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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Hearing
April 26-27, 1999
Jefferson City, Missouri
Volume 2

In the Matter of the Investigation)
into the Class Cost of Service and) Case No. EO-96-15
Rate Design for Union Electric)
Company)

SHELLY A. REGISTER, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:
KELLENE K. FEDDERSEN, CSR, RPR
ASSOCIATED COURT REPORTERS, INC.

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15 FOR: Laclede Gas Company.

16 PAUL H. GARDNER, Attorney at Law
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21 FOR: Retirement Facilities Coalition.

22 ROBIN E. FULTON, Attorney at Law
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25 FOR: The Doe Run Company.

19 SAMUEL E. OVERFELT, Attorney at Law
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23 FOR: Missouri Retailer's Association.

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FOR: Missouri Energy Group
Emerson Electric, et al.

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FOR: Staff of the Missouri Public
Service Commission.

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P R O C E E D I N G S

(EXHIBIT NOS. 1 THROUGH 35 WERE MARKED FOR
IDENTIFICATION.)

JUDGE REGISTER: Good morning, ladies and
gentlemen. I'm Judge Shelly Register. I'd like to
take your entries of appearance at this time.
Mr. Cook, would you like to start?

MR. COOK: Yes, thank you. My name is
James J. Cook. My address is Post Office Box 66149,
St. Louis, Missouri 63166, appearing on behalf of
Union Electric Company.

JUDGE REGISTER: Mr. Krueger?

MR. KRUEGER: Keith R. Krueger and Dennis L.
Frey for the Staff of the Missouri Public Service
Commission. Our address is P.O. Box 360, Jefferson
City, Missouri 65102.

JUDGE REGISTER: Mr. Coffman?

MR. COFFMAN: John B. Coffman on behalf of
the Office of the Public Counsel, P.O. Box 7800,
Jefferson City, Missouri 65102.

JUDGE REGISTER: Intervenors?

MR. BYRNE: Thomas M. Byrne, 720 Olive
Street, St. Louis, Missouri 63101, appearing on behalf
of Laclede Gas Company.

MR. JOHNSON: Robert C. Johnson, 720 Olive

1 Street, 24th Floor, St. Louis, Missouri 63101,
2 appearing on behalf of Missouri Energy Group, Emerson
3 Electric Company, et al.

4 MS. SCHMIDT: Diana M. Schmidt appearing on
5 behalf of the Missouri Industrial Energy Consumers,
6 Bryan Cave, LLP, 211 North Broadway, Suite 3600,
7 St. Louis, Missouri 63102.

8 MR. COOPER: Dean L. Cooper from the law
9 firm of Brydon, Swearingen & England, PC, P.O.
10 Box 456, Jefferson City, Missouri 65102, appearing on
11 behalf of Missouri Public Service, a division of
12 UtiliCorp United, Inc.

13 MR. MOLTENI: Ron Molteni and Mark Long with
14 the Attorney General's Office, P.O. Box 899, Jefferson
15 City, Missouri 65102, appearing on behalf of the State
16 of Missouri.

17 JUDGE REGISTER: And you're Mr. Molteni?

18 MR. MOLTENI: Yes, I'm Mr. Molteni.

19 JUDGE REGISTER: And Mr. Long's here?

20 MR. MOLTENI: He's not present right now,
21 but he may be during the course of the hearing.

22 JUDGE REGISTER: In entering appearances, we
23 only enter for those that are actually here. So when
24 Mr. Long comes in, if he enters, he'll need to enter
25 his appearance when he comes in.

1 MR. MOLTENI: Okay.

2 MR. GARDNER: Paul H. Gardner and Dallas M.
3 Forrest, Goller, Gardner & Feather, 131 East High
4 Street, Jefferson City, Missouri 65101, appearing on
5 behalf of the Retirement Facilities Coalition.

6 MR. OVERFELT: Sam Overfelt, 618 East
7 Capital Avenue, Jefferson City, Missouri, Post Office
8 Box 1336, zip 65102, appearing on behalf of the
9 Missouri Retailers Association.

