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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Hearing  
  
June 28, 2001  
Jefferson City, Missouri  
Volume 8

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 ) Case No. EM-96-149  
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.

SHEILA LUMPE, Chair,  
CONNIE MURRAY,  
KELVIN SIMMONS,  
STEVE GAW,  
COMMISSIONERS.

REPORTED BY:  
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P R O C E E D I N G S

JUDGE REGISTER: We'll go on the record now,  
Kellene.

Good morning, ladies and gentlemen. We are  
here in Case No. EM-96-149. It's in the Matter of the  
Application of Union Electric Company for an Order  
Authorizing Certain Merger Transactions Involving Union  
Electric Company, the Transfer of Certain Assets, Real  
Estate, Leased Property, Easements and Contractual  
Agreements to Central Illinois Public Service Company and,  
In Connection Therewith, Certain Other Related Transactions.

This morning we are hearing evidence on  
AmerenUE's motion entitled Emergency Motion of Union  
Electric Company to Temporarily Stay Expiration of the EARP  
and to Establish a Schedule for Further Proceedings and for  
Expedited Treatment filed on June 25th, 2001.

I'd like to go ahead and take entries of  
appearance at this time. Mr. Dottheim, if you could begin.

MR. JOYCE: Steve's not here right now, your  
Honor. Steven Dottheim, Deputy General Counsel, and Dana  
Joyce, General Counsel, here on behalf of the Staff.

JUDGE REGISTER: Thank you very much,  
Mr. Joyce. Mr. Cook?

MR. COOK: James J. Cook, Robert Cynkar and  
Victor Wolski appearing on behalf of Union Electric Company.

1 My address is Post Office Box 66149, St. Louis, Missouri  
2 63166.

3 JUDGE REGISTER: Thank you, Mr. Cook.  
4 Mr. Coffman?

5 MR. COFFMAN: Appearing on behalf of the  
6 Office of the Public Counsel and the consumers of Union  
7 Electric, John B. Coffman, P.O. Box 7800, Jefferson City,  
8 Missouri 65102.

9 JUDGE REGISTER: Mr. Fulton?

10 MR. FULTON: Yes. Rob Fulton appearing on  
11 behalf of the Doe Run Company. My address is P.O. Box 151,  
12 Fredericktown, Missouri.

13 JUDGE REGISTER: Mr. Johnson?

14 MR. JOHNSON: Yes. Robert C. Johnson  
15 appearing on behalf of the Missouri Energy Group, Barnes  
16 Jewish Hospital, Emerson Electric Company, et al, and my  
17 address is 720 Olive Street, 24th Floor, St. Louis, Missouri  
18 63101.

19 JUDGE REGISTER: Thank you, Mr. Johnson.  
20 Mr. Molteni?

21 MR. MOLTENI: Ronald Molteni, Assistant  
22 Attorney General, on behalf of the State of Missouri. My  
23 address is P.O. Box 899 Jefferson City, 65102.

24 JUDGE REGISTER: Is Mr. Swearengen or someone  
25 on behalf of UtiliCorp United here? Okay. I spoke to

1 Swearengen yesterday who indicated he was not sure.

2                   Mr. Downey, you're here on behalf of Missouri  
3 Industrial Energy Consumers?

4                   MR. DOWNEY: Yes, Judge. Ed Downey, 221  
5 Bolivar Street, Suite 101, Jefferson City, Missouri, on  
6 behalf of the Missouri Industrial Energy Consumers.

7                   JUDGE REGISTER: And Retirement Facilities  
8 Coalition, Paul Gardner, anyone on his behalf? Okay.  
9 Mr. Gardner said he had a conflict today. He wasn't sure he  
10 was going to be able to make it either.

11                   Those people -- those parties who were not  
12 able to make it today are excused due to the late notice of  
13 this filing and, therefore, the late notice of the setting  
14 of the hearing.

15                   Okay. We will proceed this morning. The  
16 first question we're going to get to here is why should the  
17 Commission even consider this motion? Initial filing of  
18 this pleading was noncompliant with the rules. It was very  
19 late filed, and it asked us to take up a question of the  
20 continuation of the EARP which has already been decided in a  
21 previous Order by this Commission on March 8th, 2001.

22                   And, therefore, AmerenUE is going to have the  
23 burden first to argue the legal issue of why the Commission  
24 should even consider this. The parties were given very  
25 little time to respond given the late filing of this motion.

1 It begs the question of whether they are given a full and  
2 fair opportunity to respond to the question presented in  
3 this motion.

4                   And there's some -- the question has been  
5 raised that this is a collateral attack on the Commission's  
6 final Order issued March 8th entitled Order Authorizing  
7 Earnings Investigation Filing July 1, 2001.

8                   In that Order the Commission found that it was  
9 reasonable to establish a case for the purpose of rate  
10 reductions immediately following the expiration of the  
11 second EARP, and it stated that it would not continue the  
12 experimental alternative regulation plan beyond its  
13 expiration on June 30, 2001.

14                   So, in essence, AmerenUE has the burden today,  
15 Mr. Cook, to tell us what's changed since March 8th, which  
16 also should include why the Commission should take up this  
17 motion, which initially on its filing on Monday, June 25th,  
18 did not comply with the Commission rules or the Protective  
19 Order that was issued prior in this case and which did not  
20 give the other parties adequate time for a full response and  
21 also purports to be an emergency in light of the March 8  
22 decision rendered by the Commission.

