BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Union Electric Company for Authority	)	
To Continue the Transfer of	)	Case No. EO-2011-0128
Functional Control of Its Transmission	)	
System to the Midwest Independent	)	
Transmission System Operator, Inc.	)	

REPLY BRIEF OF AMEREN MISSOURI

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INTRODUCTION

The Office of the Public Counsel's (OPC) Initial Brief (OPC's Brief) reads like a law review article where the author advocates a change to existing law to implement a legislative scheme and policy that the author believes is more appropriate than the one that is *actually reflected* in the law. Why might OPC take this tact? Because the law, as it exists, simply does not support the relief OPC seeks. In fact, a careful reading of OPC's Brief demonstrates that this is so. For example, OPC spills much ink bemoaning the practical effect of the Missouri Supreme Court's decision in *State ex rel. City of St. Louis v. Pub. Serv. Comm'n,* 73 S.W.2d 393 (Mo. 1934). However, OPC concedes that *City of St. Louis'* "not detrimental to the public interest standard" is the law of the land and that it controls the Commission's decision in this Section 393.190.1 case.

Also telling is the fact that OPC doesn't cite to case law (because there is none) that would support its attempt to convince the Commission that it can and should in effect impose a change to the terms of the proposed transfer to make it more beneficial from OPC's perspective. Instead of citing to case law, OPC cites to the prefiled testimony of an economist who purported to tell the Commission what its job is in a Section 393.190.1 case.[1] OPC surely wishes the law

[1] OPC's Initial Brief, p. 2 (citing Adam McKinnie's Rebuttal testimony). If the Commission lacks authority to re-write Section 393.190.1 as written by the Missouri General Assembly and as interpreted by the courts—which it most certainly does—a witness cannot change the law based on his opinion of what it should be.

was that the Commission can insist on a benefit in a Section 393.190.1 case, or that the Commission can impose changes on the terms of a transaction to make it even more favorable (from OPC's perspective) than it is as proposed, but OPC's wish is just that – a wish. Under the law the Commission possesses no such authority, and for good reason, as we discuss below.

Not only does OPC's Brief fail to reflect the proper legal standards that govern this case, OPC's Brief also reflects an "evolution" of OPC's positions in this case, which it keeps trying to modify in a way that it apparently hopes will make it *appear* that what it proposes can pass legal muster. The problem for OPC, however, is that no amount of makeup can mask the true face of OPC's position; that is, the fact that OPC is asking this Commission to impose conditions on a proposed transfer that already passes the "not detrimental to the public interest" standard. And OPC takes this position absent *any* specific evidence of the supposed harms it seeks to address; instead OPC's position rests on mere speculation. Having neither the facts nor the law on its side, OPC is simply left to bang on the table loudly with much conviction.

MJMEUC, though to a lesser degree, takes a similar tact as it relates to its own parochial interest, but in the end all that MJMEUC asks for is that the Commission require a change to Section 10(a) of the *Non-Unanimous Stipulation and Agreement (Stipulation).* MJMEUC asks for this despite the Staff's, the Company's, MIEC's and MISO's agreement that Section 10(a) is appropriate as written, and despite the fact that it is clear that the Commission can apply Section 10(a) in a manner that allows the Commission to properly discharge its regulatory oversight, if it becomes necessary or appropriate to do so in the future.

ARGUMENT

I. OPC'S Initial Brief

A. OPC misstates the law.

OPC apparently attempts to diminish the import of *City of St. Louis* by emphasizing that it was decided in 1934 during the "early decades" of utility regulation in Missouri. OPC Brief, pp. 5-6. Yet OPC has no problem relying on cases from that same era when that suits its purposes.[2] Regardless, *City of St. Louis* remains the controlling law in this state, and for good reason: it remains true today, as it did in 1934, that utilities that own property "should have something to say as to whether they can sell [transfer functional control of] it or not * * * [and that] [t]o deny them that right would be to deny to them an incident important to ownership of property." *City of St. Louis*, 73 S.W.2d at 400. And for that reason, it is still the law that a utility is free to sell [transfer] its property "*unless* it would be detrimental to the public" to do so. *Id* (emphasis added). Moreover, it is still the law that the Commission cannot "insist that the public shall be benefitted," but rather, can only condition the change in ownership [transfer] if necessary to prevent the transfer, as proposed, from being detrimental to the public interest. *Id.*

[2] *See* OPC's citation to *State ex rel. Sikeston v. Pub. Serv. Comm'n*, 336 Mo. 985, 82 S.W.2d 105 (1935), for a proposition that OPC likes. OPC's citation to *Sikeston* takes one passage from the case out of context. The case itself addresses whether the Commission has the authority to order an electrical corporation that was previously awarded a certificate of convenience and necessity by the Commission to cease its operations simply because a municipality has set up its own electric utility. 82 S.W.2d at 109. The quotation cited by OPC is actually language from another case where the commission had permitted a new company to enter into competition with an established company. *Id.* at 110. In that context, the quotation makes sense; in the context of OPC's brief, however, the quotation is nonsensical.

With regard to the context of this proceeding, it is true that there are statements in the cases that discuss the Commission's duty to protect the public from the potential harms that a monopoly service territory could cause absent regulation, but the Supreme Court has been clear the Commission's overall duty, as reflected in the Public Service Commission Law itself, is directed toward "a view to the public welfare, efficient facilities and *substantial justice between patrons and public utilities."* (italics in original). *City of St. Louis*, 73 S.W.2d at 399 (*citing* what is now Section 386.610). OPC's suggestion that the Commission can subordinate the legitimate interests of the utility to those of customers, including its right to dispose of its property and to fairly protect the interests of its investors, does not accurately reflect the law.

While OPC grudgingly acknowledges that *City of St. Louis* is the law and, in fact, asserts that it is "by no means suggesting a departure from this standard,"[3] OPC in fact advocates for abandonment of *City of St. Louis* in favor of an entirely different standard. For example, at page 9 of OPC's Brief, OPC states that the "Commission may approve a transaction (such as the transfer of functional control at issue here) subject to such conditions as are *reasonably necessary* to ***minimize any risk*** of the transaction being detrimental to the public interest" (emphasis added). This new standard is based upon OPC's overriding belief that a condition must be imposed to not only reduce "the risk that Ameren Missouri's continued participation in MISO might case harm to Missouri ratepayers," but to insure that all "risks and consequences" are borne by Ameren Missouri.[4]

OPC cites no authority for this broad (and novel) statement of what it claims the law to be. Indeed, there is no such authority. As best we can tell, OPC's "authority" for this inaccurate statement is grounded in the *City of Kirkwood* case appearing in footnote 5 at page 9 of OPC's Brief, where the issue was whether the Commission could condition total abandonment of a street railway on the requirement that bus service be substituted. It is obvious that abandoning service entirely (a kind of "transfer" of the assets from being used in service to being mothballed) would be detrimental to the public interest given that after the transfer there would be no means of transport. But neither that case (nor any number of others similar to it that OPC characterizes as "typical") provides any authority for the proposition that the Commission can impose conditions on the transfer of functional control of the Company's transmission system to MISO solely for the purpose of making the transfer more beneficial.

