

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

At a Hearing of the Public Service
Commission, held at Jefferson City,
Missouri, on the 1st day of
July, 1996.

CASE NO. EM-96-149

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 to contractual agreements
to Central Illinois Public Service
Company; and (3) in connection
therewith, certain other related transactions.

BEFORE:

JOSEPH A. DERQUE, III, Presiding,
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE.

REPORTED BY:

ASSOCIATED COURT REPORTERS, INC.

1 APPEARANCES:

2 JAMES J. COOK, Attorney at Law
JOSEPH H. RAYBUCK, Attorney at Law
3 P. O. Box 149
St. Louis, Missouri 63166

4 and

5 WILLIAM NIEHOFF, Attorney at Law
6 1901 Chouteau
St. Louis, MO 63103

7 FOR: Union Electric Company.

8 RICHARD W. FRENCH, Associate General Counsel
9 French & Stewart Law Offices
1001 Cherry Street, Suite 302
10 Columbia, Missouri 65201

11 FOR: Trigen - St. Louis Energy Corporation.

12 SONDR A. B. MORGAN, Attorney at Law
JAMES C. SWEARENGEN, Attorney at Law
13 PAUL A. BOUDREAU, Attorney at Law
Brydon, Swearngen & England, P.C.
14 P. O. Box 456
312 East Capitol Avenue
15 Jefferson City, Missouri 65102-0456

16 FOR: The Empire District Electric Company.
UtiliCorp United Inc.

17 THOMAS M. BYRNE, Attorney at Law
18 720 Olive Street
St. Louis, Missouri 63101

19 FOR: Laclede Gas Company.

20 GARY W. DUFFY, Attorney at Law
21 Brydon, Swearngen & England, P.C.
P. O. Box 456
22 312 East Capitol Avenue
Jefferson City, Missouri 65102-0456

23 FOR: Missouri Gas Energy.

24 DIANA M. SCHMIDT, Attorney at Law
25 ROBERT C. JOHNSON, Attorney at Law
Peper, Martin, Jensen, Maichel and Hetlage

1 720 Olive Street, 24th Floor
2 St. Louis, Missouri 63101

3 FOR: Anheuser-Busch, Inc.
4 Barnes and Jewish Hospitals.
5 Chrysler Corporation.
6 Emerson Electric Company.
7 Hussmann Refrigeration.
8 Lincoln Industrial.
9 MEMC Electronic Materials.
10 Mallinckrodt, Inc.
11 McDonnell Douglas Corporation.
12 Monsanto Company.
13 The Doe Run Company.

14 JAMES M. FISCHER, Attorney at Law
15 James M. Fischer, P.C.
16 101 West McCarty, Suite 215
17 Jefferson City, Missouri 65101

18 FOR: Kansas City Power & Light Company.

19 PAUL S. DeFORD, Attorney at Law
20 Lathrop & Gauge
21 2345 Grand Boulevard
22 Kansas City, Missouri 64108

23 FOR: Illinois Power Company.

24 MARILYN S. TEITELBAUM, Attorney at Law
25 Schuchat, Cook & Werner
1221 Locust Street, Second Floor
St. Louis, Missouri 63103

FOR: Local 2, 309, 702, 1455 International
Brotherhood of Electrical Workers,
AFL-CIO,

DARYL R. HYLTON, Assistant Attorney General
P. O. Box 899
Jefferson City, Missouri 65102

FOR: State of Missouri, Jeremiah W. Nixon,
Attorney General.

24
25

1 LEWIS R. MILLS, JR., Deputy Public Counsel
P. O. Box 7800
2 Jefferson City, Missouri 65102-7800

3 FOR: Office of the Public Counsel
and the Public.

4 STEVEN DOTTHEIM, Deputy General Counsel
5 ROGER W. STEINER, Assistant General Counsel
AISHA GINWALLA, Assistant General Counsel
6 P. O. Box 360
Jefferson City, Missouri 65102

7 FOR: Staff of the Missouri Public
8 Service Commission.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(Written entries of appearance filed.)

ALJ DERQUE: I have to apologize for not being prompt.

MR. FISCHER: Steve went to go find you.

ALJ DERQUE: I have to apologize for not being prompt. I had to, out of necessity, consult with the Commission and I'm sorry. I'm generally quite prompt, and I don't want to keep a roomful of attorneys and other professionals waiting. Let's go off record.