23                   So we will take oral arguments on this legal  
24 issue first before we even proceed to any evidence on the  
25 merits. We will begin with statements, oral argument by

1 AmerenUE. You'll have -- given the limited amount of time  
2 that we have for this hearing -- two and a half hours is  
3 scheduled from 8 to 10:30 -- AmerenUE will have ten minutes  
4 to address these legal issues. The responsive parties, I've  
5 got planned 15 minutes for all of your responses.

6 I can be somewhat flexible, but I would like  
7 for you to stay as close to 15 minutes as you can and talk  
8 among yourselves maybe to see how you want to divide that  
9 up. I don't know how many of the intervenors actually want  
10 to make arguments on those issues.

11 And so if Staff and Public Counsel and the  
12 intervenors' counsels would talk among yourselves and see  
13 how you want to divide that up, then we'll proceed. And  
14 then AmerenUE will have five minutes for rebuttal on that  
15 issue. Then the Commission will take a recess at that time  
16 and consider that issue first before we even proceed any  
17 further.

18 I want to make sure it's clear that before we  
19 even decide to go further in taking any evidence, you must  
20 meet that burden.

21 MR. COOK: Very well.

22 MR. MOLTENI: Your Honor, may I have a point  
23 of clarification? You continually refer to the original  
24 Order as not -- or the original motion that AmerenUE filed  
25 as not being compliant with the rules. The Amended Order



1 isn't compliant with the Commission rules either.

2 JUDGE REGISTER: Thank you for pointing that  
3 out, Mr. Molteni, and that will be addressed in your  
4 arguments as well.

5 Mr. Cook, please proceed.

6 MR. COOK: Would it be the preference to use  
7 the podium?

8 JUDGE REGISTER: Yes, please.

9 MR. COOK: May I raise a procedural point  
10 before my time starts, please?

11 JUDGE REGISTER: Certainly.

12 MR. COOK: The question of the proprietary  
13 nature of the discussions at this point. I am concerned  
14 that some of the discussions we're going to have even on  
15 this point is going to address some of the financial  
16 implications of the actions that are being discussed here,  
17 and would ask that at least the first part of this  
18 discussion be in-camera.

19 JUDGE REGISTER: Since we haven't rendered a  
20 decision on those objections, for the first portion of this  
21 argument we will go in-camera, and only those persons who  
22 are subject to the proprietary portion of these amended  
23 pleadings and the other pleadings should be in the hearing  
24 room at this time. I'll leave it to the parties to be  
25 satisfied that the people present are the ones that are

1 subject to those proprietary information.

2 Mr. Coffman?

3 MR. COFFMAN: Your Honor, if that is indeed  
4 your ruling, we're willing to accept it, except I would like  
5 to for the record object to any portion of the information  
6 in the motion being classified as proprietary and this  
7 hearing being in-camera.

8 JUDGE REGISTER: Thank you.

9 MR. MOLTENI: The State of Missouri echoes  
10 that objection.

11 JUDGE REGISTER: Thank you, Mr. Molteni.

12 Okay. If all parties are satisfied, then we can proceed.

13 MR. COOK: Thank you. May it please the  
14 Commission? I'm Jim Cook. I'm Managing Associate General  
15 Counsel of AmerenUE.

16 We certainly appreciate the opportunity to  
17 present evidence and -- argument and then hopefully evidence  
18 in support of our motion. We also appreciate the efforts of  
19 the Commission and the adjudication division and the Staff  
20 and all parties in responding to our motion.

21 Let me first be very clear about what we are  
22 asking in our motion. We are asking the Commission to  
23 direct its staff to defer the filing of its rate complaint  
24 case until the Commission has an opportunity to review,  
25 discuss and deliberate on several important policy and

1 methodology issues that are necessary to consider in making  
2 important decisions that have a direct effect on whether  
3 Missouri will continue to have adequate electric energy  
4 resources, reliable energy resources at reasonable prices.

5                   These issues should be addressed by the  
6 Commission before a rate case is filed, and it should be the  
7 Commission and not the Staff that makes these initial  
8 decisions.

9                   Based on our knowledge of what the Staff  
10 intends to file along with statements made by the Staff in  
11 previous filings and in depositions, filings, testimony, we  
12 believe that the Staff is seriously out of sync with the  
13 Commission's responsibilities to ensure adequate, safe and  
14 reliable electric energy at reasonable prices.

15                   JUDGE REGISTER: Okay. Mr. Cook, let me stop  
16 you for just a moment. We really need at this point for you  
17 to address simply the legal issues on why the Commission  
18 should take up this motion first. Now, if you need another  
19 opportunity to address the Commission on the merits of the  
20 case, we can take that up later.

21                   MR. COOK: Well, I will do that. Let me --  
22 I'll try to stop the argument, but I do want to indicate  
23 what it is that we're asking the Commission to do so that I  
24 can address what legally they can and cannot do.

25                   The specific heading of the motion is an

1 Emergency Motion to Temporarily Stay Expiration of the EARP.  
2 I'm afraid that that has given a wrong cast to what we're  
3 asking for. The suggestion to temporarily stay the  
4 expiration of the EARP was merely our attempt to allow our  
5 customers to receive the benefits of the EARP.

