

In the Matter of:

In the Matter of The Application of Union Electric Co., d/b/a Ameren Missouri

EA-2018-0202

October 31, 2018



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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing
October 31, 2018
Jefferson City, Missouri
Volume 3

In the Matter of The)
Application of Union Electric)
Company d/b/a Ameren Missouri) File No. EA-2018-0202
For Permission and Approval)
and a Certificate of Public)
Convenience and Necessity)
Authorizing it to Construct a)
Wind Generation Facility)

MORRIS L. WOODRUFF, Presiding
CHIEF REGULATORY LAW JUDGE
RYAN SILVEY, Chairman
WILLIAM P. KENNEY,
DANIEL HALL,
COMMISSIONERS

REPORTED BY:
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1 (WHEREIN; the hearing began at 9:15 a.m.)

2 JUDGE WOODRUFF: We're a little bit
3 early; that's all right. Let me get the camera on
4 here. Okay. Technology's working.

5 We're here for an evidentiary hearing in
6 File No. EA-2018-0202 which is AmerenUE's
7 application -- Ameren Missouri's application for --
8 to construct a wind generation facility. We'll start
9 today by taking entries of appearances, beginning
10 with Staff.

11 MS. MERS: Nicole Mers appearing on
12 behalf of Staff and my information has been provided
13 to the court reporter.

14 JUDGE WOODRUFF: Thank you. And for
15 Public Counsel?

16 MR. C. HALL: Caleb Hall and Ryan Smith
17 on behalf of Public Counsel. Our information has
18 also been provided to the court reporter.

19 JUDGE WOODRUFF: And for Ameren Missouri.

20 MR. LOWERY: Jim Lowery and Wendy Tatro
21 on behalf of Ameren Missouri and we've also provided
22 our information to the court reporter.

23 JUDGE WOODRUFF: All right. Then go
24 let's go ahead and get started with opening
25 statements beginning with Ameren Missouri.

1 MR. LOWERY: Making a bunch of noise this
2 morning, pardon me.

3 Good morning. May it please the
4 Commission. My name's Jim Lowery and I represent
5 Ameren Missouri in this case. I apologize for -- I'm
6 really not in Halloween costume, but I had a broken
7 blood vessel and I look like -- I look the part
8 today, so. It is getting better, but I know it's
9 hideous, so if you don't want to make eye contact, I
10 wouldn't blame you.

11 We're here this morning on what I agree
12 is a legal issue. Did the General Assembly amend or
13 repeal the requirement of the Missouri RES Statute,
14 Section 393.1030, the requirement that requires the
15 Commission to provide a rider to -- to allow recovery
16 of all risk compliance costs and pass back RES
17 compliance benefits. Did the Commission -- or did
18 Senate Bill 564 amend or repeal that statute.

19 For reasons that I will address in a
20 moment, the answer to that question is a clear no.
21 Now, you may be wondering why, if we're here on a
22 legal issue, are we having an evidentiary hearing
23 this morning. And if you're wondering that, I think
24 that's a good question. But the answer to the
25 question is that OPC chose to raise this issue via

1 the testimony of a lay witness, Dr. Geoff Marke,
2 who's an economist, not an attorney, who provides
3 what I think is unmistakably an attempt at least to
4 provide a legal opinion about what Senate Bill 564
5 did or did not do and also advances certain policy
6 arguments.

7 But the bottom line is that all of the
8 arguments that Dr. Marke made, the result of them
9 would be that the Company does not recover 100
10 percent of its RES compliance costs as the RES
11 indicates it should, but would unmistakably pass 100
12 percent of the RES compliance benefits that those
13 costs generated back to customers.

14 There are several facts that I want to
15 make sure that we're level set on before I get into
16 discussing the legal issue itself.

17 First, everyone agrees that the Company
18 should have a RESRAM, and you've, in fact, approved
19 one.

20 Second, it's undisputed that Senate Bill
21 564 is now the law of the land.

22 Third, it's undisputed that since Ameren
23 Missouri has made the election provided for by
24 Section 393.1400.5, which is one of the provisions of
25 what I think we all generally refer to as the PISA

1 statute, that two key obligations now exist. One of
2 those obligations is on the Company's part and one on
3 them is on the Commission's part.

4 The Company is now obligated to defer 85
5 percent of the return and depreciation on qualifying
6 electric plant, which includes a renewable energy
7 resource used for RES compliance, to a regulatory
8 asset, the PISA regulatory asset. And the Commission
9 is now obligated when the Company has a rate case, to
10 reflect that regulatory out-- asset balance divided
11 by 20 to reflect that quotient in the Company's
12 revenue requirement.

13 COMMISSIONER HALL: Let me stop you there
14 for a second. I have a -- I have a question. In
15 terms of the Commission's obligation that you just
16 referenced, is that contingent upon a showing that 25
17 percent of each year's capital investment plan
18 comprised of Grid MA projects?

19 MR. LOWERY: No, it's not.

20 COMMISSIONER HALL: So what does that
21 language in that statute mean?

22 MR. LOWERY: The 25 percent of Grid MA?

23 COMMISSIONER HALL: Yes.

24 MR. LOWERY: It means that the Company
25 has to file a plan that shows that that's the case,

1 but there's no -- there is no consequence provided
2 for in the statute if for some reason that weren't
3 the case. But it doesn't in any way tie to whether
4 or not the regulatory asset has to be reflected in
5 rates, according to my reading of the statute.

6 COMMISSIONER HALL: Has the Company filed
7 its capital investment plan?

8 MR. LOWERY: No. I believe, and I don't
9 remember for sure, Commissioner, but I believe that's
10 due in February of next year. It's tied to when the
11 Company, I think, approves budgets and so on and that
12 hasn't happened yet. I don't know the exact date.

13 COMMISSIONER HALL: If the Commission
14 were to take the position, and I'm not saying that it
15 will or even that I am -- hold this position, but if
16 the Company -- if the Commission were to take the
17 position that that 25 percent requirement is tied to
18 the Company's ability to get PISA treatment, that
19 wouldn't affect the decision today, correct?

20 MR. LOWERY: No.

21 COMMISSIONER HALL: Because all we're
22 looking at today is whether or not the RESRAM should
23 have the balance of that hundred percent.

24 MR. LOWERY: I agree with that. Those
25 would be totally -- two totally independent issues.

1 COMMISSIONER HALL: Okay. Thank you.

2 MR. LOWERY: So there's two obligations,
3 one on the part of the Company, one on the part of
4 the Commission have arisen because the Company made
5 the PISA election.

6 Fourth, there is no dispute that the
7 remaining 15 percent of the return and depreciation on
8 this renewable energy resource that we're talking
9 about is a RES compliance cost. Nobody claims that
10 it's not a RES compliance cost.

11 Fifth, Section 10 -- or excuse
12 me, 393.1030.2, sub 4, which is one of the provisions
13 of the RES, mandates that the Commission allow
14 recovery of prudently incurred RES compliance costs
15 and requires the Company to pass back the benefits as
16 well, via rider, via RESRAM. The statute expressly
17 says that.

18 Sixth, Senate Bill 564 acknowledges the
19 continued effectiveness and existence of the RES and
20 there's not a single word in Senate Bill 564 that
21 provides that the RES has been amended or repealed by
22 Senate Bill 564. It acknowledges the continued
23 effectiveness in several ways; I'll just mention a
24 couple of the examples. It makes clear that RESRAM
25 adjustments are an exception to the rate moratorium

1 that's in 393.1655, and it makes clear that RESRAM
2 adjustments are subject to the compound annual growth
3 rate, the 2.85 percent CAGR rate cap that is in --
4 in 1655 among other places.

