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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

December 20, 2000
Jefferson City, Missouri
Volume 7

In the Matter of the Application of)
Union Electric Company for an Order)
Authorizing: (1) Certain Merger)
Transactions Involving Union Electric) Case No. EM-96-149
Company; (2) the Transfer of Certain)
Assets, Real Estate, Leased Property,)
Easements and Contractual Agreements)
to Central Illinois Public Service)
Company; and (3) in Connection)
Therewith, Certain Other Related)
Transactions.)

SHELLY A. REGISTER, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR
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P R O C E E D I N G S

JUDGE REGISTER: Good morning, ladies and gentlemen. We are here today on a prehearing conference on Case No. EN-96-149, the case styled in the Matter of the Application of Union Electric Company for an Order Authorizing (1) Certain Merger Transactions Involving Union Electric Company; (2) the Transfer of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company; and (3) in Connection Therewith, Certain Other Related Transactions.

This is a prehearing conference related to the Stipulation and Agreement that was approved in the Report and Order by the Commission on February 21st, 1997 for the Experimental Alternative Regulation Plan that is addressed in the Stipulation and Agreement under Section 7, and I refer to that as the second EARP plan.

Okay. It's December 20th, and we're here at 10:30 a.m. in Room 310 of the Governor Office Building, and the parties are here and we'll take entries of appearance at this time. Mr. Coffman, do you want to begin?

MR. COFFMAN: Sure. Appearing on behalf of Office of the Public Counsel and the rate-paying public, John Coffman, P.O. Box 7800, Jefferson City, Missouri 65102.

MR. DOTTHEIM: Steven Dottheim, Post Office

1 Box 360, Jefferson City, Missouri 65102, appearing on behalf
2 of the Staff of the Missouri Public Service Commission.

3 JUDGE REGISTER: Mr. Cook?

4 MR. COOK: James J. Cook, Post Office
5 Box 66149, St. Louis, Missouri 63166, appearing on behalf of
6 Union Electric Company, doing business as Ameren
7 Corporation.

8 MS. VUYLSTEKE: Diane Vuylsteke appearing on
9 behalf of the Missouri Industrial Energy Consumers. I'm
10 from the law firm of Bryan Cave, LLP, 211 North Broadway,
11 Suite 3600, St. Louis, Missouri 63102.

12 JUDGE REGISTER: Ms. Langeneckert?

13 MS. LANGENECKERT: Lisa C. Langeneckert, Law
14 Office of Robert Johnson, 720 Olive Street, 24th Floor,
15 St. Louis, Missouri 63010, appearing on behalf of Missouri
16 Energy Corp.

17 JUDGE REGISTER: Mr. Reid?

18 MR. REID: Scott Reid, Schnapp, Fulton, Fall,
19 Silvey, & Reid, L.L.C., Post Office Box 151, Fredericktown
20 Missouri 63645, appearing on behalf of the Doe Run Company.

21 JUDGE REGISTER: Mr. Reid, you might have to
22 get a little closer to your microphone.

23 Any other attorneys of record that need to
24 enter?

25 (No response.)

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1 Okay. I have on the record the other parties
2 in this case are Comenco American, represented by Richard S.
3 Brownlee; Trigen-St. Louis Energy Corporation, represented
4 by Richard French; Utilicorp United, Inc., represented by
5 James Swearngen, Paul Boudreau, Dean Cooper and John
6 McKinney.

7 I have Missouri Gas Energy represented by Gary
8 Duffy and Sondra Morgan; and Retirement Coalition
9 represented by Paul Gardner and Dallas Forrest.

10 I have Empire District Gas Electric Company,
11 represented by Sondra Morgan, Jim Swearngen and Dean
12 Cooper; Laclede Gas Company, represented by Thomas Byrne and
13 Michael Pendergast; Illinois Power Company, represented by
14 Paul DeFord. I have state of Missouri ex rel Attorney
15 General Jay Nixon, represented by Daryl Hylton and Ronald
16 Molteni; and the International Brotherhood of Electrical
17 Workers Locals 309, 1455, 702 and No. 2, represented by
18 Marilyn Tettlebaum; and Kansas City Power & Light,
19 represented by Jim Fischer.

20 All those parties are not present and not
21 represented by counsel here today. And the Notice in this
22 case was issued for this prehearing conference on
23 December 11th, 2000, the Commission's Order Granting Joint
24 Motion for Extension of Deadline, Setting Prehearing
25 Conference and Directing Procedural Schedule which was

1 served on all the parties of record, and I received no
2 notice by phone or mail or otherwise that a party was not
3 going to be present at this proceeding.

4 We are here in the second EARP part of the
5 case under the second year of the second EARP and as a
6 result of the filing of the Company's final earnings report
7 and the notices filed pursuant to the Stipulation and
8 Agreement by Public Counsel and Staff; is that correct?

9 MR. DOTTHEIM: That is correct.

10 JUDGE REGISTER: And the parties have filed
11 their written statements as to their objections. Do you
12 need to go over those today or is it the intention of the
13 parties to negotiate some of the -- potential settlement of
14 some of those issues today?

