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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
  
TRANSCRIPT OF PROCEEDINGS  
  
Discovery Conference  
  
January 16, 2004  
Jefferson City, Missouri  
Volume 1

In the Matter of the Application of )  
Union Electric Company, doing )  
business as AmerenUE, for an Order )  
Authorizing the Sale, Transfer and )  
Assignment of Certain Assets, Real )  
Estate, Leased Property, Easements ) Case No. EO-2004-0108  
and Contractual Agreements to )  
Central Illinois Public Service )  
Company, doing business as )  
AmerenCIPS, and, in connection )  
therewith, Certain other Related )  
Transactions. )

KEVIN A. THOMPSON, Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.

REPORTED BY:  
  
KELLENE K. FEDDERSEN, CSR, RPR, CCR  
ASSOCIATED COURT REPORTERS

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

2 JUDGE THOMPSON: We're here for a discovery  
3 conference in Case EO-2004-0108, in the matter of Union  
4 Electric Company, doing business as AmerenUE, and I believe  
5 this is the application for authority to transfer certain  
6 assets. And why don't we take oral entries of appearance at  
7 this time, and we'll start with the company, who is  
8 attending by telephone.

9 MR. RAYBUCK: Good afternoon, your Honor,  
10 and thank you. This is Joseph Raybuck. I'm an attorney  
11 with Ameren Services Company. My mailing address is  
12 P.O. Box 66149, St. Louis, Missouri 63166-6149.

13 JUDGE THOMPSON: Thank you, Mr. Raybuck.  
14 Mr. Coffman?

15 MR. COFFMAN: John B. Coffman on behalf of the  
16 Office of the Public Counsel.

17 JUDGE THOMPSON: Staff?

18 MR. DOTTHEIM: Steven Dottheim, Post Office  
19 Box 360, Jefferson City, Missouri 65102, appearing on behalf  
20 of the Staff of the Missouri Public Service Commission.

21 JUDGE THOMPSON: Thank you, Mr. Dottheim.

22 My name is Kevin Thompson. I'm the Regulatory  
23 Law Judge assigned to preside over this matter, and this is  
24 the discovery conference which is mandated by the  
25 Commission's discovery rules. What I would like is to

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1   hear -- I understand there's a number of Data Requests in  
2   dispute, and I believe these are Data Requests propounded by  
3   the Office of the Public Counsel to the company and that the  
4   company has objections.

5                   I guess the first point is who should be going  
6   first. I guess that it's Public Counsel that would be in  
7   the position of filing a motion to compel, so I believe,  
8   then, it should be your burden to go forward, Mr. Coffman.  
9   And then we'll give Mr. Raybuck an opportunity to respond,  
10   and we'll give Staff an opportunity to weigh in if Staff  
11   wants to. And why don't we just go DR by DR or take them in  
12   groups or whatever way you think would be best.

13                  MR. COFFMAN: Your Honor, I think they could  
14   probably be grouped into about five different groups.

15                  JUDGE THOMPSON: Okay.

16                  MR. COFFMAN: And if I could just -- and maybe  
17   it would be appropriate for me to compel each group at a  
18   time, allow Mr. Raybuck to respond to that group or that  
19   particular motion, you know, and then do them in that kind  
20   of segmentation.

21                  JUDGE THOMPSON: That would be fine. Why  
22   don't you take them up in whatever way you want and just  
23   tell us why you think they ought to answer them.

24                  MR. COFFMAN: Okay. And with regard to the  
25   first two motions I would make, there have not been

1 objections exactly. There will simply be a concern that the  
2 responses have not been complete.

3 JUDGE THOMPSON: Okay.

4 MR. COFFMAN: The first one I'll just address,  
5 and I think this is a question that's probably already been  
6 answered and we can deal with it, but if I need to I'll make  
7 a formal motion to compel discovery relating to one document  
8 pursuant to Public Counsel Data Request 501, which asks for  
9 responses to Commission Staff Data Requests. There was a  
10 particular document that responded to Staff Data Requests or  
11 Staff questions.

12 It was a document dated December 23, 2003, and  
13 had been labeled as privileged and confidential and  
14 settlement discussion only. I've been told by Mr. Raybuck  
15 that that document will be produced for me in a forum that  
16 is not labeled or designated as privileged and confidential;  
17 is that correct?

18 MR. RAYBUCK: That is correct, John.

19 MR. COFFMAN: Okay.

20 MR. RAYBUCK: And in general, I believe, your  
21 Honor, that should address Mr. Coffman's concerns regarding  
22 501.

23 JUDGE THOMPSON: Okay.

24 MR. RAYBUCK: By the way, I had intended,  
25 John, to get you a letter before today's conference on this

1 and on a number of other issues, but unfortunately I didn't  
2 get around to finalizing that, but I do expect to get that  
3 to you shortly. And I can, in effect, read to you the  
4 relevant portions of that letter, and that was going to be  
5 the first topic that I was going to address.

6                   So I -- so we will, as you indicated, remove  
7 the privileged designation from the December 23rd document  
8 and provide that to you in response to your DR 501, and  
9 those are -- that would be all of the responses that we  
10 believe we owe you under 501.

11                   JUDGE THOMPSON: So that -- I assume that  
12 resolves your concerns under 501?

13                   MR. COFFMAN: I believe it does.

14                   MR. DOTTHEIM: Mr. Raybuck?

15                   MR. RAYBUCK: Yes. Is that Steve?

16                   MR. DOTTHEIM: Yes. Steve Dottheim. I'm  
17 sorry. In that that is a response to a Staff Data Request,  
18 will a copy also be provided to the Staff?

19                   MR. RAYBUCK: Well, a copy was already given  
20 to the Staff, Steve, and I guess the confusion was that we  
21 didn't view it as a Data Request. We viewed it as a series  
22 of questions by the Staff, which we answered. We thought at  
23 the time, Judge, that we were going to get into  
24 negotiations, and that's why we marked it confidential, but  
25 as it turned out, we did not. So we're willing to lift the

1 privileged designation, and a copy was already provided to  
2 the Staff.

3 MR. DOTTHEIM: Without the designation of  
4 privileged and confidential?

5 MR. RAYBUCK: Oh, I'm sorry. No. You only  
6 got the designation with privileged, and I will send you a  
7 version without that designation.

8 MR. DOTTHEIM: Yes. Excuse me. I wasn't  
9 clear enough. That's the only reason I raised that matter,  
10 so that we also could have a copy without the prior  
11 designation on the document as you're providing to the  
12 Office of the Public Counsel.

13 JUDGE THOMPSON: Okay. What's next?

14 MR. COFFMAN: The next group of Data Requests  
15 which I would like to formally make a motion to compel would  
16 be a motion to compel Data Requests 532, 535 and 536. I  
17 don't know if you think it's necessary for me to read them  
18 into the record, but they do all relate to a joint dispatch  
19 agreement.

20 MR. RAYBUCK: Excuse me, Judge. I'm having a  
21 lot of difficulty hearing the conversation. There's a lot  
22 of breakup.

23 JUDGE THOMPSON: I'll have everybody move  
24 closer to the speakerphone. Can you hear me okay?

25 MR. RAYBUCK: Yes, I can hear you loud and

1 clear, Judge.

2 JUDGE THOMPSON: I'm closest to the phone,  
3 which is probably why.

4 MR. COFFMAN: I will speak -- is this better,  
5 Joe?

6 MR. RAYBUCK: That's a lot better. Thank you.

7 JUDGE THOMPSON: Steve, why don't you come  
8 around over here and shout when you talk.

9 What we'll do is we'll just attach the Data  
10 Requests that I have copies of here to the transcript as  
11 exhibits, if that's okay.

12 MR. COFFMAN: I think that would probably save  
13 some time.

14 JUDGE THOMPSON: So we'll mark 501 as  
15 Exhibit 1 and we'll mark 532 as Exhibit 2, 535 as Exhibit 3,  
16 536 as Exhibit 4. Okay?

17 MR. COFFMAN: All right.

18 JUDGE THOMPSON: That way this will all make  
19 sense to anyone who sees it.

20 MR. COFFMAN: And again, with regard to these  
21 three Data Requests, we have not received any objection or  
22 at least any timely objection relating to these. The  
23 question that we have and the basis behind the motion is  
24 that we are not certain that we have received everything  
25 that was within the scope of the Data Request.