10 JUDGE REGISTER: Thank you, Mr. Overfelt.

11 I received a phone call from Mr. Fulton,
12 Robin Fulton on behalf of the Doe Run Company. He
13 indicated that he also had something going on in Cole
14 County Circuit Court today, and that he would be back.
15 I believe he said he would contact the parties to let
16 them know.

17 Okay. And I also received a phone call from
18 Brent Stewart on behalf of Trigen-St. Louis Energy
19 Corporation. Mr. Stewart said that he is at the rate
20 symposium in St. Louis today and probably thought he
21 better call and let us know he wouldn't be here. So
22 that is the last party I have noted here.

23 There is a -- Mr. Fulton was representing
24 Asarco, Inc., and he indicated in the prehearing
25 conference that they no longer are in business, but he

1 has not withdrawn them as a party.

2 This case is entitled In the Matter of the
3 Investigation Into the Class Cost of Service and Rate
4 Design for Union Electric Company, Case No. EO-96-15.
5 We're beginning this morning, and the hearing
6 should -- is scheduled to run through Friday barring
7 any changes.

8 I just want to cover one matter. In
9 previous hearings I've had people offer testimony in
10 the prefiled testimony and read it into the record. I
11 prefer you do not do that. Given that it's a
12 week-long hearing, we'll preserve as much of our time
13 as we can.

14 If you want to reference testimony that's
15 already in evidence, please give us the page numbers
16 and tell us what you'd like for us to pay special
17 attention to, but don't reread, don't ask your
18 witnesses to reread evidence that's already in the
19 record.

20 Okay. We have pending matters in this case.
21 Pending is a Motion to Strike. Motion to Strike was
22 filed by Alcoa Foil Products, Anheuser Busch
23 Companies, Inc., the Boeing Company, Ford Motor
24 Company, General Motors Corporation, HPE, Inc.,
25 Holeman, Inc., Hussmann Refrigeration, ISP Minerals,

1 Inc., Malincrodt, Inc., MEMC Electronic Material,
2 Monsanto Company, Proctor & Gamble Manufacturing and
3 Ralston Purina.

4 Staff filed a response to that Motion to
5 Strike on April 22nd. The Commission has reviewed
6 that Motion to Strike and determined that the issues
7 that are raised there were raised in direct testimony
8 of the Company and will deny that Motion to Strike.

9 There's also an Application to Intervene Out
10 of Time filed by Adams Mark Hotel, Alcoa Foil
11 Products, also known as Alumax, Inc., the Boeing
12 Company, General Motors Corporation, Malincrodt, Inc.,
13 Proctor & Gamble Manufacturing Company, Ralston
14 Purina.

15 There were no objections to that
16 application, and that Application to Intervene Out of
17 Time will be granted.

18 Just to clarify, Ms. Schmidt, Adams Mark
19 Hotel is included in your Application to Intervene.
20 In your Motion to Strike there was a motion -- there
21 was an HBE, Incorporated.

22 MS. SCHMIDT: I'm sorry, Judge. That is the
23 same entity.

24 JUDGE REGISTER: Okay. So HBE, Incorporated
25 is the holding company for Adams Mark Hotel?

1 MS. SCHMIDT: Right.

2 JUDGE REGISTER: I thought maybe that was
3 the fact, but I wanted to clarify that on the record.
4 Okay. So that application is granted. The
5 Application for Leave to Late File Hearing Memorandum
6 is granted, and the Motion to Withdraw filed by
7 Comenco American is granted.

8 Any other preliminary matters we need to
9 take care of on the record?

10 MR. COOK: Could I just have a clarification
11 as sometimes this becomes an issue? The witnesses
12 will be on the stand and their direct testimony will
13 be introduced. They will then be available for
14 cross-examination. They will then be available for
15 redirect, and then how many more times will each side
16 do?

