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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE
July 10, 2001
Jefferson City, Missouri
Volume 3

Zoltek Corporation,)	
)	
Complainant,)	Case No. EC-2001-345
)	
vs.)	
)	
Union Electric Company,)	
doing business as AmerenUE,)	
)	
Respondent.)	

BEFORE:

KEVIN A. THOMPSON, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE.

REPORTED BY:

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23 FOR: Staff of the Missouri Public Service
24 Commission.

25

1 P R O C E E D I N G S
2 (Written Entries of Appearance filed.)
3 JUDGE THOMPSON: Good afternoon.
4 We're here in the matter of Zoltek
5 Corporation, Complainant, versus Union Electric
6 Company, doing business as AmerenUE.
7 My name is Kevin Thompson. I'm the
8 Regulatory Law Judge assigned to preside over this
9 matter.
10 Let's go ahead and take entries of
11 appearance, beginning with the Complainant.
12 MR. MAY: Good afternoon, Judge.
13 Brian May here on behalf of the Zoltek
14 Corporation.
15 JUDGE THOMPSON: Okay.
16 MR. ALLEN: Terry Allen, Zoltek Corporation.
17 JUDGE THOMPSON: Respondent?
18 MR. COOK: James J. Cook, Post Office
19 Box 66149, St. Louis, Missouri, 63166 on behalf of
20 Union Electric Company.
21 JUDGE THOMPSON: Staff?
22 MS. SHEMWELL: Lera Shemwell, Post Office
23 Box 360, Jefferson City, Missouri, 65102, representing
24 the Staff of the Missouri Public Service Commission.
25 JUDGE THOMPSON: And it appears that Public

1 Counsel will not be joining us; is that correct?

2 MS. SHEMWELL: I haven't seen them.

3 JUDGE THOMPSON: I scheduled this prehearing
4 conference primarily as a status conference because we
5 had a flurry of motions having to do with discovery
6 difficulties, and I'd like to know whether or not
7 those have been resolved.

8 Mr. May?

9 MR. MAY: Yes, Judge. Thank you.

10 Just to give you some background on that, I
11 had received the request -- or the data request on, I
12 believe, June 12th. I received those. I realized
13 sometime before the 20 days was up, maybe 16, 17 days
14 into it, that I would not be able to have the
15 responses due in time.

16 I called Mr. Cook's co-counsel, David
17 Evelev, and requested a few extra days to get things
18 together with the holiday week and what have you.

19 He objected to my request. That led to my
20 motion to be filed. He then had a written objection
21 to my motion, which, in turn, led to my response.

22 Presently, on Friday I had sent down to
23 Mr. Evelev everything that I had in my possession that
24 was responsive to his data request.

25 Today, before I left to come to Jefferson

1 City, I sent what I considered to be the remainder of
2 the information responsive to his data request by
3 courier, and these were documents that were in the
4 possession of my client, Zoltek Corporation. The
5 plant manager assisted finding documents at the plant
6 that were responsive to the request.

7 Mr. Cook and I had a conversation before you
8 had come in, and I'm sure he will state his side, but,
9 apparently, there is some discrepancy as to whether
10 the answers are sufficient, but that's kind of where
11 we are, sir.

12 JUDGE THOMPSON: Thank you, Mr. May.

13 MR. MAY: Thank you.

14 JUDGE THOMPSON: Mr. Cook?

15 MR. COOK: Yes, sir.

16 From the very beginning the Company's
17 objection to the delay in the data requests has not
18 been because we don't think that Mr. May or his client
19 is being forthcoming in or good faith. It's a
20 practical problem of, if we don't have the information
21 we requested, we cannot discuss the details of that
22 information with our consultants and our experts and
23 prepare for depositions which are scheduled for
24 early next week, and then testimony is due in --
25 August 17th.

1 A good bit of the information -- well, I
2 can't tell you what volume. A lot of it came in
3 Friday. Some of it came into today to Mr. Evelev when
4 I was on the road here, so I haven't been able to
5 review that.