1                   We were told for several weeks that we would  
2   be receiving something after there was some approval made at  
3   an upper level of management. We did receive yesterday a  
4   document that is, I guess, described as a joint dispatch  
5   agreement analysis. It is a PowerPoint presentation that  
6   leaves us wondering whether we have really received  
7   everything in response to these Data Requests.

8                   And I would note that the Data Requests ask  
9   for all documents relating to -- 532 relating to  
10   descriptions or analysis or references to possible plans for  
11   modifying or eliminating the joint dispatch agreement. Data  
12   Request 535 asks for all documents that contain descriptions  
13   of or references to any studies that may be conducted to  
14   analyze the advantages or disadvantages of terminating or  
15   modifying the joint dispatch agreement. And Data  
16   Request 536 asks for the results of any studies that have  
17   been conducted.

18                  I would note that it's been customary to  
19   define the term "documents" to include work papers, letters,  
20   memorandum, notes, reports, analyses, computer analyses,  
21   data recordings of any kind, including electronic  
22   information, communications or even drafts of -- early  
23   drafts of particular documents. And these are -- and this  
24   is a definition that was used by AmerenUE in the recent  
25   earnings complaint case, and it -- so we, I guess, are

1 making a motion to compel to make sure we are getting  
2 everything that is within the scope of these three Data  
3 Requests.

4 JUDGE THOMPSON: Okay. Mr. Raybuck?

5 MR. RAYBUCK: Yes, your Honor. I believe we  
6 are giving him everything within the scope of the Data  
7 Request consistent with the Protective Order which has been  
8 issued in this case. We have prepared a formal response to  
9 532, 535 and 536. I had intended to send it out before the  
10 conference, but alas, I just didn't get to it.

11 As Mr. Coffman indicated, yesterday we  
12 sent to the Public Counsel the PowerPoint presentation  
13 which, in effect, is the lion's share of the response to  
14 these three data requests. In the answer that I will be  
15 sending to Mr. Coffman, perhaps later this afternoon, we  
16 will indicate -- we will make three other points.

17 The first point that we would make is that  
18 this -- the PowerPoint presentation that we sent is the  
19 summary output of a model which is -- which contains  
20 multiple inputs and outputs, thousands, in fact. And the  
21 output, the paper output of this model would yield at least  
22 300 pages by our conservative estimate, and therefore, would  
23 be voluminous according to paragraph K of the Protective  
24 Order.

25 And as a result, we've indicated that we don't

1 think we're obligated to provide every single piece of paper  
2 that would represent the output of the model. Instead, we  
3 believe it's more appropriate for the Public Counsel to come  
4 to our offices to view this information, and we believe  
5 that's in accordance with the Protective Order.

6 Two other points. At a meeting we had  
7 yesterday with Staff and with Public Counsel, the Staff  
8 requested that we provide excerpts from this model and we  
9 will do that, and we will provide copies to the Public  
10 Counsel.

11 One final point. These Data Requests do  
12 relate to documents for which we believe privileges are  
13 appropriate, and in our response, again, that will be sent  
14 out perhaps later today, we indicate what those privileges  
15 are and it's basically the work product doctrine and the  
16 attorney/client privilege.

17 So that is what Mr. Coffman will see in the  
18 formal response that he will get, and we believe that is  
19 responsive and that we have responded appropriately and  
20 completely.

21 JUDGE THOMPSON: Mr. Dottheim, anything?

22 MR. DOTTHEIM: No, I have nothing to add on  
23 these Data Requests.

24 JUDGE THOMPSON: Okay. I understand there  
25 were no timely objection letters; is that correct?

1 MR. COFFMAN: That's correct.

2 JUDGE THOMPSON: Okay. Because there were no  
3 timely objection letters, the privileges are waived, and I  
4 don't think that 300 pages is excessive, and consequently,  
5 I'm going to rule that Ameren must print out the 300 pages  
6 and provide them to Public Counsel as requested.

7 MR. RAYBUCK: Judge, may I respond to that?

8 JUDGE THOMPSON: You may.

9 MR. RAYBUCK: I mean, I respect your ruling.  
10 I would ask you to reconsider in light of a couple of  
11 different facts.

12 JUDGE THOMPSON: Sure.

13 MR. RAYBUCK: A couple of additional facts. I  
14 don't believe we have waived any privilege. What we did on  
15 a timely basis was to send to the Public Counsel a  
16 preliminary response stating that we were in the process of  
17 completing a study of the joint dispatch agreement.

18 We indicated that the analysis was materially  
19 complete, but that it awaited the review and approval of  
20 senior management. And we further indicated that once that  
21 review was complete, we would schedule a meeting with the  
22 Staff and the Public Counsel to discuss the results.

23 We did have that meeting with senior  
24 management on January 12th, and at that time decisions were  
25 made as to what the final recommendations would be. And in

1   accordance with that meeting, decisions were made consistent  
2   with the privileges that I mentioned, and therefore, since  
3   we did give an earlier response which indicated that we  
4   weren't ready, basically, I would respectfully disagree and  
5   submit that we did not waive the privilege.

6                   JUDGE THOMPSON:   Well, let me ask a couple of  
7   questions, if I may.

8                   MR. RAYBUCK:   Certainly.

9                   JUDGE THOMPSON:   First of all, did the  
10   preliminary response raise any claims of privilege?

11                  MR. RAYBUCK:   It did not do so, your Honor.

12                  JUDGE THOMPSON:   Okay.  And secondly, when you  
13   provided the preliminary response, did you elicit and obtain  
14   a formal agreement, and by that what I mean is an  
15   affirmative agreement on the part of Public Counsel to  
16   provide an additional interval until your results were  
17   complete?

18                  MR. RAYBUCK:   I understood, based on my  
19   conversations with John Coffman, that he, in effect, gave us  
20   additional time to respond to his Data Request.

21                  MR. COFFMAN:   Your Honor, it is accurate that  
22   we said that we would wait to pursue discovery on the Data  
23   Requests, in other words agreed to allow more time for  
24   responses, but it was not my intent and I don't think that I  
25   gave any waiver or extension as to the time to make any

1 objection. It was my understanding that there weren't any  
2 objections.

3 JUDGE THOMPSON: Okay. Well, I'm going to  
4 stick with the ruling that I made, and of course, you'll  
5 have an opportunity by way of a motion for reconsideration  
6 to bring that particular point to the Commissioners, okay,  
7 if you don't like the way I've dealt with it.

8 What's our next thing?

9 MR. RAYBUCK: Judge, I had one other point on  
10 the issue.

11 JUDGE THOMPSON: Yes, sir. Let me hear it.

12 MR. RAYBUCK: On the issue of voluminous, what  
13 I'm going by is paragraph K of the Protective Order.

14 JUDGE THOMPSON: Okay.

15 MR. RAYBUCK: And as I understand  
16 paragraph K --

17 JUDGE THOMPSON: Why don't you read that to  
18 me?

19 MR. RAYBUCK: Certainly. If a response to a  
20 discovery request requires the duplication of voluminous  
21 materials or material not easily copied because of its  
22 binding or size, the furnishing party may require the  
23 voluminous material be reviewed on its premises. Voluminous  
24 material shall mean a single document, book or paper which  
25 consists of more than 150 pages.

1                   And the point that I was trying to make during  
2 my earlier response --

3                   JUDGE THOMPSON: Okay. Well, I yield to that  
4 point. I didn't realize that the Protective Order actually  
5 set a clear and unmistakable numerical standard. So I  
6 appreciate you bringing that to my attention. So I will  
7 stick to my guns on the waiver of privilege, but with  
8 respect to making you produce it, since the Order clearly  
9 gives an upward limit of 150 pages, then I think Mr. Coffman  
10 is going to have to travel to your location to see it.  
11 Thank you very much.

12                   Anything else?

13                   MR. RAYBUCK: Nothing further, your Honor.

14                   JUDGE THOMPSON: Okay.

15                   MR. COFFMAN: I think we can go on to the next  
16 grouping of Data Requests, which would be Data Requests 503,  
17 504, 505, 508, 509, 5010, 5011, 5012, 5013, 5014, 50 -- I'm  
18 sorry. Let me restate that again. I got a little carried  
19 away with it.

20                   I think I can state that we are talking about  
21 Data Request 503 through 505, 508 through 519, and 521.

