

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 On the-Record Discovery Conference
6 March 11, 2004
7 Jefferson City, Missouri
8 Volume 5
9 In the Matter of the Application)
10 of Union Electric Company, Doing)
11 Business as AmerenUE, for an)
12 Order Authorizing the Sale,)
13 Transfer and Assignment of) Case No. EO-2004-0108
14 Certain Assets, Real Estate,)
15 Leased Property, Easements and)
16 Contractual Agreements to)
17 Central Illinois Public Service)
18 Company, Doing Business as)
19 AmerenCIPS, and in Connection)
20 Therewith, Certain Other Related)
21 Transactions.)
22
23 KEVIN A. THOMPSON, Presiding
24 DEPUTY CHIEF REGULATORY LAW JUDGE.
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A P P E A R A N C E S

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

2 JUDGE THOMPSON: Okay. All right. We can
3 go on the record. We are here for a discovery conference
4 in the matter of the application of Union Electric
5 Company, doing business as AmerenUE, for an Order
6 authorizing the sale, transfer and assignment of certain
7 assets, real estate, leased property, easements and
8 contractual agreements to Central Illinois Public Service
9 Company, doing business as AmerenCIPS, that's C-I-P-S, and
10 in connection therewith, certain other related
11 transactions. Case No. EO-2004-0108.

12 My name is Kevin Thompson. I'm the
13 Regulatory Law Judge assigned to preside over this matter.
14 And we will go ahead and take oral entries of appearance
15 before we do anything else. Why don't we start with
16 Staff, since I think it is Staff that is here trying to
17 compel discovery on their Data Requests.

18 MS. SHEMWELL: Lera Shemwell representing
19 the Staff of the Missouri Public Service Commission.

20 JUDGE THOMPSON: Did you hear that, Jim?

21 MR. LOWERY: Yes, I did. I can hear you,
22 Lera. If you could get a little closer, it might help a
23 little bit.

24 MS. SHEMWELL: I would have to be sitting
25 on the bench, I'm afraid, to be much closer.

1 MR. LOWERY: Okay. That's a little better.

2 JUDGE THOMPSON: Come on up. That'll work;

3 couple more chairs over here. It's not going to bother

4 me. Okay. And Mr. Lowery?

5 MR. LOWERY: My name is Jim Lowery. I

6 represent AmerenUE, with Smith Lewis, LLP at P.O. Box 918,

7 Columbia, Missouri 65205.

8 JUDGE THOMPSON: Thank you. And let the

9 record reflect that Public Counsel has chosen not to

10 attend today and neither have any of the intervenors.

11 Again, as we did yesterday, I will just

12 take it as a given that we are here to compel responses to

13 the -- it looks like only a single Data Request; is that

14 correct?

15 MS. SHEMWELL: That is correct, No. 70.

16 JUDGE THOMPSON: Data Request No. 70 served

17 by Staff on Ameren on or about March the 4th, 2004. Is

18 there an objection letter?

19 MR. LOWERY: Yes, there is, your Honor.

20 That is -- was sent on March the 9th.

21 JUDGE THOMPSON: Okay. Lera has just

22 handed me a copy of the objection letter.

23 MS. SHEMWELL: Along with a copy of the

24 Data Request No. 70.

25 JUDGE THOMPSON: Okay.

1 MS. SHEMWELL: And I have already reviewed
2 with Mr. Lowery the documents that I would be giving you,
3 Judge, and he has assured me he has access to all of the
4 documents.

5 JUDGE THOMPSON: Okay. One of them is an
6 excerpt from a case, EM-96-149, which is on page 34 of
7 6 MoPSC 3rd, and the other is a slip copy of a Stipulation
8 & Agreement in Case EM-96-149 -- that would be that same
9 case -- dated July 12th, 1996. And I assume you're going
10 to tell me what the significance of those items is or are,
11 whatever, as we go on. And then we also have this data --
12 you say you gave me a different Data Request? I have two
13 copies of 70 here.

14 MS. SHEMWELL: It's just 70. 63 or 68 was
15 also -- we've reached an agreement on the other one,
16 Judge.

17 JUDGE THOMPSON: Okay. So you've reached
18 an agreement on DR 68?

19 MS. SHEMWELL: It's just 70.

20 JUDGE THOMPSON: All right.

21 MR. LOWERY: I think 70 is the only one at
22 issue; is that correct, Lera?

23 MS. SHEMWELL: That's correct.

24 MR. LOWERY: Okay.

25 JUDGE THOMPSON: All right. Let me take a

1 look at it real quick, and then I'll take a look at the
2 objection letter and off we'll go.

3 Okay. The Data Request seeks access to all
4 documents received from CilCorp and Illinois Power during
5 Ameren's due diligence review, prior to Ameren's agreement
6 to purchase CilCorp and Illinois Power. Further request
7 that Staff be allowed to copy pages from the documents
8 provided at the time of its review. States
9 parenthetically that copies of the copies will be provided
10 to Mary Hoyt, whoever that is. Further requests that a
11 tentative meeting be set up for Staff with an employee of
12 Ameren who participated in the review process to discuss
13 the due diligence review conducted by Ameren; is that
14 correct?

15 MS. SHEMWELL: Yes, sir.

16 JUDGE THOMPSON: And the response then
17 states that the attached information is accurate and
18 complete and contains no material misrepresentations or
19 omissions based upon present facts of which the
20 undersigned has knowledge, information or belief.
21 Undersigned agrees to immediately inform PSC Staff if
22 during pendency of this case any further matters are
23 discovered which would materially affect the accuracy or
24 completeness of the attached information.

25 Okay. The objection, UE objects to Data

1 Request 70 on the grounds that the request is irrelevant,
2 not reasonably calculated to lead to the discovery of
3 admissible evidence, overbroad, unduly burdensome, seeks
4 documents that are in the possession, custody and control
5 of a company not subject to the Commission's jurisdiction,
6 and seeks documents for which a duty of confidentiality is
7 owed to third parties.

8 It is also improper in that it seeks to
9 compel Ameren employees to hold a meeting to discuss
10 matters relating to the acquisition by Ameren, which is
11 not a party to the present case, of the stock of companies
12 that are not parties to this case.

