

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE

February 26, 2003
Jefferson City, Missouri
Volume I

In re: Application of Union Electric)	
Company for Authority to Participate)	Case No.
in the Midwest ISO through a)	EO-2003-0271
Contractual Relationship with)	
GridAmerica)	

LEWIS MILLS, Presiding
DEPUTY CHIEF REGULATORY LAW JUDGE

ORIGINAL

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1 P R O C E E D I N G S
2 (Written Entries of Appearance filed.)
3 JUDGE MILLS: Let's go on the record.
4 We're on the record this morning for a Prehearing
5 Conference in Case No. EO-2003-0271, which is the
6 application of Union Electric Company for authority
7 to participate in the Midwest ISO through a
8 contractual relationship with GridAmerica.
9 We'll start by taking entries of
10 appearance in the front row on my left and go across
11 and we'll zigzag back to the second row. For staff.
12 MR. FRAY: Thank you, your Honor.
13 Representing the Staff of the Missouri Public Service
14 Commission Stephen Dottheim and Dennis L. Fray, Post
15 Office Box 360, Jefferson City, Missouri, 65102.
16 JUDGE MILLS: Thank you. For the
17 Company.
18 MR. LOWERY: Your Honor, representing
19 Ameren UE, I'm Jim Lowery, 111 South Ninth Street,
20 Columbia, Missouri, 65201.
21 MR. HENNON: Good morning, your Honor.
22 My name is David Hennen. I'm also representing
23 Ameren UE. My business address is 1901 Choteau
24 Avenue, St. Louis, Missouri, 63103.
25 JUDGE MILLS: Thank you.

1 MR. COFFMAN: John Coffman appearing on
2 behalf of the Office of the Public Cousnel, P.O. Box
3 7800, Jefferson City, Missouri, 65102.

4 MR. COOPER: Dean L. Cooper from the
5 Law Firm of Brydon, Swearengen & England, P.O. Box
6 456, Jefferson City, Missouri, 65102, appearing on
7 behalf of Aquila, Inc. and The Empire District
8 Electric Company.

9 MS. VUYLSTEKE: Diana Vuylsteke
10 appearing on behalf of Missouri Industrial Energy
11 Consumers of the Law Firm of Brian Cave, 211 North
12 Broadway, Suite 3600, St. Louis, Missouri, 63102.

13 MR. JOHNSON: Robert C. Johnson,
14 Attorney, 720 Olive Street, St. Louis, Missouri,
15 63101, appearing on behalf of the Missouri Energy
16 Group, Barnes Jewish Hospital, et al.

17 MR. STEWART: Appearing on behalf of
18 National Grid, U.S.A., Charles Brent Stewart, from
19 the Law Firm of Stewart & Keevil, L.L.C., 1001 Cherry
20 Street, Suite 302, Columbia, Missouri, 65201.

21 MR. RUMP: Michael Rump on behalf of
22 Kansas City Power & Light, 1201 Walnut, Kansas City,
23 Missouri, 64106.

24 MR. FISHER: And James M. Fisher,
25 Fisher and Doherty, P.C., 101 Madison Street, Suite

1 400, Jefferson City, Missouri, Local Counsel for
2 Kansas City Power Line.

3 JUDGE MILLS: Thank you. Is there
4 anybody else? Okay. Let's -- as the first order of
5 business, I want to take up the applications to
6 intervene. We have applications to intervene on
7 behalf of the Missouri Energy Group, Kansas City
8 Power & Light Company, Aquila, Inc., the Empire
9 District Electric Company, National Grid, U.S.A, The
10 Missouri Industrial Energy Consumers -- I'm sorry --
11 the MIEC. Did I mention the MEG? I believe that's
12 it.

13 Do any of the parties have responses to
14 any of those applications that are made? Okay. I'm
15 going to go ahead and grant them all. I'll issue a
16 notice later today just so there's a paper trail, but
17 I will grant intervention to the Missouri Energy
18 Group, Kansas City Power & Light Company, Aquila,
19 Inc., Empire District Electric Company, National Grid
20 U.S.A and the MIEC.