17 JUDGE REGISTER: Let me tell you what the --
18 what I had down for the order. I have direct, cross,
19 cross from the Bench, recross, redirect. Is that
20 satisfactory?

21 MR. COOK: Could you do that again a little
22 slower?

23 JUDGE REGISTER: Direct, cross, cross from
24 the Bench, recross, redirect.

25 MR. COOK: Thank you.

1 JUDGE REGISTER: The order of presentation
2 of the witnesses is as prepared by the parties, the
3 order of cross-examination as prepared by the parties.

4 MR. COOK: Correct.

5 JUDGE REGISTER: Anything else we need to
6 address?

7 MR. COFFMAN: Perhaps it would be
8 appropriate to bring up a matter regarding the
9 availability of witnesses. We have kind of an
10 extraordinary situation. Barry Hall, who provided
11 some of our cost of service testimony, has left our
12 office but will be back tomorrow, which is the day
13 scheduled for his testimony. He's coming back for one
14 day to help finish up this case.

15 Although we agreed that we would continue as
16 quickly as possible in order, I was hoping that that
17 would be acceptable to the Commission that he be
18 allowed, if that's not the proper order to go,
19 sometime during Tuesday. I talked to the major
20 parties that have filed testimony, and I haven't heard
21 any objection yet.

22 JUDGE REGISTER: I think that we can be
23 flexible with that if the parties agree. I don't
24 think we'll see any objection from the Bench.

25 MR. COFFMAN: Thank you.

1 JUDGE REGISTER: Anything else we need to
2 cover at this time before we go off the record, take a
3 break?

4 (No response.)

5 Hearing none, we will adjourn for a short
6 break, and we'll be back on the record when the
7 parties let me know.

8 WHEREUPON, the hearing of this case was
9 recessed until April 27, 1999.

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(April 27, 1999)

JUDGE REGISTER: We're back on the record in
case EO-96-15.

The parties have been negotiating. I'll now
ask the parties to go on record here about where
they're at in this proceeding. Mr. Cook, would you
like to begin?

MR. COOK: Yes. Thank you. I'm glad to
announce that the parties have reached a settlement in
this case, and what we have is a unanimous stipulation
on all issues that are listed on pages 6 and 7 of the
Hearing Memorandum, with the exception of two of those
issues. And on those two issues, which are the issue
summaries listed as B1B, residential seasonal
differential, and B1H, Rider E.

As to those issues, we have an agreement of
all the parties except one, Laclede Gas. We have
drafted a document that will not be put into the
record at this time, but it is an outline of the
settlement terms that the parties have worked on this
morning.

And we've agreed to what that says, and the
attorneys will spend this afternoon and tomorrow and
however long it takes to convert that outline of
settlement terms into a Stipulation and Agreement for

1 presentation in this case.

2 JUDGE REGISTER: Okay. And do you want to
3 present any testimony on the remaining issues? Will
4 there be cross-examination on those issues, B1B and
5 B1H?

6 MR. COOK: It is my understanding that
7 Mr. Byrne does wish to present his witnesses and
8 cross-examine those witnesses on those two issues.

9 MR. BYRNE: That's correct, your Honor.

10 MR. COOK: And I believe it's agreeable to
11 all the parties that that occur this week still while
12 we're in the scheduled period that had been set aside
13 for this case. I believe those witnesses were
14 scheduled for Friday. To the extent that we
15 conveniently can for everyone involved, including the
16 Commissioners, move that to Thursday afternoon, I
17 believe that's the preference.

18 JUDGE REGISTER: Okay. Can you give me an
19 amended order of cross-examination so I know which
20 witnesses we'll be calling to cross or can you --

21 MR. BYRNE: Sure.

22 MR. COOK: I guess it's probably up to
23 Mr. Byrne. He may know now or --

24 MR. BYRNE: Well, I believe I know now. I
25 know -- well, your Honor, Laclede has two witnesses

1 that we'll be presenting, Mr. Cline and Mr. Suess. I
2 know that we'll want to cross-examine Mr. Kovach from
3 UE. Mr. Cook, would his testimony cover Rider E as
4 well?