13 Okay. We have an interesting potpourri of
14 objections there. Why don't we start off, Lera, you have
15 the burden, so persuade me.

16 MS. SHEMWELL: Thank you, Judge. Let's
17 start with relevance. In this case, part of the
18 application which I'm handing to you, the wherefore
19 paragraph at C specifically asks that the Commission in
20 its Order approve as reasonable and prudent the
21 consideration received by AmerenUE from CIPS, AmerenCIPS
22 for the transfer of assets and liabilities.

23 We feel that Ameren has not provided
24 adequate information for Staff to evaluate whether or not
25 the consideration is relevant and prudent -- reasonable

1 and prudent.

2 JUDGE THOMPSON: Okay. Keep going.

3 MS. SHEMWELL: Staff believes that the
4 analysis done in these other cases where there were
5 purchases of properties is relevant because we feel that
6 AmerenUE has not done any evaluation of this transfer in
7 comparison to the amount of analysis and the factors that
8 were considered in the purchase cases, and this will give
9 us a benchmark for what actually happens in an arm's
10 length transaction.

11 This -- our point is that AmerenUE would
12 have done a great deal of data gathering, information
13 gathering, determination of the value of assets, were it
14 selling to a third party. They have done none of that.
15 Without that information as to what the value of the
16 assets are --

17 JUDGE THOMPSON: So is it Staff's position
18 that Ameren's paying too much or that CIPS is paying too
19 little?

20 MS. SHEMWELL: No. It's Staff's position
21 that we don't have enough information to determine whether
22 or not the consideration received is reasonable and
23 prudent, and that Ameren has not -- AmerenUE has not done
24 the types of analysis or looked at the factors that it
25 would look at were it selling this to another party. We

1 have very recent transactions by Ameren so that we can
2 determine the amount of work that they did when a third
3 party is involved and compare that to what they're doing
4 in this case.

5 We can also determine the value of some of
6 the assets that they are proposing to transfer, the market
7 value. They're wanting to do this at net book. We're
8 saying, but what's a market value? How are we going to
9 know that the consideration you have received is
10 reasonable and prudent if we don't know the market value?

11 We think review of this information will be
12 helpful in that they purchased electric utility assets;
13 they were arm's length, so we think we can look again at
14 the difference between how each transaction is being
15 handled.

16 JUDGE THOMPSON: Let's say -- I'm not sure
17 I understand the direction Staff's going, so let me just
18 ask a question. Let's suppose that Staff can show that
19 the consideration for the assets being transferred by
20 AmerenUE to AmerenCIPS is too low, is inadequate. In what
21 way is that a detriment to the ratepayers in Missouri?

22 MS. SHEMWELL: We're talking about all of
23 the factors that they look at, not just that. But under
24 the affiliate transactions rules, they're required to
25 transfer to an affiliate at the higher of market or book.

1 Now, they are trying to get a waiver, but even before we
2 could make a recommendation as to whether or not a waiver
3 was reasonable, we would want to look at those values. We
4 don't have those values.

5 JUDGE THOMPSON: Are they asking for a
6 waiver as part of this case?

7 MS. SHEMWELL: Yes.

8 JUDGE THOMPSON: Okay.

9 MR. LOWERY: Well, Judge, let me clarify.

10 JUDGE THOMPSON: Sure. Absolutely.

11 MR. LOWERY: We don't believe the affiliate
12 transaction rules apply in this case, but if the
13 Commission were to determine that they do apply, then
14 we -- then we are asking for a waiver or variance from the
15 rules.

16 JUDGE THOMPSON: Very well. Thank you.
17 I'm just making some notes here.

18 MS. SHEMWELL: And a transfer at less than
19 market would be, we believe, a violation, if the --

20 JUDGE THOMPSON: Be a violation of
21 affiliate transaction rules?

22 MS. SHEMWELL: Correct.

23 JUDGE THOMPSON: But not a detriment to the
24 ratepayers?

25 MS. SHEMWELL: Is certainly could be a

1 detriment to the ratepayers.

2 JUDGE THOMPSON: In what way?

3 MS. SHEMWELL: If they don't get the money
4 back they paid for.

5 JUDGE THOMPSON: I thought it was the
6 shareholders who paid for plant.

7 MR. LOWERY: Your Honor, I apologize if I'm
8 interrupting but --

9 JUDGE THOMPSON: No, that's quite all
10 right. A free-for-all is fine.

11 MR. LOWERY: The facts are that the
12 ratepayers have not paid for the assets that are going to
13 be transferred. These assets are the Metro East service
14 territory assets that serve Illinois customers that have
15 been paid for by Illinois customers.

16 JUDGE THOMPSON: Isn't that why in rates
17 you get a rate of return on assets devoted to public
18 service, because that represents the investment made by
19 the shareholders?

20 MR. LOWERY: I believe the answer to your
21 question is yes. I guess what I would respond to you is
22 that --

23 JUDGE THOMPSON: Whoever knows.

24 MR. LOWERY: -- if we are paying too much
25 or too little -- I'm sorry. If CIPS is paying too much or

1 too little, let's say that CIPS pays more. In fact, our
2 position is that Missouri ratepayers if somehow Missouri
3 gets credit for that are getting a windfall because
4 they're going to get proceeds from sale of assets that the
5 ratepayers never paid for and never bore any expense with
6 respect to.

7 MS. SHEMWELL: One of our positions in this
8 case, Judge, is that --

9 MR. LOWERY: And so, I think your question
10 goes to the very heart of that issue. There is no
11 detriment to Missouri regardless of what the consideration
12 is being paid, and that's why we don't believe the
13 affiliate transaction rule applied at all, because the
14 affiliate transaction rules apply in circumstances where
15 there's a potential for subsidization of unregulated
16 operations by regulated operations. And in this context,
17 the Illinois assets are not regulated by Missouri, there's
18 no subsidization by Missouri ratepayers of anything going
19 on in the Metro East area regardless of the consideration
20 paid.