21 Okay. Now, the other order of business
22 that I want to take up is the question of the
23 procedural schedule or the procedural proposal that
24 the staff made in -- I suppose as an alternative to
25 the proposal that the Company had made.

1 Does Ameren have any response to that
2 proposal?

3 MR. LOWERY: Yes, your Honor. Briefly
4 we'd like to address a few of the points that were
5 made by the staff. You've essentially got two
6 Proposals before you. One of them allows us to
7 receive an Order at the latest by May 1st. We
8 believe it allows us to do that, which is the time
9 within which we need an Order in order to allow our
10 participation with MISO to go forward via GridAmerica
11 before the peak summer season, which is important to
12 us for a number of reasons, some of which we've
13 outlined in our application.

14 The other Proposal has hearings taking
15 place the third week of May. After that, of course,
16 some form of briefing would be expected and the
17 Commission needs some time to deliberate at that
18 point. If that proposal were adopted, we simply
19 cannot meet the deadline that we need to meet and --

20 JUDGE MILLS: And who's guideline is
21 that?

22 MR. LOWERY: We -- pursuant to the
23 GridAmerica agreement, when we go in to participate
24 in MISO, we're going to be transferring functional
25 control of our roughly 5,000 miles of transmission to

1 GridAmerica.

2 JUDGE MILLS: Uh-huh.

3 MR. LOWERY: We need some time in order
4 to do that. We need about 60 days to make sure that
5 the transfer and the processes are in place, so that
6 when we get to the peak summer season, the system is
7 going to operate properly.

8 We certainly -- we -- it wouldn't be
9 prudent and reasonable for us to, you know, get an
10 Order on June 15th, say, and then within a very short
11 period of time, maybe immediately, have to transfer
12 that control and we're immediately in the peak summer
13 season where the system is being, you know, taxed and
14 the volumes are at their highest point in the year.
15 It's just not something that would be reasonable and
16 prudent for us to do.

17 JUDGE MILLS: So the alternative is if
18 you get an Order later, you transfer control after
19 the peak summer season, sometime in the Fall?

20 MR. LOWERY: That's correct. If we
21 can't have an Order by May 1st, we effectively cannot
22 participate in MISO via GridAmerica until the Fall,
23 and that delays the benefits that we believe in
24 GridAmerica. And for that reason, it's a
25 self-imposed deadline in the sense that, literally, I

1 suppose we could participate wait until Fall to
2 participate, but it delays those benefits.

3 The GridAmerica agreements also have a
4 potential and we don't think this is necessarily
5 going to happen, but there's a potential that other
6 participants in GridAmerica, if we have not been able
7 to transfer functional control by June 30th, could
8 pull out of GridAmerica and the entire structure may,
9 in fact, not take place and that opportunity may not
10 exist in the Fall if we don't have the Order.

11 And so when we propose a procedural
12 schedule, we recognize it's very aggressive. We
13 wouldn't deny that, but we did it for a very good
14 reason and we didn't cite the need for an Order on
15 April 15th, and at the latest on May 1st, as sort of
16 an opening salva. We really need that time because
17 we can't turn over our transmission system -- we
18 can't just snap our fingers and do it. There's some
19 things that have to be done.

20 Now, the primary criticism of our
21 proposed schedule really has nothing to do with those
22 benefits. It seems to be directed toward, well, why
23 didn't UE file this application in December, let's
24 say. It's true that we received an Order of the
25 Commission in November dismissing our prior case

1 involving withdrawal from the Midwest ISO. That's
2 true.

3 But at that time, we did not know what
4 the FERK was going to do regarding Mid-America filing
5 or when they might do it, and on December 19th, we
6 received a 62-page Order from the FERK. That Order
7 proposed some fairly substantial changes, potential
8 changes, that we were going to have to make in later
9 compliance to the FERK to the GridAmerica agreement,
10 and the GridAmerica agreements, I mean, they define
11 this relationship.