(Off the record.)

ALJ DERQUE: We're back on the record in the matter of the application of Union Electric, case No. EM-96-149. Have all counsel filed entries of appearance?

(No response.)

ALJ DERQUE: It's my understanding that there is, in principle at least, a settlement reached in this matter by a number of the parties, four of the parties, including Union Electric, the Staff, the office of Public Counsel, and --

MR. COOK: MIEC.

MR. DOTTHEIM: MIEC, the industrial intervenors.

ALJ DERQUE: Yeah. The industrial intervenors. Is that correct?

1 MR. DOTTHEIM: Yes. A tentative settlement
2 was reached mid to the latter part of Friday afternoon.

3 ALJ DERQUE: Okay. Let me, to begin with,
4 identify who is present for my own benefit. Mr. Dottheim
5 for the Staff, of course. Mr. Mills for the Office of
6 Public Counsel.

7 MR. MILLS: Present.

8 ALJ DERQUE: Robert C. Johnson?
9 Mr. Johnson?

10 MS. SCHMIDT: Mr. Johnson had car trouble
11 this morning. I am from his firm, and I'm entering
12 appearance on behalf of MIEC.

13 ALJ DERQUE: Ms. Schmidt for MIEC. For the
14 state by way of the Attorney General's office I have Darryl
15 Hylton.

16 MR. HYLTON: Yes, sir.

17 ALJ DERQUE: Mr. Hylton. Okay. Kansas
18 City Power and Light? Mr. Fischer. Mr. French for
19 Trigen. MoPub?

20 MS. MORGAN: Sondra Morgan.

21 ALJ DERQUE: Okay. Is MoPub on the service
22 list?

23 MS. MORGAN: They're as UtiliCorp United.

24 ALJ DERQUE: Is UtiliCorp on the service
25 list?

1 MS. MORGAN: Yes.

2 ALJ DERQUE: Okay. Swearengen, England and
3 Duffy?

4 MS. MORGAN: I'm also here for MGE.

5 ALJ DERQUE: Gas Energy and --

6 MS. MORGAN: And for the Empire District.

7 ALJ DERQUE: EDE. Okay. It's my
8 understanding that Marilyn Teitelbaum is not present,
9 representing the -- I believe it's three electrical worker
10 unions. Is that correct?

11 DAVID WHITE: Four of them.

12 ALJ DERQUE: Pardon me?

13 DAVID WHITE: Four of them, I believe.

14 THE REPORTER: I don't know your name, sir.

15 ALJ DERQUE: Stand up and tell us your
16 name.

17 DAVID WHITE: David White. I'm a business
18 rep with IBEW Local 2.

19 ALJ DERQUE: Mr. Pendergast for Laclede
20 gas?

21 MR. BYRNE: Thomas M. Byrne, Laclede Gas.

22 ALJ DERQUE: Thank you, Mr. Byrne. Is
23 there anyone I left out? And for Illinois Power Company,
24 Mr. Paul DeFord.

25 MR. DEFORD: Thank you.

1 ALJ DERQUE: Sorry. Now, is there anyone I
2 left out?

3 (No response.)

4 ALJ DERQUE: We will proceed in this
5 fashion: I will take advisory statements first from the
6 Staff and then, if there is any additional, from Union
7 Electric, Mr. Cook; Mr. Mills and the Office of Public
8 Counsel; and Ms. Schmidt from the industrial intervenors.
9 Mr. Dottheim?

10 MR. DOTTHEIM: Thank you, Mr. Derque.
11 As --

12 ALJ DERQUE: Well, one moment. Excuse me.
13 One moment. Mr. French --

14 MR. FRENCH: Yes.

15 ALJ DERQUE: -- and Union Electric, would
16 you prefer me rule on your motion now or later? I'm
17 prepared to rule on that motion from the bench today.

18 MR. FRENCH: Certainly.

19 ALJ DERQUE: I have a pending motion to
20 strike the testimony of Trigen, and specifically the
21 rebuttal testimony of Scott Spiewak.

