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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

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

TRANSCRIPT OF PROCEEDINGS

ORDER SCHEDULING PRESENTATION
Volume 3
Tuesday, November 4, 2003
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

LEWIS MILLS, presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE

Steve Gaw, Chairman
Connie Murray, Commissioner
Bryan Forbis, Commissioner

REPORTED BY:

JENNIFER L. LEIBACH
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
3 morning for an on-the-record conference in the Case
4 No. EO-2003-0271, which is styled In re: Application
5 of Union Electric Company for Authority to
6 Participate in the Midwest ISO through a Contractual
7 Relationship with Grid America. We'll begin by
8 taking entries of appearance. I'll just start in the
9 front row and go left and right back through the
10 ranks. We'll begin with Staff.

11 MR. DOTTHEIM: Thank you, your Honor.
12 Dennis L. Frey and Steve Dottheim representing the
13 Staff of the Missouri Public Service Commission, Post
14 Office Box 360, Jefferson City, Missouri, 65102.

15 MR. COFFMAN: John B. Coffman,
16 representing the Office of the Public Counsel. We
17 have a new Post Office Box, P.O. Box 2200, Jefferson
18 City, Missouri, 65201, thanks.

19 MR. LOWERY: James B. Lowery
20 representing AmerenUE, P.O. Box 918, Columbia,
21 Missouri, 65205.

22 MR. COOPER: Dean L. Cooper from the
23 law firm of Brydon, Swearingen & England, P.C., P.O.
24 Box 456, Jefferson City, Missouri, 65102, appearing
25 on behalf of the Empire District Electric Company and

1 Aquila, Inc.

2 MR. FISCHER: James M. Fischer, Fischer
3 & Dority, P.C., 101 Madison Street, Suite 400,
4 Jefferson City, Missouri, 65101, appearing today on
5 behalf of Kansas City Power and Light Company.

6 MR. KEEVIL: Appearing on behalf of
7 National Grid USA, Jeffrey A. Keevil with the law
8 firm Stewart & Keevil, L.L.C. I might note that we
9 have a new address, 4603 John Garry Drive, Suite 11,
10 Columbia, Missouri, 65203.

11 MR. DOWNEY: Ed Downey, Bryan Cave,
12 LLP, 221 Bolivar Street, Suite 101, Jeff City,
13 Missouri, representing the MIEC.

14 MR. HENNEN: David B. Hennen appearing
15 on behalf of AmerenUE, 1901 Chouteau Avenue, St.
16 Louis, Missouri, 63103.

17 MR. ZOBRIST: Karl Zobrist appearing on
18 behalf of Midwest ISO, Blackwell Sanders Peper
19 Martin, 2300 Main Street, Kansas City, Missouri,
20 64108.

21 JUDGE MILLS: And I'll note for the
22 record that I got a call yesterday from Bob Johnson
23 on behalf of the Missouri Energy Group, and he asked
24 to be excused today. I believe that's all that we
25 have here this morning. We'll begin with a brief

1 presentation starting with the company.

2 MR. LOWERY: Thank you, Judge Mills.

3 Good morning. Judge Mills, members of the

4 Commission, my name, as I said, is Jim Lowery, and I

5 represent AmerenUE. We, first of all, appreciate the

6 opportunity to appear before you this morning and to

7 share with you what we can about the settlement

8 discussions that have been going on in this case and

9 also about the recent developments that have impacted

10 this case.

11 With me today, I'd like to introduce in

12 addition to Mr. Hennen, who entered his appearance

13 for the company, Mr. David A. Whitely. Mr. Whitely

14 is a Senior Vice-President for Ameren Services and

15 has primary responsibility within the company for the

16 company's regional transmission organization, RTO

17 activities, including has been intimately involved in

18 this particular case.

19 I'd like to first begin by making

20 reference to the status report that we filed last

21 Thursday, coincidentally, about five minutes before

22 Judge Mills issued his order setting this

23 presentation. Hopefully you've had a chance to

24 review that report, but we're cognizant of the fact

25 that the exhibits, in particular, were rather long.

1 Most of what I'm going to say will probably mirror
2 information in that report, but we'll try to
3 summarize it for you.

4 The report, I think, accurately reports
5 the status of this case as of this time including
6 reporting on the recent developments, and in
7 particular, addresses concerns that the company has
8 related to the recent announcements regarding
9 Illinois Powers possible entry into the PJM
10 Interconnection as opposed to the Midwest ISO, and
11 I'll discuss that in more detail in just a moment.

12 Regarding settlement via settlement
13 discussions in this case, we have been working very
14 hard and very consistently over the last few months
15 to reach an agreed upon settlement on the case that
16 is before you. Those discussions have taken some
17 time. It's been hard work, difficult work at times,
18 but the talks have progressed and are continuing to
19 progress.