6 What Mr. Evelev tells me is that there is
7 some information that we would have thought would have
8 been there that is not there. Mr. May indicates that
9 he has provided everything that his client has been
10 able to come up with, so I have no reason to doubt
11 that at all.

12 But even the lack of information -- we have
13 waited to talk to our consultants and our experts
14 until we either had the information, or now we don't
15 have the information, and need to then discuss with
16 them what it is we need to inquire in our depositions.

17 And so, again, it's not being a -- we're not
18 trying to be difficult about making sure that it was
19 done in a timely manner just because it says it has to
20 be done in 20 days. It's just that we will have great
21 difficulty preparing our case as we had anticipated.

22 So we are just suggesting at this point that
23 we review the schedule. We have some depositions
24 scheduled next Tuesday and Thursday, and then a fairly
25 large number on August the 2nd. Our thought would be

1 that those depositions could remain the same, but next
2 week's would need to be moved, and then a -- probably
3 a fairly brief delay in the filing of testimony after
4 that and whatever modification of the schedule would
5 be required.

6 MR. ALLEN: And, Judge --

7 JUDGE THOMPSON: Mr. Allen.

8 MR. ALLEN: -- if you please, we just
9 visited about this.

10 We don't have any problem with what he said.
11 There is no problem with that.

12 I am real curious. If his co-counsel thinks
13 there is something missing, I would like to know what
14 it is, because we want to be responsive in all
15 respects. And if he will quickly review that and
16 share it with us, we will try to address it.

17 Isn't that right, Brian?

18 MR. COOK: I can't tell you, because I
19 haven't seen it. It's just the kind of information
20 that he would have assumed would be there, and we
21 probably would follow up both unofficially and perhaps
22 officially saying, You provided nothing for this. Is
23 that right? You have nothing for this.

24 MR. ALLEN: And I think that's what you
25 should do.

1 MR. MAY: And, your Honor, just to let you
2 know --

3 JUDGE THOMPSON: Mr. May.

4 MR. MAY: -- in response to -- and I think I
5 have a copy of the letter here I sent to Mr. Evelev
6 today.

7 I think there were three data requests where
8 we simply did not have any written information
9 documentation that they had requested. I indicated
10 that.

11 Obviously, I consider us to be under a
12 continuing duty to supplement whenever we find
13 documents. We would be glad to do that.

14 With respect to the depositions, and I'm not
15 trying to be difficult either. Mr. Cook will tell you
16 that their responses to my data requests took nearly
17 60 days to get to me, which was fine at the time. We
18 worked it out, and everything was fine.

19 My concern is with respect to these
20 depositions scheduled for this week. It was difficult
21 to get these lined up. Two of the folks -- the client
22 also has a plant in Hungary.

23 JUDGE THOMPSON: Uh-huh.

24 MR. MAY: And some of the folks have to go
25 to the plant, and I can't off the top of my head tell

1 you when folks are going or who's going, but we had
2 chosen these dates.

3 Judge, just to give you some background in
4 this case, too, and Mr. Cook can help me, the
5 litigation in this matter -- the civil litigation has
6 been going on since '95.

7 MR. COOK: I don't know exactly.

8 MR. MAY: At least '95, maybe '94. Many of
9 these very same issues have been on the table, so to
10 speak, since that time.

11 Mr. Moran, whose deposition, I believe, is
12 scheduled for Tuesday --

13 MR. COOK: I think so.

14 MR. MAY: I think it's Mr. Moran and
15 Mr. Arnold at the Zoltek's plant in St. Charles,
16 Missouri, you know --

17 MR. COOK: Yes. Moran is Tuesday.

18 MR. MAY: -- I think their depositions may
19 have already been taken -- I'm not sure -- in the
20 civil matter.

21 But, nonetheless, I don't see how relevant
22 this information requested is, especially in the light
23 of the fact, your Honor, that these folks have sent in
24 prepared testimony on June 15th.

25 JUDGE THOMPSON: Well, if you have any doubt

1 that the information is relevant, then, of course, you
2 would have had to have filed an objection letter
3 within ten days of the request, and having not done
4 so, you've waived that objection.