21 JUDGE THOMPSON: So the assets in Metro
22 East, even though owned by AmerenUE at present, aren't
23 even regulated by this Commission?

24 MR. LOWERY: And they're not in the rate
25 base.

1 JUDGE THOMPSON: And they're not in the
2 rate base.

3 MR. LOWERY: They're not in the Missouri
4 rate base.

5 JUDGE THOMPSON: Okay. I see Staff shaking
6 its head vigorously, so I'm going to let them respond to
7 that.

8 MS. SHEMWELL: AmerenUE is regulated by the
9 Commission. I don't know what --

10 JUDGE THOMPSON: Metro East?

11 MR. LOWERY: I agree that AmerenUE as a
12 corporate entity is regulated, but the assets at issue
13 here do not provide service to any Missouri customers, nor
14 are they in Missouri's cost of service -- for AmerenUE's
15 Missouri cost of service.

16 MS. SHEMWELL: There's transmission lines,
17 Judge, that --

18 MR. LOWERY: Well, we're not pretending
19 that AmerenUE is not subject to the jurisdiction of this
20 Commission. It certainly is.

21 JUDGE THOMPSON: Okay. Lera, your turn.
22 Talk loudly so he can hear you.

23 MS. SHEMWELL: There are transmission
24 lines, Judge, that are used to serve Missouri assets that
25 come out of some of the power plants over there. So there

1 are transition -- there are assets involved that are
2 useful and necessary to serve Missouri ratepayers that are
3 going to be transferred or proposed to be transferred.

4 MR. LOWERY: Judge, she is correct that
5 there is a minor amount of transmission in Illinois that
6 is also going to be transferred. It is a very, very, very
7 small portion of the assets that are at issue.

8 MS. SHEMWELL: 313.190 does not have any
9 de minimis standards in terms of applying. Also, let me
10 get back to this issue that they're asking the Commission
11 to approve as reasonable and prudent the consideration
12 received. We don't have any information about that to
13 determine what's reasonable and prudent without
14 information about what the value of those is. We may
15 agree that they don't have to be transferred at market,
16 but we need some information.

17 JUDGE THOMPSON: Well, if the assets that
18 are to be transferred are not part of the rate base for
19 Missouri purposes, then why would this Commission be
20 called upon to approve the consideration as prudent? It
21 seems to me it would be an Illinois question.

22 MS. SHEMWELL: They're going to be
23 receiving -- CIPS is going to pay Ameren for the assets
24 that are being transferred.

25 JUDGE THOMPSON: Right. The assets are in

1 Illinois and have always been in Illinois, right?

2 MS. SHEMWELL: The assets are in Illinois.

3 JUDGE THOMPSON: We've got a Missouri

4 company with assets in Illinois.

5 MS. SHEMWELL: Right.

6 JUDGE THOMPSON: It's alienating assets in

7 Illinois to another company in Illinois. It's asking us

8 for approval because it thinks it needs it because it's a

9 Missouri company, and you agree. I'm not sure I agree.

10 And -- but it's asking us to also declare the compensation

11 to be reasonable and prudent; is that it?

12 MS. SHEMWELL: Let me say that it's not

13 just assets that are to be transferred.

14 MR. LOWERY: That's fair, as in our

15 application.

16 MS. SHEMWELL: There are liabilities as

17 well.

18 JUDGE THOMPSON: Okay.

19 MS. SHEMWELL: For example, all of the

20 liability for the nuclear power plant is coming over to

21 AmerenUE. So the liabilities that are part of this

22 transaction we feel also need to be considered to

23 determine whether or not the consideration is reasonable

24 and prudent. If Missouri customers are going to take on

25 all of the liability for the Callaway plant and its

1 decommissioning, then we want to look at whether or not
2 the consideration is reasonable and prudent.

3 JUDGE THOMPSON: What do you think of that,
4 Mr. Lowery?

5 MR. LOWERY: Well, let me try to organize
6 my thoughts a little bit, Judge. What I hear Staff saying
7 is that they are looking for information about whether the
8 transfer price is or is not appropriate. We included the
9 prayer that they believe makes that issue relevant in our
10 application in August of 2003, and the information that
11 they seek is about -- and I believe, your Honor, you're
12 probably familiar with these utilities, but just in case
13 you're not, they want information that CilCorp provided to
14 Ameren Corporation when Ameren Corporation purchased the
15 stock of CilCorp.

16 These are not Ameren Corporation or
17 AmerenUE or any other Ameren company documents or
18 analyses. These are the due diligence documents that --
19 the massive amount of due diligence documents that would
20 have been in a data room that CilCorp would have set up,
21 for example, when Ameren was evaluating whether to buy the
22 stock of that company.

23 JUDGE THOMPSON: Okay. Let me stop you
24 right there, and explain to me what exactly this due
25 diligence review is.

1 MR. LOWERY: Well, there's typically -- and
2 I'm sure that's what took place in this case. Ameren was
3 interested, Ameren Corporation was interested in buying
4 the stock of CilCorp, which is an integrated Illinois
5 public utility; generation, transmission, distribution,
6 gas, electric, the whole 9 yards. When a transaction like
7 that takes place and due diligence takes place, literally
8 dozens of employees, I'm sure, from all different
9 disciplines, right of way, finance, human resources, real
10 estate, you name it, I'm sure descended upon the
11 headquarters at CilCorp and went into what are called --
12 commonly called data rooms.

13 And CilCorp laid out, here's all the paper
14 about our company. Here's our environmental permits and
15 our contracts and our -- you name it, it's all there.
16 Because when a company is going to buy the stock of
17 another company, as you know, Judge, and then merge that
18 company into the acquiring company, everything,
19 liabilities, et cetera, all are going to come along with
20 it.

21 JUDGE THOMPSON: Okay.

22 MR. LOWERY: And the acquiring party
23 evaluates that transaction by doing due diligence, looking
24 at those documents.

25 JUDGE THOMPSON: Well, now, due diligence

1 is a standard that's usually applied to, say, the
2 performance of corporate officials; isn't that right?