20 One of the reasons it's been -- or
21 several of the reasons it's been relatively difficult
22 and taking some time to conclude those discussions is
23 because no one has ever really done this particular
24 thing before. We would be the first Missouri utility
25 in a regional transmission organization, and for at

1 least some of the parties, that has raised a great
2 number issues. We have been successful, we believe,
3 in working through a huge number of issues, but it's
4 something that we have all had to learn as we go in
5 terms of how to address those issues.

6 Secondly, the facts relating to RTO's
7 and our participation have changed and evolved some
8 since the case began. For example, the FERC issued
9 its white paper in late April, which impacted the way
10 RTO's may work and how congestion management may work
11 within RTO's, et cetera. There have been some delays
12 and changes in the Midwest ISO's from transmission
13 rights known as FTR allocation processes, and there
14 have been some changes in when and how the Midwest
15 ISO intends to implement its energy markets.

16 At one time, both energy markets, both
17 the realtime and day-ahead markets were going to be
18 implemented this year, then there was discussion of a
19 staggered start where the realtime markets would
20 start in March, and the day-ahead -- March of '04 --
21 and the day-ahead markets would start in October of
22 '04, and it now appears that both markets will start
23 in October of '04, and we've had to adjust how we are
24 structuring the settlement discussions and so on to
25 take into account those events.

1 The August 14th blackout also has
2 impacted the progress in some ways because I think it
3 has properly refocused everyone's attention on the
4 importance of reliability.

5 And finally, the FERC inquiry that took
6 place on September 30 and October 1, diverted our
7 attention for some time in terms of dealing with
8 those issues, and as I mentioned, the announcement
9 regarding Illinois Power that I'm going to talk about
10 in a moment also has impacted those discussions.

11 As we stand here before you this
12 morning, we do not have a fully completed agreed upon
13 stipulation and agreement in this case, but the
14 issues that remain are very, very few. We have every
15 intention of working to resolve, if at all possible,
16 those issues expeditiously. In fact, we meet here in
17 this building again in six days from now with all of
18 the parties, and we should know in a relatively near
19 term whether we will or will not be able to reach a
20 stipulation agreement in this case.

21 If we can reach an agreement, however,
22 we are going to have to consider the impact of some
23 recent developments, most notably, the Illinois Power
24 situation. By way of background to the extent that
25 you don't know all of the details about it, at the

1 FERC inquiry that took place a few weeks ago, Exilon
2 Corporation, which is the parent corporation of
3 Commonwealth Edison, which is a utility, as you know,
4 that operates in a large part of Illinois, announced
5 that they were in exclusive discussions to acquire
6 Illinois Power.

7 Illinois Power is an electric utility
8 with which we have a great number of interconnections
9 in Illinois, and they announced at the FERC inquiry
10 that if the acquired Illinois Power, they would take
11 Illinois Power to the PJM interconnection as opposed
12 to Illinois Power participating in the Midwest ISO,
13 which is what we had thought Illinois Power was going
14 to do for some time.

15 In fact, yesterday, ComEd, or excuse
16 me, Exilon and Illinois Power announced that they
17 have signed definitive agreements, so it appears that
18 that acquisition may, in fact, take place. It hasn't
19 closed, but they have a signed agreement.

20 The developments regarding IP raise
21 significant reliability concerns for Ameren. Those
22 are concerns that we didn't have until the
23 announcements, because as long as IP was going to be
24 in the Midwest ISO, the interconnections that we had
25 with them would be managed in the same way that

1 they've been managed for many years.

2 However, if Ameren's system is in the
3 Midwest ISO and IP is in PJM, it creates seams issues
4 in Illinois that cause us concern, and there are
5 issues that we, at this point, cannot fully resolve
6 and not fully evaluate because of a couple of
7 unknowns that are yet to be resolved.

8 First of all, we don't know for sure if
9 IP is going to go to PJM despite the acquisition by
10 Exilon because we don't know what the FERC is going
11 to do. The FERC may very well require IP to remain
12 in the Midwest ISO, or for other reasons, IP may end
13 up in the Midwest ISO.

14 Second, a key component that we need in
15 order to intelligently determine whether or not IP
16 membership and PJM, if it happens, while we would be
17 in the Midwest ISO, is a completion of a Joint
18 Operating Agreement and reliability plan that's part
19 of that agreement that was ordered by the FERC in
20 July of 2002, and that as we stand here today is
21 still not done.

22 I believe it was close to being done in
23 the late summer of this year, but the August 14th
24 blackout, as I mentioned before, impacted that JOA
25 and it has been undergoing changes to address some of

1 those issues. That plan, as we understand it, is
2 currently hopefully scheduled to be finalized in the
3 next several weeks and perhaps filed with the FERC in
4 December, but until we have it and are able to
5 analyze it and understand whether it properly manages
6 the seam in Illinois that would be created and
7 whether or not we can operate our system reliably
8 under that plan, we can't say for sure whether or not
9 our concerns about the IP membership and PJM are or
10 are not resolved.

