

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 On-The-Record Presentation
8 November 14, 2003
9 Jefferson City, Missouri
10 Volume 4
11
12 In re: Application of Union)
13 Electric Company for Authority to)
14 Participate in the Midwest ISO) Case No. EO-2003-0271
15 through a Contractual Relationship)
16 with GridAmerica)
17
18 LEWIS MILLS, Presiding,
19 DEPUTY CHIEF REGULATORY LAW JUDGE.
20
21 STEVE GAW, Chair
22 CONNIE MURRAY,
23 ROBERT M. CLAYTON, III,
24 COMMISSIONERS.
25
26 REPORTED BY:
27
28 KELLENE K. FEDDERSEN, CSR, RPR, CCR
29 ASSOCIATED COURT REPORTERS

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1 P R O C E E D I N G S

2 JUDGE MILLS: We're on the record this morning
3 for an on-the-record presentation in Case No. EO-2003-0271.
4 We'll begin by taking entries of appearance, starting with
5 the Staff, then Public Counsel, then the company and
6 intervenors.

7 MR. FREY: Thank you, your Honor.
8 Representing the Staff of the Missouri Public Service
9 Commission, Dennis L. Frey and Steve Dottheim, Post Office
10 Box 360, Jefferson City, Missouri 65102.

11 MR. COFFMAN: Appearing on behalf of the
12 Office of the Public Counsel, John Coffman, P.O. Box 2230,
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14 MR. LOWERY: Appearing on behalf of AmerenUE,
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25 Grid USA, Jeffrey A. Keevil, Stewart & Keevil, LLC,

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1 4603 John Garry Drive, Suite 11, Columbia, Missouri 65203.

2 MS. VUYLSTEKE: Appearing on behalf of the
3 Missouri Industrial Energy Consumers, Diana Vuylsteke of the
4 firm Bryan Cave, LLP, 211 North Broadway, Suite 3600,
5 St. Louis, Missouri 63102.

6 JUDGE MILLS: Thank you. We just did this ten
7 days ago, so you-all know the drill. We'll start with
8 Ameren, if you could do a brief presentation, then we'll
9 follow up with the Staff, Public Counsel and any other
10 parties that wish to make a statement. And then we'll do
11 Commission questions.

12 MR. LOWERY: Thank you, Judge Mills,
13 Commissioners. We appreciate the Commission's willingness
14 to schedule this on such short notice and also the
15 cooperation of the other parties in allowing us to do that.

16 We don't necessarily believe that a formal
17 presentation in this case was necessary. The letters that
18 we submitted with our motion were intentionally drafted not
19 to address a specific Missouri case. Our intent was simply
20 for the Commission to advise the FERC and the Illinois
21 Commerce Commission of the reliability concerns that the
22 Missouri stakeholders we believe unanimously have and to
23 share those concerns related to a possible move by Illinois
24 Power to PJM.

25 However, some of the parties to the case felt

1 like that to address any possible concern, that this matter
2 needed to be taken up in the case, that we should file a
3 motion and all appear and address the Commission, and so we
4 were certainly happy to do that. We believe that's an
5 appropriate way to handle the situation, and so that's why
6 we're here today.

7 We sought this presentation quickly because we
8 think it's important that the FERC in particular receive
9 prompt communication about these issues. The FERC could
10 make decisions regarding Illinois Power and reliability
11 concerns and RTOs at any time, and we believe it's important
12 that they understand what the Missouri stakeholders'
13 concerns are.

14 We also understand that your schedule in the
15 next couple of weeks is rather difficult. We understood
16 that there was potentially a window of opportunity today
17 when we could schedule this, and so we felt like we would
18 try to take advantage of that.

19 We believe the letters that we submitted as
20 Exhibits 1 and 2 to our motion are self-explanatory. They
21 simply state that the IP situation is impacting resolving
22 Missouri RTO cases. We think that's unquestionably accurate
23 with regard to the pending cases. We don't think there's
24 any disagreement about that.

25 We also -- the letters also simply state that

1 ensuring that IP remains in the Midwest ISO removes the
2 complications that we believe their possible participation
3 in PJM would present. We believe that's also a true
4 statement.