5 MR. MAY: Your Honor, just to be clear, I'm
6 not suggesting in any way that these were relevant or
7 not. I'm saying I'm not sure how connected or
8 relevant they are to his request to need additional
9 time to take Mr. Moran's deposition.

10 Mr. Moran has stated clearly in his prepared
11 testimony what he's going to testify about. I assumed
12 that this deposition was an opportunity for them to,
13 in essence, do cross-examination before the day of the
14 hearing and prepare accordingly, so I'm not quite sure
15 why we would have to continue that.

16 And I think there is a specific objection
17 I've raised, and -- I don't know, Mr. Cook, if you
18 want to --

19 MR. COOK: Yeah. Well, first, Mr. Moran is
20 on Tuesday. Your expert is on Thursday. And
21 concerning the amount of time that this case has been
22 pending, it was only relatively recently that the
23 Company was even allowed into the facility to -- so
24 I -- until you got on this case, this Company has not
25 been at all forthcoming with information, so it's not

1 like we've had information for a long time.

2 Luckily, they now have an attorney that, I
3 think, is talking sense to them, so they've been a
4 little more cooperative, but we've not had all of this
5 information for a long time.

6 There is -- by the way, there is a question
7 in the letter about the need to keep things
8 confidential. Of course, we will do that, and only
9 our experts and in-house people would be viewing that.

10 MR. MAY: Sure.

11 MR. COOK: There is an objection to one
12 question, 210. I don't know if you want to go into
13 that now, or -- rather than --

14 JUDGE THOMPSON: Let's leave that aside for
15 the moment.

16 Staff, do you have anything you would like
17 to add?

18 MS. SHEMWELL: No, your Honor. Thank you.

19 JUDGE THOMPSON: Thank you.

20 Okay. In the stance that this case finds
21 itself in front of me, it is Complainant who has not
22 complied with the Commission's rules, and when the
23 Respondent tells me that this is prejudicing his
24 preparation for trial, I think I have to listen to
25 that and take that very seriously.

1 Now, it occurs to me, as it evidently has to
2 Mr. Cook, that the easy fix would be to adjust the
3 schedule, but I haven't heard from Complainant as to
4 whether or not adjusting the schedule is something you
5 have a problem with or not. So why don't we take up
6 that question at this time.

7 Mr. Allen? Mr. May?

8 MR. MAY: I would simply say in response to
9 that, we have no problem doing that. I just would ask
10 Mr. Cook, and he's done so before; we've worked
11 together to try to find dates that are convenient --
12 not convenient, but that my guys are actually
13 available because of travel and vacations and all of
14 that.

15 JUDGE THOMPSON: Right.

16 MR. MAY: So if he'll work with me on that,
17 I don't have a problem doing that. It was just kind
18 of difficult. Mr. Evelev, if he were here, he would
19 attest to that. It was difficult trying to find dates
20 for everybody that were kind of pinned down.

21 But I would be glad to do that. It doesn't
22 bother me.

23 JUDGE THOMPSON: Well, in that case, why
24 don't we adopt that avenue.

25 As far as discovery responses that may or

1 may not be complete, you'll have to decide what to do
2 about that, investigate that further, and I know
3 you're quite capable of doing that.

4 As far as objections that have been raised,
5 there has been no motion to compel, but we could
6 certainly take up any such objection at this time if
7 the parties are agreeable to that. I don't know if
8 everyone has come prepared to discuss those matters.

9 MR. MAY: To save Mr. Cook the trouble, I
10 would be glad to.

11 JUDGE THOMPSON: You're the one that made
12 the objection. Right?

13 MR. MAY: I made the objection, yes, sir.

14 JUDGE THOMPSON: Is it only one that we're
15 talking about, one objection?

16 MR. MAY: I believe it is.

17 JUDGE THOMPSON: Okay. Well, let's see. I
18 think it is the objecting party who has the burden of
19 showing that the objection lies, so why don't you go
20 ahead and explain it to me?