12 There's four main documents including
13 an ITC agreement between MISO and GridAmerica and we
14 had -- we needed some time after December 19th to
15 figure out for ourselves what does the FERK Order
16 mean, can we live it, what about the other parties,
17 there's other people involved, MISO's involved, the
18 other transmission owners are involved, and we needed
19 some time to figure that out and receiving an Order
20 right before Christmas, with the holidays season, it
21 took us a little while to figure that out.

22 Once we did figure out, yes, we think
23 that the changes that the FERK wants are things that
24 we could live with, it's workable, we still believe
25 the GridAmerica is the right thing to do, we felt

1 that we ought to meet with the Commission and meet
2 with staff and the OPC, which we did on January 23rd,
3 and talk about, because the ITC and RTO concepts,
4 they're not brand new, but they're not also
5 necessarily completely understood.

6 It's sort of a new trend in the
7 industry and we felt it was beneficial and we felt,
8 in fact, it would stand the potential to expedite the
9 proceedings if we could have that meeting, give some
10 people some background in advance of filing our
11 application. We had that meeting on January 23rd,
12 and 12 days later we filed our application.

13 So the suggestion that we sort of sat
14 around for three months and not done anything, which
15 is really the suggestion of the Pleadings that were
16 filed, I guess, Monday, we don't think that fairly
17 characterizes what has happened in this case, and so
18 we would submit that we, you know, with hindsight,
19 could we have squeezed a couple weeks, maybe.

20 With hindsight, since it turns out that
21 we can live with the FERK Order, if we filed in
22 December, would of it expedited things, perhaps, but
23 we really stand by our decision not to file an
24 Application that might have to be changed, might have
25 to be withdrawn, that we might not file at all

1 depending on how that FERK Order might affect the
2 application. We really stand by that decision. We
3 did it in good faith. We did it for the right
4 reasons and we filed our Application as quickly as we
5 could.

6 JUDGE MILLS: And I'm certainly not
7 interested in trying to assess blame or guilt or
8 fault, but you do understand that by making those
9 decisions and filing when you did, it may have some
10 consequences in terms of giving the other parties
11 sufficient time for discovery and it may make it hard
12 to meet your Proposed Order deadline of May 1.

13 MR. LOWERY: We certainly recognize
14 that the schedule we've proposed is aggressive and it
15 puts everybody, including us, under the gun and we
16 recognize that. I would submit that we don't really
17 think that, and I'm sure the other parties are
18 probably going to disagree with this, we don't
19 foresee that a tremendous amount of discovery is
20 going to be necessary.

21 The testimony we filed in the last
22 couple of days in addition to the GridAmerica
23 agreements, the final GridAmerica agreements, by the
24 way, those were just finalized and filed with the
25 FERK in compliance to participate on February 18th,

1 so we just were able to finalize those.

2 That's another reason we didn't file
3 the testimony two or three weeks ago as has been
4 suggested to us because that testimony is underlied
5 by those agreements.

6 Those agreements define the
7 relationship and we needed to make sure that we knew
8 exactly what those agreements were going to say
9 before that testimony could be filed, but if you take
10 that testimony and you take those agreements, we
11 think that that is going to supply the vast majority,
12 more than the vast majority, of any information that
13 really is going to exist with regard to this filing.

14 And if it turns out if the procedural
15 schedule is set and it's aggressive and there isn't a
16 lot of time for discovery in there, if it turns out
17 that staff or the other parties, we aren't doing our
18 job, we aren't responsive, they don't think we're
19 answering their questions or they come upon
20 information or questions that they think we need to
21 explore this and we need more time, we would
22 respectfully submit that they could come back to you,
23 Judge, and they could make their case why the
24 schedule needs to be changed for good cause, and
25 perhaps that would be done.

1 But what we don't think is appropriate
2 is to set a schedule that we know is doomed to
3 failure in terms of the time frame in which we need
4 to operate, and that's really what they proposed?
5 They proposed a schedule that simply doesn't work
6 within the time frame that we need to operate, and we
7 believe that we need to set a schedule that allows
8 us, if things go the way we hope they will and they
9 should, to meet that deadline, and that's the
10 approach we would suggest that you take.

11 Hopefully it wouldn't have to be
12 changed, but anyone would have an opportunity to make
13 their case at that time that it should be changed for
14 good cause.