3 MR. LOWERY: This is a different -- this is
4 using it in a totally different context, Judge.

5 JUDGE THOMPSON: Okay.

6 MR. LOWERY: I think you're referring to
7 whether a board of directors member, for example,
8 exercised due diligence in making a good decision in the
9 interest of the shareholders of the company. Here I'm
10 talking -- here this is more of, I guess I don't know if
11 it's a slang term, but it's a term commonly used in the
12 corporate world to describe the process of evaluating all
13 of the records, et cetera, et cetera, of an acquisition
14 candidate.

15 JUDGE THOMPSON: Okay.

16 MR. LOWERY: And so CilCorp provided us
17 tens of thousands of pages of documents, I have no doubt,
18 about the company. Illinois Power did and is doing the
19 same thing. As I believe you know, Ameren Corporation
20 signed an agreement about two or three months ago to buy
21 the stock of Illinois Power, another integrated Illinois
22 utility. That transaction has not closed. It's expected
23 to close by the end of 2004 if all the conditions to
24 closing are satisfied, but it did not close, and the same
25 process is taking place there as has taken place to some

1 extent and is taking place there in terms of evaluating
2 all of these documents. Staff is asking to see all of
3 those documents.

4 JUDGE THOMPSON: And we're talking about,
5 did I understand you correctly, tens of thousands of pages
6 in each case?

7 MR. LOWERY: I'm sure that's the case, your
8 Honor. We're talking about large integrated utilities,
9 and I've done this myself on several occasions. I can't
10 represent to you I have firsthand knowledge of exactly the
11 number of pages that CilCorp would have made available and
12 that IP made available. My experience with transactions
13 of this type would indicate it's thousands or tens of
14 thousands of pages.

15 JUDGE THOMPSON: Do we know which it is?

16 MR. LOWERY: I don't, your Honor, to be
17 honest with you. I'm sure it's -- I'm absolutely positive
18 it's thousands.

19 JUDGE THOMPSON: Okay.

20 MR. LOWERY: I guess I won't go so far as
21 to say tens of thousands for sure, but I suspect it is.

22 JUDGE THOMPSON: Okay.

23 MR. LOWERY: And one of the things that
24 troubles me about this request, I mean, for one thing, I
25 don't see how any of that is relevant to whether or not

1 the transfer price that CIPS is going to pay AmerenUE for
2 a, frankly a much smaller transaction of assets that
3 AmerenUE itself owns today, we know all about those assets
4 today. We've owned them for, I don't know, I think
5 decades. Why all of the documents that third-party
6 companies gave Ameren Corporation so Ameren could decide
7 whether to buy the stock of those third-party companies
8 sheds any light on what price CIPS should be paying
9 AmerenUE for assets AmerenUE is well familiar with and
10 knows all about today.

11 JUDGE THOMPSON: Okay.

12 MR. LOWERY: I don't -- I think it's -- I
13 think it's a fishing expedition that I don't even
14 understand, to be honest with you. But we have -- as you
15 noted, your Honor, there's several other objections that
16 we make, one of which that this is incredibly burdensome.
17 Whenever you look at a burdensome objection -- and I think
18 we talked about this yesterday a little bit in connection
19 with some other DRs.

20 JUDGE THOMPSON: Mr. Lowery, I wonder if I
21 might ask you to break for a moment and we'll give
22 Ms. Shemwell an opportunity to respond to what you've said
23 already and then we'll give you another chance. Okay?

24 MR. LOWERY: Sure.

25 JUDGE THOMPSON: Thank you. Why don't you

1 go ahead, Lera?

2 MS. SHEMWELL: Thank you, Judge. We agree
3 that there may be many documents. What we're looking for
4 is the index to those documents. Companies retain all of
5 these documents in case their shareholders sue them later
6 down the road and for other review purposes. The Staff
7 wants to compare -- we feel if AmerenUE were selling this
8 to a third party, they would have done a great deal more
9 work than they have done in this case. Staff -- an
10 analysis, evaluation of the value, the market value and
11 that kind of thing.

12 Staff wants to compare the scope of
13 Ameren's review of the assets and the liabilities,
14 including such things as employee pensions and obligations
15 and environmental exposure, to what was done in this other
16 case. Our point is that AmerenUE has not done nearly
17 enough in this case to evaluate things like liability,
18 pensions, environmental, the value of those things.
19 Ameren is keeping all of those liabilities and is not
20 getting any compensation for it.

21 We think that in these other cases Ameren
22 would not have taken on liabilities without getting
23 compensation, and that's one of our points. So it's not
24 just a matter of the assets, but it's also these
25 liabilities that will remain with AmerenUE customers for

1 which they're not getting any compensation.

2 Since AmerenUE did not do any evaluation to
3 provide to Staff, we're looking at this as one way that we
4 can get some idea of the scope of the evaluation they did
5 in these two very recent cases, and it will either support
6 our contention that they have done enough or have not done
7 enough. I mean, we will find out one way or the other.

8 JUDGE THOMPSON: Right. We're only at the
9 discovery stage here.

10 MS. SHEMWELL: Future obligations related
11 to pension cost and environmental cleanup have not been
12 addressed, things like that. So we want to be able to
13 make the comparison between what Ameren did when it was an
14 arm's length third-party transaction in comparison with
15 what they're doing in this case. Now, they might not need
16 to do quite as much in this case, but our contention is
17 they've not done nearly enough in terms of protecting
18 ratepayers from these liabilities.

19 Just give me one moment before Mr. Lowery
20 jumps back in.

21 JUDGE THOMPSON: Sure.

22 MS. SHEMWELL: Now, our contention is that
23 this was not an arm's length transaction, that AmerenUE
24 was not actually represented by anyone independent looking
25 out for UE's interests in this transaction, but that it

1 was a transaction made by the parent Ameren for its
2 benefit, and the interests of the Missouri ratepayers were
3 not considered adequately. A review of the sale will show
4 what Ameren is willing to do when it is protecting its
5 interests.

6 JUDGE THOMPSON: Okay. Let me ask you some
7 questions to kind of get some basic groundwork here. When
8 I look at your DR, when it refers to Ameren, am I correct
9 in my understanding that it's referring to Ameren the
10 holding company?