11 In summary, we intend to work very
12 hard, as I mentioned, to conclude the settlement
13 discussions in Missouri as quickly as we can.
14 If either IP reaffirms its commitment to be in the
15 Midwest ISO or it's clear that they're going to be in
16 the Midwest ISO or if the JOA is completed and our
17 due diligence would indicate that it satisfies the
18 concerns that we have regarding reliability, then
19 either of those events, and assuming we had a
20 Missouri settlement, we would then be in a position
21 to sign that settlement and submit it to this
22 Commission for consideration, and hopefully approval,
23 immediately.

24 If, however, we have a Missouri
25 settlement and the IP situation is not resolved, we

1 would feel duty-bound to hold off on filing that
2 stipulation because we have to make sure that our
3 system can be operated reliably if we're in one RTO
4 and IP is in another, and that's something we just,
5 at this point, that we cannot come to conclusion on.

6 Collectively, we'll be happy to try to
7 address any other questions that you might have.

8 JUDGE MILLS: Thank you.

9 MR. LOWERY: Thank you.

10 JUDGE MILLS: Staff.

11 MR. DOTTHEIM: Your Honor, Staff has no
12 additional comments beyond what Mr. Lowery has said
13 out there. We would note that our three witnesses,
14 Mike Proctor, Mark Oelschlagger and Greg Meyer, are
15 available to answer questions should you have any.
16 Thank you very much.

17 JUDGE MILLS: Thank you. Public
18 counsel.

19 MR. COFFMAN: I'm also going to decline
20 to add anything further. I think that Mr. Lowery
21 laid out the current landscape fairly well. There
22 are a considerable number of complex issues, as he
23 said, in this case, relating to what we think might
24 be impact on public interest if we do have to go to
25 hearing, but as he said, we've been working very hard

1 to try to find a way that we could agree to go
2 forward in some conditional way. Mr. Kind, Mr. Ryan
3 Kind is here to answer questions. He does have a
4 breath of knowledge about the federal transmission
5 issues, if you would like to take advantage of his
6 testimony today.

7 JUDGE MILLS: Thank you. Mr. Zobrist.

8 MR. ZOBRIST: Thank you. May it please
9 the Commission. On behalf of the Midwest ISO, what I
10 would like to say to everybody in the room here, as
11 well as to the Commission, is that we have made a lot
12 of progress on these issues, and the issues that
13 remain to be negotiated, while they're significant, I
14 think that each side has moved toward the middle, and
15 so I think that an agreement is imminent, and on
16 behalf of Midwest ISO, what we would like this
17 Commission to encourage the parties to do, and MISO
18 would encourage the parties to do as well, is to
19 proceed toward a settlement, proceed toward an
20 agreement.

21 We don't believe that this process
22 should be delayed by Illinois politics and by
23 Illinois regulatory issues. I just learned this
24 morning that Illinois Power and Exilon did make this
25 announcement of a supposedly definitive merger

1 agreement. I understand it as subject to regulatory
2 approval. It is apparently subject to a bill that
3 Exilon has proposed to be filed to the Illinois
4 House, which would contain some modifications,
5 perhaps even radical modifications, to the Illinois
6 restructuring law. It would, in essence, send some
7 money up to Exilon so they could pay for this
8 transaction to send some money down to Dynagy, to
9 perhaps bring some assets into the new Exilon company
10 if it's to include Illinois Power, this might include
11 some assets that they don't have currently.

12 This is a very fluid situation, and the
13 positive thing in Missouri is that we have made some
14 very good progress toward a goal and objective that
15 this Commission has set forth, and that's that if
16 there is to be a joining by Ameren with the Midwest
17 ISO, that it be done in a fashion that brings
18 benefits to consumers and which holds harmless those
19 people who might otherwise be at risk by virtue of
20 this.

21 Midwest ISO is willing to work with
22 Ameren on any reliability issues, be it related
23 specifically to Illinois Power or to any other
24 situation that may occur. As Mr. Lowery said, there
25 is the Joint Operating Agreement which is in the

1 process of being worked on by PJM and Midwest ISO.
2 It has been delayed by virtue of the August blackout.
3 We are awaiting some reports that come out of DOE and
4 the Joint Canadian American Task Force in that
5 regard, but these issues can be worked on, and I
6 would encourage all the parties to continue to work
7 toward a solution in this case.