22                   JUDGE THOMPSON: Okay. What about 512?

23                   MR. COFFMAN: Did I skip that?

24                   JUDGE THOMPSON: Well, I just noted it's not  
25 highlighted on this.

1                   MR. COFFMAN: No, I don't think that one's in  
2     dispute.

3                   JUDGE THOMPSON: Okay.

4                   MR. COFFMAN: And what these Data Requests all  
5     have in common is that they request information from  
6     AmerenUE and its affiliates relating to the management of  
7     SO2 allowances, which are sometimes described as pollution  
8     credits. These are allowances that can be used to operate  
9     primarily coal plants and are related to whether it is  
10    prudent to be relying upon coal plants.

11                  And there has been an objection to these Data  
12    Requests, as you can see from the letter I submitted  
13    yesterday, which makes an objection on the grounds that  
14    these are not relevant to any of the issues in the case and  
15    are not likely to lead to the discovery of admissible  
16    evidence. I disagree with that objection, and in order to  
17    make my point, I need to explain what is our aim here and  
18    what I believe to be the issue before the Commission.

19                  This is AmerenUE is making a filing under  
20    Section 393.190 to transfer certain property to another  
21    affiliate, AmerenUE, or rather AmerenCIPS, Ameren C-I-P-S.  
22    And essentially what this means for AmerenUE is that the  
23    Illinois portion of AmerenUE's energy capacity will then be  
24    used to serve Missouri's customers. So it's really a  
25    transfer of load, which results in AmerenUE receiving more



1 capacity than has been used to serve AmerenUE Illinois  
2 customers.

3               What Public Counsel is exploring and analyzing  
4 in order to respond to the application here is whether this  
5 is the least-cost option way for AmerenUE to supply future  
6 capacity needs. The application simply presents this  
7 proposed transfer against the status quo, and we believe  
8 that there are many other options that should be compared  
9 against to ensure that there's not a detriment to the  
10 public, to ensure that AmerenUE would be pursuing the  
11 least-cost option and the most prudent course of action.

12              Our discovery is aimed at ensuring that Ameren  
13 is prudently managing its SO2 allowances because what would  
14 result from a transfer in the application is a resource  
15 portfolio that more heavily relies upon coal plants. And as  
16 that results, the manner in which SO2 allowances are managed  
17 and whether, for instance, AmerenUE is sufficiently banking  
18 enough SO2 allowances is relevant to that question. I think  
19 that sums up the basic relevance.

20              Now, I guess I need to note that we have  
21 responded, we have received from AmerenUE some information  
22 in response to most of these Data Requests. What we have  
23 not received is any information relating to the SO2  
24 allowance questions for Am-- for the affiliates, and so I --  
25 and perhaps it would be good to get on the record what

1 Mr. Raybuck believes the case to be, first of all, whether  
2 the questions have been answered, the Data Requests have  
3 been responded to completely with regard to UE, and then as  
4 to what -- what, if any, information is there as to  
5 affiliates and whether that is the extent of the relevance  
6 objection.

7 And if the issue is merely that AmerenUE  
8 believes that affiliate information is beyond the proper  
9 scope of discovery, I have a series of court cases and prior  
10 Commission decisions and arguments that I would make on that  
11 particular point.

12 JUDGE THOMPSON: Mr. Raybuck?

13 MR. RAYBUCK: Yes, sir. In response to  
14 Mr. Coffman's first point, this is something that I was  
15 going to be addressing in the letter that I was planning to  
16 send to him and will send to him shortly, and it indicates  
17 that we have responded fully with respect to UE. I believe  
18 that was one of the points you just raised, John.

19 With regard to affiliate transactions, Judge,  
20 we believe that any transaction involving Union Electric and  
21 an affiliate which is relevant to the issues in the Metro  
22 East Transfer request is fair game for the Public Counsel or  
23 Staff or any party to do discovery on, but we don't believe  
24 there's been any showing made to date that SO2 allowances  
25 fit within that appropriate scope.

1                   In other words, we don't believe there's been  
2   any showing that an SO -- that there are transactions  
3   between Union Electric and an affiliate for the sale or  
4   exchange of SO2 allowances which relates to the Metro East  
5   Transfer.

6                   The Metro East Transfer involves a transaction  
7   between Union Electric and CIPS, Central Illinois Public  
8   Service Company. Union Electric proposes to transfer its  
9   Illinois service territory to its affiliate CIPS. CIPS does  
10  not own any generation, does not own any generating power  
11  plants and, therefore, it does not have any SO2 allowances.

12                  And so there is nothing, we believe, that's  
13  relevant to the Metro East case, which involves the trans--  
14  a transaction between UE and an affiliate regarding SO2.

15                  JUDGE THOMPSON: What is the affiliate in  
16  question, or the affiliates in question?

17                  MR. COFFMAN: Well, your Honor, this is a  
18  holding company situation. There's Ameren Corporation,  
19  which is the holding company. AmerenUE and AmerenCIPS are  
20  under that parent company. We also have Ameren Energy  
21  Generating, Ameren Energy Resources, Ameren Energy Services,  
22  and there are probably a variety of other affiliates. But I  
23  believe those are the major ones. There's some other  
24  complicated arrangements amongst them. If I might --

25                  JUDGE THOMPSON: Anything you need to do so

1 that I can understand this, go ahead.

2 MR. COFFMAN: Well, let me first explain how  
3 this current holding company situation got to be where it  
4 is. There was a merger in 1997, the subject of Commission  
5 Case EM-96-149, whereby this merger was allowed to occur  
6 based upon a Stipulation & Agreement. And I have a copy of  
7 the Report and Order, if you don't recall that, and this  
8 was -- what was created at that time was a -- a holding  
9 company situation.

10 If I can refer you in that document to the  
11 attachment and page 23, part of the Stipulation & Agreement,  
12 an important provision in there to my office was paragraph B  
13 on that page. It's under the state jurisdictional issues.  
14 It's simply the statement that --

15 JUDGE THOMPSON: This is page 23 of the  
16 attachment?

17 MR. COFFMAN: Of the attachment.

18 JUDGE THOMPSON: Okay. I see it. Okay.

19 MR. COFFMAN: Which is entitled Voluntary and  
20 Cooperative Discovery Practices, and it states, UE, Ameren  
21 and any affiliate or subsidiary thereof agree to continue to  
22 voluntary and cooperative discovery practices.

23 And this was a recognition that, as this  
24 entire corporate structure was set up, that there would be  
25 the need for discovery to occur amongst the various entities

1 in the Ameren family.

2 JUDGE THOMPSON: Is there a definition in here  
3 of what a voluntary and cooperative discovery practice is?

4 MR. COFFMAN: I don't believe there is.

5 JUDGE THOMPSON: Did you mean -- do you  
6 understand this to mean that the unregulated affiliates and  
7 subsidiaries would respond as though they were regulated  
8 entities?

9 MR. COFFMAN: No, your Honor. And, in fact,  
10 in the paragraph preceding that, AmerenUE did -- does  
11 reserve right to make any proper discovery objections.

12 JUDGE THOMPSON: Okay.

13 MR. COFFMAN: And -- but I think that it is a  
14 recognition that Ameren and its affiliates operate as one  
15 entity and that there are going to be times such as this  
16 where the information amongst the various affiliates are  
17 going to be required for the Commission to properly make  
18 decisions involving the regulated entity.

19 There was also identical language in a  
20 subsequent case, EA-2000-37, when the exempt wholesale  
21 generating application was made and the even more  
22 complicated corporate structure was entered into, and I  
23 could show that to you, but there's identical language in  
24 the stipulation of that particular case.

25 JUDGE THOMPSON: Okay.

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1                   MR. COFFMAN: I believe it's on page 17 of the  
2 attached stipulation to the Order approving that  
3 application. I then have a series of cases that I could  
4 give you, and I will proceed to hand those to you, and I  
5 have also alerted Mr. Raybuck that I might be referring to  
6 these cases. The first one --

7                   JUDGE THOMPSON: I think I've seen this one  
8 before.

9                   MR. COFFMAN: -- is the Associated Natural Gas  
10 case, which was decided in the Western District Court of  
11 Appeals and a rehearing denied by the Supreme Court. In  
12 this particular case, the issue of double leveraging was  
13 addressed, and there are certain comments by the court  
14 which, I think, bear on what is proper scope of discovery  
15 before the Public Service Commission.