5 We believe that ensuring that Illinois Power
6 remains in the Midwest ISO is the most or perhaps the only
7 truly effectively way to address those reliability issues.

8 If we can answer any questions, we'd obviously
9 be happy to do so. We have been discussing with the other
10 parties some aspects of the language of the letters that we
11 submitted, and I'm sure that they also probably have some
12 comments that they would like to make regarding those
13 letters and this issue.

14 So with that, if we can answer any questions,
15 we'd be happy to do so. Thank you.

16 JUDGE MILLS: For the Staff, please?

17 MR. FREY: Thank you, your Honor,
18 Commissioners.

19 With respect to the content of the proposed
20 letters, and I probably will refer to it from time to time
21 as letter because, in essence, both letters are the same.
22 In general, the Staff believes that the letter AmerenUE
23 urges the Commission to sign goes a bit too far and that,
24 therefore, it should be revised as follows:

25 On page 1, third paragraph, third line, we

1 would suggest that the word "approve" be changed to the word
2 "resolve". Then on page 1, same paragraph, third paragraph,
3 seventh line, we would recommend that the word "irregular"
4 be changed to the word "additional". And then finally, over
5 on the second page, one-sentence paragraph, we would suggest
6 that on the second line after the word "that", after the
7 words "ensure that", you would insert "the reliability
8 issues associated with". And then after the word "power",
9 Illinois Power, make it possessive, put an apostrophe S
10 after power. And then scratch the words "will remain in the
11 Midwest ISO" and insert the words "RTO participation are
12 effectively resolved."

13 So the sentence would read as follows: As a
14 result, the Missouri Commission urges you to take all
15 necessary and appropriate action to ensure that the
16 reliability issues associated with Illinois' -- Illinois
17 Power's RTO participation are effectively resolved and that
18 you do so in the very near future.

19 Those would be the revisions that the Staff
20 would recommend. I'd just make a few further remarks. The
21 Staff fully shares the concerns of AmerenUE regarding the
22 reliability issues that would be raised if Illinois Power is
23 permitted to leave MISO and join PJM and AmerenUE becomes a
24 part of MISO, but the Staff believes it is premature at this
25 time for the Commission also to subscribe to those concerns.

1 The Staff takes this position because the
2 Commission has not yet had an opportunity to deliberate
3 concerning the issue of whether AmerenUE should be allowed
4 to participate in MISO through a contractual arrangement
5 with Grid America as applied for.

6 At this point negotiations, as you know, are
7 still ongoing, and no agreement can be reached. Thus we
8 feel that the word approve in the third paragraph and the --
9 should be replaced by resolve and the changes indicated for
10 the last paragraph should be made.

11 The Staff's suggested revisions to this
12 language serve to limit the purpose of the Commission's
13 letter to one urging prompt action on the part of the FERC
14 and the ICC.

15 The Commission should be aware that Illinois
16 Power's membership in PJM is primarily a concern if AmerenUE
17 joins or participates in the MISO. If, however, AmerenUE is
18 not in the MISO or PJM, then whether Illinois Power is in
19 MISO or PJM would have similar effects on reliability with
20 respect to Ameren's interconnections with Illinois Power.

21 The Commission should also consider whether it
22 wants to intervene in any FERC or SEC proceedings with
23 respect to Exelon's acquisition of Illinois Power. The
24 Staff is not aware whether Ameren is an unsuccessful bidder
25 for Illinois Power, and Staff is concerned that if the

1 Commission adopts AmerenUE's suggested language, the
2 Commission may unintentionally get involved in Exelon's
3 proposed purchase of Illinois Power with having -- without
4 having made a determination that Exelon should not be the
5 purchaser or that Ameren should be the purchaser of Illinois
6 Power.

7 Indeed, this may turn out to be a consequence
8 of the Commission's submission of a document containing
9 AmerenUE's proposed language, that is without Staff's
10 revisions, regardless of whether it is the intention of
11 AmerenUE or the Commission.