8 We do expect FERC to give some
9 additional guidance on the MISO/PJM issues that were
10 raised in the September 20th and 29th hearings. We
11 hope to hear that by the end of the year.
12 Furthermore, MISO would say that even if the
13 Exilon/Illinois Power merger occurs, we would expect
14 to go before the Federal Energy Regulatory
15 Commission, and I would assume that we would be
16 joining hands with Ameren, at this point, so that
17 Ameren would be held harmless from any effects of
18 such a merger.

19 If this merger is to take place in
20 Illinois, and it's to have either adverse or risky
21 events occur in Illinois, or indeed affect the Ameren
22 system here in Missouri, we think that a hold
23 harmless clause ought to be conditioned upon any
24 merger.

25 So I guess the basic point that MISO

1 would like to say is that we agree with Ameren that
2 we've made progress. We think we ought to continue
3 and move forward. I understand the position of the
4 company that they're placed in a certain degree of
5 risk, but I think we need to move forward and would
6 encourage the company to work with MISO and to
7 present some things that, perhaps, we can work on in
8 anticipation of whatever happens in Illinois, but I
9 think this is not the time to start waiting for a
10 clarification.

11 I think we need to move forward. As
12 clarification comes, I think we should be ready to
13 move, otherwise I think we could be sitting here nine
14 months from now in the same position, so I would just
15 encourage all the parties and encourage this
16 Commission to encourage us to keep working. Thank
17 you.

18 JUDGE MILLS: Thank you. Does any
19 other party wish to make a statement this morning?
20 Okay. We'll move on to questions from the bench.
21 Chairman Gaw.

22 CHAIRMAN GAW: Thank you, Judge. First
23 of all, I appreciate the parties being here this
24 morning, and in large part, this was the -- the only
25 way we could have this conversation is to call for

1 this hearing so we could get updated on the status of
2 what was going on.

3 As you all are well aware, there have
4 been a number of public statements that have been
5 made in regard to changes that have occurred over the
6 last several months, and we were interested in
7 hearing directly from you how that impacted the
8 status of this case.

9 I would be interested in knowing a
10 little more from Ameren in regard to whether anything
11 could occur in this Commission that Ameren would be
12 in favor of prior to the resolution of the issues
13 that you mentioned earlier, and so I'd like to hear a
14 little more comment about that, Mr. Lowery, if you
15 could.

16 MR. LOWERY: Certainly. At this point,
17 I don't believe that we could support submitting a
18 stipulation agreement to the Missouri Commission
19 based on the knowledge we have right now. Now, it
20 could very well be that, as Mr. Zobrist said, the
21 situation is very fluid. It could be that we are
22 able to, as part of our due diligence, gain an
23 understanding that allows us to do that prior to
24 final resolution of the entire Illinois Power
25 situation.

1 Incidentally, we are working with MISO
2 and are engaged in discussions with them about trying
3 to have input in the Joint Operating Agreement as
4 it's being worked on. We have a seat at the table,
5 if you will, so that we can understand what they're
6 doing, have input about how it may impact us, and so
7 we're trying to be proactive in that regard, but as
8 -- to be perfectly honest with you, as we sit here
9 today, based on what we know today, we don't know how
10 it's going to work if IP is in PJM.

11 We don't know for sure, for example, if
12 American Electric Power is going to be in PJM and
13 when and how that's going to connect up with this
14 ComEd's system and the IP system, so until we're able
15 to see some of those things, and the JOA is the key
16 to that, I believe, we couldn't satisfy ourselves and
17 I think if we can't satisfy ourselves, we can't
18 satisfy you and our constituents and stakeholders
19 that we can operate our system reliably, or that MISO
20 could operate it reliably if we were in MISO, so at
21 this point, we couldn't move forward.

22 However, we don't intend to stop the
23 discussion in Missouri. We would hope, let's
24 hypothetically say we reach a complete agreement in
25 Missouri next week, three weeks from now, whatever it

1 would be, we don't intend to stop that process, and
2 the moment that the situation cleared up, there would
3 be no delay in coming to this Commission with a
4 stipulation and asking the Commission to consider and
5 approve it.

6 CHAIRMAN GAW: And without going into
7 the issues that remain, I don't know how appropriate
8 that would be at this stage, but you're suggesting
9 that those issues that you're in discussion with
10 Staff and the other parties about, are issues that
11 are aside from these late developments dealing with
12 MISO --

13 MR. LOWERY: Absolutely.

14 CHAIRMAN GAW: -- and Illinois Power.

15 MR. LOWERY: They have nothing to do
16 with Illinois Power.

17 CHAIRMAN GAW: Okay. The issue that we
18 have in -- dealing with the Joint Operating
19 Agreement, could you expand on that just a little
20 bit? Tell me what that -- tell me what those issues
21 are, tell me what -- just give me some background, if
22 you could.