5 Seventh, there's not a single word in
6 Senate Bill 564 that says that a RES compliance cost
7 that is not being reflected in rates elsewhere cannot
8 be included in the RESRAM.

9 And finally, the agreed upon and now
10 approved RESRAM, like any typical rider, and the
11 Company's fuel adjustment clause is a -- is a good
12 example of this, will be rebased in each rate case.
13 What that means is there's going to be a subset of
14 RES compliance costs and benefits that are reflected
15 in the revenue requirement and in base rates and
16 there's going to be the remaining subset that's going
17 to be reflected in the RESRAM.

18 But neither the RES statute nor the FAC
19 statute or any other statute that provides for a
20 rider in this state expressly says that you can't
21 both recover a cost in base rates and recover that
22 same cost in the rider mechanism itself. That's
23 because the prohibition on recovering it in two
24 places is necessarily implied by all such
25 legislation. And the RES statute itself specifically

1 contemplates this where it talks about the fact that
2 the rider's got to provide for recovery of RES
3 compliance costs outside of general rate proceeding.
4 The clear message being if it's being recovered in
5 base rates, you're not also going to recover in the
6 rider.

7 So what is OPC's argument. I would
8 submit that became, at least to me, less clear last
9 week when OPC filed its position statement.

10 But putting that aside for a minute,
11 let's start with Dr. Marke. Dr. Marke basically said
12 three things. First, he claimed that because there
13 were earlier, unenacted versions of Senate Bill 564
14 and a similar companion bill in the House that if --
15 had -- if they had been enacted, there would have
16 been a deferral of 100 percent of the return and
17 depreciation. He contends that since Senate Bill 564
18 only calls for a deferral of 85 percent, that the
19 remaining 15 percent can't be included in the RESRAM.
20 Keep in mind there's not a word anywhere in Senate
21 Bill 564 that amends 393.1030.2, sub 4, the rider
22 provision.

23 Also keep in mind that nobody is claiming
24 that the PISA provisions of Senate Bill 564 are
25 ambiguous. I mean, they're very clear. Defer 85

1 percent, Commission, you must include that in the
2 earning requirement. This means that as a matter of
3 law the Commission can't considered these unenacted
4 versions of other bills that didn't become law.
5 Instead you're confined to the four corners of the
6 statutes and that would be Senate Bill 564, it would
7 be the RES statute itself. And your job --

8 COMMISSIONER HALL: Let me ask you a
9 question about that --

10 MR. LOWERY: Sure.

11 COMMISSIONER HALL: -- because I think --
12 I mean, I agree with everything you just said just in
13 the last couple seconds, but I think you could
14 probably even go stronger.

15 Even if we were to determine that the
16 statute was ambiguous, we're still confined to the
17 four corners of the document, aren't we? Of the
18 statute. Aren't we supposed to determine the
19 ambiguity from the text?

20 MR. LOWERY: Well, if the text is plain
21 meaning, and I think it is, then absolutely, you're
22 still confined to the document. That's right.

23 COMMISSIONER HALL: No. But -- but even
24 if it's ambiguous, I mean, we could look to other
25 statutes, but we can't go to extrinsic evidence for

1 legislative intent in Missouri, can we?

2 MR. LOWERY: I think that -- I think that
3 what the Courts have said is the legislative history
4 is a very, very poor indicator of legislative intent
5 and it's of dubious value. Whether there's been an
6 absolute prohibition of ever considering it, I -- I'd
7 like to be able to say that I think that's the law,
8 but I think what the Courts have said is it's really
9 not very useful.

10 Also, please keep in mind, and this goes
11 to your point, Commissioner Hall, even if you could
12 consider -- and whether you can or not might be a
13 point of debate, but let's imagine for a minute you
14 can theoretically consider legislative history. As I
15 just said, the Courts have been very clear that it is
16 a dubious and poor indicator of legislative intent.

17 The fact is, and I mean this with all due
18 respect, but the fact is that Dr. Marke's opinions
19 about this are incompetent. They're incompetent
20 because he's not qualified to tell you how to
21 interpret a statute. That's a legal determination
22 that you have to make. And he's not trained in any
23 way to supersede your judgment about that. He is --
24 his opinion's incompetent because these other bill
25 versions cannot be considered, and even if they could

1 be, they are dubious value to say the least.

2 Moving away from the legal interpretation
3 that I think Dr. Marke advances, OPC may claim it's
4 not a legal interpretation, but that's what it really
5 is.

6 Dr. Marke's second angle is to depart
7 from attempting to provide a legal determination to
8 an extent -- to instead make a policy argument. And
9 the policy argument is he claims that Ameren Missouri
10 is trying to, quote, have it both ways. That claim
11 is false. For Ameren Missouri to have it both ways
12 would be for Ameren Missouri to recover more than a
13 hundred percent of its RES compliance cost, would be
14 for Ameren Missouri to be able to get something after
15 Senate Bill 564 with respect to RES compliance costs
16 that it couldn't get before 564. Well, the fact is
17 we're going to recover 100 percent of the RES
18 compliance costs and not a penny more or a penny less
19 and we're going to give back a hundred percent of the
20 RES compliance benefits, not a penny more or a penny
21 less.

22 Ameren Missouri's trying to have it the
23 one way that the RES statute says that it can have it
24 and that is we're required to comply with the RES,
25 we're required to incur costs to do so. And the

1 citizens of the state saw fit to make sure that we
2 get a hundred percent cost recovery through the RES.

3 Dr. Marke's third angle which is really
4 another policy-based argument is to claim that
5 including the 15 percent of return and depreciation
6 of RESRAM while deferring the other 85 of the PISA
7 reg asset would send a poor price signal. And what I
8 think he means by that is that customers wouldn't be
9 able to see in the RESRAM charge what the real cost
10 of RES compliance is.

11 Well, first of all, the RES statute
12 doesn't say anything about the RESRAM needing to
13 provide a good price signal. But even more
14 importantly maybe than that is under OPC's approach,
15 you're going to have a lousy price signal as well.
16 In fact, you're going to have a worse price signal
17 because none of the RES compliance costs, at least
18 none of the return and depreciation, which would be
19 not insignificant RES compliance costs, is going to
20 be reflected in a RES charge.

21 And even putting that aside, because
22 we're going to rebase the RESRAM in every rate case,
23 we're going to take a big chunk of the RES compliance
24 costs and benefits, put them in base rates, and
25 they're going to lose their transparency entirely and

1 the only thing customers are going to see in a RESRAM
2 is the change between rate cases which is going to
3 give a very tiny picture of what the real RES
4 compliance costs and benefits are.

5 So Dr. Marke's claim that there's a poor
6 price signal just simply doesn't hold any water.

7 I have one other point. Your rules allow
8 utilities to make a choice. The utility can say, I
9 want to have a RESRAM and if we do, we get a RESRAM
10 and we include all the costs and benefits in the
11 RESRAM or, and this is what Ameren Missouri's done
12 the last ten years because our RES compliance costs
13 were really fairly minor in the grand scheme of
14 things, we can use a deferral mechanism under your
15 RES rule, defer it to a reg asset included in rates.
16 Well, in that case, there's -- again, there's no
17 price signal, customers can't see that, they can't
18 see that RES compliance costs in that deferral
19 mechanism at all.