5 MR. COOK: Yes.

6 MR. BYRNE: And seasonal differential?

7 MR. COOK: Yes.

8 MR. BYRNE: So he may be the only witness
9 from UE that we have to cross-examine. I guess Staff
10 witness Pyatte had a small piece of testimony covering
11 the seasonal differential, and I believe there's a
12 Public Counsel witness.

13 MR. COFFMAN: Yes. Ryan Kind mentions it.

14 MR. BYRNE: To the best of my knowledge,
15 that's -- those are all the witnesses.

16 JUDGE REGISTER: Okay. Will it matter what
17 order you want them in or --

18 MR. BYRNE: Well --

19 JUDGE REGISTER: -- or do you want some time
20 to consider that?

21 MR. BYRNE: Could we consider that? We
22 haven't really discussed what order they should go in.

23 JUDGE REGISTER: We will reconvene on
24 Thursday afternoon. Let's schedule it for one
25 o'clock. And if you could submit something at least

1 by hearing time then to let us know what order we can
2 go in. If you can do it by the end of the day
3 tomorrow, it would give the Commissioners an
4 opportunity to take a look at their testimony and for
5 me to just be organized.

6 MR. BYRNE: Okay.

7 JUDGE REGISTER: And I'd appreciate it. Is
8 there anyone else that wants to address the Commission
9 on the issue of the settlement agreement at this
10 point?

11 MR. FULTON: Judge, just for the record, we
12 had discussed this off the record yesterday. I may go
13 ahead and formally withdraw Asarco, Incorporated from
14 this case.

15 JUDGE REGISTER: Are there any objections to
16 that motion?

17 (No response.)

18 If there are no objections, then I will --

19 MR. FULTON: And perhaps I should formally
20 appear on the record, too, Judge. My name is Robin
21 Fulton. I'm an attorney in Fredericktown, Missouri.
22 I'm here representing the Doe Run Company.

23 JUDGE REGISTER: I believe everyone else was
24 here yesterday. Mr. Molteni, did Mr. Long come in
25 today?

1 MR. MOLTENI: No. Mr. Long is not here in
2 the courtroom today.

3 JUDGE REGISTER: Okay. Thank you. I'll go
4 ahead and grant your motion to withdraw Asarco as a
5 party in this case and reflect that in this record.

6 MR. COOK: If I may?

7 JUDGE REGISTER: Mr. Cook, go ahead.

8 MR. COOK: It is certainly the intent of the
9 parties to be able to file a Stipulation with the
10 Commission before the end of this week. Even if that
11 does happen or it does not happen at that time, is it
12 my understanding that such a Stipulation and Agreement
13 would be submitted and then at a time that would be
14 set by the Commission we would then be asked to return
15 here to present that stipulation to the Commission?

16 JUDGE REGISTER: Yes. After the Stipulation
17 and Agreement's filed, the Commission will take a look
18 at those, and I will discuss with the Commissioners
19 whether the Commission is interested in having formal
20 presentation and then issue a notice. Typically I
21 understand they do like to do that on Stipulations and
22 Agreements.

23 I had looked at the calendar in advance, and
24 I had noticed an open week that would be in the time
25 frame, May 10th through the 14th. Are there any of

1 those days that are, I guess, available for all the
2 parties, or do you want to submit that with your
3 Stipulation and Agreement?

4 If you could tell me today, then we can put
5 it on the calendar as a reserved day and have that, if
6 there are no objections.

7 MR. COOK: I'm open that week.

8 JUDGE REGISTER: Anybody else?

9 MR. MOLTENI: Conflict with me, the 10th and
10 11th I know that I won't be available.

11 JUDGE REGISTER: So the 12th through 14th
12 would be the better days for you.

13 MR. MOLTENI: Yes.

14 MR. FULTON: Your Honor, I don't know my
15 available dates, but if there's a conflict, I'll just
16 have Ms. Schmidt here that can take my place on behalf
17 of my client if that's okay.