23 MR. LOWERY: I think I'm going to let
24 Mr. Whitely address that, if you don't mind.

25 CHAIRMAN GAW: No, that's fine.

1 MR. LOWERY: He knows certainly more
2 intimate details than I do.

3 CHAIRMAN GAW: And Judge, do you need
4 to do something?

5 JUDGE MILLS: It probably wouldn't hurt
6 to swear you in, so if you could raise your right
7 hand please. You can stay there or if it's going to
8 be a lengthy answer, you can come up to the podium.

9 (Witness sworn.)

10 JUDGE MILLS: Thank you. Go ahead.

11 MR. WHITELEY: I would direct your
12 attention, Commissioner, to part of our status report
13 that, as Mr. Lowery said, was filed minutes before
14 this meeting this morning was called.

15 In that status report, there is a FERC
16 filing that is our response to the rebuttal testimony
17 provided by Exilon Corporation and a Motion to
18 Correct the Record. Within that filing, it's
19 actually on Page 8 of that filing --

20 MR. LOWERY: Just to try to give you a
21 road map, it's part of Exhibit 5 to the status
22 report, and then it's Page 8 of Exhibit 5.

23 MR. WHITELEY: On that page, there is a
24 list of reliability issues and concerns that we have
25 with respect to Illinois Power potentially being in a

1 different RTO than Ameren, and that list includes
2 issues such as managing loop flows between the two
3 RTO's, how data exchange will occur, how reactive
4 power supply and voltage support will occur. There's
5 an entire list there, and I won't drag you through
6 each one of them unless you want to talk about them
7 individually, but these highlight the concerns that
8 we have.

9 We would expect that the Joint
10 Operating Agreement would likely have addressed these
11 anyway, but we wanted to highlight to the FERC that
12 these issues need to be addressed and they are of
13 concern to us. We would expect the Joint Operating
14 Agreement will cover these types of issues. The
15 question will be how does it cover them and does it
16 appropriately deal with the very complex seam between
17 the two companies in Illinois.

18 CHAIRMAN GAW: Give me a time line, if
19 you would, on this issue. Is that predictable from
20 this stage when those issues might be resolved on the
21 Joint Operating Agreement?

22 MR. WHITELEY: It's my understanding
23 that the Joint Operating Agreement is already under
24 development. In fact, as was stated earlier, it had
25 some level of completion before the August 14th

1 blackout and is now being revised, if you will, in
2 light of recent issues particularly with respect to
3 the August 14th blackout.

4 It's my understanding that the schedule
5 for that Operating Agreement to be completed and
6 filed with the FERC is sometime within this year,
7 before the end of the year. I believe there's
8 several steps that will have to occur either before
9 that filing with the FERC or before -- my
10 understanding is before the FERC would act on it, and
11 that is to obtain NERC approval, North American
12 Electrical Reliability Council, approval of that
13 plan. So prior to filing with the FERC or
14 immediately after, I would expect that the NERC would
15 need to act on whether or not that Joint Operating
16 Agreement does, indeed, address all of the
17 reliability issues.

18 Again, I believe the plan is for that
19 to occur before the end of the year, so that would
20 enable us, as Mr. Lowery's pointed out, assuming that
21 does resolve all of our concerns, that would allow us
22 to move forward with hopefully a stipulation
23 agreement that we've reached in the very short future
24 here for Missouri.

25 CHAIRMAN GAW: And is that -- is that

1 regardless of what happens with Illinois Power and
2 its ownership and its membership?

3 MR. WHITELEY: Yeah, our concerns with
4 respect to reliability are irrespective of IP's
5 ownership, whether Dynagy would continue to own them
6 or Exilon would own, it doesn't matter from the
7 concerns that we stated in a reliability standpoint.
8 Here, we see the issue solely as we've got a very
9 complex seam between two RTO's and how that seam is
10 managed is critical. It doesn't go to ownership of
11 the systems.

12 CHAIRMAN GAW: Or to membership of IP
13 in PJM as opposed to MISO?

14 MR. WHITELEY: Well, that, indeed, is
15 the issue for IP to be in PJM, that creates --

16 CHAIRMAN GAW: The Joint Operating
17 Agreement issue.

18 MR. WHITELEY: And as I've stated in the
19 numerous FERC filings on this issue that we've had in
20 the last few weeks, it doesn't make sense to me to
21 have a very complex situation that you then require a
22 very complex plan to address. It's much easier if
23 you have a very simple situation in the first place,
24 and then you don't need a very complex plan, but I
25 guess that's, you know, my point of view and the FERC

1 will do what they want to do.

