, frank, and open discussion about the  
9 issues and pursue possible settlement.

10                   I do want you -- everyone to know that  
11 any statements you make or positions that you take in  
12 this conference here today once we go off the record  
13 are not admissible in evidence at the evidentiary  
14 hearing should there be one unless they are confirmed  
15 or verified by independent record evidence. So they  
16 can't -- neither side can use what somebody said during  
17 this conference at hearing, you know, to prove a  
18 contested issue of fact unless it's backed up by  
19 independent record evidence.

20                   The reason for that, of course, is to  
21 encourage, you know, a fair, frank, and full discussion  
22 of the issues without having to worry about something,  
23 you know, a position or a compromise that you may have  
24 suggested being used against you at the hearing itself.

25                   So having said all of those things and

1     noting that all of the parties are present, unless  
2     anyone has any questions or other issues that you feel  
3     that I ought to address before we go off the record,  
4     we're going to do that.

5                     Yes, Dr. Maples?

6                     DR. MAPLES: I do have a question, sir,  
7     regarding the timing since this is new to me of when I  
8     can make a motion regarding some of the evidence. When  
9     is that appropriate?

10                    JUDGE LANE: You can actually -- you can  
11    make a motion at any time that you like from this point  
12    on or you could have also done it in the past. The  
13    procedural schedule will set some dates, and you'll  
14    jointly work on that. I believe the order specified  
15    that Staff is responsible for filing and preparing the  
16    procedural schedule, but you'll certainly have input on  
17    that in discussing this matter with staff.

18                    So that's as far as the dates. But if  
19    you want to file any motions that relate to discovery,  
20    that relate to any of the things that I've talked about  
21    here today, you're certainly free to file them at any  
22    point.

23                    DR. MAPLES: And do I do that in a  
24    written format or orally at this hearing or how do I --

25                    JUDGE LANE: You would do that in a

1 written format after this hearing.

2 DR. MAPLES: Okay.

3 JUDGE LANE: Okay. Just a written  
4 pleading. You've seen the style and format of some of  
5 the pleadings that have been filed by the other  
6 parties. But if you want to move to request discovery  
7 of some particular issue then you can do that by an  
8 appropriate written pleading. Make sure and file it  
9 either on the Commission's electronic filing and  
10 information system, EFIS, or by mail.

11 You need to make sure that you copy all  
12 the parties in this case with a copy of your request so  
13 that everybody's on the same page and everybody has  
14 access to the same information. But to answer your  
15 question, you can go ahead and begin doing that at any  
16 time you like.

17 You may want to while everyone's here  
18 talk about some of the issues that you're interested in  
19 learning more about or that you think that there are --  
20 there may be further documents or, you know, other  
21 questions you would like to get a formal response from  
22 the parties on, in this matter.

23 DR. MAPLES: Thank you, sir.

24 JUDGE LANE: Does that answer your  
25 question?

1 DR. MAPLES: I think so. Yes.

2 JUDGE LANE: Does anyone else have any  
3 concerns, questions, or issues. I note that we have a  
4 couple of people from Staff here today that can give  
5 some detailed answers to any questions or concerns you  
6 may have about Staff's report and recommendation in  
7 this matter. And, of course, you have the attorneys  
8 from Ameren are here also to help clarify their  
9 position and to informally answer any questions that  
10 you may have.

11 So we've got this line reserved for  
12 three hours should you need that entire time. I  
13 encourage you to use the whole amount of time. If  
14 you're going to need more time, if you'll let me know,  
15 I can call an operator and probably get this line  
16 extended for an additional period of time. But three  
17 hours is awfully long to be talking about anything  
18 maybe. All right. Great.

19 Having said all these things, I want to  
20 thank you very much for coming here today. The  
21 Complainants have made the trip up. And thank you to  
22 Ameren, OPC and Staff for your presence. And I hope  
23 you have a productive prehearing conference, and  
24 perhaps this matter can be settled. And if not, we can  
25 get the ball rolling on a procedural schedule and

1 proceed to a contested evidentiary hearing at some date  
2 later in the future.

3 Dr. Maples, I know that you are planning  
4 on being out of town from an email that I received from  
5 you for a decent amount of time coming up here. And  
6 again in working out the procedural schedule, you'll  
7 need to make those dates that you're available to, you  
8 know -- to make filings and available to help prosecute  
9 your case. You'll need to make that known to them so  
10 that that can be scheduled around.

11 DR. MAPLES: Yes, sir.

12 JUDGE LANE: Okay. Having said that  
13 again, my thanks to everyone for being here today and  
14 we're going to go off the record.

15 (WHEREIN; the prehearing conference was  
16 concluded.)

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1  
2 CERTIFICATE OF REPORTER  
3

4 I, LISA M. BANKS, a Certified Court Reporter, within  
5 and for the State of Missouri, do hereby certify that the  
6 testimony of said witness was taken by me to the best of my  
7 ability and thereafter reduced to typewriting under my  
8 direction; that I am neither counsel for, related to, nor  
9 employed by any of the parties to the action in which this  
10 prehearing conference was taken, and further, that I am not  
11 a relative or employee of any attorney or counsel employed  
12 by the parties thereto, nor financially or otherwise  
13 interested in the outcome of the action.

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16 Lisa M. Banks, CCR  
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