22 MR. FRENCH: Spiewak.

23 ALJ DERQUE: Spiewak. Sorry.

24 MR. COOK: We would request that ruling at
25 your convenience.

1 MR. FRENCH: Sure.

2 ALJ DERQUE: Okay. Now or later?

3 MR. COOK: It's up to Mr. French.

4 ALJ DERQUE: Mr. French?

5 MR. FRENCH: I would just as soon have it
6 now.

7 ALJ DERQUE: The Commission has considered
8 the motion of Union Electric Company to strike the rebuttal
9 testimony of Trigen-St. Louis and specifically the
10 testimony of Scott A. Spiewak on behalf of Trigen Energy.
11 Is that correct? Is that accurate, Mr. Cook?

12 MR. COOK: Yes.

13 ALJ DERQUE: The Commission has determined
14 that they will grant that motion, and rebuttal testimony
15 will be stricken, principally for reason that this issue
16 has been taken up both with FERC and with this Commission
17 in other cases, and that, therefore, Trigen has received
18 the opportunity -- due process opportunity to litigate this
19 issue in a number of venues in a number of cases. And
20 there need be no trial of this matter in this case.

21 Mr. Cook, and particularly Mr. French, if
22 you wish a ruling in written form, please file a motion,
23 and you will get one or request and you will get one.

24 MR. FRENCH: You want me to file a written
25 request for an order in written form?

1 ALJ DERQUE: If you want this order
2 denying -- I'm sorry. If you want a written order granting
3 Union Electric's motion to strike this testimony, please
4 file a request in this docket, and the Commission will give
5 you one.

6 MR. FRENCH: I will do so.

7 ALJ DERQUE: There is also a pending Staff
8 motion for an order authorizing the filing of additional
9 testimony. That testimony has been filed, and it was my
10 intention to grant this motion, and I simply ran out of
11 time. There was no objection to it. And the motion is
12 probably moot, but I will grant it for purposes of the
13 record.

14 MR. COOK: Your Honor, related to that, the
15 Company will be today filing its supplemental surrebuttal
16 testimony pursuant to that motion, and we have copies here
17 to hand out to the parties.

18 ALJ DERQUE: Yes, sir. I believe that was
19 included in the motion.

20 MR. COOK: Right.

21 ALJ DERQUE: Are there any other matters
22 and pending motions? Yes, sir, Mr. Mills?

23 MR. MILLS: The cross-surrebuttal of Ryan
24 Kind was filed several hours late with a request of leave
25 to file late, and that was never actually granted. But

1 there was never any objection to that testimony either.

2 ALJ DERQUE: Yes. And there was never any
3 objection to it, and it's lost in this mass of paper. I
4 knew there was another one pending out there, and I knew I
5 would find out about it.

6 MR. COOK: Must have lost our objection to
7 it.

8 ALJ DERQUE: If none of the parties have
9 any objection to the filing of Ryan Kind's testimony for
10 the Office of Public Counsel a matter of hours late -- and
11 I did know that, was aware of that -- please say so now.
12 State your objection.

13 (No response.)

14 ALJ DERQUE: Seeing no objection, the
15 motion to late file by the Office of Public Counsel will be
16 granted. Mr. Kind's testimony will be filed. I'm sure
17 it's already filed.

18 Is there any other housekeeping matter I
19 need to deal with?

20 (No response.)

21 ALJ DERQUE: Seeing none, Mr. Dottheim?

22 MR. DOTTHEIM: Thank you again. A short
23 while ago I addressed the matter of four parties, the
24 Staff, Office of Public Counsel, MIEC, and of course Union
25 Electric Company, reaching a tentative settlement Friday

1 afternoon. Not all issues have been resolved as yet. We
2 need to address those items.

3 As a consequence, because of the lateness,
4 when at least tentative settlement was reached and the fact
5 that there still are a number of issues which must be
6 resolved, we do not have at this time a stipulation and
7 agreement. We hope to file one with the Commission. We
8 are looking at a week from today as when we hope to file a
9 stipulation and agreement covering all matters in this
10 proceeding involving those four parties.

11 We've proceeded in negotiations in a manner
12 that I think is generally consistent with how negotiations
13 have proceeded in the past. Not all parties are called
14 together and convened for purposes of settlement
15 discussions, usually, other than on the first day of the
16 prehearing conference or until a tentative settlement has
17 been reached. In part that's because not all parties have
18 testimony filed, and some parties are monitoring as opposed
19 to taking a more active role in the proceedings.

20 Upon the tentative settlement being reached
21 on Friday afternoon, a one-page memorandum under my name
22 and Mr. Cook's, Mr. Mills', and Mr. Johnson's name was
23 faxed to the other parties. Due to the lateness in which
24 the fax was sent, which was after five, we figured that we
25 would not catch up with everyone. That was not

1 intentional. The lateness in which we have reached a
2 settlement was not intentional on anyone's part.