[3] OPC's Initial Brief at 7.
[4] OPC's Initial Brief at 6.

In fact, OPC's "authority" supports what we said at page 11 in our Initial Brief: the purpose of Section 393.190.1 is to "ensure the continuation of adequate service to the public" (where we cited *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. W.D. 1980)). As *City of St. Louis* makes clear, its purpose is not to allow the Commission to re-write the terms of every transfer in a way that some may believe creates a benefit, or more of a benefit, for their particular interests (e.g., MJMEUC) or the interests of some or all of the utility's retail customers.

OPC also over-reads the 2003 decision in *AG Processing, Inc. v. Pub. Serv. Comm'n,* 120 S.W.3d 732 (Mo. 2003), which did nothing to disturb the holding in *City of St. Louis;* indeed, *AG Processing* cites *City of St. Louis* with approval. What *AG Processing* teaches is only that the Commission has a duty make a decision about "relevant and critical issue[s]" when considering a proposed merger (and presumably, a transfer of assets) under Section 393.190.1. *Id.* at 736. Later in the opinion, the Supreme Court characterized it as a duty to decide all "necessary and essential issues." *Id.* Its holding was not—as OPC contends—that the Commission must "consider and decide *all* issues."

The "relevant and critical" issue in *AG Processing* involved the Commission's refusal to *even consider* the "the issue of UtiliCorp's being allowed to recoup" a $92 million merger premium in making its determination of whether the merger was detrimental to the public interest. *Id.* at 736. That premium alone constituted a large percentage (more than 35%) of the total cost of the merger. *Id.* at 733. Consequently, the court held that the Commission's failure to determine whether the acquisition premium was reasonable and include it in its cost analysis when evaluating the proposed merger was error because it "may have substantially impacted the weight of the evidence evaluated to approve the merger." *Id.* at 736. In the context of this case,

Ameren Missouri has presented evidence based on a comprehensive cost/benefit analysis of more than $100 million of economic benefit which will redound to Ameren Missouri's ratepayers as a result of its continued participation in MISO, which has not been refuted by any party.

But what of the "risks" brought forward by OPC? While no one in this case is arguing that the Commission should not *consider* whether the risks (for which there is no proof of actual, quantified harm) that OPC alleges exist in fact do exist and what their magnitude might be, that does not mean that the Commission should (or can) impose conditions to mitigate them if the transfer as proposed is not detrimental to the public interest.[5] Moreover, it certainly doesn't mean that that the Commission can interfere with an important incident of the Company's ownership of its property by conditioning its transfer when the transfer, as proposed, is not detrimental to the public interest.

Moreover, the facts of *AG Processing* demonstrate that an un-quantified and speculative, unproven risk cannot form the basis for imposing a condition on a proposed transfer. In addition to the merger premium issue, one of the arguments made by AG Processing was that the merger would lower its service provider's – Saint Joseph Light & Power Company's (SJLP) – credit rating and that this *might* lead to higher debt costs (and ultimately higher retail rates as a result). Based on that allegation, AG Processing argued the Commission had erred in not concluding that the merger was detrimental to the public interest.[6] The Missouri Supreme Court rejected this contention, noting that "[n]o evidence was presented that would quantify how the cost of debt

[5] Even OPC acknowledges just how speculative the "risks" are: "There are simple conditions that can be required by this Commission to greatly reduce *the risk* that Ameren Missouri's continued participation in MISO *might* cause harm . . . ." OPC's Initial Brief, p. 6 (emphasis added). OPC cites no authority for the proposition that the Commission can require conditions to mitigate all possible harm, and certainly cites no authority for the proposition that the Commission can impose conditions for a "risk" of harm that "might" be caused. As discussed in our Initial Brief, *MISO participation* doesn't have anything to do with the harm OPC claims might be caused in any event.

[6] AG Processing could have alternatively argued that a condition should have been imposed to mitigate or prevent the impact of the risk it claimed existed, had the interest costs in fact increased due to the merger.

attributable to SJLP would increase, and *even if it is assumed that the merger will increase the cost of debt* for SJLP's ratepayers, *that fact alone does not require the Commission reject the merger*" (emphasis added). *Id.* at 737.

Like the Supreme Court's decision in *City of St. Louis*,[7] the foregoing demonstrates that the question in a Section 393.190.1 case is whether, in total, the proposed transfer is detrimental to the public interest. This means that even if there are aspects of the transfer [e.g., the risk of increased debt costs] that could by themselves result in higher rates or some other isolated "detriment," this does not mean that the transfer itself is detrimental to the public interest. Put another way, the question is not whether every single term and condition of the transfer, considered in isolation, makes the transaction affirmatively beneficial (or better than it already is) solely from the ratepayers' perspective. If that were the standard, then the Commission would be free to insist on a benefit any time a condition could be imposed that would make an otherwise perfectly neutral transfer (i.e., one that is not detrimental) affirmatively beneficial.[8] This, coupled with reliance on speculative testimony as to what might occur, would mean that there would be no end to the conditions that could be imposed, and no end to the Commission's ability to re-write the terms of every transaction.