6                   During the proposed proceedings, what we're  
7 asking for is that the Commission in effect set aside  
8 temporarily its previous Order which directed the Staff to  
9 file the complaint case.

10                   The Commission's rules, including  
11 4 CSR 240-2.050(3), when an act is required or allowed to be  
12 done by order or rule of Commission or at or within a  
13 specific time the Commission at its discretion may order the  
14 period enlarged before the expiration of the period  
15 originally prescribed or as extended by a previous Order.

16                   In other words, the Commission, although it  
17 has made an Order directing its staff to file a case, can  
18 change that Order.

19                   JUDGE REGISTER: Why have you waited so late  
20 to come in, however, Mr. Cook?

21                   MR. COOK: It has only been very recently that  
22 we have -- for a couple reasons. It's only been very  
23 recently that we have really been able to be aware of the  
24 truly disturbing proposals that Staff's filing includes.

25                   It's not just a question of whether a rate

1 case should be filed, but the magnitude of this rate case  
2 has only recently become clear to us, and not only the  
3 magnitude, but the methodologies that the Staff is using  
4 being so different from what has -- it's not traditional  
5 ratemaking anymore. It is new things that Mr. Brant is  
6 ready to testify to about the way they're looking at  
7 normalization, but the way they're looking at various other  
8 things that has raised serious concerns to us that the  
9 Commission Staff is not in sync with what this Commission  
10 really wants to do.

11 JUDGE REGISTER: Mr. Cook, if this is -- if  
12 it's not the Order itself that a rate case be filed that was  
13 issued March 8, 2001 that you're asking to be set aside,  
14 then why can't these issues be addressed in the rate case?

15 MR. COOK: They should not be addressed in a  
16 rate case for two reasons. One, the very serious damage  
17 that will occur to the company's financial situation based  
18 solely on the Staff's filing.

19 Now, certainly the Staff could make all sorts  
20 of filings, make all sorts of claims, take certain  
21 positions, and no matter how outrageous they are the  
22 Commission can six, seven, eight, nine, ten months later  
23 correct that in their Order, but that's six, seven, eight,  
24 ten months down the road where the company has already  
25 sustained significant financial damage because of the impact

1 that the Staff's pronouncement and proposal will have on the  
2 company.

3                   Plus, just the fact that things that we  
4 believe this staff -- this Commission needs to direct its  
5 staff concerning, the policies that are going to face this  
6 state need to be addressed in a forum that is different from  
7 a contentious rate case where the parties get -- the  
8 positions are hardened. There's specific dollars attached  
9 to each little nuance of each decision.

10                   What we're asking for is that some very broad  
11 questions about the company's future and the state's future  
12 need to be addressed up front in a more generic setting.

13                   Alternatives to traditional cost of service  
14 regulation. The Commission does not necessarily, not by  
15 law, have to follow what they've called traditional  
16 ratemaking, although that's not where we're going with the  
17 Staff's filing.

18                   The Commission should be able to determine  
19 whether it wishes to encourage its staff to look harder at  
20 performance-based regulation. It could look at the  
21 experiences of other states, both good and bad.

22                   It should direct its staff in advance on how  
23 it really wants to look at cost of capital calculations,  
24 this new normalization that the Staff has come up with, how  
25 to properly set rates after an EARP. That's a new situation

1 for this Commission.

2                   Now, yes, I guess we could have -- had we had  
3 a lot of foresight, it is possible that some of these issues  
4 could have been raised earlier, but it has only been because  
5 of the very recent discovery of the significant magnitude of  
6 that rate proposal and the unusual methodologies that are  
7 being suggested in there that has caused us to realize that  
8 we needed to bring this to the Commission's attention.

9                   Now, one of the legal concerns that I know  
10 that I heard mentioned at some length in the agenda session  
11 was the legality of extending the EARP. Again, I want to  
12 stress that that is a secondary concern of ours. We merely  
13 propose that as a way to allow customers to not be harmed.

14                   One of the Commissioners mentioned that this  
15 was something similar to a temporary restraining order and  
16 that there should be some sort of bond put up to protect the  
17 customers.

18                   Well, that's in effect what the EARP extension  
19 was proposed to do, because whether the EARP expires or not,  
20 the company's rates stay the same. But if we have an EARP  
21 during this proceeding, then to the extent that an eventual  
22 rate reduction might be delayed, the customers are protected  
23 because they get some credits possibly.

24                   If the parties don't want to do that, that's  
25 fine with us.

1                   JUDGE REGISTER: Let me stop and ask you to go  
2 back to why should the Commission consider this motion given  
3 the noncompliance of the nature of the document with the  
4 Commission rules and Protective Order?

5                   MR. COOK: I would first apologize for having  
6 caused headaches that that problem has raised.

7                   Secondly, I would suggest that the  
8 noncompliance is a procedural issue. Somewhere in the  
9 pleading I asked for specific leave of the RLJ to approve  
10 any deviation that we may have inadvertently committed,  
11 which is what the rule says, that if we don't follow the  
12 rules we should ask for approval, permission to deviate,  
13 although it wasn't very well highlighted obviously. That  
14 was hidden in there.

15                   I would suggest that it is a procedural matter  
16 and that, although I certainly apologize for not doing it  
17 properly, I don't think it really goes to the merits of the  
18 issue.