16                   And on page 10 of the copy, I think, that you  
17 have, but it would be page 880 of that in Volume 706 SW  
18 Reporter 2nd, it does designate that -- it does point out  
19 that Missouri Statute Section 393.140 does prohibit  
20 regulation of any other business of a utility, but does not  
21 restrict the Commission's right to inquire as to and  
22 prescribe the apportionment of capitalization earnings,  
23 debts and expenses fairly and justly to be borne by the  
24 utility in question.

25                   JUDGE THOMPSON: Okay.

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1                   MR. COFFMAN: And if you -- if you proceed to  
2 the next page, which would be page 881 in the Southwest  
3 Reporter, there is a section under, I guess, keynote 13  
4 where the court points out that the conscious and voluntary  
5 corporate business decision that resulted in the hierarchy  
6 as exists here should not and cannot shield pertinent  
7 financial data from the Commission's scrutiny just because  
8 the ultimate owner does not provide the same service as the  
9 applicant and is not regulated.

10                   And I won't -- I won't go into all the facts  
11 of the cases below, but I would point out that the courts  
12 have recognized the Commission has broad discretion to -- to  
13 look at and base its decisions on information from the  
14 affiliates, both in the Southwestern Bell case,  
15 645 SW 2nd 44 and in the --

16                   JUDGE THOMPSON: Suburban House Interiors?

17                   MR. COFFMAN: No. That would be the GTE case,  
18 which is 537 SW 2nd 655.

19                   JUDGE THOMPSON: Okay.

20                   MR. COFFMAN: And I've also handed you copies  
21 of two Orders from our Missouri Gas Energy rate case that  
22 was decided by the Commission in 1998, two Orders granting  
23 the compelling of Data Requests by the Staff of the  
24 Commission relating to a variety of parent company and  
25 affiliate information.

1                   Now, these are our rate cases, although I  
2     would also note the recent decision by the Missouri Supreme  
3     Court in the Ag Processing vs Public Service Commission  
4     appeal, which points out that in an application based on  
5     Section 393.190, the Commission is required to consider the  
6     future ratemaking implications of an application when the  
7     not detrimental standard is considered.

8                   And so that's a rather, I guess, a longwinded  
9     way to point out that Public Counsel's concern in this case  
10    is whether or not AmerenUE is making the least cost option  
11    that it could be when it proposes this Illinois transfer,  
12    and our concern is about what that implication would be  
13    about future rates.

14                  JUDGE THOMPSON: Now, let me interrupt you. I  
15    understand your concern. Are you suggesting -- I'm not sure  
16    I understand what you're saying when you say you're  
17    concerned that Ameren may not be making the least cost  
18    option with respect to this transfer. Give me an example of  
19    what you think they could do otherwise.

20                  MR. COFFMAN: Well, we were currently  
21    discussing the SO2 allowances.

22                  JUDGE THOMPSON: Right.

23                  MR. COFFMAN: And the issue here is whether or  
24    not there have been -- those SO2 allowances are being  
25    managed in a way that is prudent and that would be prudent



1 if AmerenUE's energy portfolio included more coal plants  
2 under the application.

3 JUDGE THOMPSON: Than it presently does?

4 MR. COFFMAN: Yes. And as it relates to  
5 affiliates, I'll point out that these decisions about how to  
6 manage SO2 allowances, I believe, are made at another  
7 affiliate. They are made at the holding company level or at  
8 the Ameren Energy Services level.

9 JUDGE THOMPSON: But didn't Mr. Raybuck say  
10 that CIPS has no coal-fired generating assets?

11 MR. RAYBUCK: That's correct, your Honor.

12 JUDGE THOMPSON: So I guess what I'm trying to  
13 understand is how this transfer affects the SO2 allowances.  
14 Are they going to have coal-fired generating plants if the  
15 transfer goes through?

16 MR. COFFMAN: The transfer would result in a  
17 change, as I understand it, in the percentage of AmerenUE's  
18 portfolio which is dependent upon coal plants.

19 JUDGE THOMPSON: Because existing plants  
20 somewhere else that are coal-fired are going to be serving  
21 Ameren, whereas presently they're serving --

22 MR. COFFMAN: Yes. I mean, it's a unique  
23 application in that, from the AmerenUE perspective, it is  
24 transferring load as opposed to transferring plants.

25 JUDGE THOMPSON: Okay.

1                   MR. COFFMAN: That results in a -- the plants  
2 that have been providing AmerenUE Illinois customers would  
3 then be dedicated to AmerenUE customers, and those plants  
4 are primarily coal plants, as I understand it.

5                   JUDGE THOMPSON: Okay. Now, are those plants  
6 in Missouri?

7                   MR. COFFMAN: I don't know that that's -- I  
8 wouldn't know if they would be exclusively in Missouri.

9                   JUDGE THOMPSON: Okay. But they're existing  
10 plants?

11                  MR. COFFMAN: Yes.

12                  JUDGE THOMPSON: So aren't there SO2  
13 allowances with respect to those plants already?

14                  MR. COFFMAN: Yes, but it's our understanding  
15 from discovery that we have already done that there have  
16 been transactions made between affiliates that raise  
17 concerns and suspicions that we would like to pursue further  
18 by obtaining information from all of AmerenUE's affiliates.

19                  JUDGE THOMPSON: So is it your position that  
20 this is going to result in rate increases for Missouri  
21 customers?

22                  MR. COFFMAN: It's our concern, yes, and  
23 that's the aim of this, and we would like to be able to  
24 pursue it further through discovery to make that  
25 determination for ourselves.

1 JUDGE THOMPSON: Mr. Raybuck, do you have any  
2 response?

3 MR. RAYBUCK: I do, your Honor. As I  
4 indicated at the beginning, I think it's fair game for  
5 Mr. Coffman and the Public Counsel to obtain information as  
6 to UE's SO2 allowances certainly, and also any information  
7 as to transactions that UE engages in for SO2 allowances  
8 with an affiliate. But as I understand it, what he wants to  
9 know is the SO2 allowances of Ameren's affiliates,  
10 regardless of whether they're doing any transaction with the  
11 Union Electric Company, and I think that's off bounds, out  
12 of bounds.

13 With regard to UE's SO2 allowances, he  
14 indicated a concern about rates. I think it's appropriate  
15 for him to inquire as to UE's existing SO2 allowances and  
16 any projections it may have made as a result of the Metro  
17 East transfer, I think that would appropriate. But again,  
18 that would be information as to Union Electric, and for him  
19 to inquire as to the SO2 position of an affiliate,  
20 regardless of whether it's doing any business with Union  
21 Electric, I think, is beyond the scope of this case and just  
22 generally not appropriate under the affiliate transaction  
23 rules.

24 MR. COFFMAN: I would make just one other  
25 point, and that is -- is that to totally understand the

1 corporate relationships here, I think it's important to  
2 point out that no one at AmerenUE, as I understand it, makes  
3 the resource planning decisions for UE. The witnesses who  
4 have filed direct testimony in this particular case are not  
5 AmerenUE customers. They are employees of Ameren Services,  
6 where these decisions are made resource planning-wise for  
7 all of the affiliates.

8           The ultimate decision maker for AmerenUE is  
9 the CEO, Mr. Rainwater. He is also the CEO of the holding  
10 company and the -- it is our understanding of how this  
11 relationship works is that decisions are made generally for  
12 the benefit of the holding company. There is one strategic  
13 plan that drives all of the affiliates. There are, for  
14 various reasons, different entities that, for a variety of  
15 purposes, make decisions.

16           But for the purposes of understanding resource  
17 planning decisions and whether they are the most prudent and  
18 reasonable decisions and whether or not this particular  
19 application is detrimental to the public, we believe we need  
20 to discover information that looks at the entire picture,  
21 the entire holding company family.

22           JUDGE THOMPSON: Okay. Mr. Dottheim, does  
23 Staff have any position on this?

24           MR. DOTTHEIM: Staff has nothing to add at  
25 this time.

1 JUDGE THOMPSON: Okay. Well --

2 MR. RAYBUCK: May I make one additional point  
3 in response to Mr. Coffman, Judge?

4 JUDGE THOMPSON: As many as you want.

5 MR. RAYBUCK: All right. Thanks. I'll be  
6 brief. With reg-- Mr. Coffman referenced Ameren Services  
7 and Ameren's holding company system. It is correct that  
8 Ameren Corporation is a registered holding company under the  
9 Public Utility Holding Company Act and, as such, was  
10 compelled by regulations of the Securities and Exchange  
11 Commission to have a services company. That's the way the  
12 SEC has implemented the PUHCA legislation since it's been  
13 enacted in the 1930s.