20 So that brings me to OPC's latest
21 argument, which as far as I can tell really doesn't
22 have anything to do with Dr. Marke's argument. And
23 as a tee up the latest argument, I want to read to
24 you exactly what OPC said, because I think their
25 exact words are important here.

1 In OPC's position statement filed last,
2 OPC said, and I quote, The operative deferral statute
3 was enacted -- and then they quote Senate Bill 564 --
4 quote, Notwithstanding any other provision of Chapter
5 393 to the contrary, ending the quote of the statute.
6 And then they continue.

7 And thus explicitly excluded the recovery
8 mechanism for Missouri's Renewable Energy Standard
9 under Section 393.1030.

10 Specifically excluded the RESRAM.
11 Explicitly excluded the RESRAM I should say. And
12 when they're talking about the operative deferral
13 statute, they're talking about PISA, defer 85
14 percent, the Commission include that in rates.

15 Now, I've read -- and I would -- I would
16 suggest that this sentence is the linchpin of the
17 argument that they make in their position statement.
18 I've read this probably two dozen times and it still
19 doesn't make any sense to me. And the reason it
20 doesn't make any sense to me is that in order to
21 explicitly exclude legitimate RES costs from the
22 RESRAM the General Assembly, well, I would submit the
23 General Assembly has to explicitly say so. The
24 General Assembly would have to say something like,
25 The 15 percent of return and depreciation that didn't

1 get deferred to the PISA regulatory asset shall not
2 be included in the RESRAM. Senate Bill 564 doesn't
3 say that. That's not -- this is not an explicit --
4 excuse me, an explicit exclusion at all. At best
5 it's some kind of implied or implicit exclusion that
6 OPC's arguing for.

7 Nor does OPC's focus on the
8 notwithstanding language that I just read to you aid
9 their argument at all. In fact, I would suggest it
10 rebuts it. As OPC points out in their position
11 statement, notwithstanding means in spite of. So
12 let's apply that to the language of 564. But 564
13 says that in spite of anything else in Chapter 393,
14 the Company has to defer and the Commission has to
15 include the deferral in rates. In spite of. Well,
16 what is it in spite of.

17 Well, I think you're all familiar with
18 Section 393.270 which is the statutory embodiment of
19 the single issue ratemaking doctrine that the UCCM
20 case says, That's where single issue ratemaking
21 prohibitions in Missouri come from. Well, in spite
22 of the fact that there is a single issue ratemaking
23 prohibition in Chapter 393, in spite of that, we have
24 to defer and you have to include it and you don't get
25 to consider any other relevant factor.

1 But none of that has anything to do with
2 whether the 15 percent is a RES compliance cost. It
3 either is or it isn't. And it was before and it
4 remains.

5 The bottom line is that OPC is asking you
6 to conclude that the rider requirement in the RES
7 statute was repealed or amended by implication.
8 Repeals and amendments by implication are disfavored.
9 In fact, the Missouri Supreme Court says, quote,
10 Where the legislature amends a statute, it must do so
11 explicitly.

12 And I suppose that's why OPC's arguing
13 that there's some kind of explicit exclusion when you
14 can't find it anywhere in the statute.

15 One last substantive point. OPC also
16 couches in its position statement its argument as
17 simply urging you to uphold what it calls a, quote,
18 consumer protection. And I think the clear
19 suggestion OPC is making is that the Company and the
20 Staff are somehow being unfair or the Company and the
21 Staff are trampling on consumer protection somehow by
22 taking the position that these legitimate RES
23 compliance costs should flow through the rider. I'd
24 ask you not to be fooled by the specious argument.

25 The fact is the citizens of Missouri

1 required us to have the RES. We have to spend money.
2 We incur costs in order to do so. And it's OPC's
3 position that leads to unfairness in that the Company
4 has to effectively eat this 15 percent of RES
5 compliance cost in OPC's world between rate cases I
6 admit, but it nevertheless has to eat dollars for RES
7 compliance. The customers get 100 percent of the
8 benefits. That's the unfair position, not the
9 position that Staff and the Company are taking.

10 As a wrap up, I want to point out that I
11 have two witnesses with me today, Mr. Tom Byrne and
12 Mr. Steve Wills. We wouldn't have witnesses but for
13 the manner in which this issue came up but they're
14 here and will be happy to answer question. I'd urge
15 you to ask them questions if you have any. I'd also
16 not that while Mr. Byrne isn't trying cases anymore,
17 he is a trained attorney with more than 25 years of
18 experience in these areas, and I think might be
19 qualified if you have questions to ask, questions
20 about this. And Mr. Wills is very well-versed in the
21 relationship of base rates and the RESRAM itself.

22 So I appreciate your time very much this
23 morning. I'm here myself to answer any other
24 questions that you might have or at least attempt to
25 at this time. Thank you.

1 JUDGE WOODRUFF: Thank you. Opening for
2 Staff.

3 Did you have a question?

4 COMMISSIONER HALL: Yeah. Looking at
5 the 393.1400.

6 MR. LOWERY: Okay.

7 COMMISSIONER HALL: The PISA statute. I
8 just want to make sure that -- I'm sorry. The -- the
9 RESRAM statute.

10 MR. LOWERY: 1030?

11 COMMISSIONER HALL: Yes, 1030. And the
12 operative section is on -- is Section 4. Well,
13 it's --

14 MR. LOWERY: It's subdivision 4,
15 subsection 2 --

16 COMMISSIONER HALL: Exactly.

17 MR. LOWERY: -- I believe.

18 COMMISSIONER HALL: That's -- the RESRAM
19 is to include the costs associated and then, quote,
20 in meeting the requirements of this section.

21 MR. LOWERY: Right.

22 COMMISSIONER HALL: Is there any question
23 at all that the costs related to this project, the
24 wind farm, meet that criteria?

25 MR. LOWERY: Absolutely no question

1 whatsoever.

2 COMMISSIONER HALL: Nobody has raised
3 that with you at all?

4 MR. LOWERY: Absolutely no question.

5 COMMISSIONER HALL: Okay. All right.

6 MR. LOWERY: The only possible way that
7 could happen is if for some crazy reason the Division
8 of Energy didn't certify it as a renewable energy
9 resource. Well, it's a wind generation facility, so
10 I -- I think it's impossible.

11 COMMISSIONER HALL: All right.

12 MR. LOWERY: Nobody's raised it.

13 COMMISSIONER HALL: Can you explain to me
14 the difference -- okay. If -- if 564 had not passed,
15 would -- would Ameren be trying to run a hundred
16 percent of their costs through the RESRAM?

17 MR. LOWERY: Absolutely.

18 COMMISSIONER HALL: Is there a financial
19 difference between running the costs through the
20 RESRAM or through PISA?

21 MR. LOWERY: There is certainly a timing
22 difference because if all the costs run through the
23 RESRAM, then there's going to be RES charges
24 reflecting all the return and depreciation on the
25 wind farm. They're going to be having -- it's not

1 exactly in real time because there is an accumulation
2 period and then you have a charge, but much faster
3 than if you put in a reg asset and you may be two
4 years or whatever it is before you have a rate case
5 and you litigate a rate case.

6 COMMISSIONER HALL: But you've got curing
7 costs on that, so that should essentially work out
8 the same.

9 MR. LOWERY: At the end of the -- at the
10 end of the day when the music all stops, there
11 shouldn't be any difference, maybe, probably not even
12 from a time value money perspective, I agree. But
13 there's a timing cash flow difference and, of course,
14 you know, there's customers come and go in the system
15 so I guess you could have a little bit of a
16 difference there from some customers.