19                   JUDGE REGISTER: Do you have anything else to  
20 offer on the initial legal issues?

21                   MR. COOK: I would dispute the argument that  
22 this is a collateral attack on the Commission's previous  
23 Order.

24                   I think that certainly the Commission has the  
25 ability, just as the Commission -- some have argued that the



1 Commission could change its mind on a variety of other  
2 issues. The Commission can look at an Order -- and this  
3 this rule in particular that I've cited, it certainly gives  
4 them the authority to do that -- and say, We want to modify  
5 that.

6                   Now, we are not asking the Commission to tell  
7 the Staff, Go away, don't file a complaint case, just don't  
8 bother us. We're asking for a delay, a deferral of that  
9 until the Commission can give some direction to its staff on  
10 what that complaint should include, and by doing that, at  
11 least have the opportunity for the company to avoid the  
12 serious damage that we think that the Commission does not  
13 intend.

14                   If at the end of that period the Commission  
15 believes that, Go forward and do what you're going to do,  
16 then it's the Commission that has made that decision, and  
17 the company would probably have had its due process and that  
18 would not be the same thing as the Commission's employees  
19 doing that without direction.

20                   JUDGE REGISTER: Mr. Cook, can you give me  
21 that citation of that rule again?

22                   MR. COOK: Certainly. 4 CSR 240-2.050(3).

23                   JUDGE REGISTER: Anything further, Mr. Cook?

24                   MR. COOK: Oh, yes, but not at this time.

25                   JUDGE REGISTER: Thank you very much,

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1 Mr. Cook.

2 MR. COOK: Thank you.

3 MR. MOLTENI: Judge Register, I'd like to make  
4 an oral motion that the Commission remove the in-camera  
5 status. There's nothing that Mr. Cook said that warrants  
6 in-camera status.

7 MR. COOK: May I respond to that?

8 JUDGE REGISTER: Yes, Mr. Cook.

9 MR. COOK: My chief financial officer can  
10 correct me if I'm wrong, but I've attempted to stay away  
11 from specifics. I think if the parties would agree that  
12 nothing other than general discussions about the company's  
13 concern about the financial impact of the Staff's filing is  
14 discussed, that we would certainly be willing to have this  
15 in public.

16 We have no desire to keep this secret. It's  
17 just the very basis of our concern here is that the public  
18 announcement of the specifics of the size of the proposal,  
19 proposed rate reduction, would have the devastating effect  
20 that Mr. -- that we mentioned in the pleading. So certainly  
21 generic discussions about that should not be a problem.

22 JUDGE REGISTER: Do any of the other parties  
23 expect that they'll be getting into any of the proposed  
24 proprietary information in their arguments? Mr. Dottheim  
25 first.

1                   MR. DOTTHEIM: Yes. In response to Mr. Cook's  
2 statements, I would like to go into and identify for the  
3 Commission when the Staff provided to the Company its cost  
4 of service runs as an indication of how much time the  
5 company had and what ranges of dollars were associated with  
6 those cost of service runs, which would dispute that the  
7 company only a very short time ago first became aware of the  
8 amount involved in the Staff's excess earnings audit that  
9 the Staff is planning to file with the Commission as a  
10 complaint case.

11                   JUDGE REGISTER: Any other parties expect to  
12 be getting into that information? Okay. Mr. Molteni, did  
13 you want to add something?

14                   MR. MOLTENI: I just wanted to say, if  
15 Mr. Dottheim wants to go into the specifics of those details  
16 and talk about numbers, then maybe that would be an  
17 appropriate time to go into in-camera, but there's nothing  
18 that Mr. Cook said in his opening statement that warrants  
19 in-camera status.

20                   He talked about general ratemaking  
21 methodology. He talked about the possibility that a rate  
22 case with incorrect and enlarged numbers could financially  
23 affect the status of the company. There's nothing about  
24 that that's secret. You can go out and yell that on Madison  
25 Street. It wouldn't make any difference. None of the

1 brokerage houses would turn an ear to that.

2                   There's nothing that Mr. Cook said that  
3 warrants in-camera status. He said, We're not seeking to do  
4 anything secret here. That's completely contradictory to  
5 both their original motion and amended motion. They're  
6 asking the Commission to do a lot in secret here, and we  
7 have serious issues about that.

8                   MR. COOK: Just very briefly, if I may.

9                   JUDGE REGISTER: Let me clarify what he's  
10 asking. Mr. Molteni, you're asking that we go back and  
11 remove the status of the in-camera proceeding from the time  
12 that we granted it up to the point where Mr. Dottheim begins  
13 his response?

14                   MR. MOLTENI: Correct.

15                   MR. COOK: I have no objection to that. Your  
16 Honor, my prepared remarks would have been more specific,  
17 and your direction has caused me to modify that. So I would  
18 have no objection to that.

19                   JUDGE REGISTER: Then we will remove the  
20 in-camera status from the hearing from the point where it  
21 began to now, and let the record reflect that that part of  
22 the record is now open. Thank you very much, Mr. Cook.

23                   Mr. Dottheim, you are next, and so we will go  
24 back in-camera to receive Mr. Dottheim's comments in  
25 response, and we should also again remain on the issues that

1 I initially outlined, the late filed, the noncompliance of  
2 the document and whether this matter has already been  
3 decided in the March 8th, 2001 Commission's Order.