We would lastly make note of OPC's citation to the Commission's 2004 order concerning Aquila's request to encumber regulated assets as collateral for a loan regulated assets that would in part support Aquila's unregulated operations in other states.[9] OPC characterizes that decision as an explanation of the Commission's "determination of the 'not detrimental to the

[7] *See Id.* at 735, where the Supreme Court cites *City of St. Louis* with approval.
[8] Logic dictates that if the Commission cannot condition a neutral transfer in a manner that in effect requires that the transfer actually produce a benefit (and can't condition a beneficial transfer such that it would be more beneficial if the condition were satisfied), then it cannot impose a condition that eliminates a speculative risk that even if it came to pass would still fall far short of wiping out the benefits of the transfer, as proposed.
[9] Section 393.190.1 also requires Commission approval of the "encumbrance" of all or part of the utility's franchise, works or system.

public interest' standard." OPC's Brief, p. 8. The 2004 *Aquila Order* provides no support for OPC's position in this case. The *Aquila Order* does nothing more than recognize that if there is a substantial risk of very meaningful harm in the face of a record where there is little or no benefit from the proposed transfer, the Commission must consider that risk and its magnitude (per *AG Processing*) and could, in the Commission's view in that case, determine that the risk resulted in making the proposed encumbrance detrimental to the public interest. ("The Commission finds that Missouri ratepayers *would* [not might] suffer a detriment if Aquila used its Missouri regulated assets to support debt for its riskier, unregulated operations" (emphasis added)).

Moreover, the Commission found that Aquila would receive "little, if any benefit" because the purported reason for encumbering the Missouri assets was that Aquila had to pledge a certain amount of its assets in order to meet a required collateral ratio and to receive an interest rate discount. However, Aquila could meet the collateral obligation and receive the discount without a pledge of the Missouri assets because "other states have already allowed Aquila enough regulated assets to meet the collateral ratio in the term loan agreement, and to receive the 75 basis points reduction."

To the extent OPC argues that the Commission has an "understanding" that it can condition a proposed transfer that indisputably brings substantial benefits to the transferor (and customers) because of some speculative risk OPC can't prove and hasn't proven (to, in effect, insist that an already beneficial transfer be made more so), such an understanding would fail to comport with Missouri courts controlling application of the "not detrimental to the public interest" standard.[10] At bottom, *Aquila* is inapposite because in that case the Commission

[10] Nor can the Commission impose a condition to mitigate what OPC wrongly claims is the detriment of "loss of jurisdiction." OPC's Brief, p. 14. As we discuss *infra*, the Commission has such authority as its enabling statutes

determined that the overall transaction, as proposed, *was* detrimental to the public interest because there was no evidence of a benefit to the public and there was evidence of a significant risk of harm that caused the transfer to be detrimental. No such evidence has been presented in this case.

The point is that if a significant risk of harm is proven and if the harm is of sufficient magnitude, the Commission could find that a proposed transfer is overall detrimental to the public interest *if* the risk and the magnitude of the risk *overcome* or outweigh the benefits of the transfer. But here, not only has OPC failed to quantify any risk (just as AG Processing failed to quantify the risk of higher debt costs in the *AG Processing* case), OPC has made no claim that any such risk comes anywhere close to making the overall transaction detrimental to the public interest. Consequently, on this record, the Commission would have no basis whatsoever to determine that the proposed transfer, taken as a whole, would be detrimental to the public interest, meaning that the transfer must be approved as proposed. *City of St. Louis*, 73 S.W.2d at 400.

B. Neither the Facts nor the Law Support OPC's desire for different terms.

OPC argues that the terms in the *Stipulation* "need to be strengthened" in three ways: (a) by changing Section 10(a), (b) by dictating to the Company how it interacts with MISO, and (c) (apparently) by dictating to the Company what transmission it must make "diligent efforts" to build.[11]

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give it; no more and no less. A utility's transfer of functional control of its transmission system cannot "take away" the Commission's jurisdiction, and the Commission's conditioning of such a transfer cannot increase its jurisdiction. The Commission either has jurisdiction or it doesn't.

[11] OPC's *Second Statement of Position*, p. 2. We note that OPC's Brief (pages 14-21) meanders off into a discussion of OPC witness Ryan Kind's Supplemental Rebuttal testimony (which in many respects was just a repeat of his rebuttal testimony), as opposed to supporting the condition OPC is actually proposing regarding making diligent efforts to build all transmission in the Company's certificated service territory. We addressed all three of these issues in our Initial Brief, including why who builds what transmission is not an issue that is tied to MISO participation (particularly given FERC Order 1000), and why Mr. Kind's theories demonstrably fail to establish that

1. The Section 10(a) Condition.

Staff, MIEC, and MISO are satisfied with the terms of Section 10(a). As we pointed out in our Initial Brief, Section 10(a), as written, gives the Commission ample discretion to open a docket if the Commission believes doing so is warranted. It reflects an appropriate balance between creating a mechanism to address a substantial change in circumstances and allowing the Company to manage the functional control of its transmission system through RTO participation for the next few years. After all, the permission sought is interim and conditional, and another formal docket including a new, robust cost-benefit study, will be initiated just three and one-half years from now.

Not only has OPC failed to show a need to upset that balance, but OPC can't even seem to figure out what it wants in this regard. In its *Second Statement of Position*, filed less than two weeks before the evidentiary hearings (and two months after Section 10(a) was included in the *Stipulation*), OPC proposed a modification of Section 10(a) that essentially meant that if a change "may" occur that "may" present a substantial risk that MISO participation "may" become detrimental, others should expect that a docket would be opened upon request of any stakeholder. In our Initial Brief we described the scope of this provision as being broad enough to drive the proverbial truck through, and that description is apt. Adoption of OPC's position would mean that the provision might just as well read: "If *any* fact that anyone thinks *might* change in *any* way the relative costs and benefits of MISO participation occurs then grounds to open a new docket exist." Such a position reflects a desire to micromanage the operation of Ameren

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the transfer, as proposed, is in fact detrimental to the public interest even if those theories are not addressed through the condition for which OPC advocates (which in any event, the Commission has no authority to impose). We will amplify our prior discussion in this brief.

Missouri far beyond what is appropriate or necessary, especially given the fact that OPC has failed to offer any evidence that would compel such a change.

In its Brief OPC has come up with yet another formulation of its preferred Section 10(a) (see page 11), which, although slightly different, is just as vague and overly broad. Now OPC says if something is "expected to occur" that "may" cause "substantial harm" a docket should be opened. Left unanswered is "expected" by whom? What is "substantial"? Even more disturbing, OPC makes no attempt to tie the invocation of this condition to the legal standard that all agree governs approval of this transfer in the first place: the not detrimental to the public interest standard. Rather, OPC has invented a new standard – a "may cause 'substantial harm'" standard. OPC might view any number of things that could reduce the benefits of MISO participation between now and when another RTO participation docket will commence in November 2015 as something that "may" cause "substantial harm," but that does not mean that the participation has become or is even realistically threatened to become detrimental to the public interest. The Commission should decline the invitation to micromanage (or to let OPC attempt to micromanage) the Company's operation of its transmission system.