18 JUDGE REGISTER: That's okay.

19 MR. JOHNSON: I will not be available, but
20 I'm necessary for -- I'll participate in the
21 Stipulation. I don't think I'm essential to the
22 presentation.

23 JUDGE REGISTER: Okay. Thank you,
24 Mr. Johnson. Any other problems?

25 MR. MOLTENI: Your Honor, I just want to be

1 clear on the record that we have tentatively agreed to
2 a stipulation, and at this point by not making an
3 objection we're not waiving the right. I don't know
4 that the State's going to have any problem with it,
5 will make an objection, but I don't want to waive the
6 right to do so if we should by not stating that right
7 now.

8 JUDGE REGISTER: I think that's -- I think
9 that's acceptable at this point.

10 MR. MOLTENI: And the reason I say that is
11 because we haven't seen a final document, what the
12 Stipulation and Agreement's going to look like.

13 JUDGE REGISTER: Certainly the terms are
14 rough at this point. We understand that and expect
15 that the parties will work the document out to fit the
16 terms that you agree to.

17 MS. SCHMIDT: Judge Register, I hope I
18 didn't miss something, but you said the week of May
19 10th would be the week for the stipulation hearing?

20 JUDGE REGISTER: That's just a week that I
21 had seen on the calendar. I just checked the calendar
22 to see if I could firm up a date, if the Commission
23 was interested in formal presentation, just to see if
24 I could get the parties available dates. How is that
25 week for you?

1 MS. SCHMIDT: It's fine. I was just
2 conferring with your witness, and he just wanted to
3 pin down the date as soon as possible, but we're both
4 available that week. That's fine. We'd just like to
5 get the date pinned down.

6 JUDGE REGISTER: I can maybe even by
7 Thursday be able to tell you if the Commission is
8 interested in formal presentation and give you a firm
9 date at that point.

10 MS. SCHMIDT: Thank you.

11 JUDGE REGISTER: So I'm looking at either
12 the 12th, 13th or 14th at this point as available
13 dates.

14 Okay. Is there any other business that we
15 need to address at this time, then?

16 MR. KRUEGER: Your Honor, do you have a date
17 by which you would want to receive suggestions in
18 support of the Stipulation and Agreement?

19 JUDGE REGISTER: I suppose that we would
20 need to receive those before the presentation. That
21 would be most helpful, I believe, if you choose to
22 file them. I don't think that they're absolutely
23 necessary if there's going to be formal preparation.
24 I would say that they'd be most helpful before the
25 presentation, but I will leave that to your

1 discretion.

2 And I'll check with the Commissioners on
3 that and see if they would find that helpful in
4 addition to formal presentation, or maybe they would
5 want that as a substitute for formal presentation, but
6 I'll find out if they have a particular thought on
7 that.

8 MR. KRUEGER: Okay. Thank you.

9 MR. BYRNE: Your Honor, is the hearing now
10 scheduled for Thursday at one o'clock? It is now
11 scheduled for that?

12 JUDGE REGISTER: Yes. This hearing will
13 reconvene and be scheduled at one o'clock on Thursday.
14 I have not had an opportunity to talk to the majority
15 of the Commissioners. I expect that that date will be
16 acceptable. If there's a problem I will notify the
17 parties.

18 MR. COOK: Based on this announcement and
19 our discussions here, the Company intends to release
20 its witnesses from the courtroom who are not otherwise
21 going to be used to help work the Stipulation up, if
22 that's agreeable.

23 JUDGE REGISTER: That's acceptable. Any
24 objections from any other parties? The same with all
25 the rest of your witnesses, I'm assuming. You can

1 release those that aren't needed for Thursday's
2 hearing.

3 MR. COOK: Yes.

4 JUDGE REGISTER: That's fine. Okay. Then
5 we are off the record.

6 WHEREUPON, the hearing of this case was
7 recessed until April 29, 1999.

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E X H I B I T S

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