4 (REPORTER'S NOTE: At this time, an in-camera  
5 session was held, which is contained in Volume No. 9, Pages  
6 1031 through 1039 of the transcript.)

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1 JUDGE REGISTER: Thank you, Mr. Molteni.

2 MR. MOLTENI: Thank you.

3 JUDGE REGISTER: Mr. Dottheim?

4 MR. DOTTHEIM: And the Company might indicate,  
5 I think the only thing that I addressed that the Company  
6 would likely assert is proprietary from their perspective is  
7 my relating the numbers from the Staff's cost of service  
8 runs that were provided to the Company.

9 JUDGE REGISTER: No problem. Let's go ahead.

10 MR. COFFMAN: Thank you. And I do agree that  
11 that is, in our opinion, the best approach to try to --  
12 although we disagree with anything that has been filed  
13 really should be proprietary, that to the extent the  
14 Commission wants, that it be limited to those portions and  
15 may be as limited as possible.

16 JUDGE REGISTER: Thank you very much,  
17 Mr. Coffman.

18 MR. COFFMAN: I think, your Honor, you have  
19 addressed what I think is really the most key point as to  
20 whether this should be considered an emergency motion on an  
21 expedited basis at this moment, and that is that the  
22 Commission had made it very clear in response to the  
23 February 1 filings what it intended to have happen on  
24 March 8, and that no motions for rehearing or  
25 reconsideration were made at that time.

1                   In response to this, Mr. Cook I think made a  
2 couple of points as to why it should be considered an  
3 emergency. First one was that certain important things,  
4 energy policy and various financial matters relating to his  
5 company should be contemplated before a rate case is filed.

6                   We think that is absolutely wrong. We think  
7 that these are matters that can be best considered in the  
8 course of a rate case and when all factors can be looked at  
9 by the parties in a public process, and that really is the  
10 best place to do that.

11                   The other point that I took from his statement  
12 is that the magnitude of the eminent rate complaint case  
13 that Staff is preparing, that magnitude was not made aware  
14 to them until recently, and I believe Mr. Dottheim has  
15 addressed that fairly well.

16                   I think that when you consider the size of the  
17 potential rate complaint case, it really needs to be  
18 considered in the context of what we are now under, which is  
19 an alternative regulation plan that has been going on for  
20 three years and, I guess, another one three years before  
21 that, and I just think that that needs to be kept in mind.

22                   That was a negotiated settlement, and there  
23 were certain benefits that came out of a merger case, and we  
24 entered into that agreement with others because certain  
25 costs and other merger-related issues were dealt in ways

1 that satisfied some of our interests. And so the terms of  
2 the contract EARP were bargained for in relation to many  
3 other factors.

4 JUDGE REGISTER: We don't want to get into the  
5 merits of those yet, though.

6 MR. COFFMAN: No, no. But I just to point out  
7 that as part of that entire bargaining process, duration was  
8 a very important issue. The fact that it would be three  
9 years and that it would terminate on June 30th was part of  
10 the bargaining process that led up to the sharing grid that  
11 allowed UE each year to earn up to 12.61 percent return on  
12 equity, 50 percent between 12.61 and 14 percent, and even 10  
13 percent of overearnings up to 14 -- or up to 14 percent or  
14 over 14 percent.

15 So that was the bargain, and, of course, there  
16 have been times when we may under different financial  
17 conditions regretted that, but the limit was very important.

18 The point I'm getting to is that those  
19 overearnings have clearly placed UE in a situation where a  
20 significant rate decrease is due, and I believe Ameren has  
21 each acknowledged itself that they believe some reasonable  
22 rate reduction may be in order.

23 JUDGE REGISTER: I'm sorry. I don't want to  
24 interrupt you, but I want to get you back to why should the  
25 Commission even consider this motion? Have you had a fair



1 opportunity to respond, and is there any reason that this  
2 should not be considered a collateral attack on the March 8  
3 Order?

4                   MR. COFFMAN: We believe it is a collateral  
5 attack. And if I might just make one other statement, and  
6 that is that if the parties are ever to negotiate another  
7 alternative regulation plan, it would need to be with a  
8 clear understanding of what it's an alternative to, and that  
9 really isn't going to occur until there is a rebasing or at  
10 least a complaint case process in order, and that was the  
11 point I was trying to get to earlier.

12                   And we think that as the irreparable harm,  
13 that it is really our clients that would be harmed by a  
14 delay in the process. Again, I think there are due process  
15 concerns, and we are -- we're still developing research and  
16 analysis of why, the various reasons why we think it would  
17 be unlawful for the Commission to go forth with what UE's  
18 requesting.

19                   But we'd just like to make you aware that  
20 every day that a complaint case is delayed because of the  
21 prohibition against retroactive ratemaking is real dollars  
22 to consumers that cannot be refunded.

23                   I think I can leave it at that and emphasize  
24 that the Commission reaffirm its March 8th Order. One other  
25 point, and that would be, although the Commission may have

1 the legal authority to tell its staff what to do and whether  
2 or not to file a complaint case, there are other parties,  
3 including ourselves, that would have the right to do that,  
4 and that is an opportunity we may take advantage of in the  
5 future.