2 MR. ZOBRIST: Commissioner, can I
3 clarify one thing?

4 CHAIRMAN GAW: Go ahead, Mr. Zobrist.

5 MR. ZOBRIST: And pardon me for
6 interrupting, I want to just make sure. When you
7 asked the question about whether the JOA was related
8 to Illinois Power, I just wanted to clarify that the
9 Joint Operating Agreement came into being as a part
10 of the July 31, 2002, FERC order that said, well,
11 okay, if some of you former alliance companies want
12 to go to PJM and some of you want to go to MISO, you
13 need to eliminate or address all of these seams
14 issues, so it does affect the whole Midwest
15 footprint, not just the Illinois Power issue, but
16 other seams issues that we have in the Midwest.

17 CHAIRMAN GAW: It is creating issues
18 where issues were would not be if they were all in
19 one footprint.

20 MR. ZOBRIST: I would agree with that.

21 MR. LOWERY: And Judge, if I could add,
22 if Illinois Power was in the Midwest ISO, as Mr.
23 Zobrist says, there's still a need for a JOA because
24 there are some former alliance companies that are
25 going to be in PJM and some in the Midwest ISO, but

1 we have a great level interconnectivity with Illinois
2 Power, and so when they go to PJM, it creates
3 specific reliability issues that we would not
4 otherwise have.

5 COMMISSIONER GAW: Yes, and in the
6 interest as far as -- as far as Missouri customers is
7 concerned, do you want to briefly tie that together?

8 MR. WHITELY: Well, the way I would
9 address that is that Ameren operates one system, in
10 fact, the transmission interconnection operates as
11 one great big interconnection. It -- irrespective of
12 company ownership or geographic or political
13 boundaries, Ameren operates one control area between
14 Missouri and Illinois, and operates its system as one
15 system, and so to the extent that one part of the
16 system is impacted, it necessarily has an impact on
17 the other part of the system, regardless of whether
18 it's Missouri or Illinois, and even if that were not
19 the case, we would still have concerns that the Joint
20 Operating Agreement address the reliability issues
21 because all of the transmission is connected, and so
22 even if this was not an Ameren and an IP issue but
23 the same situation occurred, in fact, I believe as
24 Mr. Zobrist has pointed out, does occur in Ohio with
25 respect to AEP and other former alliance members,

1 we're concerned that their systems are operated
2 reliably because they can impact us because of the
3 interconnected nature.

4 MR. COFFMAN: Your Honor, if it's
5 appropriate, Mr. Kind would like to address this
6 particular issue. I don't know if it's appropriate
7 to jump in now or later, but at some point later --

8 JUDGE MILLS: Okay. We're rapidly
9 running out of time, so please keep it brief. Should
10 Mr. Kind be sworn?

11 JUDGE MILLS: Oh, yes. If you'll raise
12 your right hand, please.

13 (Witness sworn.)

14 MR. KIND: I will try to make this very
15 brief. I just wanted to address the Joint Operating
16 Agreement a little bit. I'm on the NERC committee.
17 The operating committee that has the chief
18 responsibility at NERC for reviewing that agreement.
19 It was supposed to be brought to us last summer and
20 our meeting was called off as a result of the
21 blackout. The meeting was going to occur just
22 shortly after that.

23 There was a degree of skepticism about
24 this agreement even before the blackout on our
25 committee, and then I, myself, had, my skepticism has

1 been greatly heightened by the blackout, and this has
2 to do with the Joint Operating Agreement, you know,
3 efforts to try and set up a reliable system where
4 you've got Commonwealth Edison, which is totally
5 disconnected from PJM, except for, I think it's a 600
6 megawatt contract path going through someone else's
7 control area that connects them, and I basically
8 agree with what Mr. Whitely said that the FERC has
9 gone down this road setting up a configuration of
10 RTO's that create such -- they've got such messy
11 seams created that you really -- you need a really
12 complex arrangement in order to try and preserve the
13 level of reliability that you would have absent those
14 seams, and I think I am, and I think a lot of other
15 people, are getting increasingly sceptical about
16 whether that can be done and the cost associated with
17 trying to do that, and that's really all I wanted to
18 add. Thanks.

19 CHAIRMAN GAW: Does Staff want to
20 comment on that, this discussion?

21 JUDGE MILLS: If Dr. Proctor is going
22 to speak, I'll swear him in.

23 MR. DOTTHEIM: Thank you.

24 (Witness sworn.)

25 JUDGE MILLS: Thank you. Please go

1 ahead.

2 DR. PROCTOR: The Joint Operating
3 Agreement that they're talking about deals with, as
4 you know, seams issues that, and I like the way Mr.
5 Whitely put it, can be very simple if we're talking
6 about simple situations. IP provides a level of
7 complexity that was -- wasn't there in terms of
8 Ameren. I think it was there in terms of ComEd, and
9 so I agree with the skepticism that Mr. Kind has
10 expressed.