It is important to note that the Company did not have to agree to Section 10(a), but agreed to it as part of an overall compromise of the issues that had been raised in this case. There is no showing that absent the condition, the transfer is detrimental to the public interest; this means that the Commission would have no authority to impose it, absent Ameren Missouri's agreement. Consequently, the Commission has no authority to change that which has been agreed upon, regardless of what OPC wants.

2. <u>The "Separate Representation" Condition</u>.

This entire "separate representation" idea is a product of Mr. Kind's imagination and is yet a further attempt to dictate to the Company how it should manage its business. As Mr. Kind admitted when he was deposed, he came up with this concept based upon what he characterizes as a "logical conclusion":

> *Q. You call it a logical conclusion. But at this point, nothing in your rebuttal testimony cites to any particular example where there's been some detriment to Ameren Missouri or its customers by having Ameren Services represent at [sic] MISO, fair?*
>
> *A. Fair.*[12]

All Mr. Kind has been able to come up with to support his "logic" is his theory that there is or may be what he characterizes as a "conflict" between Ameren Missouri's interests in relation to MISO's resource adequacy construct (RAC or capacity market) and the interests of some of Ameren Missouri's affiliates.[13] The problem for OPC is that testimony from both Ameren Services Company personnel who act on Ameren Missouri's behalf and Ameren Missouri personnel themselves (i.e., Ameren Missouri witness Jaime Haro) is that a mandatory capacity market is in Ameren Missouri's interests, as well as that of its affiliates, because a transparent mandatory capacity market improves reliability, aids in resource planning, and creates a more efficient market that provides appropriate price signals regarding new

[12] Ex. 6 (Ameren Missouri witness Maureen Borkowski Supplemental Surrebuttal, p. 10, l. 1-6 (*quoting* Mr. Kind's November 8, 2011 deposition, p. 80, l. 8-13).

[13] Supplemental Rebuttal Testimony of Mr. Kind, p. 23, l. 10-24. We would note that OPC's Brief also contains what can be fairly characterized as gross exaggerations regarding the need for a condition to address Ameren Missouri's interactions with MISO. For example, in the Introduction of its Brief, OPC says that the "creation and function of ATX profoundly impacts the way Ameren Missouri interacts with the MISO . . . ." OPC's Brief, p. 3. Not even Mr. Kind so testified. His focus was on alleged "conflicts" arising from market activities (the RAC) and on the alleged impact on what transmission facilities Ameren Missouri might or might not build (and what ATX might build), which have nothing to do with how Ameren Missouri "interacts with the MISO." OPC must exaggerate because its issues relating to ATX have nothing to do with Ameren Missouri's MISO participation.

generation.[14] It also addresses the "free rider" problem (when a load-serving entity does not make adequate plans for capacity), which is an issue that has been observed in the MISO region.[15] OPC can't sustain its burden to establish that the manner in which Ameren Services represents Ameren Missouri at MISO is counter to Ameren Missouri's interests *at all*, let alone in a manner that it turns the proposed transfer from being wildly beneficial into being detrimental to the public interest, based only on Mr. Kind's "logic" and his speculative theories. OPC has to have proof, which it does not have.[16] *Ag Processing*, 120 S.W.3d at 736.

OPC also keeps shifting its proposal on this representation point as well, as it has on every other condition it has proposed in this case. First Mr. Kind proposed a condition that would have required that Ameren Missouri duplicate personnel and disregard the governance that is in place at the MISO by "representing itself."[17] Mr. Kind later conceded that it would be "hard to make it [his condition] work" and that it may be impossible to make it work.[18] In an apparent search for support for the condition, Mr. Kind then looked to an Arkansas Commission order involving Entergy (and the unique facts, circumstances and history surrounding Entergy in Arkansas) and indicated that the Arkansas Commission had required Entergy to become a

[14] Tr. p. 124, l. 11 to p. 125, l. 1 (Ameren Missouri witness Ajay Arora); Tr. p. 130, l. 2 to 20 (Mr. Haro); Tr. p. 278, l. 6-14.
[15] Tr. p. 279, l. 15 to p. 280, l. 1; p. 322, l. 21 to p. 323, l. 25 (Ms. Borkowski).
[16] Even OPC's brief acknowledges that all it really can point to is a "potential" for conflicts in this area. OPC Brief, p. 12. Moreover, OPC plucks a few words from Mr. McKinnie's hearing testimony out-of-context to make it appear that Mr. McKinnie is agreeing with Mr. Kind. OPC's Brief, pp. 13-14. It is true that Mr. McKinnie said there "could be" a conflict – of course anything is possible – but he went on to say that "I would have a hard time saying exactly what that conflict would be at this moment . . . ." Tr. p. 166, l. 2-7. And he also went on to say that while he could see the Commission imposing or attempting to impose a condition such as Mr. Kind argues for "in a few limited situations," he could not identify a "situation where Ameren Missouri's interest is going to be massively different." Tr. p. 166, l. 10-19. So while Mr. McKinnie testified that there *could* be situations where the interests of Ameren Missouri's customers are not perfectly aligned with other Ameren companies and that, "theoretically," there "could be a situation" where Ameren Missouri might vote differently than Ameren Services, he never pointed to any concrete detriment arising from the "ill" Mr. Kind seeks to cure, and certainly provided no support for the idea that such a condition was either necessary or advisable. Tr. p. 167, l. 10-23.
[17] Ex. 11 (Kind Rebuttal, p. 16, l. 23 – p. 17, l. 5).
[18] Ex. 6 (*quoting* Kind Deposition, November 8, 2011, p. 10, l. 14 to p. 11, l. 8).

"separate signatory" to the MISO Transmission Owners Agreement (TOA), which essentially amounts to the same (unworkable; impossible) concept OPC proposed before.

Aside from the Ameren Missouri witnesses whose uncontroverted testimony demonstrated that Ameren Missouri simply cannot have its own vote at MISO (which in effect is what the Arkansas Commission was indicating it was looking for), Staff witness McKinnie confirmed this as well.[19] And Mr. McKinnie also agreed that Mr. Kind's condition would be difficult to implement.[20] Also important is something Mr. Kind failed to point out to the Commission when he advocated for an approach that was "similar" to what the Arkansas Commission had suggested. After the Arkansas Commission issued the order Mr. Kind pointed to, Entergy sought rehearing and the Arkansas Commission issued another order in which it quite clearly stated that its initial order was only intended to provide guidance.[21] The subsequent order made clear that the initial order was not final and that Entergy has not been ordered to do anything.[22]

Not only is Mr. Kind's proposal demonstrably unnecessary, it is unworkable. Moreover, OPC has come nowhere near to providing the substantial and competent evidence of record needed to support the proposal. OPC hasn't proven that there is any material conflict that needs to be addressed by such a condition, and certainly hasn't proven that the absence of such a condition makes the transfer, as proposed, detrimental to the public interest.