12 Just some comments about procedural matters as
13 well. If the Commission decides to communicate with the
14 FERC on this matter, the Staff would suggest that rather
15 than sending a letter to the FERC, the Commission should
16 file a pleading with the FERC in the dockets in which the
17 FERC conducted an inquiry this past September. I believe it
18 was -- the on-the-record portion was September 29th and 30th
19 of this year, and that would be docket EC-03-53-000. I take
20 that back. I'm not sure that's the docket number.

21 It's not clear at this time whether there's a
22 similar appropriate docket number in the ICC where the
23 Commission could file a letter. Perhaps the company could
24 provide some information, shed a little light on that, and
25 suggest one for the Commission and the parties in this case,

1 EO-2003-0271, to consider.

2 We might also remind the Commission that the
3 letters it sent to the FERC on March 18th and June 3rd of
4 this year in that Docket No. EC03-52-000 had no perceptible
5 effect either in shortening the procedural schedule or
6 dispensing with the hearing regarding Ameren Energy
7 Generating Company's and AmerenUE's application to transfer
8 Pinckneyville and the Kinmundy combustion turbines from AEG
9 to AmerenUE.

10 Moreover, those letters prompted inquiries
11 from the FERC staff regarding possible submission of data
12 requests to the Missouri Commissioners.

13 Finally, the Staff recommends that the
14 Commission consider whether any communications with the FERC
15 and the ICC concerning this issue should be accompanied by a
16 copy of the transcript of today's proceeding.

17 In summary, then, the Staff has no objection
18 to the content of the letter subject to the revisions that
19 it has suggested here, but would suggest that, to the extent
20 possible, pleadings be submitted rather than using the
21 letter form. That's all I have. Thank you.

22 JUDGE MILLS: Before you sit down, could you
23 please go over your specific changes to the letters again?

24 MR. FREY: Yeah. Sure. Okay. Page 1, third
25 paragraph, line 3, change the word "approve" to "resolve".

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1 Is that a clear instruction or have I blown it? So that it
2 reads, while the Commission cannot prejudge whether it will
3 approve RTO participation in the pending cases before us in
4 Missouri, we have deep concerns over the additional impact
5 Illinois Power leaving the Midwest ISO to join PJM will have
6 on our ability to resolve the pending applications.

7 The second suggestion was simply to change the
8 word "irregular" in that paragraph on line 7 to
9 "additional", from an irregular seam to an additional seam.

10 And then the third suggestion involves some
11 changes to the sentence over on the second page, and
12 after -- on the second line, the words "ensure that," insert
13 "the reliability issues associated with." And then the
14 words "Illinois Power" following that, make those -- make
15 that possessive, apostrophe S after power, and delete the
16 words "will remain in the Midwest ISO" and insert there "RTO
17 participation are effectively resolved."

18 Again, the sentence reads, as a result, the
19 Missouri Commission urges you to take all necessary and
20 appropriate action to ensure that Illinois Power -- excuse
21 me -- to ensure that the reliability issues associated with
22 Illinois Power's RTO participation are effectively resolved
23 and that you do so in the very near future.

24 I just mention that we have Dr. Mike Proctor
25 and Mr. Greg Meyer available here from the Staff to answer

1 questions that you might have. Thank you.

2 JUDGE MILLS: Thank you. Public Counsel?

3 MR. COFFMAN: Good morning, or afternoon. I
4 want to thank you for scheduling an on-the-record
5 presentation here, particularly because that alleviates
6 concerns that there may be about ex parte communications in
7 an open contested case. Makes this a lot easier to deal
8 with.

9 The practice of the Missouri Commission
10 sending letters is somewhat unusual, and its procedural
11 effect here or at the FERC I think escapes my absolute
12 definite grasp. I understand that letters are a procedural
13 method that are common, that is common at FERC.

14 But that does not mean that we object to this
15 letter. I think we actually have a great deal of consensus
16 on this particular issue. The letter is very close to a
17 consensus document, and I would say we have no objection
18 about going forward.