21 MR. MAY: Yes, sir. Specifically, I believe
22 it's 2-10 is the request, and the data request says,
23 "Please provide all documents relating to damages you
24 allegedly have sustained as a result of power
25 disturbances since 1993."

1 I object to that, and I'll read from my
2 letter, if I may.

3 I must object to 2-10 as it requests
4 documents related to, and I put in quotations, damages
5 that Zoltek has sustained. And I said, As you know,
6 the Public Service Commission's jurisdiction does not
7 include the monetary losses suffered by Zoltek as a
8 result of the multiple service quality incidents.
9 Furthermore, the information requested is not
10 reasonably calculated to discover information that
11 would be admissible at the time of the trial of this
12 matter. The preliminary list of issues created by the
13 parties and approved by your Honor does not include
14 anything about the monetary losses of Zoltek.

15 Judge, basically, when I had first got into
16 this matter, it was made clear to us that we're not
17 talking about money damages in this case, that that
18 was something that was, I guess, still pending at the
19 circuit court level. That was my understanding.

20 So it seems to me, in light of the fact that
21 information they would request would be burdensome,
22 difficult to obtain, what have you, and then to have
23 it be simply not admissible would not seem like to be
24 the smart or right thing to do, but -- so that's the
25 basis for our objection.

1 JUDGE THOMPSON: Okay. Mr. Cook.

2 MR. COOK: Yes. First, because I'm usually
3 the one that misses the deadline, I will mention that
4 it comes after the ten days, but I'll go ahead and
5 argue.

6 If there are no -- well, first, I certainly
7 agree that this Commission is not being asked and
8 doesn't have the authority to award monetary damages
9 of this complaint. We're not asking for that
10 particular type of information.

11 The genesis to the -- of the data request
12 is, if there are no damages, then why are we here?
13 And so for us to understand what it is specifically
14 that our alleged failure to provide quality service,
15 what problem that is causing the company, the
16 Complainant, we are asking for any documents that you
17 have that relate to the damages that you allegedly
18 have sustained because of those disturbances.

19 Now, that does not necessarily -- and I
20 guess we could agree to a reforming of the question.
21 It's not necessarily asking for a dollar value but
22 certainly a description of the damages and a -- or a
23 documentation that the company has actually sustained
24 some damage.

25 Again, it's not a question of how much.

1 It's a question that there is damage that has
2 occurred, and we want -- we believe it is important to
3 be able to determine whether we're at fault there to
4 know what it is that is the problem that has caused
5 this complaint to the filed, so I think it is very --

6 MR. ALLEN: Are they ask-- Judge, may I?

7 JUDGE THOMPSON: Sure.

8 MR. ALLEN: Are you asking -- with all of
9 these outages and what have you, are you asking how it
10 affects the company? Is that what you're asking?

11 MR. COOK: We're asking what --

12 MR. ALLEN: What impact it has? I'm not
13 talking about dollars and cents. What does it do to
14 them?

15 MR. COOK: Yeah, I think that's probably it.
16 The damages you allege have -- that you have
17 sustained. In other words, if somebody's --

18 MR. ALLEN: That's different.

19 MR. COOK: -- power is out and all they had
20 to do is go turn their clock back on, then you've been
21 annoyed, but you haven't had any damage. If the power
22 is out and this machine goes down and that causes that
23 machine to blow up, and you have evidence to show that
24 that machine blew up because the power went down, then
25 that's what we're looking for.

1 MR. ALLEN: In other words, how it affected
2 it?

3 MR. COOK: Yes.

4 MR. ALLEN: See -- and why I asked that is I
5 remember when we were in here the first time, one of
6 the things you had said, Mr. Cook, was that this isn't
7 about damages because they don't determine that. That
8 was -- that has been and, I assume, is still, from
9 what you're saying, UE's position relative to this
10 proceeding.

11 So it sounds to me like it's probably just
12 the way you asked the question --

13 MR. COOK: That could be.

14 MR. ALLEN: -- and asking the right
15 question. And that's why I said, How does it affect
16 them.

17 I guess what I looked at I thought maybe
18 they had already given you, and, in all fairness,
19 including when I reviewed Expert Witness Park's
20 testimony, that they had already given you, I assumed,
21 information relative to how he reached that conclusion
22 or those conclusions as to how it affects Zoltek from
23 these particular outages.