Finally, OPC (and the Commission for that matter) has substantial rights itself to protect the interests of Missouri customers at MISO. For example, on the MISO's advisory committee, state regulatory authorities have three seats, while public consumer advocates have two seats, for

[19] Tr. p. 163, l. 5-20.
[20] Tr. p. 171, l. 4-14.
[21] Ex. 10 (McKinnie Surrebuttal) p. 16, l. 25 to p. 17, l. 13.
[22] *Id.*

a total of five seats; the transmission owners only have three.[23] And with respect to the MISO stakeholder group "where the resource adequacy construct that so concerns Mr. Kind arose,"[24] OPC has one vote as does Ameren Services (as does the Commission).

This brings us full circle. The *only* instance that Mr. Kind can point to where his "logic" gives rise to a conflict between Ameren Missouri and one of its affiliates at MISO involves the RAC. And on the stakeholder group where the RAC arose and was considered, this Commission and OPC together have more votes than Ameren Missouri has under the current structure, and they have more votes than Ameren Missouri would have if Mr. Kind had his way. Indeed, if Mr. Kind's theory were true (that other Ameren companies would have a different interest regarding the RAC than Ameren Missouri) a change in governance at MISO of the type Mr. Kind apparently wants would dilute Ameren Missouri's vote because Ameren Illinois and Ameren Energy Generating Company would have two votes to Ameren Missouri's one vote, which, if Mr. Kind's "theory" is correct, would only hurt Ameren Missouri customers.[25]

The bottom line is that there is no evidentiary record in this case upon which the Commission could base imposition of Mr. Kind's "separate representation" condition, and indeed in the absence of a record that supports the conclusion that without that condition the proposed transfer is detrimental to the public interest, the Commission lacks the authority to do so.[26]

[23] Ex. 5 (Borkowski Surrebuttal), p. 25, l. 12 to p. 26, l. 12.
[24] Tr. p. 257, l. 25 to p. 258, l. 1 (Mr. Kind).
[25] Judge Woodruff to some extent appeared to be getting to this point in questions he asked Mr. Kind during the hearing, to which Mr. Kind gave rather meandering answers in which Mr. Kind tried to deny that his proposal would have a dilutive effect on OPC's vote (and logically, on Ameren Missouri's vote as well). We will let the record, and the obvious math that Judge Woodruff was getting to, speak for itself. Tr. p. 256, l. 17 to p. 259, l. 24.
[26] We would also submit that the attempted imposition of such a condition would raise serious questions of federal preemption, as was explained by Entergy in its petition for rehearing, filed in the Arkansas case referenced by Mr. Kind (and later, by Mr. McKinnie, when Mr. McKinnie pointed out that Mr. Kind had only told part of the story).

3. The "Commission's Jurisdiction" Condition.

OPC makes the sensational claim that the Commission would experience a "loss of jurisdiction" without imposition of its condition that would require Ameren Missouri to make "diligent efforts to construct and own any and all transmission projects proposed for UE's retail service territory."[27] This allegation gives rise to three questions, as follows: first, can the Commission "lose" jurisdiction; second, even if it could lose jurisdiction, would the alleged loss of jurisdiction be caused by the proposed transfer; and third, even if the loss of jurisdiction would be caused by the proposed transfer, would that loss render the proposed transfer detrimental to the public interest? The answers to those questions are "no," "no," and "no."

a. The Commission has the jurisdiction it has; it can't "lose jurisdiction" unless the General Assembly amends the Public Service Commission Law.

The Commission's jurisdiction is purely a matter of its enabling statute (the Public Service Commission Law) codified (as applicable to electric utilities) in Chapters 386 and 393, RSMo. If the Legislature gave the Commission jurisdiction over a matter in those statutes, it has the jurisdiction. If the Legislature did not give the Commission jurisdiction over a matter, it doesn't have it. The only thing that can cause a "loss" of jurisdiction is a duly adopted amendment to the statutes by the Legislature or by initiative petition.

What this means is that the Commission has, and will always have, the jurisdiction to set Ameren Missouri's retail rates. If Ameren Transmission Company or XYZ Transmission Company builds a regional project, this Commission will still set Ameren Missouri's retail rates. What OPC is really saying is that OPC wants Ameren Missouri to agree not to assert that the filed-rate doctrine requires the Commission to recognize transmission costs that are based on

[27] OPC's *Second Statement of Position,* p. 2. We have addressed this condition in detail in our Initial Brief, at pp. 14-21, and will endeavor not to repeat those points here.

FERC-approved transmission incentives received by a separate company (affiliated or not affiliated) because OPC theorizes that retail rates will necessarily be higher if those transmission costs are recognized in Ameren Missouri's rates. But this isn't a "loss of jurisdiction" – the Commission never had the jurisdiction to ignore the Supremacy Clause and disregard FERC-approved rates.[28] You can't lose something you don't have.

Moreover, OPC's theory rests on an unproven assumption; that is, that a third party's transmission costs reflected in Ameren Missouri's rates will necessarily result in a higher overall revenue requirement for Ameren Missouri in later rate cases. There is no proof that this is so, save Mr. Kind's theories. Indeed, the financial benefits to Ameren Missouri's customers of future transmission projects may more than offset their costs. The only evidence on this point is that there may very well be reasons that the Company's revenue requirement will not increase, but until Ameren Missouri has a later rate case where Ameren Missouri's capital and other costs are analyzed to determine what the revenue requirement is, we cannot know whether Mr. Kind's theory is true.[29] OPC bears the burden to prove its assertion; that is, that higher retail rates will result. *AG Processing*, 120 S.W.3d at 736. It has provided no evidence that supports that assertion.

b. <u>OPC's desired condition has nothing to do with MISO participation and, consequently, nothing to do with this case.</u>