15 JUDGE MILLS: Thank you. Let me ask if
16 there are any other parties that want to speak
17 against staff's proposal. Mr. Coffman.

18 MR. COFFMAN: Well, it's --

19 JUDGE MILLS: I thought you filed a
20 Pleading saying you supported it.

21 MR. COFFMAN: Well, we would not want
22 anything more expeditious than the staff schedule and
23 I guess I have to say that the schedule that would be
24 appropriate in our minds really is interrelated to
25 how successful discovery process is going to work,

1 and we're still worried that maybe there could be
2 some bumps along that road.

3 I think it's important to point out
4 that the meeting that we all had on January 23rd, we
5 expressed our belief that the central piece of
6 evidence in this case, the most important piece of
7 information that we're going to be looking at, is the
8 cost benefit study that talks about what the benefits
9 are from the public from the proposed relationship,
10 and we've requested that in discovery, yet we still
11 haven't gotten it. Maybe it's here today, but we
12 still have yet to see that, and if there's a problem
13 getting that, even the staff's proposed schedule
14 could be ambitious for us.

15 We're still not sure exactly what the
16 harm to the public is if Ameren UE does not meet its
17 self-imposed deadline and we are, I guess, concerned
18 that this Company seems to have the most ambitious
19 schedule of all the other electric utilities that are
20 proposing contemplating relationships with other
21 RTO's, mostly with the Midwest ISO, and yet this is
22 the most complicated one.

23 The others seem a lot easier to
24 analyze, so we could probably live with the staff
25 schedule, but actually whether we do this quickly or

1 is more lengthy is really tied up with the discovery,
2 and we're really very focused and concerned about
3 that. Expeditious discovery terms might allow more
4 ambitious schedule from our mind. Discovery problems
5 are going to make us really worried about even the
6 staff schedule.

7 JUDGE MILLS: Thank you. Mr. Stewart,
8 were you going to say something?

9 MR. STEWART: Judge, I just was brought
10 into the case on Friday, so I'm not up to speed on
11 all of the issues here, but I did want to go on the
12 record and say that National Grid, U.S.A., would
13 encourage the Commission to try its best to get an
14 Order out by the first part of May, simply for the
15 practical reasons that Mr. Lowery had addressed.

16 That's my understanding from my
17 clients. They're very concerned about having enough
18 time between Commission action and actual transfer to
19 get those bugs -- get all of the practical issues
20 worked out and so we wanted to go on the record to
21 support Ameren's schedule.

22 JUDGE MILLS: Thank you. Staff, do you
23 want to respond to Mr. Lowery?

24 MR. FREY: Yes. Thank you, your Honor.
25 I think we can conclude from the Pleadings, the

1 Company's Pleadings, as well Mr. Lowery's statement,
2 that they are not up against any FERK deadline or any
3 other external deadline in this case.

4 It's strictly a self-imposed deadline
5 and the Staff feels that, as Mr. Coffman mentioned,
6 that this is potentially a fairly -- a pretty complex
7 case, more complex than, for example, the Empire
8 situation in which -- and I might note that today
9 we're going to file a proposed procedural schedule in
10 that case calling for an August hearing, evidentry
11 hearing, so as Mr. Coffman mentioned, this case is
12 potentially more complex and to complex just to rush
13 through for a self-imposed, what you might call an
14 internal deadline.

15 The Staff would also mention that with
16 regard to the schedule that the Company proposed
17 calling for, I believe, a hearing, let's see, on
18 March 20th, our key witness, or certainly one of our
19 key witnesses, perhaps our only witness, might -- Dr.
20 Proctor will be out of the country at that time, so
21 we would certainly take the position that that would
22 be an impossible date for us to mention.

23 Of course, we had the -- we have the
24 situation in Iraq that might very well have an impact
25 on his movements, and so that's something, also, to

1 keep in mind with regard to the uncertainty in this
2 case. Pardon me.

3 I would add that because of the events
4 over in the Persian Gulf, that it's possible that Dr.
5 Proctor will not be literally out of the country, and
6 this is one of the reasons that we did not bring it
7 up in our response to the Company's proposed
8 procedural schedule.