14 The SEC's belief is that efficiencies are to  
15 be derived from having a centralized services company  
16 performing various services for utilities and other entities  
17 in the holding company system. So Mr. Coffman is generally  
18 correct that in this case, the people making the SO2  
19 decisions are employees of a services company, in this case  
20 either Ameren Services or Ameren Fuels and Services.

21 But in my opinion that does not get him as far  
22 as he needs to go. The employees of the services company  
23 are acting as agent for the utility. There are regulations  
24 in effect at the SEC and by the Missouri Commission to  
25 prevent subsidization and improper non-utility activities,

1 and our employees are made aware of that. And to the extent  
2 that the Staff or the Public Counsel or another party  
3 believes that the services company employees are not  
4 engaging in the best interests of the utilities, they're  
5 certainly free to bring that to the Commission.

6 And just to recap, we don't believe there's  
7 any nexus connecting the SO2 transactions of the affiliates  
8 with those of Union Electric or with any of the issues in  
9 the Metro East case.

10 JUDGE THOMPSON: Okay. Well, let me zero in  
11 on a couple things that I've heard. No. 1, you told me that  
12 the decisionmakers and affiliates are acting as agents for  
13 AmerenUE; is that correct?

14 MR. RAYBUCK: That's generally correct, your  
15 Honor, yes, for specialized support kind of services.

16 JUDGE THOMPSON: Okay. And --

17 MR. RAYBUCK: In this case, we're talking  
18 about decisions regarding the management of SO2 allowances  
19 for Union Electric and for its affiliates.

20 JUDGE THOMPSON: I understand. And what about  
21 Mr. Coffman's assertions that the transfer, if it goes  
22 through, is going to leave AmerenUE with a portfolio that  
23 includes a larger percentage of coal-fired generation  
24 assets, do you agree or disagree with his characterization  
25 of the results of the transfer?

1                   MR. RAYBUCK: That characterization is not  
2 accurate. Union Electric's generation will not change.  
3 Based on a related agreement, namely the joint dispatch  
4 agreement, which we believe is outside of this case -- based  
5 on the joint dispatch agreement, the way those UE power  
6 plants are run might change. So that he does -- he does  
7 have a potential concern that if those UE generation plants  
8 run more often, UE could incur -- could eat up more SO2  
9 allowances.

10                   And therefore, I said that I thought it was  
11 fair game for him to inquire into UE's existing position  
12 regarding SO2 allowances and any projections UE may have  
13 made as to future SO2 allowance positions as a result of the  
14 Metro East transfer. So UE's generation is not going to  
15 change. It's not going to add or subtract any generation  
16 plants. Those plants may run more often because of the  
17 Metro East transfer, but that's just a UE situation and does  
18 not involve an affiliate.

19                   JUDGE THOMPSON: Okay. Mr. Coffman?

20                   MR. COFFMAN: Well, as Mr. Raybuck accurately  
21 points out, this is all dependent on -- there are issues  
22 that relate to whether the current joint dispatch agreement  
23 is going to continue, and it's our understanding that Ameren  
24 is at a crossroads as to whether the current joint dispatch  
25 agreement will be continued or terminated or modified. And

1 as that changes, there are a lot of other relationships that  
2 could change which ultimately impact on whether this  
3 transfer is detrimental to the public interest.

4 We merely seek to be able to see the entire  
5 picture here and not have this case narrowly focused upon  
6 the two particular affiliates, AmerenUE and AmerenCIPS, in  
7 making our recommendation to the Commission about whether  
8 this is detrimental to the public.

9 JUDGE THOMPSON: Okay. Mr. Dottheim?

10 MR. DOTTHEIM: Yes, if I might just briefly  
11 note an item or two, and that is, the Staff shares the  
12 concerns of the Office of the Public Counsel. Contrary to  
13 what Mr. Raybuck has stated is the position of AmerenUE, the  
14 Staff believes, along with Public Counsel, that the joint  
15 dispatch agreement which governs how the units of AmerenUE  
16 and Ameren -- well, Ameren Energy Generating operate is very  
17 much an issue in this proceeding.

18 The Staff would note that with these Data  
19 Requests, as I believe with the other Data Requests,  
20 AmerenUE's objections are not that the documents are not in  
21 the control, custody or possession of AmerenUE.

22 AmerenUE's objection is not that the Data  
23 Requests are burdensome. The objections are on the basis of  
24 relevance, and the Staff would concur with the arguments of  
25 Public Counsel on relevance, the broad aspect of discovery



1 of the Commission Staff, Office of Public Counsel in these  
2 proceedings.

3 JUDGE THOMPSON: Okay. I'm fortunate on this  
4 particular question in that I had to deal with a discovery  
5 dispute involving affiliate transactions in the water rate  
6 case shortly before we went into the hearing room in  
7 December, and so it happens that I know exactly what the  
8 majority of the Commission will do on this particular  
9 question. And consequently, Mr. Raybuck, I'm going to have  
10 to grant the motion to compel with respect to these Data  
11 Requests.

12 Again, you have the option of asking for  
13 reconsideration and taking it to the Commissioners, but as I  
14 said, I think I'm pretty certain of what response you'll get  
15 from the majority there. So anything else?

16 MR. COFFMAN: I think that --

17 MR. RAYBUCK: I think I understand, Judge. I  
18 respectfully disagree.

19 JUDGE THOMPSON: Okay.

20 MR. RAYBUCK: Some of these -- I won't belabor  
21 the point. Some of these as worded by the Public Counsel do  
22 not, we believe, have any showing of any relationship to  
23 Union Electric.

24 JUDGE THOMPSON: Okay.

25 MR. RAYBUCK: Therefore, I respectfully

1 disagree.

2 JUDGE THOMPSON: Yes, sir.

3 MR. RAYBUCK: But I'll take that up in the  
4 course of considering whether to file a request to  
5 reconsider.

6 JUDGE THOMPSON: Thank you, sir. I appreciate  
7 that. We're looking now at 547?

8 MR. COFFMAN: Yes, we are, your Honor. I  
9 would make a motion to compel a full response to Data  
10 Request 4-- or rather Data Request 547, which has been  
11 objected to on the grounds that it is not likely to lead to  
12 the discovery of admissible evidence. You have the Data  
13 Request in front of you.

14 It deals with contracts between UE and its  
15 affiliates and Electric Energy, Inc., which is often  
16 referred to as EEI. The -- the concern that is being  
17 pursued by Public Counsel is whether Union Electric will  
18 renew its current contract with EEI in a couple of years  
19 when that contract could expire.

20 There are future ratemaking concerns about  
21 this. There was an Order of the Commission in 1977 based on  
22 an application that Union Electric Company made requesting a  
23 guarantee of certain financial obligations, and which talks  
24 about certain payments that would need to be made for  
25 purchased power regardless of what power was provided. I

1     could -- I guess I could cite you to that case.  It was Case  
2     No. EF-77-197.

3                     MR. RAYBUCK:  EF-77, did you say?

4                     MR. COFFMAN:  Yes, EF-77-197.  But again, our  
5     concern here is simply knowing what all the options are,  
6     having all the options on the table, when we are making a  
7     decision about whether AmerenUE is pursuing the right course  
8     of action and whether that's detrimental to the public.  And  
9     I guess the issue here is, again, whether we have  
10    information from all affiliates.

11                    JUDGE THOMPSON:  Mr. Raybuck?

12                    MR. RAYBUCK:  Judge, really, I've argued a lot  
13    of this already.  Let me just drill down to the language of  
14    547.  As I understand it, the Public Counsel is asking for  
15    contracts between Electric Energy, Inc. and affiliates of  
16    UE.

17                    JUDGE THOMPSON:  Right.

18                    MR. RAYBUCK:  Not between EEI and UE, but  
19    between EEI and affiliates of UE.  And once again, we don't  
20    believe there's been any showing at all as to how this  
21    relates to Union Electric and so -- or how it relates to the  
22    Metro East transfer.  So --

23                    JUDGE THOMPSON:  Those are questions that I  
24    have as well.  Mr. Coffman?

25                    MR. COFFMAN:  If there are contract -- well,

1 first of all, if the current contract with AmerenUE and EEI  
2 does not expire, it would appear to us that there would be  
3 no need to obtain greater capacity, hence the application to  
4 transfer AmerenUE Illinois. If -- and this is our interest  
5 in asking this question, or one of our interests, and that  
6 is, if one of the affiliates of AmerenUE has or will  
7 continue to contract or has access to energy from EEI, that  
8 then becomes a potential resource for transferring to Union  
9 Electric.