11 MS. SHEMWELL: Yes.

12 JUDGE THOMPSON: Okay. And it's correct
13 that Ameren the holding company is an unregulated entity?

14 MS. SHEMWELL: That is correct. However,
15 when Ameren the holding company became an unregulated
16 entity as a result of Case No. EM-96-149, they agreed
17 under the state jurisdictional issues to provide access to
18 the books and records, including AmerenUE and any
19 affiliates or subsidiaries. You can read it for
20 yourself --

21 JUDGE THOMPSON: Right.

22 MS. SHEMWELL: -- and see what I -- and it
23 agreed that it would not object to providing such records
24 and personnel because Ameren is unregulated under PUHCA.
25 So it has agreed that it will provide these documents. It

1 will not, as they have tried to do here, say, oh, wait, we
2 can't provide that because we're Ameren and we're
3 unregulated under PUHCA. They agreed that they would not
4 raise that objection in discovery. It's also part of the
5 Commission order in this case. Did I hand you a copy of
6 that, Judge? If not, I will provide you a copy.

7 JUDGE THOMPSON: Stipulation & Agreement?

8 MS. SHEMWELL: There is the order in the
9 case as well.

10 JUDGE THOMPSON: I have an excerpt here, as
11 I noted, from 6 MoPSC 3rd that states, UE and its
12 prospective holding company Ameren agree to make available
13 to the Commission at reasonable times and places all books
14 and records and employees and officers of Ameren, UE, and
15 any affiliate or subsidiary of Ameren as provided under
16 applicable law and Commission rules, provided that Ameren,
17 UE, and any affiliate or subsidiary of Ameren shall have
18 the right to object to such production of documents of
19 records or personnel on any basis under applicable law and
20 Commission rules, excluding any objection that such
21 records and personnel are not subject to Commission
22 jurisdiction by operation of the Public Utility Holding
23 Company Act of 1935, popularly known as PUHCA, P-U-H-C-A.
24 Well, I don't see any reference to PUHCA in the objection
25 letter.

1 MS. SHEMWELL: That's the objection,
2 though, that Ameren is not regulated by the Commission.
3 They've agreed here when they formed the holding company,
4 under PUHCA, that they would not object that documents
5 were in the possession of Ameren as opposed to UE.

6 JUDGE THOMPSON: Well --

7 MS. SHEMWELL: In the control of a company
8 not subject to the Commission jurisdiction. I believe
9 that is Ameren. Ameren controls these documents.

10 JUDGE THOMPSON: Perhaps that's arguably
11 within there. What I'm trying to figure out is --

12 MS. SHEMWELL: Well, these documents are in
13 the possession of Ameren.

14 JUDGE THOMPSON: -- is the relevance scope,
15 and the Commission's concern is with the doings of the
16 regulated entity, UE. So --

17 MS. SHEMWELL: Well, also, though, Judge --

18 JUDGE THOMPSON: -- this is the acquisition
19 by the holding company of regulated entities other than
20 UE, right?

21 MS. SHEMWELL: You mean the Illinois
22 purchases?

23 JUDGE THOMPSON: Right, CilCorp and
24 Illinois Power.

25 MS. SHEMWELL: They're buying regulated

1 electric companies, uh-huh.

2 JUDGE THOMPSON: Right, but not regulated
3 by this Commission.

4 MS. SHEMWELL: No.

5 JUDGE THOMPSON: In other words, so far the
6 only relevance that I hear is that they provide a
7 yardstick for comparison, in other words, how much work
8 Ameren does when it's buying a company that's owned by a
9 third party in order to protect itself from a later
10 stockholder lawsuit that it bought a pig in a poke.

11 MS. SHEMWELL: Actually to protect its
12 interests.

13 JUDGE THOMPSON: Right.

14 MS. SHEMWELL: Not just --

15 JUDGE THOMPSON: Here AmerenUE is not
16 buying anything. It's selling, rather, its own service
17 area. I find persuasive what Mr. Lowery said that Ameren
18 is fully familiar with those assets.

19 MS. SHEMWELL: Our point is, Judge, that
20 they have not valued those assets or the liabilities to
21 determine whether or not the transfer price is reasonable
22 and prudent. Staff doesn't have a yardstick of Ameren
23 selling, but we do have very recent transactions where we
24 saw all of the factors that they looked at when they were
25 buying. Our point is that they haven't done -- AmerenUE

1 is not being protected.

2 JUDGE THOMPSON: I understand your angle.

3 Okay. I understand your angle, and I think it's a

4 stretch, but I'm willing to give you a leeway there,

5 except then I'm hearing about thousands, possibly tens of

6 thousands of pages of documents, and I'm very concerned

7 with that.

8 MS. SHEMWELL: Well, Judge, these documents

9 should all be in one spot, and we're just asking to access

10 them, not to -- not for them to send us copies but just to

11 go in and look.

12 JUDGE THOMPSON: In other words, you travel

13 there to their premise to look at them?

14 MS. SHEMWELL: We'd travel there,

15 absolutely. Absolutely. And we --

16 JUDGE THOMPSON: How does that sound to

17 you, Mr. Lowery?

18 MR. LOWERY: Well, Ms. Shemwell has her

19 facts wrong about the documents all being in one spot. As

20 I mentioned before, when an acquisition of this type is

21 done, literally dozens of employees, I'm sure, given the

22 size of the acquisition, are involved. They look at

23 documents, they get copies of documents.

24 These documents, as I understand it,

25 there's some level of a central repository, although not

1 entirely, but mixed in with those documents are Ameren
2 documents, and I'm sure legal memorandums and all kind of
3 things that would have to be excised and separated in
4 order to allow Staff access to the documents.

5 JUDGE THOMPSON: So, in other words --

6 MR. LOWERY: There's another -- there's
7 another problem, I think, that exists. Staff is making it
8 sound like that the only possible way that they can figure
9 out what the assets that are associated with X number of
10 electric and gas customers is worth is to go look at due
11 diligence documents provided by third parties in a stock
12 acquisition of an entire utility in Illinois.