3 I attempted on Saturday to reach by phone
4 the parties who were not involved in the negotiations, and
5 both tried that also Sunday, and was only partially
6 successful in catching up with people. I have indicated to
7 those individuals and I think the one-page memorandum
8 indicates that today we intend to address the various items
9 that are encompassed by the tentative settlement with the
10 other parties.

11 If we had reached this stage a week ago,
12 ten days ago, we would have convened the parties at that
13 time. Unfortunately, that did not occur, and the four
14 parties thought that we were far enough along that it was
15 not beneficial to commence the proceedings, so we asked for
16 a postponement to provide us an opportunity to visit with
17 the other parties to see if any of them are interested in
18 joining in the stipulation and agreement, at an absolute
19 minimum, providing them an explanation of what has been
20 agreed to and what is still outstanding.

21 I also made an effort to reach three
22 parties. They are not parties. I maybe should say
23 entities. They are not parties to the present case,
24 EM-96-149. They were parties in case No. ER-95-411, which
25 was filed and resolved last summer. Those parties are the

1 Missouri Retailers Association, Asarco Inc. and the Doe Run
2 Company, and finally, Cominco American. The reason I tried
3 to reach --

4 ALJ DERQUE: What was it's third one?

5 MR. DOTTHEIM: Cominco American,
6 C-O-M-I-N-C-O, American and Asarco is spelled A-S-A-R-C-O.

7 ALJ DERQUE: I'm familiar with them.

8 MR. DOTTHEIM: Okay. The reason those
9 parties were contacted, as I mentioned, they were parties
10 to ER-95-411, and they also were made parties by the
11 Commission pursuant to the stipulation and agreement that
12 was filed last summer in that case. They were also made
13 parties in two subsequent dockets, EO-96-14, which is a
14 monitoring docket for purposes of the experimental
15 alternative regulation plan, and EO-96-15, which is a
16 comprehensive rate design docket. In particular, I
17 attempted to reach those parties because of the ER-95-411
18 and EO-96-14.

19 The terms of the tentative stipulation and
20 agreement, the tentative settlement that Staff, Public
21 Counsel, MIEC, and Union Electric Company have reached,
22 affect the stipulation and agreement in ER-95-411, and as a
23 consequence, we thought and believe there's a necessity to
24 advise those parties of what has been negotiated and
25 determine what their disposition is.

1 I was able to reach before we started this
2 morning counsel for those three parties, Willard Reine and
3 Sam Overfeld for the Missouri Retailers Association;
4 Robin E. Fulton for Asarco Inc. and the Doe Run Company;
5 and Richard Brownlee for Cominco American and attempted to
6 provide some details about what was going to occur this
7 morning. None of them were available on short notice to be
8 present this morning. I indicated that we would keep them
9 fully apprised of the particulars of the tentative
10 settlement in the present pending merger case of Union
11 Electric Company.

12 Again, the lateness within which this
13 tentative settlement has been reached has caused us to ask
14 that the hearings be placed in abeyance. If we had reached
15 this point earlier, all parties would have been fully
16 apprised at that point when we had reached the tentative
17 settlement.

18 As far as the particulars of the tentative
19 settlement, I believe Mr. Cook would like to address that.
20 And if the bench has any questions regarding the procedural
21 nature of, again, the timing, of the contacting of various
22 parties, I and others will attempt to address that.

23 ALJ DERQUE: Thank you, Mr. Dottheim. I
24 will deal with that. Mr. Cook?

25 MR. COOK: The only thing I think I --

1 ALJ DERQUE: Mr. Mills, would you rather go
2 first?

3 MR. MILLS: Mr. Cook can go ahead. I will
4 see if I have anything to add.

5 MR. COOK: I would have nothing to add to
6 what Mr. Dottheim has said concerning the procedure that
7 has brought us to this point.

8 I have with me a copy -- copies of a letter
9 from me to Mr. Mills, Mr. Dottheim, Mr. Johnson, which set
10 forth the basics of the agreement that we have. I would
11 prefer, I believe, to pass that out and discuss it off the
12 record when that's appropriate.