11 We are going to have seams, we're going
12 to have seams somewhere in the Midwest, and so I'm
13 not talking about not having seams and not having
14 Joint Operating Agreements and all of that. I mean,
15 you have to -- you will have seams, you will have
16 Joint Operating Agreements. The issue is the
17 complexity of those, and I think it could hold us up,
18 even though I'm not convinced that you can operate
19 these systems at a highly reliable level through a
20 so-called operating agreement. We'll see.

21 CHAIRMAN GAW: And to follow-up with
22 Staff and Public Counsel, do you all agree with what
23 Ameren has stated as conditions that we should go
24 forward here in approving or trying to gain some
25 resolution to the issues in this case at this stage?

1 In other words, do we need to see the
2 development of some of these things further on before
3 we should be trying to resolve the issues in this
4 case?

5 DR. PROCTOR: I guess my response to
6 that is I think reliability is paramount. If we
7 can't come to some kind of agreement where people say
8 these systems will be run reliably, I think that's
9 absolutely paramount. I mean, I think the blackout
10 shows that. So I think it's a critical driving
11 issue, so yes, I agree with Ameren.

12 CHAIRMAN GAW: Okay. And Public
13 Counsel.

14 MR. KIND: I think we mostly agree with
15 Ameren. Maybe the small downside of not moving
16 forward with the settlement is that I think a
17 settlement agreement of the way we are resolving
18 issues would have some merit in getting completed as
19 soon as possible because of the message that it would
20 send to the FERC and other federal regulators about
21 issues that are important in Missouri, and I'm just
22 not, you know, I think if we don't do it through a
23 settlement in letting other people know that way what
24 we need in order to make RTO's work for Missouri, we
25 probably need to be aggressive in sending that

1 message in other ways.

2 CHAIRMAN GAW: Okay. And are you
3 suggesting a settlement that resolves the issues
4 regardless of the outcome of some of the things that
5 Ameren thinks are contingences or are you saying that
6 you would like to see all of the other issues
7 resolved outside of that?

8 MR. KIND: What I'm saying is that I
9 can't see us agreeing to a settlement where
10 implementation of the settlement would not be
11 contingent upon the resolution of some of these other
12 important issues.

13 CHAIRMAN GAW: Okay.
14 That clarifies it for me, and one final question, I'm
15 taking too much time myself here, and I realize that
16 there is a prior order from this Commission dealing
17 with Ameren and MISO.

18 Is it possible that -- is it possible
19 that we could -- we could -- that this Commission at
20 some point may need to reevaluate that order --
21 orders in regard to whether or not Ameren should be
22 joining MISO as an RTO?

23 MR. COFFMAN: Your Honor, Chair Gaw, I
24 mean, it's our opinion that that order is -- is of
25 questionable application in more sense Ameren did

1 exit the MISO, and yes, I do think it needs to be
2 addressed anew by this Commission.

3 CHAIRMAN GAW: All right. Staff.

4 MR. DOTTHEIM: Staff made that same
5 argument to Commissioner Gaw in a prior pleading.

6 CHAIRMAN GAW: Ameren.

7 MR. LOWERY: Commissioner Gaw, I think
8 the issue you're raising is in part and parcel of the
9 Motion to Limit Scope that has never been ruled on by
10 the Commission, and not suggesting that it needs to
11 be ruled on at this point, that was filed by Ameren
12 prior to us entering the end of the settlement
13 discussions, so depending on what happens, I think,
14 that is an issue that's going to have to be
15 addressed. I think it's a motion that would need to
16 be addressed, but at this point, I don't think it's
17 right or necessary to address it on the assumption
18 that we're able to reach a settlement. I don't think
19 that affects our settlement discussions or whether we
20 can reach settlement.

21 CHAIRMAN GAW: I don't think it does
22 necessarily, but I raise the issue in regard to this
23 question because some of the public statements that
24 were made by Ameren indicated that there may be a
25 need to reevaluate whether or not a different RTO is

1 more appropriate, or if any, I don't know whether
2 that was the other option, but, and if you wish to
3 comment any further on that, please do.

4 MR. LOWERY: Just briefly, I think it
5 is fair to say that depending upon what happens with
6 IP or the JOA that it is possible that Ameren might
7 come back to the Commission and say the Midwest ISO
8 is perhaps not the appropriate place, we ought to be
9 looking at something else, so if that is your
10 question, I think that's possible, we just don't know
11 at this point.

12 MR. GAW: And I'm assuming the parties
13 will be informing the Commission if that becomes an
14 issue that we need to address.

15 MR. LOWERY: I would certainly think
16 so.

17 CHAIRMAN GAW: I see heads nodding, I
18 don't know if the Court Reporter picks that up. All
19 right. That's all I have. Thank you, Judge.

