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2
3 BEFORE THE PUBLIC SERVICE COMMISSION
4 OF THE STATE OF MISSOURI

5 MISSOURI COALITION FOR FAIR COMPETITION,)
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8) Case No.
9) EC-99-327
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Petitioner,

v.

UNION ELECTRIC COMPANY, doing business
as AMEREN UE,

Respondent.

12 PREHEARING CONFERENCE

13 KEVIN THOMPSON, Presiding
14 Deputy Chief Regulatory Law Judge.

15 ALSO PRESENT:

16 LERA L. SHEMWELL
17 Missouri Public Service Commission
18 Assisant General Counsel

19 JOHN B. COFFMAN,
20 Office of the Public Counsel
21 Deputy Public Counsel

22 JAMES J. COOK,
23 Ameren Services
24 Associate General Counsel

25 TERRY C. ALLEN
ALLEN & HOLDEN LAW OFFICES, L.L.C.
Counsel for Missouri Coalition
for Fair Competition

FILED

APR 14 1999

*Missouri
Public Service Commission*

1 JUDGE THOMPSON: Good morning. My name is
2 Kevin Thompson. I'm the Regulatory Law Judge
3 assigned to this matter, which is the Missouri
4 Coalition for Fair Competition, Petitioner, versus
5 Union Electric Company, doing business as Ameren
6 UE, Respondent.

7 Could I have oral entries of appearance?
8 How about Petitioner?

9 MR. ALLEN: Terry C. Allen, Allen and
10 Holden Law Offices, LLC. I've handed my card to
11 the reporter. My office is in Jefferson City, and
12 I represent the Missouri Coalition for Fair
13 Competition. With me today is a representative of
14 my client for the purpose of just sitting in and
15 listening, Mr. Perry, P-e-r-r-y, Moore, M-o-o-r-e.

16 JUDGE THOMPSON: Thank you, Mr. Allen.
17 Respondent?

18 MR. COOK: James J. Cook appearing for
19 Ameren UE, Union Electric Company, Post Office
20 Box 66149, St. Louis, Missouri 63166-6149,
21 appearing on behalf of Respondent, Union Electric
22 Company.

23 JUDGE THOMPSON: Thank you, sir.
24 Office of the Public Counsel?

25 MR. COFFMAN: Yes. John B. Coffman,

1 appearing on behalf of the Office of the Public
2 Counsel, P.O. Box 7800, Jefferson City, Missouri
3 65102.

4 JUDGE THOMPSON: And Staff of the
5 Commission?

6 MS. SHEMWELL: Lera Shemwell, appearing
7 for the Staff of the Missouri Public Service
8 Commssion, Post Office Box 360, Jefferson City,
9 Missouri 65102.

10 JUDGE THOMPSON: Thank you. I assume
11 you've all received the order or you wouldn't be
12 here today. What is the status of settlement
13 negotiations between the parties, if any?

14 MR. ALLEN: We never talked.

15 JUDGE THOMPSON: You haven't talked yet?

16 MR. ALLEN: They haven't talked to us and
17 we haven't talked to them. No offense intended, by
18 the way.

19 MR. COOK: I don't think we've decided to
20 shun the other, we just have not gotten together.

21 JUDGE THOMPSON: Okay. Well, this room is
22 yours until five o'clock today, and I hope you will
23 take advantage of the fact that you are all here
24 face to face across the table and that you've got
25 an uninterrupted space where you can discuss

1 settlement possibilities in this matter.

2 In terms of the hearing, I have taken the
3 liberty to get some dates off of our calendar. Our
4 calendar is very full. Do the parties have any
5 idea how many days they believe they would need?

6 MS. SHEMWELL: I can't think it would be
7 more than one.

8 MR. COOK: I wouldn't think so.

9 MR. ALLEN: That would be my best guess.
10 I think just frankly from the response of UE, which
11 I think was a reasonably fair response with regard
12 to the items referenced in our petition, that they
13 basically admitted that that occurred, and I think
14 the issue that we see is the extensiveness of what
15 went on beyond that.

16 You know, whether we need to address those
17 by a separate complaint, whether we can address it
18 through this process and try to reduce everybody's
19 time and effort, because we have received
20 additional examples of the same problem with other
21 customers, and we would really be interested, I
22 think, in the long run, to know, you know, how many
23 people they sent these to and the circumstances
24 under which they sent them and how they corrected
25 it.

1 And then there's another issue that came
2 up recently as to a boiler operation, by phone,
3 that they use that we would like to try to address
4 with them. And, you know, granted the petition
5 only addresses ostensibly two matters. We think
6 it's more extensive than that, and we need to
7 discuss it.