24 MR. COOK: Well, and what we're asking -- I
25 guess the only thing I take exception with is the fact

1 that the question wasn't asked correctly.

2 In effect, you are saying that you have
3 provided testimony about the effect that this has
4 caused, allegedly, on your system, and we're asking
5 for documentation that supports that. And if there is
6 nothing, then there is none. But, certainly, there
7 should be some documentation, we would think, that
8 says, Because of an outage on a certain day, this is
9 the damage that we incurred.

10 Again, I don't know that we care if it's
11 \$1,000 or \$100,000, but what happened.

12 MR. MAY: Your Honor, one of the difficult
13 things, and I'm sure Mr. Cook will agree, when you do
14 these data requests it seems like one flows into the
15 other often.

16 2-20 talks about -- which, to me, is kind of
17 the term at issue. "Please provide all documents
18 supportive of your contention that Union Electric did
19 not provide safe, adequate, reliable electric service
20 to Zoltek," which obviously is kind of the crux of
21 this matter.

22 I think our direct testimony, including the
23 expert witness testimony, clearly illustrates that --
24 in our position that that type of service was not
25 provided, and we recount almost 200 -- or over

1 200 incidents of an outage or disturbance, whatever
2 you want to call it.

3 JUDGE THOMPSON: And have you provided to
4 Mr. Cook any documents relating to those over
5 200 incidents?

6 MR. MAY: Yes, sir. In fact, we have
7 provided -- and that's where it gets confusing. We
8 have provided outage logs that were handwritten at
9 the -- contemporaneous with the incident by the
10 machine operator, you know, and you back up the fact
11 that I believe we can demonstrate these over 200
12 outages occurred coupled with the plant manager.

13 I'm starting in '93 all of the way to
14 present, so I think I go through two or three plant
15 managers who detail sometimes in repetitive
16 painstaking detail what occurs precisely with each --
17 I want to say they have three different lines there; I
18 can't remember -- but three different types of
19 processes, what occurs when one of these outages, in
20 fact, occurs. And they even recount specifically on a
21 certain day, or what have you.

22 I mean, we did provide that kind of detail.
23 Again, if we're getting away from the money damages,
24 now we're talking about what was the damage that was
25 caused to something, I think we've demonstrated that,

1 but --

2 MR. COOK: If I may, the testimony is not
3 adequate. I mean, we're looking for documentation
4 that supports the testimony and the claims.

5 If, in fact, your position is that you have
6 provided that documentation in response to other data
7 requests, then I think an answer to that extent would
8 satisfy us, and then we can then look at those other
9 data requests and say, Well, yes, this talks about it,
10 and we'll deal with that, or we'll say, You provided
11 no documentation. I'm sorry. And that will be our
12 claim. But at least we will know what it is you claim
13 supports your complaint.

14 MR. MAY: Well, your Honor, if we know, for
15 instance, they are not asking about monetary damages,
16 I mean, that objection obviously could stand to that
17 respect. But if you're looking at damage, no "S,"
18 then I would be glad to work with Mr. Cook and try to
19 sort that out and figure that out.

20 To add one other thing, if I may, there was
21 a deposition that was taken in '97, which predates our
22 involvement, of a Lynn Greenwall or -- I can't think
23 of her last name. I can get it for you.

24 She was an accountant or a numbers person at
25 Zoltek, and she went through -- and, again, it touches

1 on monetary damages, but she actually went through and
2 defined the dollar amounts that were -- so, again,
3 I -- you-all took the deposition, so --

4 MR. COOK: Again, I think if there is an
5 indication that the documents that support the claim
6 that damage has occurred, whatever that is, is to be
7 found in the other responses, then if we can work
8 together on figuring out where that is, that's
9 adequate.