15 MR. DOTTHEIM: I'm not certain that we have
16 the individuals available to engage in such discussions
17 regarding settlement, but it is the Staff's intent to do so
18 with the Company.

19 MR. COOK: Let me add to that, that not only
20 do we not have the people here today, but one of the reasons
21 that we don't have the people here today is because we have
22 not completed providing all the information that Staff and
23 Public Counsel have requested in order for them to know what
24 their position is to have meaningful negotiations.

25 Mr. Coffman probably has something he'd like

1 to say along those lines.

2 JUDGE REGISTER: So the Company is still
3 providing information --

4 MR. COOK: Yes.

5 JUDGE REGISTER: -- on the data requests?

6 MR. COOK: That's correct.

7 JUDGE REGISTER: Mr. Coffman?

8 MR. COFFMAN: I was going to say, I believe
9 that as far as what we think are potential issues, we have
10 tried to outline those in our notice. They aren't -- the
11 items we listed there probably weren't as specific as they
12 could have been had discovery been further along, but we
13 think it's -- we stated things in a general enough way that
14 they cover the areas we're investigating.

15 We have some outstanding data requests with
16 the Company. Twenty of those Public Counsel data requests
17 are overdue, and we've been discussing with the Company when
18 we might receive them. Those 20 DRs, I guess, for the
19 record are Public Counsel Data Requests 1012, 1014, 1015,
20 1016, 1018, 1019 and Public Counsel Data Requests 1024
21 through 1037.

22 These data requests were propounded on
23 November 6th, and I understand there may be a personnel
24 changeover going on with the Company. Most of these relate
25 to work orders. We don't imagine there's going to be

1 complications necessarily but I guess some time getting
2 them, and hopefully we're going to get them soon.

3 I wanted to raise that now in anticipation
4 that we might need to pursue that further.

5 JUDGE REGISTER: Okay. Mr. Dottheim?

6 MR. DOTTHEIM: Yes. The report filed by the
7 Staff identified the areas of disagreement and did so in a
8 general manner. Some of the areas are areas of prior
9 disagreement with the Company that had been resolved for
10 prior years. They're areas of disagreement in the present
11 sharing credit year.

12 Some areas involve matters where discovery
13 still is occurring, and the Staff intends to continue
14 discussions with the Company, and Staff did not believe that
15 there was a necessity to go into any great detail regarding
16 these items in particular while discussions were still
17 intended to occur and discovery was still occurring.

18 JUDGE REGISTER: And so one of your purposes,
19 what I understand, in your request for having this early
20 prehearing conference slated for today was to give you that
21 opportunity to meet and discuss those issues?

22 MR. DOTTHEIM: Yes, and also to provide the
23 impetus to come up with a procedural schedule if those
24 discussions are not successful in concluding matters and,
25 therefore, provide the Commission with a procedural schedule

1 so that the areas of disagreement can be resolved by the
2 Commission.

3 JUDGE REGISTER: Mr. Cook, given the
4 circumstances your client's in, when do you think that
5 response on the outstanding data requests can be made?

6 MR. COOK: The Public Counsel data requests,
7 I'm aware that approximately 16 are being stamped and copied
8 and should be in the mail today. The others, I don't know.
9 Many of the questions that have to do with work orders
10 require us to search into the depths of hundreds of
11 thousands of work orders that one would assume would be
12 easily retrievable but apparently are not.

13 I'm hoping -- we have a couple meetings
14 scheduled with the Staff in early January, the first week or
15 so. Hopefully within the next -- well, I would hope that
16 most of the data requests that require us to provide
17 documents can be provided by the end of the year, and then
18 we have a couple of meetings scheduled after that. I cannot
19 commit to that, but certainly we're making every effort.

20 JUDGE REGISTER: Ballpark?

21 MR. COOK: Yeah.

22 JUDGE REGISTER: Is there any date deadline in
23 this case, other than I know we're coming to the end of
24 another year and then we'll be in the third year and we'll
25 be dealing with the other issues in this case? Is there any

1 date deadline that expedites this portion of the second year
2 for any reason?

3 MR. COOK: My recollection of the last
4 deadline would have been the filing of disagreements or
5 objections to our final earnings report, and then it's just
6 up to us to come up with a schedule to resolve those.
7 There's nothing in the stipulation that sets any further
8 deadlines that I'm aware of.

9 MR. COFFMAN: Unfortunately.

10 MR. DOTTHEIM: I believe that's correct.

11 JUDGE REGISTER: So our main concern about
12 timeliness at this point is making sure we get our credits
13 back to our consumers in a timely fashion?

14 MR. COOK: Correct.

15 JUDGE REGISTER: Several affirmative actions
16 going on.

17 MR. COOK: And for the record, and not to be
18 repetitive, had the level and intensity of the discovery
19 requests during these last several years been at the level
20 anticipated by the Company certainly at the beginning of
21 this entire matter, the credits would have gone back in a
22 much more timely manner. However, that matter has been
23 discussed.