13 ALJ DERQUE: Okay. Do you have that in
14 writing --

15 MR. COOK: Yes.

16 ALJ DERQUE: -- Mr. Cook?

17 MR. COOK: Yes, I do.

18 ALJ DERQUE: Okay. You need not -- you may
19 pass it out to the remainder of the parties, and when
20 that -- if you have that very basic framework formalized in
21 writing, you need not discuss it on the record or off the
22 record with me.

23 MR. COOK: Okay.

24 ALJ DERQUE: It's simply to advise the
25 Commission of what to expect in this agreement.

1 MR. COOK: What to expect, did you say?

2 ALJ DERQUE: Well, yes. Just the basic
3 framework so they know generally, have an idea of what --

4 MR. COOK: That's what you're asking that I
5 put on the record at this point?

6 ALJ DERQUE: No. No. I'm saying if you
7 have it in writing, you don't have to or off the record.
8 You don't have to discuss it. I will give you that
9 opportunity shortly.

10 MR. COOK: Okay. I have nothing further to
11 add to what Mr. Dottheim said.

12 ALJ DERQUE: Mr. Mills?

13 MR. MILLS: I have nothing to add. I will
14 be happy to answer you questions if you have any.

15 ALJ DERQUE: Let me ask you a question
16 right now, because I know there is at least one
17 Commissioner that will ask it. Does office of Public
18 Counsel support this agreement?

19 MR. MILLS: Yes, at this point.

20 ALJ DERQUE: Do they think it is in the
21 public interest at this point?

22 MR. MILLS: Yes, although it's tentative.
23 Not all the parties have agreed to it, and not all the
24 points are addressed in it. But to the point we have got
25 so far, public interest and Public Counsel supports it.

1 ALJ DERQUE: And Ms. Schmidt?

2 MS. SCHMIDT: I have no statement at this
3 time. Thank you.

4 ALJ DERQUE: Thank you. There are a number
5 of parties who are not yet -- have not yet been apprised of
6 the contents of this agreement. Is that correct?

7 MR. COOK: That's correct.

8 ALJ DERQUE: Okay. Let me -- what I will
9 do is go through and ask those parties, on the record, as
10 to whether they wish to see the agreement and engage and
11 further negotiations or whether they wish to litigate their
12 issues. Mr. DeFord? I'm not doing this in order. I'm
13 just going down my list.

14 MR. DEFORD: I believe we would be very
15 interested in looking at the agreement, but since we filed
16 no testimony, we have no issues to litigate at this point.

17 ALJ DERQUE: Yeah. I know some of these
18 parties have not filed testimony, and I don't have written
19 down here which ones. And I'm going to go through the list
20 and give everyone their due process. Mr. Hylton?

21 MR. HYLTON: We also would -- have not
22 filed testimony and would be very interested in seeing the
23 contents of the agreement and would be happy to address
24 things that way.

25 ALJ DERQUE: Okay. Mr. Fischer?

1 MR. FISCHER: Kansas City Power and Light
2 is in the same boat. We haven't filed testimony, but we're
3 very interested to see that document.

4 ALJ DERQUE: Mr. French?

5 MR. FRENCH: We haven't been apprised of
6 the settlement and would like to see it.

7 ALJ DERQUE: Okay. Laclede Gas,
8 Mr. Byrne?

9 MR. BYRNE: We too have not filed any
10 testimony, but we would be interested in seeing the
11 document.

12 ALJ DERQUE: The Unions will be included in
13 any further negotiation, and you may tell that to
14 Ms. Teitelbaum. Thank you.

15 Are there any objections to the way this
16 negotiation process has gone to date from the remainder of
17 the parties that were not included in the negotiation?

18 (No response.)

19 ALJ DERQUE: If you have an objection,
20 please state it now for the record.

21 MR. FRENCH: Well, judge, I'm not stating
22 an objection. I just don't have no idea how this process
23 was conducted, so at this point I have no --

24 ALJ DERQUE: I understand.

25 MR. FRENCH: I have no information on which

1 to make an objection.

2 ALJ DERQUE: It's my understanding from the
3 parties -- I can't put that on the record, but that the
4 intervenors were not intentionally excluded, nor was there
5 any intent to deprive them of due process and as much input
6 as they wanted. Mr. Dottheim?

7 MR. DOTTHEIM: That is correct. We didn't
8 call individual parties and say, "We are involved in
9 negotiations; would you care to join us?" The individual
10 parties were free to contact any of us and to inquire as to
11 what discussions might be occurring and what the nature of
12 them were or what they might be.