6 JUDGE REGISTER: Thank you very much,  
7 Mr. Coffman.

8 Mr. Molteni, did you have any comments on the  
9 procedural?

10 MR. MOLTENI: I did.

11 JUDGE REGISTER: Please proceed.

12 MR. MOLTENI: Thank you very much for the  
13 opportunity to address the Commission. First of all, on the  
14 procedural aspect, 4 CSR 240-2.08(20) says that a pleading  
15 may be amended within ten days unless a response is filed.  
16 The original pleading filed by AmerenUE was filed on Monday,  
17 the 25th. The Attorney General's Office filed a responsive  
18 pleading on the 26th. The amended pleading does not comply  
19 with this rule.

20 Mr. Cook characterized it as a procedural  
21 issue, it's a due procedural issue. AmerenUE faxed to us  
22 the amended pleading at 2:30 on Wednesday afternoon, and the  
23 pleading contains a request that the Commission order  
24 parties to respond by Wednesday afternoon. There's no  
25 possible way to effectively address that pleading.

1                   The Attorney General has a much more strong  
2 public policy opposition to AmerenUE's motion in either  
3 form, the original or its amended version. The worst aspect  
4 of this motion is the cloak of secrecy that it asks this  
5 Commission to operate under. AmerenUE wants blanket  
6 confidentiality about, quote, subjects under consideration.

7                   There is nothing about ratemaking methodology  
8 that is or should be confidential. And if AmerenUE has  
9 figures that are highly confidential, it needs to take the  
10 appropriate steps to protect those.

11                   Asking this Commission to maintain secrecy  
12 about subjects under consideration and essentially issue a  
13 gag order on the parties would violate this Commission's own  
14 statute, the Sunshine Law and every semblance of free and  
15 open democratic government that we have in this state.

16                   Section 386.380 states, quote, All proceedings  
17 of the Commission and all documents and records in its  
18 possession shall be public records. That's only tempered by  
19 386.480 that commands the parties not to divulge information  
20 furnished to the PSC by a corporation unless those matters  
21 are specifically required to be open under 386 or Chapter  
22 610, the Sunshine Law. 610.010 defines this Commission as a  
23 public governmental body.

24                   610.010 codifies the state public policy that  
25 all records are to be deemed open and that's to be liberally

1 construed. Any confidentiality is to be strictly construed,  
2 and this Commission has set up appropriate procedures for  
3 information that is highly confidential.

4                   This Commission has in its name the word  
5 public. You have a statutory and a moral responsibility to  
6 conduct these proceedings in public. And UE by its  
7 definition in 326.020(4)2 is a public utility, and along  
8 with its privilege to serve the public, it has  
9 responsibilities to the public, and one of those is to keep  
10 transparent to the public the methodology used to arrive at  
11 what UE's customers ultimately see in the form of their  
12 bill.

13                   Transparency is important because UE has a  
14 service monopoly to the overwhelming majority of its  
15 customers. They can't fire UE if they don't like the  
16 practices or rates, and the only protection they have from  
17 monopolistic exploitation is this Commission.

18                   So the public looks to this Commission to  
19 ensure that the rates that it pays for electricity and other  
20 public services are fair. This Commission owes that duty to  
21 the public, not to UE's shareholders.

22                   Part and parcel of making -- of that duty is  
23 to make sure that UE has an adequate return on its equity to  
24 ensure its continued viability so the public doesn't suffer  
25 at the loss of that reliable electric service, and no one

1 contests that. But it's your duty to the public, not to UE,  
2 that's the backbone of this Commission's mission.

3                   The Commission has a statutory right to  
4 conduct a rate case, and perhaps it's in the best public  
5 policy for it to do so, especially since it's been so many  
6 years since there's been a rate case relating to UE. That's  
7 a discretionary call this Commission has to make, although  
8 it seems as if this is a collateral attack on the  
9 Commission's Order from March 8th.

10                   UE is -- and this is a very charged word. I  
11 don't mean this to be offensive, but they are trying to  
12 emotionally blackmail this Commission from conducting a rate  
13 case with this Chicken Little the sky is falling crisis,  
14 that its stock price might crash --

15                   MR. COOK: I object.

16                   MR. MOLTENI: -- if the Commission conducts a  
17 rate case.

18                   MR. COOK: I was prohibited from discussing  
19 the hyperbole and histrionic allegations that were made  
20 against UE. I've not had a chance to do that. I don't  
21 think he should be allowed to argue them. It's not legal  
22 issues.

23                   MR. MOLTENI: These are the issues that  
24 Mr. Cook addressed. Mr. Cook addressed the stock issue in  
25 his opening statement.

1                   If UE is a well-run company as it claims it  
2 is, I think it uses those terms, it has nothing to fear from  
3 a rate case. It hasn't been -- if it hasn't been  
4 over-earning, it has nothing to fear from a rate case.

5                   JUDGE REGISTER: Mr. Molteni, I do want to ask  
6 you to stick to the procedure, procedural issues is, should  
7 we be here considering -- should we even consider this  
8 motion?

9                   MR. MOLTENI: You should not consider this  
10 motion. It has been inadequately presented to the  
11 Commission, and to -- for the Commission to even consider  
12 this motion and the relief that the motion requests violates  
13 the parties' due process and it asks this Commission to  
14 shirk its responsibilities to the public.