17 COMMISSIONER HALL: So the Company could
18 have decided to not elect PISA under 564 and run a
19 hundred percent of the cost through --

20 MR. LOWERY: Absolutely.

21 COMMISSIONER HALL: -- through the
22 RESRAM.

23 MR. LOWERY: Absolutely. That's true.
24 Of course then it wouldn't have had PISA on anything.

25 COMMISSIONER HALL: Correct.

1 MR. LOWERY: But it was the Company's
2 choice to elect PISA, that is true.

3 COMMISSIONER HALL: Okay. Well, I --
4 I -- from what I've heard so far and what I've read
5 so far, I'll be honest; I don't even understand why
6 we're here today. This seems like a slam dunk case
7 that it seems to me there's a lot of people wasting a
8 lot of time on.

9 But I will -- I will make this point,
10 that is this is 100 percent a legal issue; I agree
11 with you. And I don't see any reason why we have
12 witnesses testifying. So I'm -- I'm going to listen
13 to counsel and then I'm going to exit the stage
14 because I just don't see any reason -- I think it's a
15 total waste of time. So thank you for your comments.

16 MR. LOWERY: I don't disagree.

17 JUDGE WOODRUFF: Okay. Opening for
18 Staff.

19 MS. MERS: I know you have a copy, but
20 this is nice and highlighted for you.

21 JUDGE WOODRUFF: This is a copy of the
22 statutes?

23 MS. MERS: Yes, the PISA
24 statute 393.1400.

25 Good morning, Commissioners. Good

1 morning, Judge. If it pleases the Commission. My
2 name is Nicole Mers, and I'm here on behalf of staff.

3 Today's case stems from Ameren
4 Missouri's statutory obligations under 393.1030 to
5 generate or purchase renewable energy resource --
6 electricity from renewable energy resources. I will
7 refer to 393.1030 in this case as the RES statute.

8 The RES statute began as a ballot
9 initiative in 2008 that was passed with 66 percent of
10 the vote. The RES statute requires that beginning
11 in 2021, 15 percent of Ameren's retail sales must be
12 produced or purchased from renewable energy
13 resources. The RES statute also incentivizes
14 Missouri's cited generation with Missouri generation
15 given .25 percent adder.

16 To comply with the law, Ameren Missouri
17 must begin retiring in 2021 4.5 million RECs.
18 Currently Ameren Missouri produces 1.4 million RECs,
19 leaves -- leaving a 3.1 million REC shortfall for
20 compliance with the law. Ameren Missouri modeled the
21 level as cost of energy and overall economics and
22 began moving forward to procure 700 to 800 megawatts
23 of wind for compliance.

24 Staff evaluated the project in this case
25 and due to the need to comply with the legal

1 obligation of the RES compliance, the details of the
2 BTA and the value of the PTCs among other things, we
3 concluded that it met the target criteria. And then
4 we entered into a stipulation and agreement with the
5 Company. The third iteration of that stipulation and
6 agreement was approved at the last agenda -- or
7 actually the agenda the week before last, leaving
8 only the issue that you will hear today left for
9 determination.

10 I concur with the comments of
11 Commissioner Hall and Ameren in what OPC said in its
12 position statement, that today is purely a legal
13 issue. And that issue today is does Missouri -- or
14 Ameren Missouri's election of plant in service
15 accounting or PISA under 393.1400 not allow Ameren
16 Missouri to collect a hundred percent of prudently
17 incurred capital costs required for RES compliance.

18 Staff believes the answer to this
19 question is no. Ameren Missouri can utilize
20 both 393.1400, which I will refer to as the PISA
21 statute, and a RESRAM to receive a hundred percent of
22 prudently incurred costs.

23 Although Staff fully intends to explain
24 all of the legal arguments during this conclusion in
25 briefing, I will explain briefly why Staff has come

1 to that con-- this conclusion in my opening.

2 First, it is important to remember that
3 Ameren Missouri is required by law to meet RES
4 compliance. This means that Ameren Missouri is
5 obligated to incur some costs to meet compliance, be
6 it for owning generation, a purchase power agreement,
7 or some other method. In the same statute that
8 requires Ameren Missouri to re-- meet the renewable
9 energy requirements, the legislature put in place a
10 mechanism for recovery outside of a rate case of
11 prudently incurred costs. This mechanism works to
12 ensure that the utility is fully compensated for
13 going beove what is required -- going above and
14 beyond what is required for safe and adequate service
15 in incurring costs to secure renewable generation.

16 393.1030.2, sub 4 does not limit the
17 utility's ability to recover prudently incurred costs
18 and the legislature has not repealed this.

19 OPC argues election of PISA requires
20 utilities to forego 15 percent of prudently incurred
21 costs; however, OPC does not state that a utility
22 that did not elect PISA has to forego the same 15
23 percent impro-- incurred cost. In fact, in rebuttal
24 testimony, OPC's witness confirms a utility that does
25 not elect PISA can utilize a RESRAM. Seems

1 counterintuitive that a utility that elects to
2 utilize PISA to book 85 percent of the costs and then
3 wait until its next rate case to recover those costs
4 would be entitled to recover less of the same costs
5 than a utility that utilizes a RESRAM and immediately
6 flows through a hundred percent of cost to a
7 customer.

8 In other words, why would some customers
9 be entitled to a so-called consumer protection as OPC
10 has called their position while other customers are
11 not, depending on if the utility has elected PISA or
12 not.

13 In testimony OPC advances the legal
14 argument that legislators intend to -- intended to
15 limit recovery costs to 85 percent without the
16 remainder flowing through the RESRAM by pointing to
17 previous versions of Senate Bill 564.

18 This has been on, but I'd also like to
19 note that the OPC witness has advancing the legal
20 argument regarding statutory interpretation and
21 legislative intent is not an attorney nor does he
22 have any legal training nor experience. Therefore,
23 the testimony is simply a lay opinion provided by
24 somebody with no expertise on the subject matter.
25 It's not expert testimony, and should be accorded

1 little weight.

2 In addition to being lay opinion
3 testimony, the argument fails as it disregards
4 well-established case law regarding legislative
5 intent in history. The Eighth Circuit has stated in
6 Northern States Power Company versus United States,
7 When the words of a statute are unambiguous, the
8 first canon, that the Court must presume that the
9 legislature says in statute what it means and means
10 in statute what it says. That is also the last
11 canon, and at that point judicial inquiry's complete.

12 The U.S. Supreme Court has also stated in
13 Connecticut National Bank versus Germain that when
14 statutes are clear and straightforward, that
15 legislative history is at best, interesting, and at
16 worst, distracting and misleading and in neither case
17 is it authoritative.

18 This seems to be a case of the latter as
19 OPC itself has stated that the PISA statute is clear
20 and explicit. However, it is against the canons of
21 statutory construction to turn to legislative intent
22 and history if the statute is clear. Since the
23 statute, as OPC states, is clear, our inquiry's at an
24 end. It's also important to note, and this goes to a
25 question you had, Commissioner Hall, that Missouri --

1 in the Missouri Supreme Court, the case Butler versus
2 Mitchell-Hugeback, they have found that legislative
3 history is not highly persuasive as words are
4 routinely modified for many reasons during the course
5 of the legislative process.

6 Because OPC has not made a showing that
7 the PISA statute is ambiguous and have instead
8 asserted that the statute is clear, OPC has ignored
9 its canon of construction and used legislative
10 history improperly to support its desired outcome.