19 I just want to point out that some differences
20 with regard to the situation you were in with regard to the
21 last two letters that you were urged to send to the FERC at
22 AmerenUE's urging. Those letters were sent to a case in
23 which the Public Service Commission was not a party, and it
24 was my opinion that in those situations they related to no
25 open PSC cases.

1 Those are two distinguishing situations that I
2 think create a concern but are not a concern, given that all
3 the parties are here having a chance to talk about it before
4 you make a decision, and certainly eliminates any
5 inappropriate ex parte concerns.

6 We have no objection to the letter as revised
7 by the Staff. I would offer a couple of additional
8 revisions, though, if you want to take a look at that.

9 I would suggest five lines down, the sentence
10 that kind of begins with PJM with AmerenUE in the Midwest
11 ISO, I would delete the next few words. I would delete "has
12 the effect of placing" and insert there the words "may lead
13 to delays of these." Then on the next line, I would delete
14 the words "on hold."

15 So that the entire sentence reads, the
16 uncertainty created by a possibility that Illinois Power
17 might be in PJM, with AmerenUE in the Midwest ISO, may lead
18 to delays of these two pending Missouri cases until the
19 reliability concerns stemming from Illinois Power's ITO
20 participation are resolved.

21 I would also respectfully suggest that in the
22 concluding paragraph, the initial phrase "as a result" be
23 deleted and replaced with "given the present circumstances
24 surrounding RTO development in the midwest, comma."

25 Those are not inconsistent with Staff's

1 changes. I don't think it changes the effect of the letter.
2 That last change simply, I think, puts it in the context of
3 the very immediate situation, and given the ever-shifting
4 landscape of federal transmission, I want to make sure that
5 whatever is issued in this case and what may seem like the
6 thing to do now is not construed later to be what is the
7 right thing to do after a lot of other facts are changed and
8 different rules are issued.

9 So that's all I have to offer, and thank you
10 very much.

11 JUDGE MILLS: I think rather than having
12 you-all come up and go through these changes laboriously
13 each time, I'm going to ask you-all to submit these in
14 writing when you come to a consensus or different versions
15 if you don't come to a consensus. Different changes with
16 different parties is a little hard to follow along with.

17 Anybody else wish to come forward and make a
18 presentation? Mr. Fischer?

19 MR. FISCHER: No, thank you, your Honor.

20 JUDGE MILLS: Mr. Keevil?

21 MR. KEEVIL: Based on what you just said, your
22 Honor, I think we can probably avoid a lot of the rest of
23 the presentations.

24 The only other thing I might say was, during
25 his presentation Mr. Frey said that no agreement, I think he

1 was referring to EO-2003-271 case, that no agreement can be
2 reached. I would change that to simply state that no
3 agreement has been reached to date, but that everyone is
4 still working diligently toward a resolution, in fact, I
5 think have made quite a bit of progress toward reaching an
6 agreement, and that everyone, I think, is still hopeful that
7 the case before you will be resolved by stipulation.

8 So with that, and like you said, I assume the
9 parties will be working on submitting some letters to submit
10 to you, that's all I'd say at this time.

11 JUDGE MILLS: Ms. Vuylsteke?

12 MS. VUYLSTEKE: I'd just like to state briefly
13 that --

14 JUDGE MILLS: Can you come forward? You're
15 not getting picked up on our microphone.

16 MS. VUYLSTEKE: I just wanted to say that
17 we're very appreciative of the Commission having an
18 on-the-record presentation this morning and handling this in
19 such an open way, and that we would support the Staff's
20 suggestion to the Commission that it file a pleading instead
21 of a letter. Thank you.

22 JUDGE MILLS: Thank you. Mr. Frey?

23 MR. FREY: Thank you, your Honor. I just
24 apologize if I misspoke. The Staff would concur with
25 Mr. Keevil's remarks.

1 JUDGE MILLS: Okay. Anything further?

2 MR. LOWERY: I just offer, Judge, that we
3 certainly are agreeable to submitting this letter or
4 whatever is ultimately arrived at by pleading at the FERC.
5 We think that the FERC inquiry docket would be the
6 appropriate docket.