13 I don't believe that we proceeded any
14 differently than what is the general procedure. What is
15 different is the timing in which a tentative settlement was
16 obtained. If we had more time between when the tentative
17 settlement was obtained and the schedule commencement of
18 the evidentiary hearings, we would have advised, again, the
19 other parties. We would have, hopefully, resolved all
20 outstanding matters, which we still do have some
21 outstanding matters, and ideally, we would have been able
22 to generate a stipulation and agreement for filing with the
23 Commission.

24 ALJ DERQUE: Okay.

25 MR. COOK: Mr. Derque?

1 ALJ DERQUE: Yes, sir.

2 MR. COOK: If I may, at the prehearing
3 conference that was held in this case, the Company
4 announced on more than one occasion to all that were here
5 that we were here not only for the procedural matters of
6 the prehearing, but also willing and ready to discuss
7 settlement with any parties. And no one approached us that
8 day, and it wasn't until several days, at least, later that
9 discussions began with first Staff and Public Counsel and
10 then the intervenors.

11 So I think it's fair to say that the
12 Company made it very clear at the prehearing that we were
13 willing to talk to anybody.

14 ALJ DERQUE: Mr. Mills, do you have any
15 additional comment?

16 MR. MILLS: I would just like to agree with
17 your statement that there was no intention to deprive any
18 of the parties of their due process. It seemed a better
19 use of time to get the parties that were the most involved
20 and had testimony filed on the main issues and see if an
21 agreement could be reached among those parties before some
22 of the less active parties were contacted.

23 ALJ DERQUE: Ms. Schmidt?

24 MS. SCHMIDT: Nothing.

25 MR. DOTTHEIM: Mr. Derque?

1 ALJ DERQUE: Yes, sir.

2 MR. DOTTHEIM: And again, I don't want to
3 leave this unclear. The general practice is not to convene
4 all the parties, other than at the prehearing conference,
5 for purposes of settlement discussions. Generally, it
6 involves parties with testimony filed, and even those
7 parties will carry on negotiations amongst a subset of even
8 those who have testimony filed.

9 It's generally not viewed that any time,
10 for example, the Staff would choose to speak with the
11 Company, that the Staff would advise all other parties to
12 the case and suggest that they convene for such
13 discussion. And that's the same also for if the Staff
14 would have any discussions with the Office of Public
15 Counsel or any other party in the litigation.

16 ALJ DERQUE: Yeah. I appreciate that,
17 Mr. Dottheim. I felt it necessary for the Commission to
18 have a clear understanding how these negotiations
19 progressed and how they will progress.

20 Let me advise the parties that have been
21 involved to date in negotiations and the remainder of the
22 parties that there are limited dates for the trial in this
23 matter, should that occur. And what I mean by limited is,
24 they begin -- the available dates at this point, should the
25 parties not use this week and next week, are some time in

1 September and perhaps October.

2 And I will -- when we adjourn, I will go
3 back and look at the Commission's calendar -- I didn't have
4 time this morning -- and give the parties a date certain
5 when this matter can be set today. Next week that may not
6 be the case. Someone else may set a trial. I cannot move
7 the Commission schedule, and I cannot move other trials for
8 this matter. The parties negotiated vigorously for these
9 two weeks. Other matters were moved aside, set aside,
10 moved back to try this case beginning today, and I'm not of
11 the mind, nor is probably the Commission, to do that
12 again.

13 So if any of the parties wish to try their
14 issues, this is their notice according to Rule 2.115 that
15 they will, okay, upon the filing of a stipulation and
16 agreement which is not unanimous, they will file a motion
17 for a trial. If they do not, the Commission, according to
18 the rule, will consider the agreement unanimous. Now, does
19 anyone object to that?

20 (No response.)

21 ALJ DERQUE: Does anyone have a problem
22 with that?

23 MR. FRENCH: I'm sorry, Judge. I didn't
24 quite understand what you said.

25 ALJ DERQUE: When an agreement is filed in

1 this case --

2 MR. FRENCH: Okay. I understand.

3 ALJ DERQUE: -- in the event it is not
4 unanimous, the party who is not a signator to that
5 agreement will file at that time for a motion for a trial.
6 Okay. I'm going to give you dates, available dates. If
7 there is no request for a hearing -- would you prefer a
8 request for a hearing, Mr. French?