More fundamentally, even if Mr. Kind's theory were accurate, this has nothing to do with Ameren Missouri's MISO participation on the terms proposed in this docket, as we have explained before. *See generally* pages 18-21 of the Company's Initial Brief. To summarize, Ameren Missouri has no right to tell ATX or XYZ Transmission Company or anyone else that

[28] That Ameren Missouri voluntarily agreed to in effect waive the filed-rate doctrine under certain circumstances when it entered into the Service Agreement in 2003, or as reflected in Section 10(j) of the *Stipulation* here, provides no basis or authority upon which the Commission can condition the proposed transfer now.
[29] Exh. 5 (Borkowski Surrebuttal) p. 12, l. 12-21.

they cannot build transmission facilities in its service territory, and Ameren Missouri isn't going to avoid its share of regional transmission project cost allocations whether or not it participates in MISO.[30] At bottom, a condition on *MISO* participation does not and cannot address the "harm" OPC asserts (but doesn't prove) exists. OPC simply wants to prevent a separate transmission company – ATX or XYZ – from receiving FERC incentives and from the impact of those FERC incentives being reflected in Ameren Missouri's retail rates, and OPC wants to misuse this docket to accomplish that end. In doing so, OPC is asking this Commission to do what it cannot lawfully do: impose a condition on participation that has nothing to do with the transfer at issue. Even if it did, OPC has not proven it necessary to prevent the proposed transfer from being detrimental to the public interest. This means, for the reasons outlined earlier, that the Commission has no authority to impose it.

c. <u>Even if there were some tenuous tie between what ATX might do and this case, the impact of such a tie does not change the fact that the proposed transfer is not detrimental to the public interest.</u>

At page 19 to page 20 of its Brief, OPC takes issue with a statement made during the undersigned counsel's opening statement (which is supported by undisputed evidence of record) to the effect that even if one accepted OPC's premise about the *potential* for higher rates, that potential is extremely small during the period of extended permission sought in this case because of the very small investment ATX plans to make between now and 2016 in Missouri.[31] Although it offers no evidence to support such an assertion, OPC goes so far as to claim the statements were "wrong on several levels." OPC's Brief, p. 20. It is OPC that has it wrong.

[30] *See also* Staff's Initial Brief, pp. 21-25, where the Staff discusses the operation of the TOA as it pertains to these issues, and FERC Order 1000.

[31] And as to an ATX-constructed transmission line in Missouri, Ameren Missouri has indeed agreed that any FERC incentives ATX receives and that would otherwise be reflected in Ameren Missouri's retail rates will not be reflected for the entire term of permission sought in this docket.

It is undisputed that any ATX transmission investment in Missouri during the relevant period – through the extended period of permission at issue here – and any possible impact on Ameren Missouri rates (an impact which OPC hasn't proven will occur at all), is quite small – an approximately $11 million forecasted investment over about four years resulting in (worst case, from OPC's perspective) a very small $1.6 million rate impact on a *net present value basis* over the 40-year life of the one transmission line that might be developed. That sum is *5 hundredths of one percent* (about .00053 percent) of Ameren Missouri's revenue requirement in the last rate case, which was approximately $3 billion.[32] It is a tiny fraction of the more than $100 million of benefits customers will derive from Ameren Missouri's continued participation in MISO. Consequently, even if this issue had something to do with MISO participation, it does not turn the proposed transfer from one that is not detrimental into one that is detrimental.[33] Moreover, the investigatory docket provided for by Section 10(i) of the *Stipulation* will presumably explore these issues in detail, and the Company will return to the Commission in 2015 regarding its post-2016 RTO participation. There is, therefore, no authority to impose OPC's condition and no need to do so.[34]

d. <u>OPC's extensive discussion of a provision that it isn't even proposing in this case demonstrates just how unreasonable OPC's position is in this case.</u>

Finally, although OPC did not recommend this, at page 21 of its Brief, OPC restates an "approach" Mr. Kind raised for the first time in his Supplemental Rebuttal testimony. This

[32] Ex. 6 (Borkowski Supplemental Surrebuttal, p. 3).
[33] For the reasons discussed earlier, OPC is dead-wrong as a matter of law when it argues that the Commission "must impose" its condition on Ameren Missouri (OPC Brief, p. 20). Not only is it the case that the Commission need not impose it, the Commission has no authority to impose it.
[34] And while OPC's $1,000,001 of benefits versus $1,000,000 of detriments example at page 5 of its Initial Brief accurately demonstrates that the not detrimental to the public interest standard cannot be applied with mathematical precision, we are not in the case talking about a $1 dollar difference. We are talking about a more than $100 million difference. That OPC can come up with an extreme example neither changes the law nor justifies (as a matter of law or based on the record in this case) imposition of OPC's preferred conditions.

approach is even more offensive (as a matter of law and fact) than the condition OPC has actually proposed. As Ms. Borkowski explains in her Supplemental Surrebuttal testimony, this approach would have this Commission refuse to recognize in Ameren Missouri's revenue requirement charges assessed to Ameren Missouri by the MISO under MISO's FERC-approved tariff for transmission *no matter who builds it or where it is built* to the extent those charges reflected transmission rate incentives that the FERC itself would already have approved.[35] A detailed legal analysis is not needed to understand that this "approach" is not only unlawful under Missouri law for the reasons discussed earlier, but would result in a classic violation of the filed-rate doctrine, which itself is grounded in the Supremacy Clause of the U.S. Constitution.

OPC can't have it both ways. OPC can't expect the Company to take the prudent step of participating in MISO to the great benefit of Missouri retail customers but at the same time avoid the "burden" that OPC claims goes along with that participation: payment of Missouri's share of regional transmission costs under a FERC-approved tariff.[36]

II. MJMEUC's Brief

MJMEUC appears to have sought intervention in this case for one reason: it prefers that MISO not implement its RAC. As explained in our Initial Brief, MISO's parochial concerns have no place in this docket. If MJMEUC doesn't like the RAC, it should take its concerns to the FERC. While MISO's witnesses at the evidentiary hearing apparently were unaware of this fact,[37] MJMEUC apparently is addressing its concerns at the FERC.[38] But in a classic case of wanting two bites at the apple, MJMEUC, who is not a customer whose service is or can be regulated by this

[35] Ex. 6, p. 7, l. 14 to p. 8, l. 1.
[36] Again, payment of those regional transmission costs, under FERC Order 1000, is no longer tied to whether or not Ameren Missouri participates in MISO, which demonstrates that none of this has anything to do with this case.
[37] Tr. p. 213, l. 22-25.
[38] MJMEUC's Initial Brief says as much. *See* p. 6 of MJMEUC's Initial Brief, where MJMEUC references its inclusion in the Midwest Transmission Dependent Utilities group. A review of the FERC's docket regarding MISO's RAC proposal reveals MJMEUC, through this group, filed a 73-page protest to MISO's proposal. FERC Docket No. ER11-4081, Motion to Intervene and Protest (Sept. 15, 2011).