7 In term of the Illinois Commerce Commission, I
8 don't believe there is a docket really available that
9 pleading could be submitted in an ICC docket. So I think it
10 would have to be via a letter.

11 We'd also suggest that any letter include both
12 the transcript from the November 4 presentation -- as
13 referenced in the letter, I think everybody agrees with that
14 -- and the transcript from today. I just wanted to clarify
15 that we wouldn't be leaving out that earlier transcript.

16 Finally, in terms of this last paragraph, I
17 think Ameren is completely agreeable and we will submit
18 something with all of the changes that have been suggested
19 except with respect to the last paragraph. We would still
20 advocate that the last paragraph remain as it was with the
21 proviso that we don't -- the preface that OPC suggested we
22 don't have a problem with, and this is the reason why:

23 When the case was filed, when our case was
24 filed, when Aquila's case was filed, IP was going to be
25 going to the Midwest ISO. Given the present circumstances,

1 you know, the Missouri Commission is a participant in the
2 Organization of MISO States.

3 We think that relying upon a JOA to timely
4 resolve these reliability concerns, and in effect if MISO is
5 -- if IP is not going to remain in the MIS and if we're not
6 going to encourage the FERC to require that to happen, then
7 what we're saying is we're going to rely upon the JOA to
8 resolve the reliability concerns.

9 To rely upon the JOA to do that in a timely
10 fashion is, I think, a big question. And I think all the
11 parties in the room would probably agree that there's
12 questions about whether that effectively will -- whether
13 that solution will even be effective.

14 So I appreciate the concerns that Staff has
15 raised, understand them, but the company's position is still
16 that it would be appropriate and more effective to leave the
17 letter as it was. We'll submit that in writing.

18 One other thing that I would request, and
19 obviously the other parties can object if this doesn't work,
20 but we do think timing is important to get something to the
21 FERC. I would suggest that we all submit something even
22 before the end of the day. I think we really only have one
23 paragraph that we're really talking about. So I think we
24 all could submit something today, if at all possible, so we
25 can get that in the Commission's hands so it can be dealt

1 with.

2 JUDGE MILLS: Thank you. Questions from the
3 Bench, Chair Gaw?

4 CHAIRMAN GAW: Thank you. Let me ask first of
5 all, the timing issue on this is what? What are we dealing
6 with on window of comment here by the letter and what's --
7 tell me what the deadlines might be, if there are any.

8 MR. LOWERY: I don't believe there's any
9 actual procedural deadline. It's just a question of we
10 don't know when FERC may or may not take some action, issue
11 some order that might affect this entire situation.

12 The inquiry was held now, I guess, a month and
13 a half ago. And so our feeling is that the sooner the
14 better, because we would like for this pleading as I think
15 it would be to have an impact before the FERC may take steps
16 that are hard to reverse.

17 CHAIRMAN GAW: If we do this as a part of a
18 pleading, if we -- let me ask Staff, are we a part of this
19 FERC docket now?

20 MR. FREY: Yes. Yes.

21 CHAIRMAN GAW: And what have we done up to
22 this point in time?

23 MR. FREY: We filed comments in that docket.
24 Excuse me. This is the docket in connection with the, I
25 guess, on-the-record presentation on September 29th and

1 30th.

2 CHAIRMAN GAW: And just so it refreshes
3 everybody's memory, what are the gist of those comments? I
4 knew I'd eventually get him up here. Mr. Dottheim?

5 MR. DOTTHEIM: Yes. The Commission submitted
6 comments, and the comments were strictly factual, regarding
7 providing a history of Union Electric Company's interest and
8 efforts in joining an RTO. So the Commission didn't take a
9 position, so to speak, in those comments that were
10 submitted.

11 It was just to provide the FERC a factual
12 background for the history of AmerenUE's efforts regarding
13 an RTO. Going back to the merger between SIPS, SIPSCO, Inc.
14 and Union Electric Company, and relating via at history the
15 subsequent dockets leading up to the present time.