11 OPC has also ignored a canon of
12 construction given both by the United States Supreme
13 Court and the Missouri Supreme Court. The United
14 States Supreme Court case, Epic Systems versus Lewis,
15 a 2018 case, and the Missouri Supreme Court case is
16 State ex rel. Bowman versus Inman, a 2017 case, that
17 come to the conclusion that statutes, especially
18 statutes on the same subject must be read together
19 and harmonized. The U.S. Supreme Court in the Epic
20 Systems case held that a party suggesting that
21 statutes cannot be harmonized bears a heavy burden to
22 show that there was a clearly expressed intention and
23 that it is the job of Congress by legislation and not
24 the Supreme Court by supposition to write laws and
25 repeal them. OPC has not met that heavy burden.

1 Finally, in its position statement OPC
2 raises the argument regarding the use of the term
3 "notwithstanding." This argument misses the mark and
4 ignores the clear, plain meaning of the statute.

5 Turning to the PISA statute that I've
6 handed out -- and I'll put it on the Elmo for
7 everyone else to look at.

8 JUDGE WOODRUFF: We may not be able to
9 get that on today.

10 MS. MERS: Okay. I'm just looking at the
11 Revised Statutes of Missouri, RSMo 393.140.

12 If you look at the paragraph in which the
13 notwithstanding appears, in that very same paragraph
14 in which the language, Notwithstanding any provision
15 of this chapter to the contrary, you will find
16 language, I've highlighted it in yellow in the
17 handout that I've given, that the following language
18 appears that stays, The balance of the regulatory
19 asset as of the rate base cutoff date shall be
20 included in the electrical corporation's rate base
21 without any offset, reduction, or adjustment upon
22 consideration of any other factor.

23 This language in the same paragraph that
24 is containing the notwithstanding language is
25 explicitly stating that all relevant factor do not

1 have to be considered. And that language runs
2 contrary, as Jim noted, to the usual directive that
3 the Commission has of 393.270 that states, In
4 determining the price to charge for gas, electric, or
5 water, the Commission may consider all facts in which
6 its judgment have any bearing upon a proper
7 determination of the question.

8 In other words, the Courts have held
9 that 393.270 is the prohibition on single issue
10 ratemaking and that all relevant factors are
11 appropriate to consider when setting rates.

12 The plain reading of the PISA statute is,
13 Notwithstanding the language of 393.270 to the
14 contrary, the value of the regulatory asset shall be
15 placed into rates without consideration of all
16 relevant factors.

17 To close, Staff's reading of the PISA
18 statute and the RESRAM statute, according to the
19 directions of the U.S. and the Missouri Supreme Court
20 about statutory interpretation and harmonizing
21 statutes on the same subject allows Ameren to do the
22 following: Ameren Missouri shall book 85 percent of
23 return on and of any qualifying plant as PISA
24 under 393.1400.

25 For RES compliance costs Ameren

1 Missouri's utilization of a RESRAM under 393.1030.2
2 sub 4 allows for only the remaining 15 percent of the
3 return of and on prudent RES compliant plant to flow
4 through the RESRAM, along with any prudently incurred
5 expenses and all benefits, except to the extent that
6 Ameren Missouri has been granted a variance that
7 allows them to flow through the FAC.

8 With this reading the Commission should
9 approve the RESRAM that -- tariff that's been
10 attached to the stipulation as Appendix B.

11 Thank you. And I'm happy to answer any
12 questions you might have. We also will be having
13 Jamie Myers appear on behalf of staff to answer any
14 other questions you may have.

15 JUDGE WOODRUFF: Any questions?

16 COMMISSIONER HALL: No questions. Thank
17 you.

18 JUDGE WOODRUFF: Thank you.

19 MS. MERS: Thank you, Judge.

20 JUDGE WOODRUFF: Opening for Public
21 Counsel.

22 MR. C. HALL: May I approach the
23 Commission?

24 JUDGE WOODRUFF: Certainly.

25 MR. C. HALL: For the courtesy of

1 everyone being able to follow along, we've made
2 printouts of our presentation we're providing.

3 Would you like a copy?

4 COURT REPORTER: Thank you.

5 MS. MERS: Have you got one more?

6 MR. C. HALL: I've got one more.

7 MS. MERS: Thank you.

8 MR. C. HALL: May it please the
9 Commission. Good morning. My name -- oh, pardon me.
10 We didn't get this up yet.

11 JUDGE WOODRUFF: No. It's in the process
12 of changing behind you. There we go.

13 MR. C. HALL: Okay. Good morning. My
14 name is Caleb Hall. I'm the newest attorney with the
15 Office of Public Counsel. Immediately before joining
16 this office, I was actually the House analyst
17 assigned to House Bill 2265 and SB 564, the very laws
18 we're now debating today.

19 Now, I must admit I'm personally excited
20 to be here because this is my first chance getting to
21 speak to this Commission in a hearing. As an office,
22 we don't see a reason to be here and we didn't see a
23 reason to be here when we asked Ameren Missouri to
24 forego this hearing and simply brief the issue.
25 Instead we're here and as long as we have that

1 convenience, our office is available for questioning.
2 And we'll give a brief trailer for our argument where
3 most of the actual otherwise will be provided in the
4 briefs.

5 Public -- first let's state what our
6 argument is. Public Counsel's argument is not that
7 the RESRAM was repealed. Nowhere in anyone's
8 testimony has that been argued. Instead our
9 argument is follow the plain reading of the statute,
10 and two, that legislative history supports the plain
11 reading. There's no reason why you should close your
12 eyes off to blinders and ignore obvious and apparent
13 public history of what was debated on the Missouri
14 Senate floor.

15 PISA may be used for all additions
16 except -- all rate-based additions except coal-fired
17 plant, your new nuclear facilities, new natural gas,
18 or those rate -- or those new rate-base additions
19 that increase revenues by allowing service to new
20 customer premises.

21 The importance of why I ran the slide is
22 that you see a very large expansive definition
23 whereas you don't have a restrictive one. It's all
24 rate-based additions with these few exceptions. It's
25 not singling out wind. It's not singling out

1 renewables precisely because PISA was enacted with
2 the mind of rate case modernization and modernizing
3 the grid. You're talking smart meters, transmission
4 lines, all these things that are promised through
5 PISA. All these things that were promised through
6 PISA. Not just wind. Putting all this cost through
7 wind is otherwise going to distort the purpose of
8 PISA.

9 Now, this is a pretty good deal. Whereas
10 the depreciation expense and return would otherwise
11 be lost due to regulatory lag in between when a plant
12 is built and when that plant's put into service, that
13 cost is to be immediately recouped, but that recovery
14 is not unlimited. Instead, again following the plain
15 reading of the statute, it says that 85 percent of
16 all depreciation and return is to be returned,
17 associated with all qualifying plants. Nowhere else
18 in this statute or anywhere else in SB 564 is that 15
19 percent addressed. Nowhere in SB 564 was RESRAM
20 amended to make clear that RESRAM can be made in
21 conjunction with PISA.

22 Now, I must admit, when I first read the
23 first sentence, I thought that was against us. I
24 thought it read that notwithstanding the provisions
25 that we want to reply upon, that Ameren Missouri gets

1 a hundred percent. But let's look closely at that.
2 Notwithstanding any other provision of this
3 chapter to the contrary, this chapter, Chapter 393.
4 Not 393.270 specifically, not any other statute,
5 rather all the chapter including your Renewable
6 Energy Standard.

7 And notwithstanding. What does that mean
8 exactly. Despite the renewable energy standard's
9 guarantee of a hundred percent recovery, if you
10 operate under this statute, you only get 85 percent.
11 No more, no less.