9 MR. FRENCH: No. I was kind of confused
10 about whether you were shortening the amount of time, given
11 the rule for the party to file that motion, that request.

12 ALJ DERQUE: Not at all.

13 MR. FRENCH: All right. That's fine.

14 ALJ DERQUE: It's five days.

15 MR. FRENCH: Business days.

16 ALJ DERQUE: Okay. Five business days.

17 MR. FRENCH: Thank you.

18 ALJ DERQUE: Starting at the close of
19 business next Monday --

20 MR. FRENCH: If the stipulation is filed.

21 ALJ DERQUE: Yeah. Starting at the close
22 of business -- Tuesday morning. Okay. After Tuesday
23 morning and whenever an agreement is filed, if the
24 Commission does not have a request from a party or parties
25 for a hearing to hear their issues accompanied by a full

1 hearing memorandum as to what those issues are, who the
2 witnesses are, the order of cross-examination, okay, those
3 matters contained in the standard hearing memorandum, the
4 Commission will consider the agreement unanimous.

5 Now, do all the parties fully understand
6 what I've just said? I'll be glad to explain this.

7 (No response.)

8 ALJ DERQUE: Are there questions or
9 objections?

10 MR. FRENCH: I don't want to be difficult
11 again.

12 ALJ DERQUE: You're not being difficult.
13 That's what we do this for.

14 MR. FRENCH: Just so I understand, the
15 party that would request the hearing would certainly be
16 required to file its position and its witnesses, if any,
17 and so forth. Are you also requiring them to obtain
18 agreements from other parties, what witnesses they would
19 have, and also what order of cross-examination that those
20 parties would agree to? Because I think that may not be --
21 that may be an undue burden, if those parties just refuse
22 to agree within that time frame.

23 ALJ DERQUE: I need advice in the form of a
24 hearing memorandum. Okay? And by form of hearing
25 memorandum, what I mean is a list of witnesses for

1 cross-examination, the order in which they will be called,
2 and the order in which they will they will be
3 cross-examination -- they will be cross-examined, together
4 with the issues that will be tried. Now, that's standard
5 hearing memorandum information. That's what I need.

6 Now, whether it's -- everybody cooperates
7 in making that agreement or not, or a party that wants
8 their hearing, wants their due process hearing, simply does
9 it themselves, either one, I need that information. Yes,
10 sir?

11 MR. DOTTHEIM: Mr. Derque, certainly the
12 Staff will cooperate with any party that files a motion for
13 a hearing. The Staff will cooperate in assisting and
14 putting together a hearing memorandum in that instance. I
15 just thought that I might state that.

16 ALJ DERQUE: Thank you. And the Commission
17 appreciates that.

18 MR. MILLS: We will too.

19 ALJ DERQUE: Thank you, Mr. Mills. Now,
20 does everyone understand? This is your 5-day notice. Does
21 everyone understand that?

22 (No response.)

23 ALJ DERQUE: Okay. I have advised Mr. Cook
24 and I will advise the remainder of the parties that this is
25 a large and complex matter, and it may involve far-reaching

1 policy considerations, maybe not. At any rate, it's
2 important and it's a very big case. The Commission does
3 not wish to be pressed for time to decide this matter, to
4 determine -- to review the stipulation and agreement,
5 review the details of it, and that's a matter of advice.

6 Presenting a stipulation and agreement and
7 saying, "We need it next week" will not meet with the --
8 will not meet with the Commission's approval. Does anyone
9 have any difficulty with that?

10 MR. COOK: Just for the record, there is no
11 reason that I can anticipate now that the Company would be
12 pressing for that, just because of the other regulatory
13 proceedings that are ongoing. There's a significant window
14 of opportunity for approval action.

15 ALJ DERQUE: I understand that this
16 Commission is the model of efficiency and expediency.

17 MR. COOK: Of course.

18 ALJ DERQUE: I have memorandum -- legal
19 memorandum on jurisdictional issues. I will hold those
20 pending -- none of them are asking the Commission to do
21 anything, but I will hold those pending the outcome of
22 negotiations. If there are issues in there which will turn
23 up in litigation, I assume they will be resolved, or we
24 will litigate them.