16 So it was from -- it was from strictly a
17 historical perspective, and the Commission's General Counsel
18 Dan Joyce and Commission's Washington counsel Scott Hempling
19 appeared on behalf of the Commission at the FERC inquiry on
20 September 29 and 30.

21 The Commission did not file anything
22 subsequent, did not, that I recall, make any statement or
23 take any position at the hearings on September 29 and 30.
24 It was at the hearing on the 29th where Exelon divulged that
25 if it was successful in acquiring Illinois Power, that it

1 would have Illinois Power join PJM instead of the Midwest
2 ISO.

3 So the Commission -- I'm sorry, Chair. The
4 Commission has submitted comments in that proceeding which
5 the Staff is suggesting that the information that's
6 presently contained in the draft letters be in the pleading
7 filed in that proceeding.

8 CHAIRMAN GAW: What would be the difference in
9 the process here between sending a letter and filing a
10 pleading?

11 MR. DOTTHEIM: As far as timing or --

12 CHAIRMAN GAW: Whatever the issues are. I'm
13 trying to see what the issues are in regard to the --

14 MR. DOTTHEIM: I don't know that -- I don't
15 know what standing really the letter itself would have. I
16 don't know that the FERC would not consider a letter. I
17 would expect that they would -- they would note that.

18 But in that the Commission has already filed a
19 pleading in those proceedings, the Staff thinks that it
20 would actually be more appropriate or in keeping with what
21 has already been done to be filed in the form of a pleading.

22 AmerenUE has submitted various documents in
23 the present case before the Missouri Commission tracking its
24 filings in those dockets at the FERC, and Ameren has been
25 proceeding by filing pleadings throughout. So again it was

1 thought that it would be more in keeping.

2 Also, too, not that this would necessarily be
3 a comparable situation, but Mr. Frey has mentioned that in
4 the proceeding before the FERC involving the AmerenUE/Ameren
5 Energy Generating Company application for transfer of the
6 Pinckneyville and Kinmundy units, the Commission submitted
7 letters and that prompted phone calls, a couple of phone
8 calls from the FERC staff inquiring into what would be the
9 procedure to submitting Data Requests to the Missouri
10 Commissioners. Now, the FERC staff never followed up on
11 that.

12 But in submitting a pleading, the pleading
13 would be submitted by the Commission's General Counsel and
14 its Washington counsel as opposed to the Commissioners. So
15 if there might be any inquiry, it might be of a more formal
16 nature, something possibly maybe other than an inquiry as to
17 serving Data Requests on Missouri Commissioners themselves.

18 CHAIRMAN GAW: If you did a pleading in this,
19 what would that look like? Would we be talking about using
20 some of this language that's in this letter? What's the
21 thought there?

22 MR. DOTTHEIM: I think the language would be
23 near identical, and we can -- we can submit to the
24 Commission, and we would endeavor to do it before the end of
25 the day, what a comparable pleading would look like instead

1 of in the format of a letter. I think the substance would
2 be -- would be the same.

3 CHAIRMAN GAW: Ameren, do you want to respond
4 to any of that?

5 MR. LOWERY: Other than that say, I mean, we
6 don't object to it being submitted as a pleading. I don't
7 think it makes a lot of difference. I think in many ways it
8 might have more impact if it's submitted as a letter, but I
9 think the difference is so small that if the other parties
10 are more comfortable with a pleading and that's what the
11 Commission's inclined to do, we have no objection.

12 CHAIRMAN GAW: No objection?

13 MR. COFFMAN: No objection.

14 CHAIRMAN GAW: Either way?

15 MR. COFFMAN: Either way.

16 CHAIRMAN GAW: I need a little more
17 understanding about this issue about, are you -- the issue
18 on the last paragraph about the wording there. What is
19 Staff's -- what is Staff's rationale again for why that
20 wording ought to be changed? I think Mr. Proctor wants to
21 say something.

22 JUDGE MILLS: Let me go ahead and swear you
23 in, Dr. Proctor.

24 (Witness sworn.)

25 JUDGE MILLS: Please go ahead.

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1 DR. PROCTOR: It's more of a question of
2 timeliness. If we had a -- if we had a stipulation signed
3 and agreed and the Commission had approved it for Ameren to
4 join the Midwest ISO, then we would have no problems with
5 the language that Ameren's proposing.