Commission, argues that this Commission should change the terms of participation agreed upon by the Company, the Commission's Staff, and large industrial companies who actually take service from Ameren Missouri.[39] Ameren Missouri's customers derive huge benefits from its MISO participation. What MJMEUC wants shouldn't be allowed to interfere with those benefits.

To be fair, MJMEUC has apparently backed-off from the claim made in its Statement of Position where it indicated that Ameren Missouri's participation in MISO as proposed by Ameren Missouri was detrimental to the public interest. As pointed out in our Initial Brief, MJMEUC's counsel conceded this point when he conceded that MJMEUC's concerns were not enough reason to deny the Company's request. However, MJMEUC's Initial Brief suggests that MJMEUC in effect wants to be the tail that wags the proverbial dog. MJMEUC wants a seat at the table when Ameren Missouri conducts a cost-benefit study regarding RTO participation, which obviously means MJMEUC wants its costs to be part of such a study (although this has never been the case, and for good reason).[40] And MJMEUC apparently wants this Commission to later initiate dockets regarding Ameren Missouri's RTO participation if, in MJMEUC's view, "its customers (and owners) [are exposed to] unnecessary wholesale market price volatility and risk."[41]

The Commission should not let this tail wag the dog by entertaining changes to the proposed participation terms that have already been found appropriate by the Commission's Staff and Ameren Missouri's large industrial customers. Indeed, for the reasons discussed above and in our Initial Brief, the proposed transfer is already not detrimental to the public interest absent any change

[39] MJMEUC is not an Ameren Missouri customer. Rather, MJMEUC takes wholesale transmission service from MISO under MISO's FERC-approved tariff.
[40] Tr. p. 126, l. 8-16. And while Mr. Arora politely indicated to MJMEUC's counsel that he would be "okay with considering" things that others thought should be studied, he did not agree that any suggestion that includes studying MJMEUC-specific impacts would be appropriate; as Mr. Arora indicated, the study is done "for the benefit of Ameren Missouri's *retail* customers." Tr. p. 96, l. 3-12 (emphasis added).
[41] MJMEUC's Initial Brief, p. 7. Neither Ameren Missouri nor this Commission control (or regulate) the wholesale markets.

in terms proposed by MJMEUC, meaning that the Commission has no basis to adopt MJMEUC's proposed change.

III. The Staff's Brief

While the Staff itself agrees that the proposed transfer on the terms reflected in the *Stipulation* meets the applicable "not detrimental to the public interest" standard and that OPC's proposed conditions should not be imposed, the Staff discusses a couple of cases in its Initial Brief which the Staff contends might suggest that there *could* be some different standard. We discuss why that is not the case, below.

The Staff first cites to *State ex rel. Consumers Public Serv. Co. v. Public Serv. Comm'n*, 180 S.W.2d 40 (Mo. *banc* 1944), and tepidly suggests that this case "seems" to focus on an "in the public interest" standard. But *Consumers* does not change the not detrimental to the public interest standard established in *City of St. Louis,* which the Supreme Court affirmed as recently as 2003, and which has been followed in every other appellate case involving a transfer of assets (or a merger) under Section 393.190.1 since it was first decided.[42]

The question before the Supreme Court in *Consumers* was whether the Commission had erred in approving the sale of electrical properties from a Commission-regulated investor-owned utility to a rural electric cooperative. *Id.* at 41. In other words, the case effectively involved a proceeding in which the selling utility was de-certifying a portion of its service territory, the service of which would be taken over by the cooperative. Three competing investor-owned utilities challenged the sale, all indicating that they desired to buy the properties and serve the areas at issue. *Id.* at 42. The competing utilities claimed that "it will not be in the public interest to permit a

[42] *AG Processing, Inv. v. Pub. Serv. Comm'n*, 120 S.W.3d at 735 (affirming that the "not detrimental to the public interest" standard controls in a Section 393.190.1 case); State ex rel. *Praxair, Inc. v. Pub. Serv. Comm'n, 344 S.W.3d 178, 184* (Mo. 2011) (proper standard was whether or not the merger would be "detrimental to the public" as enunciated in *State ex rel. AG Processing*); *Fee Fee Trunk Sewer*, 596 S.W.2d at 468 (also affirming the application of the *City of St. Louis* standard).

regulated utility to sell to a cooperative." *Id.* at 43-44. In affirming the Commission's order, the Supreme Court stated as follows:

> We think it is clear from a consideration of the whole report of the Commission . . . that it only meant to overrule appellants' [the competitors'] contention that it was *against* the public interest for any cooperative under any circumstances to ever acquire any properties of any existing operating public utility (emphasis).

Id. at 46. Against the public interest is, of course, another way of saying "detrimental to" the public interest. While the Supreme Court discussed "in the public interest" in the context of the particular facts at issue in *Consumers*, that case has never been cited by any court for the proposition that in a Section 393.190.1 asset transfer case, the utility must meet an "in the public interest" standard. To the contrary, the "not detrimental to the public interest" standard has controlled in all appellate cases where such a transfer was at issue in the 77 years since *City of St. Louis* was decided.[43]

The Staff also quotes from (but doesn't discuss) a Commission report and order from a 2008 RTO participation case involving Aquila. It is true that in that case the Commission examined what it referred to as the opportunity cost of an RTO alternative different than that proposed by the utility (SPP participation instead of MISO participation) and appeared to conclude that it could in effect lawfully force a utility to select what the Commission concluded was the better of two options. Aside from the fact that this decision was not appealed and that no court has ever affirmed the Commission's legal conclusions on those points, there were several unique considerations at play in that case that render it inapposite to the case before the Commission now:

- Aquila's own cost-benefit study showed that participation in SPP was more favorable by a factor of about 3 times, or by approximately $65 million. Those greater benefits were specifically quantified. (Conversely, no quantification of any

[43] The Commission's rules also reflect that the "not detrimental to the public interest" standard controls as a matter of law. *See* 4 CSR 240-3.110(1)(D) (filing requirements for electric utility applications for authority to sell, assign, lease or transfer assets include a statement of reasons why the proposal is "not detrimental to the public interest").

of the so-called "detriments" alleged to exist by OPC in this case has been provided. *See AG Processing*, 120 S.W.3d at 736 (where AG Processing's contention that there might be higher debt costs from a merger was rejected because AG Processing failed to carry *its* burden to quantify those costs).)