12 One may wonder why a utility would elect
13 to use PISA if it's only going to get 85 percent of
14 depreciation when the current Renewable Energy
15 Standard recovery mechanism, RESRAM, would enable a
16 hundred percent recovery. We offer that these are
17 choices and choices have tradeoffs. Sure, RESRAM
18 gives you a hundred percent recovery subject to a 1
19 percent retail impact cap. This 85 percent may not
20 seem as big even though it's 85 percent of the whole,
21 and it's also -- but you also have more wiggle room.
22 You have 2.85 percent retail rate impact cap for --
23 in the context of Ameren Missouri. For Kansas City
24 Power & Light, they'll be able to play with a 3
25 percent retail rate impact cap. Plus, unlike the

1 Renewable Energy Standard, PISA is subject to a
2 stated 20-year amortization. You don't get that
3 guarantee out of Renewable Energy Standard.

4 Furthermore, if you turn to two other
5 accompanying statutes that were passed within SB 564,
6 you'll see two explicit references to not just the
7 renewable energy statute, but the RESRAM.

8 This is 393.1665. This is the
9 required solar energy investments. You see an
10 explicit reference. A rate adjustment mechanism
11 under 393.1030. Likewise you see this same language
12 in the accompanying statute regarding the
13 reauthorized solar rebates.

14 The stat-- the legislature knew how to
15 write RESRAM. They knew how to cite to the RES. And
16 yet they chose not to cite to that in the operative
17 PISA statute. That choice should be informative
18 today.

19 Now, not only is OPC's position
20 clearly --

21 COMMISSIONER HALL: Excuse me. Could you
22 make that ar-- that last argument one more time? I'm
23 not sure I followed.

24 MR. C. HALL: The -- why these are
25 important?

1 COMMISSIONER HALL: Well, you made the
2 point that the General Assembly knows how to cite
3 RESRAM when they want to and they didn't --

4 MR. C. HALL: Sure. So --

5 COMMISSIONER HALL: -- in 1665 and 1670,
6 so I'm trying to understand that argument again.

7 MR. C. HALL: Of course, Commissioner.
8 You have multiple statutes that are passed all in
9 conjunction within the body of SB 564. So we should
10 be understanding that this wasn't later -- these
11 weren't statutes that were created years apart from
12 each other; instead, this was one legislative body
13 that all had the same consideration and background
14 knowledge while drafting it.

15 So if you see explicit reference to
16 RESRAM in other sections, you have to wonder why it
17 wasn't put in the other one. Of cour-- of course
18 legislative intent is only a buttress to our main
19 argument. Rather our main argument is just reading
20 the text. Notwithstanding anything else guaranteed
21 in Chapter 393, you get 85 percent.

22 But turning to legislative history just
23 for a bit, let's see what the House did.

24 January 24th, 2018, Representative T.J.
25 Berry introduces legislation that guarantees we get

1 all depreciation expense and return. I think that's
2 the statute that Ameren Missouri's reading today.

3 Then the committee amended the statute
4 and said, You're only going to get 100 percent of
5 all, but only half of your qualifying plants. That
6 seems like a little bit hard to implement. How do
7 you decide which half of the plant you get. So
8 obviously that got amended on the House floor
9 March 14th, 2018, and instead you only get 50
10 percent. This vers-- that 50 percent language is
11 what was necessary to move the House bill out of the
12 House, into the Senate where it ultimately died an
13 untimely death.

14 Then you look at what the Senate did,
15 where the revisions were far more pronounced. Within
16 Missouri's deliberate legislative body, you see that
17 Senator Ed Emery introduces the all depreciation
18 expense return language December 1st, even before the
19 legislative session formally started.

20 Then February 7th we see that number gets
21 lowered to 90 percent and the -- mind you, this is
22 after the bill hit the floor and endured a 20-hour
23 filibuster. They've -- there was large -- this
24 filibuster was motivated first and foremost by
25 consumer -- by the interest of consumer issues and

1 making sure that the recovery of full depreciation is
2 not otherwise going to be a burden to consumers.

3 But not even that 90 was good enough to
4 get through the legislative balk -- block. Instead
5 Senate Amendment 1 was then offered by Senator Romine
6 on that same day and that struck the word 90 and
7 inserted instead the word 85. That 85 is what was
8 necessary to get out of the Senate, where it sat in
9 the Missouri House for 100 days where at any time it
10 could have been amended to make clear that you get to
11 use multiple recovery mechanisms in conjunction with
12 the same plant. Instead it was passed May 16th
13 saying, with the language we're debating today, 85
14 percent of all.

15 The amount settled on was 85 percent.
16 The Commission should not give into arguments here
17 that we're unable to pursued members down the street.

18 Some of the mischaracterization --

19 COMMISSIONER KENNEY: Excuse me.

20 MR. C. HALL: Yes.

21 COMMISSIONER KENNEY: Are you making the
22 assumption that the senators actually understood the
23 law?

24 MR. C. HALL: As someone who worked in
25 the House, I am making the assertion that senators

1 and representatives understand the law, yes.

2 COMMISSIONER KENNEY: Well, I -- sitting
3 there eight years, I would make the assumption that
4 not everybody understands the factual law because
5 they're dealing with lobbyists who want one thing and
6 want another thing and some of them don't actually
7 understand everything that's going into it. Because
8 a lot of -- most of them are not attorneys.

9 MR. C. HALL: I think that is a fair
10 point, Commissioner.

11 COMMISSIONER KENNEY: No, it's a true
12 point.

13 MR. C. HALL: No. You're --

14 COMMISSIONER KENNEY: And you can ask
15 Chairman Silvey.

16 MR. C. HALL: I think that's a fair
17 point. How -- not all of them are attorneys and all
18 of them come to the legislative body with a different
19 skill set. I would ask you to consider that you have
20 this history of amendments that it looks like you're
21 buying a used car. The used car man gives out the
22 offer of, Okay, it's a hundred. The House came back
23 and said, No, it's going to be 50. And then an
24 amount was agreed upon in the middle, 85.

25 You don't need a law degree to read a

1 statute. The statute speaks for itself. You don't
2 need a law degree to understand that when you have
3 cantankerous, prolonged filibustering debate over the
4 amounts of recovery under plants in service
5 accounting that it should mean something.

6 Which is why we ask the rhetorical
7 question again. Why the 85 percent. If PISA was
8 simply enacted to be a separate bucket for electric
9 utilities to put the RESRAM costs in while meanwhile
10 keeping other RESRAM costs with -- under the 1
11 percent retail impact cap, why wasn't the RES statute
12 amended. Why wasn't the RES statute cited to at all
13 in the PISA statute.

14 In summation, limiting the amount of
15 depreciation to 85 percent is just, it's reasonable,
16 and it fully respects both the text and intent of the
17 legislature.

18 I thank you for your time, and I wish you
19 all a happy Halloween.

20 JUDGE WOODRUFF: Any questions?

21 COMMISSIONER KENNEY: No.

22 JUDGE WOODRUFF: Thank you. All right.

23 Before we go on to the witnesses --

24 COMMISSIONER HALL: I have -- I'm sorry.
25 Okay. I wanted -- looking at the RESRAM statute, the

1 same provision that I asked Mr. Lowery about, I want
2 to make sure I understand OPC's view of this. Is
3 there any question in Public Counsel's mind that the
4 costs associated with the wind farm are -- do qualify
5 as meeting the requirements of this section, that
6 those costs are related to -- to complying with the
7 RES statute?