6 It's somewhat a question of prejudgment,
7 because it just would not be good to put forth a letter from
8 the Commission saying that IP should be in the Midwest ISO
9 when the Commission has not yet decided whether or not
10 Ameren should be in the Midwest ISO.

11 And those two are intertwined because the
12 reliability issue centers around both of them being in the
13 same ISO. So if ultimately the Commission would decide
14 Ameren isn't to be in the Midwest ISO, then you're on record
15 saying that IP ought to be in the Midwest ISO.

16 CHAIRMAN GAW: Yeah. I think there's a
17 quandary here that involves two issues that are tied
18 together in this language if I understand this correctly.

19 One is the issue of whether or not there's a
20 prejudgment in regard to whether or not Ameren ought to be
21 in the Midwest ISO. The other is the problem that if the
22 Commission were to conclude at some point that it should, we
23 would certainly -- it seems to me that we would be better
24 served if IP were in there as well.

25 So by -- but by loosening up this language to

1 anticipate that, you're also not conveying a picture that
2 suggests that, assuming that that impact, that may impact
3 how this Commission looks at whether or not they're in --
4 that Ameren should be in there, instead of it being about
5 whether or not we prefer them joining under that assumption
6 that Ameren ends up there as opposed to having an agreement,
7 a JOA, which is the other -- I think what I'm -- I think I'm
8 hearing Ameren suggest, suggesting that a JOA -- by
9 loosening the language, you may be giving them the
10 impression that a JOA's just as good as having IP remain in
11 MISO.

12 That means to me that you-all need to talk
13 about this language a little bit more so that both of those
14 thoughts can be transferred over to FERC, because I think
15 you're arguing -- your argument here is not on the same
16 plain and that a further explanation of what both sides are
17 talking about would clear up that you're both saying
18 something very similar. This wording with one phrase here
19 is -- I don't think is going to get you there.

20 I may have -- anybody want to comment on what
21 I just proffered? Public Counsel?

22 MR. COFFMAN: Yes. Mr. Chair, I think we
23 agree with your take on that, and I think that that's a good
24 suggestion. Obviously the thing that the parties have
25 consensus about is that a seam between Ameren's territory in

1 Illinois and Illinois Power would be bad, but we may be able
2 to reach some consensus language or not. I'm not sure.
3 That's the point.

4 And at the current time it appears that urging
5 that Illinois Power be in the Midwest ISO would be the
6 appropriate thing, but with a change in circumstances, we
7 don't know. The real thing that we're in agreement in is
8 that seam would be bad.

9 CHAIRMAN GAW: Yes. I understand. I get that
10 impression from all the parties.

11 Is there a disagreement about what I think
12 Ameren is suggesting, that if the footprint eventually
13 includes Ameren in MISO, that having IP in MISO as well is
14 better than having a JOA?

15 MR. LOWERY: I suspect, I believe there's
16 unanimity on that point in the room.

17 CHAIRMAN GAW: I thought that was probably the
18 case, but it's not really coming across in the way this is
19 drafted currently. To me isn't anyway. So I just -- maybe
20 you-all can do a little work on that.

21 MR. COFFMAN: If that could be said without
22 the prejudgment, then definitely.

23 CHAIRMAN GAW: I think you have to condition
24 this. I mean, the way the wording is, it's got to be
25 conditioned on an assumption that that take place, and it

1 needs to be phrased as an assumption, because it does have
2 an impact, I suspect, on how things are analyzed from
3 your-all's standpoint, which probably translates into a
4 factor for us.

5 MR. DOTTHEIM: We can attempt to be more
6 explicit on that. Whether we'll ultimately reach agreement
7 on the language, that may be another matter.