10 MR. MAY: I will be glad to talk to him
11 about that, Judge.

12 JUDGE THOMPSON: I have a couple of
13 questions at this point.

14 First of all, for you, Mr. Cook, do you
15 waive the untimely objection?

16 MR. COOK: Yes.

17 JUDGE THOMPSON: Okay. And then to you,
18 Mr. May --

19 MR. MAY: Yes, sir.

20 JUDGE THOMPSON: -- is it Zoltek's intention
21 that it has responded to Data Request 2-10 with
22 documents produced in response to other DRs?

23 MR. MAY: Your Honor, if the question is not
24 about monetary damages, but what damage was caused, I
25 would say yes, sir, that -- and I would be glad to

1 identify -- help him identify which documents were
2 responsive to that extent.

3 JUDGE THOMPSON: I think Mr. Cook explained
4 he doesn't mean money damages.

5 MR. MAY: Yes, sir.

6 JUDGE THOMPSON: Okay. To the extent that
7 the data request seeks documents relating to money
8 damages, the objection which has its untimely nature
9 having been waived is clearly well taken. To the
10 extent that the data request seeks documentation of
11 deleterious effects of the alleged power outages, then
12 the objection does not stand, and I think the parties
13 are in agreement on that point. Is that correct?

14 So if the parties would work together, then,
15 to make sure that whatever you have that is responsive
16 to the deleterious effect side of that request will be
17 provided to Mr. Cook, and to the extent it's already
18 been provided, if you could perhaps point him to it.
19 Okay?

20 MR. MAY: Yes, sir.

21 JUDGE THOMPSON: Do the parties have
22 anything else at this time?

23 MR. MAY: Well, if we're -- one other
24 question, if we're going to extend the deposition,
25 reschedule those, would you need more time on your

1 August 17th? That's what I --

2 MR. COOK: Yes.

3 MR. MAY: -- since we're here.

4 MR. COOK: What I would propose is that we
5 agree on a date with two -- by which we will get back
6 to the -- to your Honor with either a proposed
7 schedule or an indication that we can't come to an
8 agreement on a proposed schedule.

9 JUDGE THOMPSON: Okay. Do you think we will
10 be able to preserve the present hearing on October 9th
11 and October 10th, or do you think we'll need to set
12 that back as well?

13 MR. ALLEN: I don't think so.

14 MR. COOK: Let me look at the schedule for a
15 moment.

16 I'm concerned that that -- although I don't
17 anticipate a lengthy change in our rebuttal more
18 than, right off the top of my head, I'm assuming two
19 weeks maybe, that may still be a little too much to
20 squeeze in the hearing.

21 JUDGE THOMPSON: That's not a problem. We
22 don't have any operation of law date in this case, so
23 we can adjust the schedule as necessary for everyone
24 to get a full and fair opportunity to be heard.

25 MR. ALLEN: It looks like it's about two

1 weeks off, Judge.

2 JUDGE THOMPSON: Okay. Why don't I go get a
3 copy of the adjudication calendar showing the dates
4 that the hearing room is available, and I'll leave
5 that with you, and you can work out what kind of
6 adjustment you want to make. And then if someone
7 would just report the new dates to me, I'll issue an
8 order accordingly.

9 MR. COOK: Let me say, I do not anticipate
10 that I will be able to report the dates to you today
11 because --

12 JUDGE THOMPSON: Okay.

13 MR. COOK: -- we're going to have to check
14 with witnesses and that on dates. But if we have an
15 idea of what dates are possible at least at this point
16 for hearings, we can work with that.

17 JUDGE THOMPSON: That would be fine. And if
18 you could -- you don't need to do them as a pleading.
19 You can just embody them in the form of a letter to me
20 through the secretary of the Commission. All right?

21 MR. COOK: All right.

22 MR. MAY: All right.

23 MR. ALLEN: Thank you, your Honor.

24 JUDGE THOMPSON: Thank you very much.

25 I apologize again for being late, although

1 it seems you used the time to good advantage in
2 discussing your differences.

3 Thank you.

4 WHEREUPON, the on-the-record portion of the
5 prehearing conference was concluded.

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