9 That's all I have, your Honor.

10 JUDGE MILLS: Okay. Is Dr. Proctor's
11 conflict with that day, that week, that month? What
12 are we talking about?

13 MR. FREY: My understanding is that he
14 will be leaving on March 19th, that is March 18th
15 will be his last day, and he returns on April 7th.

16 JUDGE MILLS: Okay. Mr. Lowery, let me
17 ask you this. I believe you mentioned something
18 about there's -- is there a clause in the GridAmerica
19 agreements that allow the other proposed participants
20 to back out if Ameren UE doesn't have a firm Missouri
21 Commission approval by a date certain? MR.

22 LOWERY: Judge, there's a clause, and I can't tell
23 you chapter and verse, the precise nature of it, but
24 essentially as I understand, there's a clause that
25 says that a functional control of all of the systems,

1 I believe it's three participants that are
2 participating in MISO via GridAmerica, have not been
3 transferred -- functional control of their systems
4 has not been controlled by June 30th, then any one of
5 them can pull out and essentially GridAmerica will
6 just sort of dissolve away at that point, so there is
7 a clause --

8 JUDGE MILLS: I'm sorry, I didn't mean
9 to interrupt.

10 MR. LOWERY: Go ahead, I'm sorry.

11 JUDGE MILLS: I haven't had a chance to
12 look at the testimony that was filed. Are the
13 GridAmerica agreements attached to that testimony?

14 MR. LOWERY: Yes, they are, your Honor,
15 and incidentally, in that regard, those agreements
16 have been available publically since July at the
17 FERK.

18 Now, the December 19th Order I
19 mentioned did require some changes of those
20 agreements and the agreements that are attached to
21 the testimony are as changed, but the GridAmerica
22 agreements are not the structure of GridAmerica, how
23 it's going to work, what an ITC is, the basics.

24 It's not something that has just come
25 up today and in our application, in fact, we

1 specifically directed the parties to the fact that
2 all GridAmerica agreements were then constituted were
3 available on the Ferris website at the FERK and so
4 it's not something that's brand new. I think there's
5 been some suggestion that we've also no ability to
6 understand anything about this and I don't think
7 that's a completely fair characterization.

8 There's a couple other things I wanted,
9 if your Honor please, in response to Mr. Frey and
10 Mr. Coffman, I wanted to mention. Ameren's
11 transmission system is a little bit different and we
12 think this case is a little bit different and the
13 benefits that would flow from us being able to
14 participate by the summer season is different than
15 some of these other utilities that are being
16 mentioned.

17 As you may know, Ameren's system sits
18 right in the middle of the country. It is sort of a
19 key component -- will be a key component within MISO,
20 in terms of connecting the east and the west part of
21 the eastern interconnect together, and therefore, it
22 has an affect on the entire electricity market, the
23 transmission market, the ability of Ameren to access
24 cheaper generation, if we need to or sell power to
25 the benefit of our consumers, if we need to or we

1 have that available.

2 We're a little bit different in that
3 regard because of where our system sits and the size
4 of our system, and that, we believe, is another
5 reason that we believe there are benefits --
6 substantial benefits from our ability to participate
7 this Summer not to have that situation put off until
8 the Fall.

9 With regard to Mr. Coffman's
10 discussion, and it was mentioned in the OPCs
11 response, as well about the cost benefit analysis.
12 Mr. Whitely addresses our stance, in effect, on the
13 cost benefit analysis in his testimony that was filed
14 on Monday. In short, we haven't done a detailed cost
15 benefit analysis and we don't think that it's
16 reasonable or warranted to do one.

17 The standard in this case is whether or
18 not our Application is detrimental to the public
19 interest. We think there are benefits, we think we
20 can show that and we think we will, but we don't have
21 a burden to come in and establish that the public is
22 going to gain X, Y and Z in order to sustain our
23 Application.

24 Our burden is just to show that it's
25 not detrimental to the public interest, and so we

1 have addressed a cost benefit analysis. There's not
2 going to be further discovery hinging on a cost
3 benefit analysis.