20 JUDGE MILLS: Commissioner Murray.

21 COMMISSIONER MURRAY: Thank you. Mr.
22 Zobrist, I'd like to ask you if you can respond to
23 this, if you don't feel comfortable responding, you
24 don't have to, but with the -- beyond the seams
25 issues with IP, potentially, and it looks like

1 probably not joining MISO, is the future of MISO at
2 stake?

3 MR. ZOBRIST: I don't think the future
4 of MISO is at stake because it's already an operation
5 and it's developing a proving record, but this
6 creates some additional issues. There's no doubt
7 about that. Our President, Jim Toggerson, expressed
8 that concern before FERC, and Mr. Whitely was there,
9 so I think it's a -- it certainly is a concern.

10 It would propitiate the Swiss cheese
11 problem that we've had for a number of years,
12 particularly because of AEP's decision to remain
13 agnostic about RTO's and finally recently say, well,
14 we'll stick our toe into the PJM puddle but we don't
15 really want to be part of it, so it creates some of
16 these continuing issues.

17 I mean, I have to say from my selfish
18 viewpoint, I guess, is having worked with MISO for a
19 number of years, I think MISO still is the only game
20 in town for the majority of the Midwest. This is a
21 critical issue.

22 At the same time, I would agree with
23 what Mr. Kind said, most of these issues can be
24 worked through, but there is a question of cost and
25 there's question of reliability, and particularly

1 since the August 14th blackout, MISO has communicated
2 very clearly that its concerned more about
3 reliability right now than just putting the markets
4 into effect, and I don't know if the Commission has
5 seen the communication that came out to stakeholders
6 yesterday, but the current proposal is to refile the
7 energy markets tariff in March of '04 with a markup
8 start up in December of '04, and I think that shows,
9 you know, that MISO's commitment to address
10 reliability issues ahead of pure market issues.

11 COMMISSIONER MURRAY: Now, in terms of
12 cost for the MISO, of course, the fewer utilities
13 that are in it, I would think the less cost you're
14 going to recover, the fewer cost you would be
15 recovering, and you mentioned earlier that you would
16 be asking FERC to hold UE -- AmerenUE harmless for
17 the merger if it takes place. Are you talking about
18 holding Ameren harmless to the additional costs that
19 would be created for being a part of MISO or what it
20 specifically were you referencing there?

21 MR. ZOBRIST: Well, I think what we're
22 -- what MISO is referencing is the whole harmless
23 language in the white paper. What the white paper
24 was saying is that if markets are going to be
25 introduced, they need to be introduced in a fashion

1 that holds, you know, all existing customers harmless
2 from RTO developments and RTO politics, and so what
3 we are proposing is that if the merger between Exilon
4 and Illinois Power goes forward, and that's a big if,
5 because there are a lot of other things that need to
6 fall into place, we think it's reasonable for FERC to
7 impose a whole harmless standard if it's going to
8 approve that merger so that Ameren's customers in
9 both Illinois and Missouri are held harmless from any
10 risks that IP joining PJM would trigger.

11 COMMISSIONER MURRAY: And assume worst
12 case scenario here for MISO assuming that Ameren did
13 not end up joining MISO, what would -- what would
14 MISO consist of then?

15 MR. ZOBRIST: Well, the MISO right now,
16 the heart of MISO tends to be Indiana, Michigan,
17 portions of Illinois and Ohio, but we haven't, you
18 know, we've got Wisconsin Electric and number of
19 utilities in the upper Midwest that have either
20 joined independently or are working to join through
21 translink, so you know, it would create an enormous
22 scene, and I think that's why we think that Ameren is
23 very critical to MISO, and MISO has had a very good
24 working experience with Ameren over the last, you
25 know, 12, I guess 12 months, maybe more than that, to

1 address all these issues, and we think it can be
2 successfully introduced, but you know, although I
3 know Southwest Power Pool is introducing some
4 proposals, they appear to be at a very, you know,
5 more relaxed timetable, and you know, we've got
6 markets developing in Texas, which is a big market,
7 and so we think that we need to move, you know,
8 properly but expeditiously toward reliability goals
9 and markets, so we think that Midwest ISO really is
10 still the best hope for all of the Midwest.

11 COMMISSIONER MURRAY: Would anybody
12 else want to comment on those? If not, I'll pass
13 this along to Commissioner Forbis. Thank you.

14 JUDGE MILLS: Thank you. Commissioner
15 Forbis, any questions?

16 COMMISSIONER FORBIS: In regards with
17 time, I'm fine. Commissioner Gaw.

18 CHAIRMAN GAW: I don't think so.

19 JUDGE MILLS: I think that's it for
20 questions from the bench. Anything further from the
21 parties? Okay. Well, I appreciate you all the
22 coming in on relatively short notice and I think we
23 got a lot of information out in a relatively short
24 period of time. We're adjourned.

25 WHEREUPON, the recorded portion of the

1 order scheduling presentation was concluded.

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