15                   Thank you.

16                   JUDGE REGISTER: Thank you, Mr. Molteni.

17                   Do any of the other parties have a statement  
18 at this time?

19                   MR. FULTON: Judge, if I could have one  
20 moment?

21                   JUDGE REGISTER: Please go right ahead,  
22 Mr. Fulton.

23                   MR. FULTON: Your Honor, I believe that  
24 basically what we have here is clearly a collateral attack  
25 on the March 8th Order that was entered by this Commission.

1 UE is well aware of a sizable refund -- I mean decrease case  
2 looking at them. At that point in time, and obviously as  
3 indicated by Steve, they've been aware throughout that  
4 period of time that the decrease is looking larger and  
5 larger.

6 I think what we have here is an attempt to  
7 poison the well with this Commission. UE in the last case,  
8 the last -- which is still on appeal in the Court of  
9 Appeals, and in this motion has taken slap after slap after  
10 slap at Staff's methodology in making determinations.

11 I think what we see here really and truly is  
12 an attempt by UE to prejudice the Commission at the outset,  
13 before a case is ever filed, against its own staff and its  
14 methodology. I think that's the true intent of this motion  
15 is, not necessarily to get this stopped, because I don't  
16 think anybody really believes, getting to the merits, they  
17 can have this Commission do it, but rather to have this  
18 Commission prejudge the methodology that's being utilized by  
19 the Staff.

20 I think it is barred. It is collaterally --  
21 it is a collateral attack, and it's for improper purposes  
22 it's been filed. Thank you.

23 JUDGE REGISTER: Thank you, Mr. Fulton. Any  
24 statements in response to responding parties?  
25 Mr. Johnson?

1                   MR. JOHNSON: Yes. I'll be very brief. Our  
2 client group includes Barnes Jewish Hospital, Emerson  
3 Electric, Chrysler and others.

4                   It's a physical impossibility for me as an  
5 attorney to report to our clients, to meet with them to make  
6 decisions on what our position would be. We've been unable  
7 to do that, and we cannot therefore participate in this  
8 proceeding because we have no opportunity to prepare. And  
9 that's really all I have to say.

10                  JUDGE REGISTER: Thank you, Mr. Johnson.  
11 Mr. Coffman?

12                  MR. COFFMAN: Your Honor, if I could just make  
13 a quick motion, and that is in relation to the  
14 classification of UE's motion, I feel I need to make it now  
15 because it is inextricably linked with whether or not the  
16 Commission goes forward on an expedited basis.

17                  We do believe -- and I have several arguments  
18 that I can get into later about why we think it's not  
19 proprietary information, but --

20                  MS. REGISTER: I'm going to ask you to hold  
21 this until after we've ruled on this portion of the  
22 procedure, whether even to proceed further. I'll take it  
23 after we have made that ruling.

24                  Okay. Mr. Cook, would you like an opportunity  
25 to respond?



1                   MR. COOK: Yes. Thank you. This will  
2 obviously be disjointed, and I apologize for that.

3                   In response to Mr. Dottheim's listing of the  
4 dates and the amounts, I think, if nothing else, the  
5 Commission can see how those amounts were increasing and  
6 continuing to increase.

7                   And at what point it became apparent to the  
8 company that we had serious concerns about the effect of the  
9 public announcement of those dates is difficult to say, but  
10 the combination of that mounting number and really the last  
11 run that brought to our attention some very disturbing new  
12 methods that they were using to come up with those numbers  
13 caused us grave concern.

14                   Plus we have been, and it's been publicly  
15 discussed, been in negotiations. So certainly early filings  
16 of alternatives would not have assisted those negotiations  
17 which all sides were proceeding in in good faith.

18                   Why should we do this before a rate case? In  
19 a rate case positions are taken that are often driven by the  
20 dollars, and what we're suggesting is that not every issue  
21 be resolved before the rate case. In fact, what we're  
22 suggesting is that this Commission make a determination and  
23 advance what kind of overarching issues that it wishes to  
24 look at in this interim period.

25                   And it is in this interim period that we're --

1 we're suggesting, by the way, that that interim procedure  
2 would certainly not be at all in confidential hearings.  
3 That would be totally open to the public.

4                   It's also true that this Commission has  
5 authority over its employees, and certainly there's the  
6 inherent right to tell its employees how to do their job.

7                   Others can file. Mr. Coffman talked about  
8 that they could file a case. Others can file a case  
9 pursuant to a variety. But this Commission could also take  
10 that filing and say, Thank you very much, but it's not  
11 consistent right now with our proposal, which is -- our  
12 preference, which is to go forward on an interim basis and  
13 decide some of these important issues that need to be  
14 decided before we tell our staff how to proceed.

15                   Concerning the secrecy, again, a generic  
16 interim proceeding will, of course, be totally open. We're  
17 only asking for very limited data to be kept confidential.  
18 We want to make the Staff's methodology transparent and  
19 publicly discussed before they file that case and hurt us  
20 financially.

21                   We need a public discussion on a variety of  
22 issues. We need a public discussion and not a lot of  
23 shouting and histrionics.

24                   Concerning the very real problem, I  
25 understand, of the shortness of the time that has been

1 allowed, the Staff did mention this morning about a two-week  
2 delay. The Company would suggest that, although that's  
3 certainly appreciated, that doesn't really help much.