- Aquila's own testimony indicated that the only reason it was applying for MISO participation was because it had contractually agreed to do so in a settlement of a FERC case with the MISO in 2003; i.e., even Aquila did not seriously contend that participating in MISO was the proper decision. Indeed, "it [was] . . . clear that the only reason Aquila applied to join Midwest ISO . . . [was] . . . its obligation to do so [under the settlement agreement]." *Report and Order*, EO-2008-0046.
- Since the 2003 FERC settlement, the Commission had approved Aquila's merger with KCP&L, which was an SPP member. One of the factors supporting the merger was that Aquila and KCP&L would enjoy synergies from being in the same RTO (i.e., in SPP).

These particular facts suggest that participation in MISO would actually have been detrimental to the public interest regardless of how the Commission characterized its decision.

Furthermore, some of the Commission's "conclusions of law" in the 2008 Aquila case do not accurately reflect Missouri law on these issues. First, the Commission relies upon a single federal court case involving the Federal Communications Commission, citing that case for the key proposition that underlies the Commission's "opportunity cost" analysis.[44] But that case sheds no light on the proper standard to be applied in a Section 393.190.1 transfer case, because it involved an entirely different statute that specifically required the FCC to consider whether the "public convenience, interest, or necessity *will be served*" by granting a communications license to a

[44] *Victor Broadcasting v. FCC*, 722 F.2d 756 (DC Cir. 1983).

particular broadcaster. *Victor*, 722 F.2d at 760 (*citing* 47 U.S.C. § 307(a) (emphasis added)). The question in *Victor* was which of two radio stations ought to receive a license (analogous to which of two utilities competing for a service territory ought to receive a CCN). The case did not involve the transfer of any property right of either radio station and, therefore, did not implicate the same Constitutional considerations that are at play when a utility seeks to transfer its property. As earlier noted, an important incident inherent in the ownership of property is the right to transfer it, and that right cannot be interfered with *unless* doing so would be detrimental to the public interest. *City of St. Louis,* 73 S.W.2d at 400. A utility (or a radio station) has no right to expand its services. *Victor* is inapposite.

In its 2008 Aquila report and order, the Commission also cited *Environmental Utilities, LLC v. Pub. Serv. Comm'n*, 219 S.W.3d 256 (Mo. App. W.D. 2007), suggesting that it too supported its "opportunity cost" analysis in a Section 393.190.1 case. *Environmental Utilities* provides no such support. That case involved the very complicated and difficult circumstances presented by the debacle involving water service provided by Greg and Debra Williams through three companies owned or controlled by them. The appeal involved a review initiated by Environmental Utilities (owned by Williams) from a Commission order dismissing an application to sell part of the assets owned by these companies to Missouri American Water Company (MAWC).

Basically, MAWC was willing to buy a subset of the total assets, but was unwilling to buy a large portion of the assets (the title to which was clouded), which would mean that a majority of the customers would be left receiving service from companies controlled by Williams. The Commission, however, had previously determined that Williams' utility companies were "distressed" and, in fact, had been in receivership; in addition, the Commission determined that

Williams' companies had a demonstrated track record of poor service. The case was, to say the least, unique.[45]

What the Commission apparently did in the 2008 Aquila R*eport and Order* was interpret the fact that the Commission would have preferred all of the assets to have been sold in *Environmental Utilities* (an "alternative proposal") coupled with its dismissal of the transfer application in *Environmental Utilities* to somehow mean that it might possess the authority to deny a transfer and require a different transfer if there is a "better alternative" out there. In point of fact, the Commission did not mandate that a "better alternative" must be chosen, as the Court of Appeals decision in *Environmental Utilities* makes clear.

First, the Court of Appeals affirmed the controlling standard to be what it always has been: "The Commission may not withhold its approval of the disposition of the assets unless it can be shown that such disposition is detrimental to the public interest." *Id.* at 265 (*quoting Fee Fee Trunk Sewer*, 596 S.W.2d at 468). Because the transaction as proposed would leave more than half of the customers with poor service at a cost that the evidence suggested would increase "dramatically," the court determined that the proposed transaction was detrimental to the public interest.

Moreover, there was no actual alternative on the table. MAWC's purchase contract specifically stated that it would *not* buy the rest of the assets; consequently, there was but one proposal – the one made by Williams – and that proposal was demonstrably detrimental to the public interest. *Environmental Utilities*, then, neither sanctioned nor suggested that the Commission has the power to decline to approve a proposed transfer that satisfies the standard of *City of St. Louis*, even if there is a transfer on different terms that others, or even the Commission, might prefer.

[45] 219 S.W.3d at 261 ("The case before the Commission was not a standard transfer of utility assets case and, therefore, raised a number of unique issues . . . .").

In summary, the Staff can point to no case decided by the courts of this state that ignores or limits what the Supreme Court said in *City of St. Louis*. To the extent the Commission, on the particular facts of a particular case before it may have suggested that it does not have to adhere to the standard contained in *City of St. Louis*, such decisions would be in error or they involve considerations not present in this docket.

CONCLUSION

Nothing contained in the briefs of OPC or MJMEUC alters in any way the facts set out in Ameren Missouri's Initial Brief:

- The proposal before the Commission provides huge benefits to customers.
- There is no evidentiary basis and no legal authority to adopt the additional conditions proposed by OPC (or to somehow address MJMEUC's parochial concerns).
- The conditions proposed by OPC are an improper (and unsupported) attempt to make the proposed transfer more beneficial (from their perspective) than it already is.
- Given that the Commission has no authority to insist that a transfer provide any benefit at all, the Commission has no authority to interfere with the Company's right to control and manage its property by continuing the transfer of functional control of its transmission system to MISO on the terms it, Staff, MIEC and MISO have agreed are appropriate.

For these reasons, the Commission should approve the continued transfer of functional control of the Company's transmission system to MISO on the terms and conditions provided for in Section 10 of the *Stipulation*.

Respectfully submitted,

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Dated: March 23, 2012.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail on counsel for the parties of record to this case, on this 23rd day of March, 2012.

/s/James B. Lowery
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