13 For one thing, even if there was some
14 credence to that theory, which I don't believe there is,
15 but even if there was, Staff had since last August to
16 explore that issue and didn't choose to do it until last
17 Friday when we're two weeks and three days away from the
18 hearing.

19 But even more so, Illinois Power and
20 CilCorp, they're subject to the jurisdiction of the ICC,
21 they're subject to the jurisdiction of the FERC. The
22 asset transfer agreements that were signed when Ameren is
23 seeking to buy or bought or seeking to buy in the case of
24 Illinois Power, those assets were filed with the SEC.
25 These are all public company transactions.

1 A tremendous amount of the information if
2 Staff wants to see how assets are valued, what those
3 assets were, try to make comparisons, they've got X number
4 of customers from CilCorp and they had X miles of
5 transmission, they had
6 X miles of this and so on, is publicly available
7 information that Staff could very easily have -- have
8 access had they chosen to do so, and now they are
9 essentially asking Ameren to provide it for them. I mean,
10 even from the relevance standpoint, there are much less
11 burdensome ways that are available.

12 I also -- just one other point, and then
13 I'll let Ms. Shemwell continue. The order in the
14 EM-96-149 case and the passage, Judge, that you were
15 reading from, where you stopped reading there's another
16 sentence that goes on to say that in the event that rules
17 imposing affiliate guidelines regarding access to books,
18 records, personnel, applicable to similarly situated
19 electric utilities in Missouri are adopted, which I think
20 that has happened. Ms. Shemwell and I spent two years
21 probably arguing about the affiliate transaction rule.

22 It goes on to say then UE, Ameren and each
23 affiliate or subsidiary thereof shall become subject to
24 the same rules of such other similarly situated electric
25 utilities in lieu of this paragraph. Well, what that

1 tells you is, you've got to go look at the books and
2 records provisions of the affiliate transaction rules to
3 see the rules that Ameren are subject to, not this
4 stipulation in any event at this point in time.

5 This was a stop gap that Staff wanted in
6 connection with the stipulation to have in place some
7 mechanisms about affiliate records that would fill the gap
8 until such time as affiliate transaction rules were
9 adopted, and now they have been, and so this paragraph
10 really doesn't even apply anymore. It also -- as I think
11 your Honor noted, it also specifically preserves our
12 ability to object, which we've done.

13 JUDGE THOMPSON: Let me ask you two
14 questions real quick. Is there an index, as was referred
15 to by Ms. Shemwell?

16 MR. LOWERY: I don't know, your Honor.

17 JUDGE THOMPSON: And No. 2, what is the
18 site to an affiliated transaction rule that you suggest
19 has taken the place?

20 MR. LOWERY: I believe, your Honor, that
21 there are two -- well, there are three provisions. I
22 think there are two that might be relevant.

23 JUDGE THOMPSON: Okay.

24 MR. LOWERY: And I'm looking at the
25 electric rules 4 CSR -- excuse me -- 4 CSR 240-20.015, I

1 believe it's paren 5 and paren 6.

2 JUDGE THOMPSON: Okay. I think that

3 Ms. Shemwell has just handed me that; is that correct?

4 MS. SHEMWELL: That is correct.

5 JUDGE THOMPSON: Okay.

6 MR. LOWERY: And if you look at that, your

7 Honor, there's a couple of -- well, I think if you read

8 it, you can probably read it to yourself, but I think you

9 will see that there is nothing in that rule that says that

10 Ameren Corporation, the unregulated company, must make

11 available under this rule documents it receives from a

12 third-party company whose stock acquired.

13 That is not -- that transaction when Ameren

14 bought the stock of CilCorp and when Ameren is attempting

15 to buy the stock of IP is not an affiliate transaction

16 within these rules and it's not -- those documents are not

17 within the scope of the two subdivisions that I just read

18 to you or cited to you.

19 JUDGE THOMPSON: Okay. Ms. Shemwell?

20 MS. SHEMWELL: Judge --

21 JUDGE THOMPSON: You want to whale on him

22 some more?

23 MS. SHEMWELL: Sure. The question of

24 surprise, we have been discussing this informally with Tom

25 Byrne for a long time. He has indicated that many of the

1 records are in a centrally -- in a central location. My
2 understanding is that there is an index, and while we
3 recognize that there may be some attorney/client
4 privileged documents in there, we have no idea how many or
5 what is in there. I believe those could be easily
6 segregated. I believe that. I do not know that for sure,
7 but we could work that out.

8 JUDGE THOMPSON: Okay

9 MS. SHEMWELL: I do believe that the Stip
10 and Agreement does say separately that AmerenUE continues
11 to -- will continue to engage in voluntary and cooperative
12 discovery practices. While Ameren may be subject to that,
13 we feel that the whole purpose of this Stip and Agreement
14 was that Ameren would not claim that it was not regulated
15 by the Commission and withhold documents.

16 Now, let me get to access of records. The
17 Commission has full authority to review and inspect and
18 audit all books and accounts kept by a regulated
19 electrical corporation or affiliated entity. The holding
20 company is the -- is the holding company. I mean, they
21 are the affiliated entity.

22 MR. LOWERY: Judge, what Ms. Shemwell
23 didn't read --

24 JUDGE THOMPSON: Let's let her finish.

25 MR. LOWERY: -- is the words for the sole

1 purpose of assuring compliance with this rule.

2 JUDGE THOMPSON: Mr. Lowery, let's let her

3 finish.

4 MR. LOWERY: I'm sorry.

5 JUDGE THOMPSON: That's quite all right.

6 MS. SHEMWELL: We are wanting to look at

7 these rules for the purpose of assuring compliance because

8 we feel that the rule does apply in this case. And that

9 this transfer should be made at the greater of market or

10 book, that this provides some method for determining

11 whether or not the consideration received is reasonable.

12 The Commission has issued its own rules saying what is

13 reasonable between affiliates. This is the Commission's

14 position on that.

15 JUDGE THOMPSON: Okay. Well, surely,

16 surely UE has an inventory of the assets, correct?