8 JUDGE THOMPSON: Well, you'll have, as I
9 said, every opportunity to discuss these matters
10 informally today --

11 MR. ALLEN: Okay.

12 JUDGE THOMPSON: -- and ask for the
13 hearing. Of course, the only matters before the
14 Commission for hearing will be those matters in the
15 pleadings. So if you need to amend your pleadings
16 to add additional incidents, then I urge you to go
17 ahead and do whatever is necessary.

18 There are two days in April which is, I'm
19 sure, way too soon.

20 MS. SHEMWELL: Much.

21 JUDGE THOMPSON: But I'm mentioning them
22 simply because they are there, and even finding a
23 single day is not an easy matter over the next
24 several months. We do not double up on hearings,
25 that is hold two hearings simultaneously if we can

1 avoid it, because the Commissioners are only able
2 to attend one at a time.

3 In May, the 20th and the 21st are both
4 open. In June I was able to find only one day, the
5 16th. In July only two days, the 22nd and 23rd,
6 and I did not look later than that. So if you want
7 to look later than that, you can go look at our
8 calendar.

9 It is the practice, according to our rule,
10 that a procedural schedule be developed jointly by
11 the parties and most of you, I'm sure, are well
12 familiar with the sorts of things that are
13 contained therein. Basically a date is set for the
14 filing, pre-filing of direct testimony, which is
15 simultaneous. Thereafter there's an opportunity
16 for simultaneous filing of rebuttal testimony.

17 There's also typically a hearing
18 memorandum which sets out the issues for
19 determination. Often the parties will agree who
20 their witnesses are, the order in which they're
21 going to be presented, the order of cross, items of
22 that kind, and that proposed procedural schedule is
23 due April 2nd. So that's something you would want
24 to address today as well.

25 Do any of the parties have any idea as to

1 how many witnesses they plan to present yet?

2 MR. ALLEN: No. Not many.

3 JUDGE THOMPSON: Okay. And you've
4 indicated you think there's additional issues that
5 you are going to bring in as well?

6 MR. ALLEN: Well, again, the -- at the
7 time we filed the complaint, we only had the
8 limited examples, and we realize that the way they
9 do business in sending out bills that there were
10 more than just those examples, and we've gathered
11 some more. We don't know how many of these things
12 they've actually sent out, and I think, you know,
13 we could ask. They say it's inadvertent. I think
14 that burden's on the present pleadings, frankly.

15 The other thing we're concerned about is
16 any other forms, whether it be by phone or
17 otherwise, that has been undertaken without
18 complying with the statutes since August 28th of
19 1998, which I believe is the effective date of the
20 law.

21 And I guess our concern comes from the
22 fact that, you know, first, they shouldn't be doing
23 it, but more importantly, the legislation itself
24 was an effort of both parties and many parties to
25 avoid the problems that we have here, and it was,

1 you know, I think, a consensus legislation. So
2 we're real concerned that, you know, it's more than
3 just inadvertence, and perhaps it is; perhaps it
4 isn't.

5 But the other things that bother us in
6 terms of the law when we talked about penalties
7 back in the legislative process, the penalties were
8 substantially higher, and the penalty figure in the
9 statute was a penalty figure arrived at by
10 consensus again. And we also believe that any
11 penalty should be addressed to each billing, not
12 just to the two in the pleading.

13 Again, this may necessitate amending the
14 pleading unless we can get some kind of agreement
15 on where we're going and work with UE and them with
16 us on this.

17 JUDGE THOMPSON: Very well. Do you
18 anticipate extensive discovery?

19 MR. ALLEN: I would like -- you know,
20 unless we can get something resolved today, I would
21 like to inquire of them of how many of these things
22 were actually sent out since August 28th, and be a
23 little bit more precise on how they are addressing
24 the issues currently. And also now that I've
25 learned about this boilerplate issue, I'd like to

1 get into that as it bears on their so-called
2 inadvertence.

3 MS. SHEMWELL: Staff anticipates that
4 there may be some discovery.

5 MR. ALLEN: That's the short of it, I
6 suppose.

7 Yes, we would do some, and I think there's
8 certain things, obviously, they can agree to as
9 they already have. And in light of the nature --
10 in light of the answer that they have submitted to
11 the Commission.

12 JUDGE THOMPSON: Very well. I've noticed
13 that Staff often takes the lead role in developing
14 the hearing memorandum. Is Staff willing to do
15 that in this case?

16 MS. SHEMWELL: Certainly.

17 JUDGE THOMPSON: Thank you. I think that
18 takes care of all of the matters that we need to do
19 on the record today, unless there's anything else
20 that a party has.

21 MR. COOK: I have nothing further.

22 JUDGE THOMPSON: Thank you, sir. We'll go
23 ahead and go off the record then and conclude the
24 pre-hearing conference in this matter. I urge you
25 to use this time here to get this thing settled if

1 possible. Thank you very much.

2 (WHEREUPON, the recorded portion of
3 testimony of this case was adjourned.)
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