8 MR. C. HALL: That is going to have to
9 depend on what specific costs we look at. Contrary
10 to the characterizations from prior -- from prior
11 counsel, there was discussion of what exactly a
12 renewable energy cost is. The wind mill itself,
13 probab-- most definitely. You're going to -- your
14 first initial environmental mitigation costs, yeah,
15 because we want this wind farm to be operated in a
16 reasonably prudent manner. But if you exceed your
17 habitat conservation plan because your imprudence and
18 then perhaps to incur further costs, the Office of
19 Public Counsel does not see that as a renewable
20 energy cost. And we, in future cases, would probably
21 argue that that should not be recovered for the
22 RESRAM.

23 COMMISSIONER HALL: Okay. The costs that
24 are at issue here, are there any costs that you don't
25 believe were or will be related to meeting the

1 requirements of the section?

2 MR. C. HALL: I'm afraid you've phrased
3 your question in a negative, so allow me to restate.
4 None of the costs that are at issue here, we are not
5 contesting the eligibility of any of the costs here
6 to flow through the RESRAM as to the definition of a
7 renewable energy cost. However, now that we have --
8 now that we have an operative PISA statute, we have
9 to harmonize the later-in-time statute as to the
10 accounting for depreciation.

11 Perhaps it would be helpful to consider
12 that when the great people of Missouri enacted the
13 Renewable Energy Standard, it doesn't actually
14 guarantee a RESRAM. Subsection 2, subdivision 2 I
15 believe states that there's going -- that commission
16 rule shall provide for a recovery mechanism.

17 I would read the fact that the power -- I
18 would read the fact that it was said, it was stated
19 that commission rule was going to have a recovery
20 mechanism means that the Commission is able to
21 exercise its -- exercise its judgment on how that's
22 going to -- how that's going to be implemented and
23 how it's going to work in conjunction with later
24 enacted laws.

25 COMMISSIONER HALL: Okay. So we did

1 promulgate a rule. Is there anything in that rule
2 that supports your position?

3 MR. C. HALL: I'll be quite honest; the
4 numbers aren't at the forefront of my frontal lobe
5 and I don't have it in front of me. But I do know
6 that there's a provision of the rule that says that
7 costs funneled through the RESRAM are not to be
8 funneled through other mechanisms.

9 COMMISSIONER HALL: I would love to find
10 that cite.

11 MR. C. HALL: I can provide that for you
12 later in -- later in time, Commissioner.

13 COMMISSIONER HALL: Okay. So do you
14 agree with Mr. Lowery that if 564 had not passed or
15 if the Company had decided to not elect PISA, that it
16 could have run a hundred percent of its costs through
17 the RESRAM?

18 MR. C. HALL: Absolutely.

19 COMMISSIONER HALL: Do you believe that
20 there is any financial advantage to running the costs
21 through PISA versus through the RESRAM?

22 MR. C. HALL: Yes. By splitting the
23 depreciation costs through PISA and RESRAM, you may
24 not see much of an effect with this one 700-megawatt
25 facility, but over the five years of PISA and over

1 the time span of all of Ameren Missouri's planned
2 wind investments, you're going to see that the retail
3 rate impact caps are probably not going to be met.
4 And I would offer that this is a way of gaming the
5 system. If all of the depreciation costs for all
6 these planned wind facilities went into the RESRAM,
7 you're likely to see an exceedance of 1 percent
8 impact cap. Again, not with this one project, but I
9 would consider what the plans are for wind energy in
10 the future.

11 COMMISSIONER HALL: Okay. And then
12 lastly, looking at 393.1400, the PISA statute and
13 your, I guess, fourth slide where you've filled in
14 some language. And I -- this is actually the best
15 case you could have made.

16 MR. C. HALL: I'll take that as a
17 compliment.

18 COMMISSIONER HALL: You lose -- you lose
19 in my mind, but that's the best case. If I was a law
20 school professor, I'd give you a B minus for this
21 one, okay. But the -- because the problem is that
22 PISA and the RESRAM are two different mechanisms.
23 And if the RESRAM was actually some type of
24 regulatory asset deferral mechanism, then this would
25 actually have some value. But because they are two

1 different mechanisms, they're not inconsistent.

2 And so I'd applaud the effort. Well, I
3 guess I don't applaud the effort because I don't
4 think we should be here, but I -- I think this was --
5 this was the best argument you could have made.

6 MR. C. HALL: Thank you. I appreciate
7 the compliment. I would just politely offer in
8 response to that, they are two different operative
9 statutes and two oper-- two mechanisms clearly. It's
10 just a matter of they're both addressing the same
11 costs.

12 JUDGE WOODRUFF: Anything else?

13 COMMISSIONER HALL: I have nothing else.

14 JUDGE WOODRUFF: Great. Thank you.

15 MR. C. HALL: I apologize for the delay;
16 I'll get this off the screen.

17 JUDGE WOODRUFF: Not a problem. Before
18 we take first witness, we'll go off the record for a
19 moment to premark exhibits.

20 (Off the record.)

21 (Ameren Missouri Exhibits 119, 120, 121
22 were marked for identification.)

23 (Staff Exhibit 122 was marked for
24 identification.)

25 (OPC Exhibits 123, 124, 125, and 126 were

1 marked for identification.)

2 JUDGE WOODRUFF: Okay. We're back from
3 break. So let's go ahead and get started again.

4 MR. LOWERY: Your Honor, if I may,
5 counsel was discussing this while we were on break
6 and I think we've all agreed that we can waive cross
7 since there's no commissioners here. Mr. Hall
8 indicated during his opening that OPC had offered to
9 forego the hearing. That's true, but OPC also wanted
10 to go ahead and admit their testimony, in which case
11 we needed to admit our testimony. And we didn't know
12 what questions we might need to have based on
13 questions from the bench, which is why the Company
14 was unwilling to just let the testimony come in and
15 not necessarily have a hearing. But now that it
16 appears we're not going to have any questions from
17 the bench, none of us have any cross. We might have
18 based on questions from the bench, but we don't have
19 any otherwise.

20 And so if it pleases the Commission, we
21 could just waive cross and forego having the
22 witnesses take the stand.

23 JUDGE WOODRUFF: And admit the testimony.

24 MR. LOWERY: Admit the testimony just as
25 it is.

1 JUDGE WOODRUFF: I don't actually know if
2 any commissions are planning on coming down, so I
3 don't want to --

4 MR. LOWERY: Okay.

5 JUDGE WOODRUFF: -- rule on that until I
6 go back upstairs and figure that out.

7 So at this point, we'll take another
8 short, about a five-minute break and I'll make sure
9 that nobody had any plans to come back down.

10 MR. LOWERY: And certainly if they want
11 to have questions, we'll make our witnesses
12 available.

13 JUDGE WOODRUFF: Okay. Let's go back on
14 break then. We'll come back at about 10:45.

15 (Off the record.)

16 JUDGE WOODRUFF: All right. We're back.
17 I was able to confirm with all the commissioners that
18 they do not have any questions for the witnesses. So
19 we'll not be having anybody take the stand. Excuse
20 me.

21 We do still have the exhibits out there.
22 We'll start with Ameren's 119, 120, and 121. I
23 assume they'll be offered at this point.

24 MR. LOWERY: We offer 119 through 121.

25 JUDGE WOODRUFF: Been offered. Any

1 objections to their receipt? Hearing none, they will
2 be received.

3 (Ameren Missouri Exhibit 119 through 121
4 were received into evidence.)