10 Again, these are -- as we understand the  
11 decision-making of this entire holding company situation, it  
12 is -- these resource planning decisions are all made in  
13 concert with the holding company and all of its affiliates.

14 JUDGE THOMPSON: Well, I'm going to deny the  
15 motion to compel on 547 because, frankly, I think that the  
16 language, which doesn't even refer to AmerenUE, frankly,  
17 makes it too remote. Okay?

18 MR. RAYBUCK: Thank you, your Honor.

19 JUDGE THOMPSON: Thank you. Now we have  
20 another batch. This looks like 551 --

21 MR. COFFMAN: Your Honor --

22 JUDGE THOMPSON: -- and others.

23 MR. COFFMAN: Let me just simply say that I  
24 think we can skip over this next grouping.

25 JUDGE THOMPSON: Great.

1                   MR. COFFMAN: The Data Requests that refer to  
2 the Pinckneyville and Kimmundy plants, we just are simply  
3 not going to press those at this time.

4                   JUDGE THOMPSON: Very well.

5                   MR. COFFMAN: I would be ready to move on to  
6 the group of Data Requests that begins 571. I think that I  
7 can group together 571, 572, 573, 576 and 578, and I would  
8 make a motion to compel responses to those five Data  
9 Requests. Each of these in different ways discu-- or  
10 request information from Ameren or its affiliates relating  
11 to various purchased power options.

12                   571 asks for expressions of interest in  
13 discussing purchased power agreements of one year or longer.  
14 572 requests all documents that contain descriptions or  
15 analysis or references to.

16                   JUDGE THOMPSON: Could I ask a fundamental  
17 question before we go any further?

18                   MR. COFFMAN: Yes, your Honor.

19                   JUDGE THOMPSON: I understand that CIPS has no  
20 generating assets?

21                   MR. RAYBUCK: That is correct, your Honor.

22                   JUDGE THOMPSON: And are any generating assets  
23 being transferred as part of the transfer that's proposed  
24 here?

25                   MR. RAYBUCK: No.

1 JUDGE THOMPSON: So I guess I don't understand  
2 exactly how this relates to the transfer.

3 MR. COFFMAN: Well, your Honor --

4 JUDGE THOMPSON: Perhaps I'm dense, but if you  
5 could point that out.

6 MR. COFFMAN: In a sense, the way I understand  
7 it is essentially, from the AmerenUE perspective, it's a  
8 transfer of load, which then changes the resource needs and  
9 resource portfolio of AmerenUE going forward. We believe  
10 that there are other options that may have been considered  
11 or could be considered to that particular option, which  
12 would -- which would be other alternatives to providing  
13 sufficient capacity going forward.

14 JUDGE THOMPSON: When you talk about transfer  
15 of load, do you mean the load represented by the Metro East  
16 service area?

17 MR. COFFMAN: Yes, those customers that are  
18 now being served by AmerenUE Illinois or in Illinois by  
19 AmerenUE.

20 JUDGE THOMPSON: And they're going to be  
21 transferred to AmerenCIPS and they're going to become part  
22 of the load of that provider, right?

23 MR. COFFMAN: That's my understanding.

24 JUDGE THOMPSON: And I don't know how they  
25 serve their load, but I guess that's not my concern. So if

1    this is load being transferred away from UE, explain to me  
2    why we have concerns then.

3                   MR. COFFMAN:  In my limited understanding of  
4    resource planning, if you're supplying for your future  
5    energy needs, your future load, you can consider capacity  
6    additions or ways that you can reduce your load, and this is  
7    a decision that we believe should be laid side by side with  
8    other alternatives for meeting future capacity needs.

9                   JUDGE THOMPSON:  But --

10                  MR. COFFMAN:  A decision to shave load, reduce  
11    loads, transfer away load should be compared side by side  
12    with decisions about possible purchased power or generation  
13    construction --

14                  JUDGE THOMPSON:  Okay.

15                  MR. COFFMAN:  -- in order to ensure that this  
16    utility is pursuing the least cost option for the benefit of  
17    its customers.

18                  JUDGE THOMPSON:  I don't understand from the  
19    application that reducing load is the primary motivation  
20    behind this transfer.  Mr. Raybuck, why don't I let you jump  
21    in here?

22                  MR. RAYBUCK:  I'll be glad to, your Honor.  
23    You've hit upon some important points here, the cases about  
24    transferring the Illinois load from Union Electric to an  
25    affiliate.  Least cost planning does come into the picture

1 in part, but the driving force behind this is a desire on  
2 our part to make a structural change, so that Union  
3 Electric's operations are limited to Missouri and its  
4 affiliates' operations, CIPS are limited to those of  
5 Illinois and that CIPS pick up the UE Illinois service area  
6 transfer.

7                   This desire for a structural change, as we  
8 discussed in the application, is based upon conflicting  
9 regulations in Missouri and in Illinois. Missouri does not  
10 involve competition for retail supply of service. Illinois  
11 does allow retail customers to choose different suppliers.  
12 So you've got two different sets of regulations and  
13 regulator schemes in Missouri and Illinois, and that's  
14 driving UE's desire to no longer be an Illinois utility.

15                   The proposal would be for CIPS to pick up the  
16 UE Illinois load, and as you may have gathered by the  
17 earlier discussions, CIPS no longer has any generation  
18 plants. CIPS spun those plants off to an affiliate, and so  
19 CIPS, in effect, is a pipes and wires company or a  
20 distribution company for Illinois regulation purposes. And  
21 we wanted to make a clean break so that UE limited its  
22 operations to Missouri and did not have to deal with  
23 conflicting regulations in Illinois.

24                   So the driving force behind this is a  
25 structural -- a desire for a structural change. We go on to



1 indicate, though, that we think from a least cost planning  
2 perspective, transferring the Metro East load is the least  
3 cost option for Union Electric, and now we get into these  
4 affiliate issues where I think you'll find that this is  
5 really no different from the Data Requests in 547 and your  
6 ruling in that case.

7                   It would be fair game for Mr. Coffman to  
8 inquire into expressions of interest given to Union  
9 Electric, but instead he's asking for expressions of  
10 interest involving other affiliates. And given that this is  
11 a case about transferring load and giving up load, we don't  
12 believe there's any relevance that has been shown as to why  
13 these actions of the affiliates here would have any  
14 relevance to the case.

15                   MR. COFFMAN: Your Honor, in response to that,  
16 I certainly understand why it would be appealing from a  
17 political perspective, from -- it would have a surface  
18 appeal to have maybe a cleaner -- cleaner boundaries, make  
19 sure that the entity that is AmerenUE is regulated by one  
20 state and not two, and that it would clean up some  
21 conflicting regulations and additional paperwork that must  
22 be complicated for the utility.

23                   However, we want to make sure that those  
24 considerations are not cleaned up, if you will, at the  
25 expense of Missouri ratepayers, and that there is not a

1 detriment to the ratepaying public in order to create this  
2 cleaner boundary, and --

3 JUDGE THOMPSON: But my concern is that if no  
4 generating assets are being transferred and UE is now left  
5 with a smaller load, I don't see how the ratepayers are put  
6 at risk.

7 MR. COFFMAN: We believe that there may be  
8 other options as far as meeting the future capacity needs of  
9 UE that may not be pursued if this transfer occurs.

10 JUDGE THOMPSON: Such as?

11 MR. COFFMAN: Well, that's the point of  
12 discovery, in finding out what they are. We have some  
13 concerns, but we do not have enough information to  
14 ultimately make that decision. And this particular group of  
15 Data Requests, we believe, is essential to us making our  
16 case in rebuttal two weeks from today, making sure we know  
17 all of the resource planning options that are available.

18 And I certainly understand your question as to  
19 why is a sale of load, you know, equivalent to generation  
20 and capacity additions or purchased power contracts, but  
21 they are things that we believe should be laid side by side  
22 and analyzed as to --

23 JUDGE THOMPSON: Well, let's say -- let's say  
24 for purposes of argument that -- that, you know, you're able  
25 to show that there might be some sort of detrimental effect.

1 I don't know that the law permits the Commission to require  
2 Ameren to forego this reorganization or this transfer simply  
3 because it might result in some perceived detrimental effect  
4 in the future. Do you see what I'm trying to say?