4                   Perhaps an alternative would be a 30-day  
5 delay, either with or without a continuation of the EARP,  
6 but direct the Staff to hold up, to defer for 30 days, allow  
7 the parties more time, perhaps another ten days for the  
8 other parties to respond to our request, allow us ten days  
9 to reply to those responses, have another hearing, and then  
10 allow the Commission to understand in more depth what  
11 it is that we're planning, what we're suggesting be done.

12                   I'm sure there's some things that someone will  
13 tell me I should have addressed, but I will sit down.

14                   JUDGE REGISTER: Thank you, Mr. Cook. Okay.  
15 The Commission will retire to consider these issues at this  
16 time. We will go off the record. I'm not releasing you for  
17 a break. If you leave this room, when we reconvene in here  
18 then you better have somebody come get you or ready to come  
19 get you because we will begin the proceedings as soon as the  
20 Commission has completed its deliberations and returned to  
21 the room.

22                   Okay. We'll go off the record at this time,  
23 Kellene.

24                   (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

25                   JUDGE REGISTER: Kellene, please go back on

1 the record.

2                   Okay. The Commissioners and I have adjourned  
3 to the ante room to discuss whether the deliberations on  
4 this case would take place in the agenda room or if we  
5 should just continue with their deliberations here.

6                   Given that we normally would discuss these  
7 things in an open agenda and deliberate these decisions, it  
8 was decided rather than make all the parties get on the  
9 elevators and go up to agenda room, that we would just  
10 return out here, have the discussions and have the  
11 deliberations on the record here.

12                   So I will turn it over to the Chair to take up  
13 the issue of whether there was sufficient time given for the  
14 parties to have a full and fair opportunity to respond,  
15 whether we should even -- whether the Commission should even  
16 consider this motion given the noncompliance, the late  
17 filing, and whether this is a collateral attack on the  
18 Commission's March 8 Order Authorizing Earnings  
19 Investigation Filing July 1, 2001. Chair.

20                   CHAIR LUMPE: The question that was posed to  
21 the parties was should we be considering this motion, and I  
22 think the parties argued about the proper presentation of  
23 the motion, whether it followed the rules, the statutes, and  
24 they also argued a lack of ability to get response from  
25 their clients to respond properly and on the issue of

1 collateral attack.

2                   And just from my point of view, which I will  
3 start and let the rest of you jump in then, it seems to me  
4 that we did issue an Order back in March. We made it clear  
5 that we were not going to go forward with the current  
6 alternative plan, that we did authorize Staff to file a rate  
7 case, and there was no request for rehearing on that Order,  
8 and so I think that Order should stand.

9                   JUDGE REGISTER: Commissioner Murray.

10                   COMMISSIONER MURRAY: Thank you. As the  
11 parties probably know, I dissented from that March 8th  
12 Order, and as much as I would like to be able to give the  
13 Staff some direction as to methodology before going forward  
14 with a rate case, I think procedurally the Commission has  
15 spoken.

16                   I would agree with the Chair that the Order of  
17 March 8 did order that the EARP would end and that the Staff  
18 could file a complaint and earnings investigation. In fact,  
19 we directed the Staff to do so if they found reason to do  
20 so.

21                   And I think that the timeliness of the motion  
22 prevents us from addressing this issue even if it were  
23 appropriate to address it in this manner, and my opinion  
24 would be that we have no choice but to deny the motion.

25                   COMMISSIONER SIMMONS: Chair Lumpe, I would

1 have to say that, looking over the Order that was issued by  
2 the Commission on March 8th, I too probably fall in the same  
3 category with both you, Commissioner, both you and  
4 Commissioner Murray, that the Commission, in my opinion, has  
5 properly spoke to the issue.

6                   And when we made our ruling on March 8th, I  
7 think that that ruling should probably stand, and at this  
8 point in time would probably agree with the both of you in  
9 that this Commission Order should be final.

10                   And I have some serious concerns about the  
11 parties not having the opportunity, as was presented in  
12 testimony this morning, with certain clients that just did  
13 not have an opportunity, and I think that that is  
14 problematic for me also, but I would agree with you both.

15                   COMMISSIONER GAW: Thank you, Chair.

16                   I would like to say to the parties that we  
17 appreciate you being here today and advising this Commission  
18 as to the aspects of this issue. I realize that it was very  
19 short notice for some of you, and we appreciate the  
20 responses that we did get.

21                   I agree, Chair, that based upon the fact that  
22 this Commission previously made a ruling which seems to be  
23 on point with this question, that the particular request of  
24 the Company in this case does not seem to bring to light  
25 anything that would cause this Commission to move forward on

1 the request, and particularly I'm not sure that we have the  
2 ability to move forward on it because of the question of  
3 whether or not it is a collateral attack.

4                   Therefore, from my standpoint, my vote would  
5 be the same as yours, and I think -- I think that the rest  
6 of the questions fall by the wayside with that ruling.

7                   CHAIR LUMPE: It appears to me, then, that we  
8 have a majority of the votes that the motion is not in order  
9 and that we should not go forward.

10                   JUDGE REGISTER: At this time, then, we  
11 will -- I will rule from the bench that AmerenUE's motion  
12 filed on June 25th, 2001 as amended has not met its burden  
13 and that the March 8, 2001 Order is a final Order, and a  
14 written opinion will be issued following, and we will  
15 adjourn at this time.

16                   Thank you.

17                   WHEREUPON, the hearing of this case was  
18 concluded.

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