17 MS. SHEMWELL: They have provided that.

18 What they have not provided is value. They have not --

19 also what we haven't seen is their evaluation of the

20 entire sale, not just the assets, but again these

21 liabilities, pension benefits. We're talking hundreds of

22 thousands of dollars and millions of dollars in the

23 pension assets. We're also talking --

24 JUDGE THOMPSON: Have you directed DRs to

25 specifically those questions? Because, I mean, this does

1 not specifically strike at those.

2 MS. SHEMWELL: We're asking for this -- we

3 have made clear that we do not feel the evaluation they

4 have done in this case is enough.

5 JUDGE THOMPSON: Okay.

6 MR. LOWERY: I'll acknowledge that they've

7 made that clear.

8 JUDGE THOMPSON: Okay. Do you know if

9 they've --

10 MS. SHEMWELL: We have asked for

11 information related to the liabilities and it has not been

12 provided.

13 JUDGE THOMPSON: Are you planning to compel

14 response to those?

15 MS. SHEMWELL: I don't know.

16 JUDGE THOMPSON: Okay. Fair enough.

17 MS. SHEMWELL: We think that this is one

18 reasonable way for us to make our point that were this a

19 third-party transaction, it would be handled much

20 differently, and that that provides a basis for assisting

21 us in determining whether or not it's detrimental to the

22 public interest and whether or not the consideration

23 received is reasonable and prudent.

24 JUDGE THOMPSON: You've certainly piqued my

25 interest with respect to the liabilities, particularly the

1 Callaway plant, but I still think this seems like a long
2 way around the barn, as they say, to get there.

3 MS. SHEMWELL: Well, let me make this
4 point. We do not have the staff to go out and determine
5 the value of a lot of these things.

6 JUDGE THOMPSON: Okay.

7 MS. SHEMWELL: The value of assets was
8 determined in these recent purchases. If Mr. Lowery had
9 felt they were publicly available, he could have included
10 that in his objection, and that is not part of the
11 objection.

12 JUDGE THOMPSON: Right.

13 MS. SHEMWELL: That might be a cross check,
14 but what actually Ameren has done in very recent purchases
15 we think will provide some information, again, in terms of
16 the whole scope of what they look at and the fact that
17 none of that was done in this case before proposing to
18 make this transfer.

19 JUDGE THOMPSON: Do you know what's been
20 done in this case?

21 MS. SHEMWELL: Yes.

22 JUDGE THOMPSON: And do you know what was
23 done in those other cases?

24 MS. SHEMWELL: We suspect a great deal more
25 was done. That's what we're looking for.

1 JUDGE THOMPSON: But you don't actually
2 know?

3 MS. SHEMWELL: No. This is discovery.

4 JUDGE THOMPSON: That's what you want?

5 MS. SHEMWELL: That's right.

6 JUDGE THOMPSON: What if this index you
7 speak of existed and I allowed discovery of that, would be
8 that sufficient?

9 MS. SHEMWELL: I don't think we know until
10 we see it. We're not looking to look through hundreds or
11 thousands of documents. Give me just a moment.

12 JUDGE THOMPSON: Sure.

13 We're going to take a little recess while
14 the reporter gets her machine working.

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

16 MS. SHEMWELL: If I may continue, Judge.

17 JUDGE THOMPSON: Okay. We're back on the
18 record. Please continue, Ms. Shemwell.

19 MS. SHEMWELL: Our contention in this case
20 is that Ameren has not done nearly enough. We feel that
21 the best way for us to support that is to show --

22 JUDGE THOMPSON: What they did in another
23 case?

24 MS. SHEMWELL: -- what they did in another
25 case. And when the Commission says, well, you're making

1 this assertion, what do you base that on, we can say,
2 look, we've got very recent transactions and we're
3 comparing the amount of work done in that to what's been
4 done in this case.

5 JUDGE THOMPSON: Okay.

6 MS. SHEMWELL: Also, Staff has informed me
7 that if they can look at the main file, under that will be
8 listed documents, they can decide which documents from
9 that they wanted to see. They are expecting that it would
10 not be a lot, but they want to look particularly at the
11 environmental liabilities and pension assets and see what
12 was done in that respect. Those are two particular areas
13 of concern.

14 JUDGE THOMPSON: Let me ask some questions,
15 if I may. In the proposed transaction as it's presently
16 laid out, is there a valuation assigned to these
17 liabilities?

18 MS. SHEMWELL: No.

19 JUDGE THOMPSON: There is not?

20 MS. SHEMWELL: Yes.

21 MR. LOWERY: Separately in some fashion,
22 you mean, your Honor?

23 JUDGE THOMPSON: Well, in other words, do
24 we know what the present value is of any liabilities that
25 are going to essentially be shifted to the Missouri

1 ratepayers if the transaction is approved?

2 MR. LOWERY: Your Honor, we have provided
3 AmerenUE's balance sheet to Staff, and Staff knows as well
4 as we do that, I believe, approximately 6 percent of
5 AmerenUE's retail load is located in the Metro East area
6 that will be transferred.

7 JUDGE THOMPSON: Okay.

8 MR. LOWERY: The generation that is not
9 being transferred, as I believe you understood from our
10 conversation yesterday, but that will essentially be freed
11 up to serve only Missouri now.

12 JUDGE THOMPSON: Right.

13 MR. LOWERY: Of course, in effect, there's
14 going to be 6 percent less load to serve Illinois, so that
15 6 percent generation that used to serve Illinois will now
16 serve Missouri. So it seems to me that -- and I'm not an
17 accountant, so I may be speaking out of turn, but it seems
18 to me if you have the balance sheet and you know what the
19 liabilities are and you know the load that's transferred
20 is 6 percent, you can sort of figure out what the number
21 is.

22 JUDGE THOMPSON: It's always been my
23 experience that it's more complicated than that when you
24 talk to accountants.

25 MR. LOWERY: It may be, but --

1 JUDGE THOMPSON: I know, for example, that
2 the Metro East customers have been receiving some power
3 from the Callaway plant; isn't that correct?