25 MR. DOTTHEIM: Yes.

1 ALJ DERQUE: Is there anything else I need
2 to deal with on the record? Mr. Dottheim, did you -- yes?

3 MR. DOTTHEIM: Just one thing. I don't
4 mean to cause any concern by this. But when you mentioned
5 the schedule, just as a precautionary item, if the parties
6 take a look at the Commission's schedule in the next months
7 and -- will you be open to us inquiring as to -- again,
8 just strictly precautionary. You've noted that hearings
9 are being set all the time. Would you be open to the
10 parties or some set of them, suggesting days that appear to
11 be open?

12 ALJ DERQUE: Yes.

13 MR. COOK: Next Monday.

14 ALJ DERQUE: Next Monday is open.

15 MR. DOTTHEIM: Yes. That is understood.

16 ALJ DERQUE: Other than next Monday, what I
17 intend to do when we go off the record, is go back and look
18 at it, look at what we -- let's go off the record a
19 minute.

20 (Off the record.)

21 ALJ DERQUE: What I intend to do is, go
22 back and look at the master calendar and determine when
23 available dates are right now. Next week they may not be
24 available, in which case we'll have to work something else
25 out if we intend to litigate this matter.

1 MR. DOTTHEIM: Should we inquire any
2 further with you about those available dates? I have taken
3 a look at the calendar just out of a sense of precaution,
4 and although there is no single block of 5 days, there
5 appears to be before September one or two, opportunities
6 where there are 3 or 4 days.

7 ALJ DERQUE: Uh-huh. Yes and no. It's a
8 little more complicated than walking back there and looking
9 at the master calendar. I need to discuss matters with
10 various parties and get the dates. And I'm not trying
11 to -- I'm not trying to duck the Commission's
12 responsibility here at all.

13 MR. DOTTHEIM: No. I understand.

14 ALJ DERQUE: We would be more than happy to
15 litigate this matter starting right now or starting next
16 Monday. Other than that -- then what I'm telling the
17 parties is, don't expect to move heaven and earth to get
18 this thing done tomorrow -- I mean, get this thing done
19 outside, you know, the 15th of July. That's probably not
20 going to happen.

21 MR. COOK: But from the Company's
22 standpoint -- and I know all of this discussion is purely
23 precautionary, but if we've not tied down virtually every
24 item by next Monday, then we need to start talking about
25 when the hearing will be. We're not interested in any

1 party thinking they're going to be holding out for whatever
2 purpose they would like to do that, in hopes that maybe we
3 will be able to negotiate sometime in August before some
4 sort of September hearing on something. We can't afford to
5 wait that long.

6 ALJ DERQUE: That's fine. Is there
7 anything else I need to deal with on the record?

8 (No response.)

9 ALJ DERQUE: What I intend to do is go off
10 the record, go back and look at the master calendar, and
11 discuss the matter with various people I need to, and then
12 come back and get six copies, Mr. Cook, of your prepared
13 handout. And if the Commission needs to be advised orally,
14 we'll do that.

15 MR. COOK: Okay.

16 ALJ DERQUE: But I think probably -- let me
17 look through it, but I think probably the handout will be
18 sufficient.

19 MR. COOK: Okay.

20 ALJ DERQUE: Is there any other matter I
21 need to deal with on the record? Yes, sir?

22 MR. MILLS: I just -- this seems to me a
23 new procedure, that the Commission has asked to be advised
24 of the elements of a tentative settlement.

25 ALJ DERQUE: Don't need to, Mr. Mills. If

1 you object to it --

2 MR. MILLS: My only concern is, if we're
3 not able to reach a settlement, there are a good number of
4 concessions given on each side --

5 ALJ DERQUE: That's fine.

6 MR. MILLS: -- that I would hate to have
7 the judges in this case to be prejudged as to, well, they
8 were willing to give this up in settlement and therefore it
9 must be reasonable. Why are they trying to --

10 ALJ DERQUE: Thank you. I agree. There
11 will be no advice to the Commission.

12 MR. COOK: That's probably best.

13 ALJ DERQUE: Pardon me?

14 MR. COOK: I think, I believe, that is
15 probably best.

16 ALJ DERQUE: Okay. Well, yeah. So is
17 there any matter -- other matter on the record that I need
18 to deal with?

19 (No response.)

20 ALJ DERQUE: Seeing none, what I intend to
21 do is go off the record and give the parties available
22 dates for trial. We are off the record in this matter.

23 WHEREUPON, the hearing of this case was
24 continued to a date to be fixed by the Commission.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25