5 MR. COFFMAN: I believe -- I believe I  
6 understand.

7 JUDGE THOMPSON: Do you think the standard in  
8 FeeFee Trunk Sewer controls here?

9 MR. COFFMAN: I believe the standard is  
10 whether it is not detrimental to the public interest.

11 JUDGE THOMPSON: And doesn't the case law  
12 require the showing of a present detriment?

13 MR. COFFMAN: No, that's not my reading of the  
14 case. And I would certainly, again, point the Commission to  
15 the most recent pronouncement from the Supreme Court in the  
16 Ag Processing case, which does require the -- does not force  
17 the Commission to --

18 JUDGE THOMPSON: That had to do with an  
19 acquisition premium, as I recall.

20 MR. COFFMAN: Which was also an application  
21 under 393.190, a transfer, an acquisition, and same  
22 standard.

23 JUDGE THOMPSON: I understand that.

24 MR. COFFMAN: Which is --

25 JUDGE THOMPSON: But it was a direct outcome

1 of the transfer under consideration in that case; in other  
2 words, to purchase St. Joe Light & Power, we're going to pay  
3 X millions of dollars in excess of the book value of the  
4 utility plant in service belonging to that company. This  
5 acquisition premium, then, we want to recover from the  
6 ratepayers because we think it's going to be so much more  
7 wonderful for them to have Aquila sending them their utility  
8 bills, right?

9                   It seems to me what you're saying is that  
10 there might be in the future, in terms of planning for  
11 future loads, right, a detriment. It doesn't seem to me  
12 you're pointing to the kind of direct, immediate,  
13 consequential, monetary burden being imposed on the  
14 ratepayers such as was under consideration in the Ag  
15 Processing case. Clarify this if I'm wrong.

16                   MR. COFFMAN: Your Honor, our concern is that  
17 there are options right now available to AmerenUE that may  
18 or may not be more beneficial to consumers, ways to meet  
19 future needs for Missouri customers that would not -- would  
20 not have the same impact as a transfer of load through the  
21 Illinois transfer, that there might be contracts and  
22 purchased power options perhaps that are less expensive and  
23 would result in lower rates in the subsequent AmerenUE rate  
24 case or earnings complaint case.

25                   And my understanding of the Supreme Court case

1   that we're talking about is that the court said that the  
2   Commission cannot simply shut its eyes and make a decision  
3   that says anything that happens on Day 2 after this transfer  
4   occurs is beyond what the Commission is required to look at,  
5   that the Commission is required to look at the next  
6   subsequent rate case and its impact.

7                   MR. DOTTHEIM:   Judge, the matter of the  
8   standard not detrimental to the public, not detrimental to  
9   the public interest, it is very much in dispute amongst  
10  various parties as to the definition of that standard, how  
11  immediate, how direct the detriment must be in order for  
12  there to -- for the standard to not -- to not be met.  In  
13  fact, it's actually very much being contested before the  
14  Commission at the moment in the --

15                  JUDGE THOMPSON:   Okay.  I understand that, but  
16  what I'm trying to understand here is essentially the  
17  detriment that you're trying to delineate.  Okay?  Before I  
18  make them provide this information, I need to be comfortable  
19  that it really does relate to something in issue in the  
20  case, right?  Because I don't think you get to go fishing on  
21  any topic that has to do with Ameren that may be  
22  interesting, right?  I think you have to show it relates to  
23  this case.

24                  Now, as I understand it, right now the people  
25  in Metro East are being served by generation assets owned by

1 AmerenUE; is that right?

2 MR. DOTTHEIM: Correct.

3 MR. RAYBUCK: That is correct, your Honor.

4 JUDGE THOMPSON: Okay. And when this load

5 goes to CIPS, they're going to be served by some other

6 assets somewhere. In other words, CIPS is going to buy

7 power, I presume, from different power sellers in order to

8 meet its load requirements. Isn't that how CIPS operates?

9 Didn't you say it's a wire and pipes company?

10 MR. RAYBUCK: That's correct, your Honor, and

11 it buys its power from a different supply than Union

12 Electric.

13 JUDGE THOMPSON: So then the AmerenUE assets

14 that have been serving Metro East are going to be able to be

15 available to serve Missouri load; is that correct?

16 MR. DOTTHEIM: Well, yes. The cost and the

17 plant along with it. There will be a greater allocation of

18 AmerenUE investment costs to the AmerenUE Missouri native

19 load customers.

20 JUDGE THOMPSON: In other words, what you're

21 saying is that as those assets come to Missouri, they bring

22 baggage?

23 MR. DOTTHEIM: Yes, such as the

24 Decommissioning Trust Fund, the decommissioning costs that

25 are being paid for Callaway.

1 JUDGE THOMPSON: Okay.

2 MR. DOTTHEIM: Missouri ratepayers --

3 JUDGE THOMPSON: Will pay more?

4 MR. DOTTHEIM: Well, will pay a larger portion

5 of those. Instead of paying 83 percent, they may be paying

6 98 percent, so --

7 JUDGE THOMPSON: Okay. Well --

8 MR. COFFMAN: And that's also a concern from

9 my office. As regards to these Data Requests, our concern

10 is that there are other options available other than having

11 the resources currently dedicated to the AmerenUE Illinois

12 customers, other options -- and I'm just using this as a

13 hypothetical -- perhaps purchased power contracts that could

14 be entered into at -- currently, right now that would meet

15 future load in a way that this transfer --

16 JUDGE THOMPSON: So make this simple enough

17 even for me to understand. What Steve said, I think, is

18 that we may not want this additional generating facilities,

19 right?

20 MR. DOTTHEIM: Yes. I mean, it's a question

21 of economics.

22 JUDGE THOMPSON: Okay.

23 MR. COFFMAN: I share that perspective.

24 JUDGE THOMPSON: You know, you've made it

25 simple enough for me. Okay.

1 MR. RAYBUCK: May I respond, hopefully?

2 JUDGE THOMPSON: You absolutely can. Keep it  
3 simple.

4 MR. RAYBUCK: Thanks, Judge.

5 In an effort to keep it simple, Mr. Dottheim  
6 and Mr. Coffman are, I believe, correct in their statement  
7 that the freed-up generating capacity that Union Electric  
8 will bring back to Missouri brings back both costs and  
9 benefits. The load, the generation that had been serving  
10 Metro East will now be freed up to serve Missouri interests.  
11 There are costs and benefits associated with that. And as I  
12 indicated earlier, we did an analysis which we believe shows  
13 that when you take all of those costs and benefits into  
14 account, this is the least cost resource for Union Electric.

15 Additionally, I would go back to what I said  
16 earlier. If Mr. Coffman wanted to inquire as to other  
17 options presented to Union Electric, that would be fair  
18 game, but instead his Data Request, in my view in a manner  
19 similar, if not identical to what he's done in 547, has  
20 asked for expressions of interest or possible resources  
21 discussed or presented to affiliates other than AmerenUE.  
22 So I believe it's off the mark for the reasons we've  
23 discussed already regarding 547.

24 JUDGE THOMPSON: Okay. Mr. Coffman?

25 MR. COFFMAN: And in response to that, my



1 concern is that we do not know all the options that are on  
2 the table because these resource planning decisions are not  
3 made by UE personnel and are made in conjunction with a  
4 broader Ameren Corporation strategic plan, and that -- our  
5 concern is that some information may be shielded from us by  
6 the fact that it is addressed to or by employees of other  
7 affiliates.

8                   And we simply want the ability to look at all  
9 the options that are currently available to AmerenUE to meet  
10 its future energy needs, and we think that that requires, as  
11 we found it to be necessary in past rate cases, to be able  
12 to look at all the resource planning information available  
13 within the entire holding company structure. And again,  
14 this particular group of Data Requests we believe are  
15 essential to us being able to make our case. I believe it's  
16 distinguishable from your prior ruling on the EEI.

17                   JUDGE THOMPSON: Well, how do you know if it's  
18 essential if you don't know what the results would be?

19                   MR. COFFMAN: We know from past experience  
20 that there's information about resource planning options  
21 that we cannot find simply by asking the question about  
22 documents that are to or from AmerenUE specifically.

23                   MR. RAYBUCK: I don't know that I would agree  
24 with that, Judge. Really I think this is no different from  
25 547. As you pointed out there, this -- whatever OPC's

1 interests are, it should not allow them to go on a fishing  
2 expedition to inquire into transactions involving affiliates  
3 which have no demonstrated relevance to Union Electric.