4 MR. LOWERY: That's correct, and --

5 JUDGE THOMPSON: And so they've been
6 shouldering some of the cost of the eventual retirement of
7 that plant; isn't that correct?

8 MR. LOWERY: That is correct, and I believe
9 that 6 percent number I gave you is probably the corollary
10 number you're talking about.

11 JUDGE THOMPSON: Okay. And now Missouri
12 ratepayers will shoulder that percent, correct?

13 MR. LOWERY: That's correct, and get all
14 the power.

15 JUDGE THOMPSON: And get all the power, I
16 understand, but also be liable for all the retirement.

17 MR. LOWERY: Well, now on the retirement,
18 Judge, just so I can clarify, as you probably know, each
19 year Ameren contributes sums to a decommissioning fund and
20 contributes those sums on behalf of Illinois, that
21 Illinois ratepayers have been paying for, and some on
22 behalf of Missouri, and the Missouri number is many
23 multiple times higher, but the sums in that fund will be
24 transferred to AmerenUE Missouri and will be available.

25 If there is a dispute in this case, in the

1 interest of full disclosure, about whether for the next
2 year and a half AmerenUE Missouri should have to continue
3 putting in the \$272,000 that has been being contributed on
4 behalf of Illinois ratepayers, we contend based on our
5 current analysis that that's not necessary, that the
6 6.2 million is put in for Missouri is sufficient, and that
7 every three years we have to file with the Commission, as
8 you probably know, to update that number, and that if it
9 turns out we were wrong about, that we can adjust it in
10 2005 when we file again.

11 But the point I'm trying to make is that
12 several million or tens of millions, whatever the amount
13 of Illinois deposits have been made over the last 20 years
14 since Callaway's been there, all that money's going to
15 come with the Callaway liabilities to be there to pay for
16 decommissioning Callaway.

17 JUDGE THOMPSON: Okay. Thank you for
18 clarifying that. What about other possible liabilities,
19 PCBs or anything of that kind?

20 MR. LOWERY: In general, your Honor,
21 generation-related liabilities are remaining under the
22 transaction with AmerenUE, and it's -- the reason that we
23 did that is because -- since the benefit of the plants,
24 the power, et cetera, are all going to come to Missouri
25 and all the power's going to be available to Missouri, we

1 believe that it was appropriate that all the liabilities
2 come with those plants.

3 JUDGE THOMPSON: Okay. I appreciate that.
4 Thank you. I can tell the parties that I've heard
5 everything I need to hear. If there's anything you'd like
6 to say to close, finish up or a point that you think I
7 misunderstand, which we may be here a week if we clarify
8 all of those. Anything else?

9 MS. SHEMWELL: I don't think I have
10 anything else, Judge. If you need anything from us, just
11 let us know.

12 JUDGE THOMPSON: Okay.

13 MR. LOWERY: I don't think I do either.

14 JUDGE THOMPSON: Very good. I appreciate
15 your time. I appreciate your very articulate
16 explanations, and I will take this under advisement. I
17 hope to have an Order -- I guess we're going to have to
18 look at late tomorrow at this point.

19 MR. LOWERY: Judge, before we go off the
20 record, can I take up one other minor matter with you?

21 JUDGE THOMPSON: Absolutely.

22 MR. LOWERY: We spoke yesterday,
23 Mr. Dottheim and I, with you about the issues list and the
24 position statement.

25 JUDGE THOMPSON: Correct.

1 MR. LOWERY: Mr. Dottheim had indicated
2 seeking an extension on the issues list, I believe,
3 through today, and then on the position statements through
4 Tuesday.

5 JUDGE THOMPSON: Right.

6 MR. LOWERY: I believe you had indicated
7 that as long as you had the issues list by nine o'clock
8 Monday, that would be satisfactory to you. We are trying
9 to get our ducks in a row and get together to --

10 JUDGE THOMPSON: That was when I was under
11 the misapprehension that we were starting the hearing at
12 nine o'clock Monday. But we've got another week, don't
13 we?

14 MR. LOWERY: We actually start on the 22nd.

15 JUDGE THOMPSON: Okay. Let me explain
16 about the issues list and the position statements. The
17 Commissioners use those to tell them what to read of the
18 testimony to prepare for the hearing. Okay. So they get
19 very antsy when they don't have it prior to the hearing,
20 because they don't know what to take home with them at
21 night to read of.

22 Of course, as we all know, when these
23 hearings actually go, nobody ever winds up going on the
24 stand when they were supposed to anyway, but still the
25 Commissioners would like that for that purpose. The last

1 agenda prior to our hearing would be Thursday. I have to
2 have the position statements and issues in time to put
3 them together into a memorandum that I can hand to the
4 Commissioners at agenda Thursday morning. Okay? So I
5 mean, if you send them to me electronically Wednesday
6 afternoon, I can do it, that's fine. But certainly we
7 have to have them no later than Wednesday afternoon.
8 Okay?

9 MR. LOWERY: Well, I don't think we intend
10 to wait that long, but if we would have the latitude to
11 have it 'til then, it would be appreciated.

12 JUDGE THOMPSON: Why don't I just say right
13 now on the Bench, you've got until Wednesday afternoon at,
14 why don't we say three o'clock.

15 MR. LOWERY: That's great.

16 JUDGE THOMPSON: Okay. And send them
17 directly to my e-mail address, which for the record is all
18 lower case kevin.thompson@psc.mo.gov. Okay?

19 MR. LOWERY: Okay. Thank you.

20 JUDGE THOMPSON: You'll have to file with
21 EFIS as well, but if you would send me a word processing
22 copy that I can then cut and paste to make this
23 memorandum, I would be eternally grateful and in a very
24 good mood when we start the hearing.

25 MR. LOWERY: We'll do it.

1 JUDGE THOMPSON: Great.
2 MR. LOWERY: Thank you.
3 JUDGE THOMPSON: Thank you. Is there
4 anything further today?
5 MS. SHEMWELL: Thank you, Judge.
6 MR. LOWERY: Not from me.
7 JUDGE THOMPSON: Hearing nothing further,
8 we will adjourn. Thank you very much.
9 WHEREUPON, the hearing was concluded.
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