5 JUDGE WOODRUFF: 122 is Staff's, Jamie
6 Myers' testimony. Is that offered?

7 MS. MERS: Yes. We will offer 122.

8 JUDGE WOODRUFF: All right. Any
9 objections to its receipt? Hearing none, it will be
10 received.

11 (Staff Exhibit 122 was received into
12 evidence.)

13 JUDGE WOODRUFF: 123 and 124, Dr. Marke's
14 rebuttal and surrebuttal. I assume it's offered?

15 MR. C. HALL: Office of Public Counsel
16 offers those at this time as well as we've had just
17 numbered with the court reporter No. 126, which is
18 Ameren Missouri's filing. The -- and the EO dockets
19 demonstrating their election to -- their election to
20 use the plant in service accounting. At this time
21 Office of Public Counsel also offers, we have copies
22 of all the legis-- all the prior legislation that was
23 discussed in OPC's arguments. These have all been
24 sealed and authenticated by the secretary of the
25 Senate and the chief clerk of the House and we wish

1 that the Commission would take notice of these
2 documents.

3 JUDGE WOODRUFF: And are they offered as,
4 I guess the next number would be 123. Are you going
5 to offer them as separate documents?

6 MR. C. HALL: If it is all possible for
7 convenience, we could offer all the Senate documents
8 as No. 127 and all the House documents as No. 128.

9 JUDGE WOODRUFF: Okay. So we skipped
10 from 124 to 126. 122 was -- you mentioned was your
11 testim-- or your opening statement. We were going to
12 mark that -- or we were going to mark that but not
13 admit it? Is that --

14 MR. C. HALL: Yeah. 125 was the
15 presentation provided. That was --

16 JUDGE WOODRUFF: Oh, I'm sorry. I -- my
17 numbering was screwed up here. 125 is the screen
18 demo. I for some reason had it as 122. Okay. 125,
19 is the screen demo.

20 MR. C. HALL: That was simply marked for
21 identification purposes.

22 JUDGE WOODRUFF: Okay. Okay. All right.
23 Let's do it this -- 123 and 124 have been offered.
24 That's Dr. Marke's testimony. Any objection to the
25 receipt?

1 MR. LOWERY: No objection to those.

2 JUDGE WOODRUFF: And they will be
3 received.

4 (OPC's Exhibits 123 and 124 were received
5 into evidence.)

6 JUDGE WOODRUFF: The screen demonstration
7 exhibit's not been offered. 126, 127, 128, any
8 objections to those documents.

9 MR. LOWERY: I have objections to 127
10 and 128. There's no authority for admitting an
11 unenacted version of a bill whatsoever. I don't care
12 if it's a certified copy of an unenacted version of a
13 bill or not; it doesn't make it admissible evidence.

14 MR. C. HALL: I find Ameren Missouri's
15 objection shocking actually. We only have this
16 hearing because of their mistaken idea that you
17 cannot cite to prior legislation in legal briefs.
18 And now that we have offered them in a good faith
19 attempt, we're now hearing objections. Missouri
20 Supreme Court has repeatedly cites to previous
21 enacted laws in deliberations of their decisions,
22 most notably PSC versus Columbia from 1930, one of
23 the seminal Public Service Commission cases.

24 JUDGE WOODRUFF: I'll go ahead and rule
25 that the objection -- the documents will be admitted.

1 (OPC Exhibits 127 and 128 were received
2 into evidence.)

3 JUDGE WOODRUFF: I assume you've given a
4 copy of them to the court reporter?

5 MR. C. HALL: Unfortunately I wasn't able
6 to get them at this time. I have them available to
7 discuss with the court reporter afterwards.

8 COMMISSIONER HALL: All right. And
9 you'll need to get a copy to me as well.

10 MR. C. HALL: Of course.

11 MR. LOWERY: I'd just like the record to
12 reflect that's the first time I've had an objection
13 that shocked anybody, your Honor.

14 JUDGE WOODRUFF: Okay. All right. We
15 also have -- there was no objection to the 126,
16 correct?

17 MR. LOWERY: I think that what Public
18 Counsel's really asking is you take notice of a
19 filing, but no, if that's properly understood, no, I
20 don't have an objection.

21 JUDGE WOODRUFF: All right. It will be
22 received also.

23 (OPC Exhibit 126 was received into
24 evidence.)

25 JUDGE WOODRUFF: I believe that takes

1 care of all the exhibits. We also have the question
2 of a briefing schedule. When do the parties want to
3 file their briefs?

4 MR. LOWERY: When will the transcript be
5 available?

6 JUDGE WOODRUFF: Off the record for a
7 moment.

8 (Off the record.)

9 JUDGE WOODRUFF: Back on the record. The
10 court reporter indi-- while we were on -- off the
11 record, the court reporter indicated that it would be
12 due on the 5th of November. Up to you guys as to how
13 quickly you want to file your briefs.

14 MR. LOWERY: I'll just throw this out
15 there; I'm not married to this. What about initial
16 on the 16th and reply a week later?

17 JUDGE WOODRUFF: Anybody have a problem
18 with that? That would be the 16th and the 23rd. All
19 right. Then briefs will be due on the 16th of
20 November with reply briefs on the 23rd of November.

21 MS. MERS: Can we discuss --

22 JUDGE WOODRUFF: I'm sorry. Go ahead.

23 MS. MERS: Often the day after
24 Thanksgiving is usually declared a state holiday,
25 which would be the 23rd.

1 MR. LOWERY: You mean before
2 Thanksgiving?

3 MS. MERS: No, the day after.

4 MS. TATRO: The 23rd the State will be
5 closed is what she --

6 MS. MERS: Yeah.

7 MR. LOWERY: Oh, I'm sorry. I'm sorry.
8 I was looking at the wrong calendar, your Honor; it's
9 my fault. What about the 13th and the 20th?

10 JUDGE WOODRUFF: That would be the
11 Tuesday?

12 MR. LOWERY: Tuesday the 13th and Tuesday
13 the 20th. I was -- I apologize; I was still in
14 October.

15 JUDGE WOODRUFF: All right. That sounds
16 fine to me if nobody has any objection to it.

17 MR. C. HALL: We think those dates work
18 for us, but weren't there -- weren't there otherwise
19 preordered dates?

20 JUDGE WOODRUFF: I think I wiped those
21 out when I cancelled the earlier schedule and so we
22 could --

23 MR. LOWERY: That was my understanding.

24 MR. C. HALL: Okay.

25 JUDGE WOODRUFF: I don't know how they

1 could correspond to what the previous dates were.

2 MR. LOWERY: Well, they were -- they were
3 more elongated because --

4 JUDGE WOODRUFF: Yes.

5 MR. LOWERY: -- the theory would have
6 been you would have a complete case to brief.

7 JUDGE WOODRUFF: Right. That was what my
8 thought was on it.

9 MR. C. HALL: Sure.

10 JUDGE WOODRUFF: Okay. Then initial
11 briefs on the 13th; reply briefs on the 20th.

12 Anything else we need to take up while
13 we're on the record?

14 All right. Hearing none, then we are
15 adjourned.

16 (Staff Exhibits 104, 105, 105HC, 106,
17 107, 108, 109 were marked for identification.)

18 (OPC Exhibits 110, 127, and 128 were
19 marked for identification.)

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CERTIFICATE

I, Shelley L. Mayer, a Certified Court Reporter, CCR No. 679, the officer before whom the foregoing transcript of proceedings was taken, do hereby certify that the testimony was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this transcript of proceedings was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.


Shelley L. Mayer, CCR

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