4 We've made the decision on the evidence
5 that we believe is appropriate to present our case
6 and hiring Consultants and doing a detailed cost
7 benefit analysis is not something that we think is
8 warranted and Mr. Whitely addresses that, so we don't
9 think that will impact the schedule.

10 JUDGE MILLS: Thank you. Do any of the
11 other parties that haven't had a chance to speak have
12 anything to add, primarily about the schedule?

13 MS. VUYLSTEKE: On behalf of the MIEC,
14 we support the schedule proposed by the staff and we
15 also submitted a pleading about that.

16 JUDGE MILLS: Okay. Mr. Johnson.

17 MR. JOHNSON: MEG supports the staff
18 schedule.

19 JUDGE MILLS: All right. As I
20 understand, most of you have gone on record and most
21 of your Applications have been made available. I
22 just wanted to make sure you didn't have anything
23 further to add to that.

24 MR. FRAY: Two points. One, the
25 benefits that Mr. Lowery is speaking of are not going

1 to be, at least during the period of the rate
2 moratorium, enjoyed by the rate pairs of the State of
3 Missouri, and the other point I would make is that my
4 understanding is that the Company was aware of
5 problems with Dr. Proctor's availability at the time
6 they filed their proposed schedule.

7 JUDGE MILLS: Okay. Thank you. Mr.
8 Lowery, I'm sure you want to respond to that.

9 MR. LOWERY: Well, just a couple
10 things, Judge. In the settlement of our last rate
11 case, the revenues that we're talking about and the
12 benefits of having the Ameren system in MISO and
13 participating in an RTO, they were taken into account
14 in terms of setting what those -- what these
15 settlement terms are, so we think the rate pairs have
16 already benefited from the assumption that we're
17 going to be able to participate in a timely fashion.

18 In regard to Dr. Proctor's absence, we
19 were advised that he might be gone. That's true. I
20 don't think that explains the request for 60 days of
21 time to file rebuttal testimony and to have a hearing
22 in the third week of May, however.

23 I don't think we're sitting here taking
24 the position today that the precise dates we proposed
25 were absolutely rigidly affixed to them, but given

1 the time frames we're under, we don't feel like we
2 have a very much latitude.

3 Is there a little latitude? Can we try
4 to work with people? Sure, we'd certainly do that,
5 but adding two months to the schedule is not the kind
6 of latitude that we have or we feel like that we need
7 to work on, despite that absence that might take
8 place for a week or so.

9 JUDGE MILLS: Okay. Let me ask you
10 this, and you may not be able to answer the question.
11 Is it Ameren's position that if Ameren doesn't have
12 approval by May 1, that it will take advantage of the
13 clause in the GridAmerica agreement and back out or
14 are you going to stick it out until you hear from
15 this commission?

16 MR. HENNON: Your Honor, we do not
17 intend to back out in the absence of an Order by June
18 30.

19 JUDGE MILLS: Okay. And another
20 question, obviously when I get a chance to read this,
21 I can find out for myself, but if you all know, is
22 there -- is the 60 days to transfer functional
23 control, is that set forth in that agreement or is
24 that just something that you think is a good idea?

25 MR. HENNON: It's a prudent thing, your

1 Honor. Obviously different people will be monitoring
2 the flows on the transmission system that are
3 currently monitoring them today. There's complex
4 modeling systems that have to be integrated. All
5 these things just take time. I mean, they don't
6 happen overnight, and I think it would be prudent for
7 the Company to transfer control of its system
8 certainly in the midst of the Summer, when the stress
9 of the system is at its high point.

10 JUDGE MILLS: Okay. Okay. Do any of
11 the parties have anything else they want to talk
12 about on the record this morning? Okay. If you need
13 me during the day, you'll know where to find me, but
14 if there's nothing else from the parties, we'll
15 conclude the on the record portion and I'll leave you
16 all to talk upon yourselves.

17 Nothing further? We're off-the-record.

18 WHEREUPON, the on-the-record portion of
19 the prehearing conference was concluded.

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