24 JUDGE REGISTER: I think we all learned
25 something in this whole procedure.

1 Okay. I have a concern. It's my
2 understanding that one of the reasons that we set these
3 kinds of discussions for prehearing conference is to ensure
4 that all the parties are present, and I have a concern that
5 the -- this is an older case and there may be a lot of
6 parties that were interested in the merger part of the case
7 that are not here today.

8 And so I was -- I think that I'm going to
9 issue an Order that would direct any party who is not
10 present here today to file an Application for a Leave for
11 Good Cause, if they were not here for good cause, then I
12 will -- they will remain a party. If there is no good cause
13 or they have no objection, it would allow me to dismiss them
14 under Rule 242.116(3), unless any of the parties know that
15 there's somebody who couldn't make it for some reason.

16 That hopefully will help the parties in their
17 negotiations not have to deal with people who are not
18 present here, and I'll try to do that quickly so that you
19 also don't have to continue to copy parties who are not
20 actually interested in this portion of the case.

21 MR. DOTTHEIM: The Staff would concur with
22 that. Generally the Staff does not take a position
23 regarding the intervention of an application or an applicant
24 in a proceeding or a party's continued participation or
25 inclusion in a case.

1 But in this situation, there are a number of
2 parties who have been served pleadings, definitely pleadings
3 of the Staff, and have not participated in any manner for
4 quite some time, and it is an item of concern to the Staff
5 as far as trying to make certain that all parties who are
6 still in the case, regardless of whether they participated
7 or not, receive communications, pleadings that are filed.

8 And if there are entities which no longer
9 intend to participate, I think that it would facilitate
10 matters that they be asked/required to indicate whether they
11 intend to further participate in the case.

12 JUDGE REGISTER: I was just double checking
13 the rule, and the 2.116(4) requires ten days notice. It
14 does grant the Commission the authority to dismiss with good
15 cause after ten days notice. So I'll issue an Order, and
16 I'll probably go ahead and do that and not wait for your
17 procedural schedule even though you may be filing that also
18 just so that we can go ahead and get that done.

19 Procedural schedule. In the Order issued
20 December 11th, I gave you 'til January 15th of 2001. Is
21 there any reason that that wouldn't be long enough
22 considering you've got meetings scheduled? Will you need
23 more time than that?

24 MR. DOTTHEIM: From the Staff's perspective,
25 at the present, the Staff doesn't envision needing any

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1 additional time beyond January 15 to submit a procedural
2 schedule to the Commission. The Staff is prepared today to
3 discuss a procedural schedule with the other parties.

4 JUDGE REGISTER: Okay. Any other comment?
5 I'll leave it there, then, and if your discussions put you
6 in a position where you'd like to have more time, you can
7 file a request for extension or suspension or whatever is
8 appropriate considering your discussions. And if I needed
9 to change it, I was going to -- I wanted to know so that I
10 could put it in the same Order as the other one.

11 Okay. I talked to Mr. Coffman yesterday about
12 the rule under 4 CSR 240-2.090(8)(b) which requires the
13 parties to contact the judge in the event that they aren't
14 able to work out their disputes on discovery issues, and
15 because we've talked about that here today, he wanted to
16 know whether I would have time to meet later today.

17 And what I told him and what I'm going to tell
18 you-all now is that I think that you-all are actually
19 discussing your issues. It's my opinion that this rule is
20 intended to make sure the parties are talking to each other
21 and to make sure that they're not filing anything without
22 giving the other one the benefit or that there's no
23 misunderstanding.

24 And so I want to -- I'm going to find
25 basically that the discussion we've had about discovery here

1 today satisfies the (8)(b) requirement that you contact the
2 Regulatory Law Judge on prehearing motions before you file a
3 Motion to Compel.

4 If for any reason, however, you want to
5 contact me under that rule for any discussion, I am
6 available to you, but I will not require you to. I'll
7 consider this satisfactory, satisfying that rule. So that
8 frees you on to do whatever you need to do in your
9 discussions.

10 MR. COFFMAN: In other words, you're not going
11 to require us to get on a telephone?

12 JUDGE REGISTER: Right. That was one of the
13 things, and I made a note about -- you know, we amend rules
14 as we need to, and Mr. Coffman called that to my attention
15 that it requires us to be on the phone, and I thought, well,
16 yeah, that probably should be changed. So I can go out in
17 the hallway and you guys can stay in here.

18 So this was appropriate, since we are having
19 prehearing conference, we are talking about discovery
20 issues. I am aware and am quite confident that the parties
21 are working together to try to resolve those issues. And so
22 if any one of the parties wants to have that telephone
23 conversation, you're welcome to initiate it, we will have
24 one and then go from there. Okay.

25 MR. COFFMAN: Thank you.

1 JUDGE REGISTER: Anything else that you-all
2 need to discuss? I don't have anything else on my list.

3 Okay. I'm going to call Judge Dippell, and
4 she's going to come down and have her part with you on the
5 other case that's scheduled for today so that we can both
6 then free you-all to have your discussions. Okay.

7 MR. COFFMAN: We should call the individuals
8 in our office that are participating in that case now?

9 JUDGE REGISTER: Yeah. We can go ahead and go
10 off the record.

11 WHEREUPON, the recorded portion of the
12 prehearing conference was concluded.

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