8 CHAIRMAN GAW: I do not have that ability to
9 foresee things. I'm not expecting you-all to --

10 MR. DOTTHEIM: Dr. Proctor had mentioned when
11 we started off about this being a matter of a question of
12 timing, of there not being before the Commission a signed
13 Stipulation & Agreement. And as previously indicated, we
14 are continuing to work at that. We are moving along. We
15 have another meeting scheduled. We met on Monday of this
16 week. We've got a meeting scheduled on December 1, I
17 believe it is.

18 But it's not just a matter of putting before
19 the Commission a Stipulation & Agreement. It's the
20 Commission taking action also on that Stipulation &
21 Agreement because, of course, regardless of what we may be
22 able to reach agreement on may not be acceptable to the
23 Commissioners themselves.

24 CHAIRMAN GAW: Yes, and isn't it possible that
25 these changes -- I think we've already heard, these changes

1 in circumstances could result in other options which have
2 not been explored being more attractive than they had been
3 in the past?

4 MR. DOTTHEIM: Yes. I mean, our discussions
5 have changed some. I don't know markedly, but they have
6 changed some because of the results of September 29
7 announcement by Exelon.

8 CHAIRMAN GAW: And isn't it also the case that
9 the parties are probably at least as concerned, if not more
10 so, about seams in Missouri as they are about seams in
11 Illinois?

12 MR. DOTTHEIM: Yes.

13 MR. COFFMAN: Yes.

14 CHAIRMAN GAW: I see other heads nodding, too.

15 MR. DOTTHEIM: Ameren itself has indicated on
16 the record on September 29, and it's been filed as documents
17 with the Missouri Commission, that if Illinois Power does
18 join PJM instead of the Midwest ISO, Ameren has indicated
19 that it will have to look again at its decision regarding
20 joining the Midwest ISO and has indicated that any number of
21 options might be considered at that point.

22 CHAIRMAN GAW: The current status -- you might
23 bring me up to date. The current status of the federal
24 legislation that's out there is contained -- does it still
25 contain language that indicates that RTO joinder would be

1 voluntarily for the near future, could not be mandated?

2 MR. COFFMAN: As far as I know.

3 CHAIRMAN GAW: May be a deal that has been
4 constructed since the overnight hours.

5 MR. LOWERY: I was going to say, Chairman Gaw,
6 that maybe after the 39 hours of debate we'll have a better
7 idea of what's going on in the Senate.

8 CHAIRMAN GAW: I think that's probably true.
9 But it is possible, one of the -- are there -- I don't want
10 to go in too much detail, but I assume one of the other
11 options that's out there is the possibility that another RTO
12 if one -- if there is a joinder of an RTO, that another RTO
13 might be -- might be examined in light of all of the changes
14 that might occur in Illinois?

15 MR. DOTTHEIM: I think --

16 CHAIRMAN GAW: Is that what I heard you say a
17 while ago?

18 MR. DOTTHEIM: Yes. I think UE can --
19 AmerenUE can address that, but those are the indications
20 that AmerenUE have indicated.

21 CHAIRMAN GAW: Does Ameren want to venture
22 down that road?

23 MR. HENNEN: Sure. I don't know if any of you
24 recall, but the original reason that Ameren withdrew from
25 the Midwest ISO in the first place is because ConEd and IP

1 announced that they were withdrawing to go to another RTO.
2 In our analysis of that situation, we came to the conclusion
3 that that does create reliability issues.

4 Now, there were other issues that drove us to
5 that conclusion, but obviously we're back to square one. IP
6 and ConEd have announced they may go to a different RTO,
7 which raises all those same issues again and we just need to
8 re-evaluate them.

9 CHAIRMAN GAW: I'm done. Thank you.

10 JUDGE MILLS: Commissioner Murray?

11 COMMISSIONER MURRAY: I don't have any
12 questions. Thank you.

13 COMMISSIONER MURRAY: Okay. Apparently there
14 are no further questions from the Bench. Is there anything
15 else from the parties?

16 (No response.)

17 Okay. If you-all can take some time and see
18 if you can work out consensus language, that would be great.
19 If not, the quicker you can file your competing proposals I
20 think the better off we all will be. Anything further?
21 Hearing nothing, we're off the record.

22 WHEREUPON, the on-the-record presentation was
23 concluded.

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