4 MR. COFFMAN: I would urge your Honor to look  
5 at this the way you did under the Data Requests related to  
6 SO2 allowances. This is, again, a matter where -- whereby  
7 decisions are made at a holding company level or by one  
8 affiliate with regard to all affiliates and --

9 JUDGE THOMPSON: Well, you know, I see this  
10 one as being -- as being right on the edge, and so I'm going  
11 to deny the motion to compel as to these Data Requests.

12 MR. RAYBUCK: Thank you, Judge.

13 JUDGE THOMPSON: We've got one more, 580.

14 MR. COFFMAN: Just a second, your Honor.

15 JUDGE THOMPSON: 580 has to do with  
16 voluminous --

17 MR. COFFMAN: Before we go on to that, your  
18 Honor, could I ask perhaps that AmerenUE be directed to  
19 state on the record whether or not they have at least  
20 complied with that last group of Data Requests?

21 JUDGE THOMPSON: 571 through 578?

22 MR. COFFMAN: Yes, in a complete manner at  
23 least with regards to AmerenUE.

24 JUDGE THOMPSON: Mr. Raybuck?

25 MR. RAYBUCK: Which Data Requests, again, are

1     you talking about?

2                   MR. COFFMAN:  571, 572, 573, 576 and 578.  The  
3     question is whether or not AmerenUE's responses to date are  
4     fully and completely responsive to the questions as to  
5     AmerenUE?

6                   MR. RAYBUCK:  John, we have a letter coming to  
7     you that says that that is the case.  It tracks Data  
8     Requests that are -- numbers that are different from what  
9     you referenced.  So I'm -- I'm scrambling a little bit in my  
10    notes to go over some of these.  You mentioned 571, 2 and 3,  
11    correct?

12                  MR. COFFMAN:  Yes.

13                  MR. RAYBUCK:  And we are going to give you a  
14    letter that will say yes as to those.  You have already  
15    received all of the information for UE of which we are  
16    aware, and we are indicating that that is the case for other  
17    Data Requests.

18                  MR. COFFMAN:  And the other two were 576 and  
19    578.

20                  MR. RAYBUCK:  576 and 578.  We may need to  
21    confirm that, but I believe that is the case also for those  
22    two.  I have Mary Hoyt with me, our paralegal, and she is  
23    nodding her head that, yes, those are all of the UE  
24    responses.  We will double check, and if that's not the  
25    case, I'll let you know.

1 MR. COFFMAN: Okay.

2 JUDGE THOMPSON: Now, with respect to 571  
3 through 578, I would permit you to inquire as to whether  
4 or not any of the affiliates have received -- what's the  
5 term -- expressions of interest on terms more advantageous  
6 than those that have been offered to AmerenUE. And that's  
7 just a yes or no question and, of course, they're going to  
8 need some time to find an answer.

9 I think I can see that, you know, if the  
10 answer there is no, then there's no need to go any further.  
11 If the answer there is yes, you might very well be able to  
12 persuade the Commissioners that there's something there that  
13 you need to get.

14 MR. COFFMAN: Your Honor, would that be  
15 considered a split ruling or a conditional ruling on these  
16 Data Requests or are you suggesting that a separate Data  
17 Request would need to be sent?

18 JUDGE THOMPSON: I think you would need to  
19 send a separate Data Request.

20 MR. RAYBUCK: That seems more appropriate to  
21 me, Judge.

22 JUDGE THOMPSON: I think it addresses narrowly  
23 the concern that you raised. I don't want to foreclose your  
24 finding something that's significant, but I don't want to  
25 make, you know, UE have to come up with thousands of boxes

1 of paper.

2 MR. COFFMAN: And so I understand what you  
3 would find appropriate is whether the --

4 JUDGE THOMPSON: In other words, he's answered  
5 for Union Electric. And your concern is, well, what do the  
6 affiliates have that's not all on the table. If we don't  
7 see everything, we can't really analyze the effects of this  
8 transaction.

9 And what I'm proposing is a narrowly tailored  
10 Data Request; are there any offers -- I don't know what the  
11 right word is, but let's call them offers -- on the table  
12 with respect to affiliates that are on terms more  
13 advantageous than those that they have revealed as to  
14 AmerenUE? Okay? If the answer is no, then --

15 MR. COFFMAN: I think there may -- on a couple  
16 of these we may need to maybe wordsmith a little bit, but I  
17 certainly understand where --

18 JUDGE THOMPSON: You see where I'm going?

19 MR. COFFMAN: Yes, and I think we can do that.

20 JUDGE THOMPSON: Okay.

21 MR. COFFMAN: I expect that we would do that.  
22 We may also consider pursuing --

23 JUDGE THOMPSON: Absolutely, you can do that.

24 MR. COFFMAN: -- reconsideration by the  
25 Commission on this grouping.

1 JUDGE THOMPSON: Absolutely.

2 MR. COFFMAN: As to the last Data Request,  
3 we're just not going to press that matter in the interest of  
4 stopping while we're behind.

5 JUDGE THOMPSON: Well, I don't know that you  
6 are behind.

7 MR. COFFMAN: Just a second, your Honor.

8 MR. RAYBUCK: Going back to what we said  
9 earlier, Judge, since you made us both unhappy, you must be  
10 doing a good job.

11 JUDGE THOMPSON: You know, I could be heading  
12 for the Federal Bench.

13 MR. RAYBUCK: John, by the way, with regard to  
14 580, I'll confirm anyway that we're talking about something  
15 more than 150 pages, so we believe that under the Protective  
16 Order that's something that would be appropriate for an  
17 onsite visit. You had asked me to indicate that, and that's  
18 what our letter will say.

19 MR. COFFMAN: If you don't mind, I'd like to  
20 ask a question or rather ask the -- I guess ask the Judge if  
21 it would be appropriate to get a clarification on the record  
22 from Ameren as to one document that was supplied in response  
23 to Data Request 571?

24 JUDGE THOMPSON: Sure.

25 MR. COFFMAN: And, Joe, we're looking at your

1 response to 571. We received a proposal that's entitled  
2 Exelon's Proposal to Ameren for Firm Capacity in Energy.

3 MR. RAYBUCK: Yes.

4 MR. COFFMAN: You're aware of that document?  
5 My question is, is this a proposal to AmerenUE? It simply  
6 says Ameren.

7 MR. RAYBUCK: I think it's unclear, but I  
8 believe Rick Voightus (ph. sp.) has answered a series of  
9 Data Requests regarding the Exelon proposal, and I believe  
10 you have everything in our possession on that.

11 MR. COFFMAN: Okay. Well, it raises, again,  
12 the concern we have that there really is within the  
13 corporate entity little distinction between these affiliates  
14 and Ameren, and I guess we can -- and I guess you're telling  
15 me you're not sure whether that is simply to AmerenUE or  
16 whether it's to any -- any Ameren affiliate?

17 MR. RAYBUCK: Well, I'm looking at the  
18 response to 571 now, and the cover page says, proposal to  
19 Ameren. And so I guess I would stand by what I said  
20 earlier, that it is unclear. However, I believe it's a moot  
21 point, in that we have provided to you all of the  
22 information that we received regarding this Exelon proposal.

23 JUDGE THOMPSON: Have you revealed all the  
24 proposals you've received that are made just to Ameren,  
25 without specification?

1                   MR. RAYBUCK: From this one supplier at this  
2 one point in time, yes, Judge.

3                   MR. COFFMAN: As I understand what Mr. Raybuck  
4 has said here on the record, it is -- he believes that they  
5 are complete with regard to 571, 572 and 573, and he's  
6 unclear as to 576 and 578 and is unable to say for certain  
7 at this time about those two. Is that -- am I understanding  
8 you correctly?

9                   MR. RAYBUCK: Yes, except I expressed more  
10 confidence as to the latter two, but indicated we would  
11 check. And if I'm mistaken, we will let you know, but we  
12 believe that we are complete with respect to UE as to all of  
13 these that you mentioned.

14                  MR. COFFMAN: Okay.

15                  JUDGE THOMPSON: Great. Anything else?

16                  MR. COFFMAN: That's all we have, your Honor.

17                  JUDGE THOMPSON: Thank you, Mr. Raybuck.  
18 Thank you, John.

19                  WHEREUPON, the discovery conference was  
20 concluded.

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